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VOLUME II



NOTE: The second volume continues with Journal proceedings proper (page 1199) of February 28 and concludes with the proceedings of March 13, ending with page 2412 of the Regular Session.



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On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Nohe, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Walters, Williams, Woelfel and Cole (Mr. President)—25.

The nays were: Kessler, Laird, Miller, Trump, Unger and Yost—6.

Absent: Ferns and Prezioso—2.

Excused from voting: Palumbo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. H. B. No. 2201) passed with its title, as amended, as a result of the objections of the Governor.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Nohe, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Walters, Williams, Woelfel and Cole (Mr. President)—25.

The nays were: Kessler, Laird, Miller, Trump, Unger and Yost—6.

Absent: Ferns and Prezioso—2.

Excused from voting: Palumbo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2201) takes effect from passage.

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

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill No. 234, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Senate Bill No. 408, Establishing critical need alternative teaching certificate.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 408 (originating in the Committee on Education)—A Bill to amend and reenact §18C-4A-1, §18C-4A-2 and §18C-4A-3 of the Code of West

Virginia, 1931, as amended, all relating to education; expanding class of teachers who are eligible to receive assistance from Underwood-Smith Teacher Loan Assistance Program; and increasing annual amount of assistance available from Underwood-Smith Teacher Loan Assistance Program.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,
Chair.

The bill (Com. Sub. for S. B. No. 408), under the original double committee reference, was then referred to the Committee on Finance.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 580 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §55-7B-4 of the Code of West Virginia, 1931, as amended, relating to the statute of limitations on claims by minors for health care injuries under the Medical Professional Liability Act.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2157, Relating to absentee ballot fraud.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the sixth order of business.

Senator Stollings offered the following resolution:

Senate Concurrent Resolution No. 48—Requesting the Joint Committee on Government and Finance study the need and feasibility of county commissions cooperating with municipalities and entering into joint agreements to effect the removal or demolition of dwellings or buildings determined unfit for human habitation.

Whereas, Counties and municipalities of West Virginia are each frequently confronted with the removal or demolition of dwellings or buildings determined unfit for human habitation. Both governmental entities have statutory authority to make this determination and take that action, but there is no specific authority for counties and municipalities to cooperate and enter into agreements to effect the removal or demolition of dwellings or buildings determined unfit for human habitation and are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the need and feasibility of county commissions cooperating with municipalities and entering into joint agreements to effect the removal or demolition of dwellings or buildings determined unfit for human habitation; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, 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.

Which, under the rules, lies over one day.

At the request of Senator Carmichael, and by unanimous consent, the Senate returned to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Concurrent Resolution No. 49 (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study the placement of magistrates within regional jails for purposes relating to criminal procedure.

Whereas, Concern has arisen relating to the availability of magistrates to conveniently handle certain matters relating to the initiation of charges, including arraignment; and

Whereas, The Legislature wishes to study, for potential consideration for adoption, best practices as it relates to the administration of justice; and

Whereas, Neighboring states, particularly the Commonwealth of Virginia, place magistrates within the several regional jails to conduct arraignments and for other purposes; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the placement of magistrates within regional jails for purposes relating to criminal procedure; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to study the practices of the Commonwealth of Virginia with respect to the placement of judicial officers within regional jails for purposes of facilitating 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, 2016, 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 reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Trump, unanimous consent being granted, the resolution (S. C. R. No. 49) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration.

On motion of Senator Trump, the resolution was referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution No. 47, Amending Joint Rules of Senate and House relating to printing enrolled bills.

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

The Senate proceeded to the eighth order of business.

Com. Sub. for Senate Bill No. 14, Creating Public Charter Schools Act of 2015.

On third reading, coming up in regular order, with the right having been granted on Wednesday, February 25, 2015, for amendments to be received on third reading, was reported by the Clerk.

Senator Sypolt requested unanimous consent that the bill be laid over one day, retaining its place on the calendar, and with the right for amendments to be considered on third reading remaining in effect.

Which consent was not granted, Senator Unger objecting.

Following a point of inquiry to the President, with resultant response thereto,

On motion of Senator Sypolt, the bill was laid over one day, retaining its place on the calendar, and with the right for amendments to be considered on third reading remaining in effect.

At the request of Senator Carmichael, and by unanimous consent, Senator Carmichael addressed the Senate regarding anticipated action as to Committee Substitute for Senate Bill No. 14.

Eng. Com. Sub. for Senate Bill No. 94, Establishing driver's license restoration program.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 94) passed with its title.

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

At the request of Senator D. Hall, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

At the request of Senator D. Hall, and by unanimous consent, the provisions of rule number fifty-four of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant Simone Marstiller, Florida Appellate Judge, privileges of the floor for the day.

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

Eng. Senate Bill No. 122, Adopting federal definition for disabled veterans' preference in civil service hiring and state contract vendor bidding.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 122) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 248, Requiring certain insurance and owner information be provided following car accident.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes,

Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 248) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 278, Relating to lawful and unlawful methods of hunting.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 278) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 423, Amending Aboveground Storage Tank Act.

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

Pending extended discussion,

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

Eng. Senate Bill No. 454, Criminalizing trademark counterfeiting.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 454) passed.

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

Eng. Senate Bill No. 454—A Bill to amend and reenact §47-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §47-2-14a, §47-2-14b, §47-2-14c and §47-2-14d, all relating to trademark counterfeiting and forfeiture; defining terms; creating crime of misdemeanor trademark counterfeiting; creating crime of felony trademark counterfeiting; providing penalties; and providing for seizure, forfeiture and disposal of property used or obtained in furtherance of violations.

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

Eng. Com. Sub. for Senate Bill No. 488, Reestablishing and modifying Broadband Deployment Council.

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

Senators Carmichael and D. Hall moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motions prevailed.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Facemire, Gaunch, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—30.

The nays were: None.

Absent: Ferns and Prezioso—2.

Excused from voting: Carmichael and D. Hall—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 488) passed with its title.

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

Eng. Senate Bill No. 502, Relating to eligibility for certain reclamation or remediation tax credit.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 502) passed.

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

Eng. Senate Bill No. 502—A Bill to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to surface mining and reclamation; bonding; special reclamation tax and funds; prohibited acts; bond liability; specifying retrospective eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond

forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund; and specifying limitations.

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

Eng. Senate Bill No. 503, Permitting sheriff hire outside attorneys for tax collection assistance.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 503) passed.

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

Eng. Senate Bill No. 503—A Bill to amend and reenact §7-5-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-2-2 of said code, all relating to permitting sheriff to hire outside attorneys to assist in the collection of taxes through the

courts; providing for fees to be paid to any attorneys so hired; and sharing cost of collection with the various taxing units.

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

Senate Bill No. 576, Prohibiting PSC jurisdiction of internet protocol-enabled service or voice over internet protocol-enabled service and certain telephone company transactions.

On third reading, coming up in regular order, with the right having been granted on yesterday, Friday, February 27, 2015, for amendments to be received on third reading, was reported by the Clerk.

There being no amendments offered,

The bill was ordered to engrossment.

Engrossed Senate Bill No. 576 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 576) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2099, Extending the time of meetings of local levying bodies when meetings are delayed.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2099) passed with its title.

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

Eng. House Bill No. 2576, Creating new code sections which separate the executive departments.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt,

Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2576) passed with its title.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill No. 17, Permitting all-terrain vehicle operation on roadway under certain conditions; defining off-road motorcycle.

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

Senate Bill No. 332, Relating to administrative fees for Tax Division, Department of Revenue.

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

Com. Sub. for Senate Bill No. 342, Clarifying scope, application and requirements for error corrections by CPRB.

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

Com. Sub. for Com. Sub. for Senate Bill No. 455, Relating to public higher education procurement and payment of expenses.

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

Senate Bill No. 481, Relating to municipal policemen's and firemen's pension and relief funds' investment.

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

Senate Bill No. 510, Amending Uniform Interstate Family Support Act.

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

Senate Bill No. 514, Relating to investments of local policemen's and firemen's pension and relief funds.

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

Senate Bill No. 515, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments.

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

Senate Bill No. 530, Extending income tax exemption for retirees receiving pensions from certain defined pension plans.

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

Senate Bill No. 545, Removing certain prior bank overdraft approval by director or executive officer.

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

Com. Sub. for Senate Bill No. 548, Changing procedure for filling U. S. Senator vacancies.

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

Senate Bill No. 574, Relating to liquor sales by distilleries and mini-distilleries.

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

Eng. House Bill No. 2726, Clarifying choice of laws issues in product's liability actions.

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

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

On page two, section sixteen, lines eight and nine, by striking out all of subsection (b) and inserting in lieu thereof a new subsection, designated subsection (b), to read as follows:

(b) The amendments to this section enacted in 2015 shall be applicable prospectively to all civil actions commenced on or after July 1, 2015.

The bill (Eng. H. B. No. 2726), as amended, was then ordered to third reading.

Without objection, the Senate returned to the third order of business.

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

Eng. Com. Sub. for Senate Bill No. 175, Authorizing DHHR promulgate legislative rules.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH
AND HUMAN RESOURCES TO PROMULGATE
LEGISLATIVE RULES.**

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on August 1, 2014, 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 October 23, 2014, relating to the Department of Health and Human Resources (public water systems, 64 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2014, 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.

(c) The legislative rule filed in the State Register on July 31, 2014, 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 October 14, 2014, relating to the Department of Health and Human Resources (Fatality and Mortality Review Team, 64 CSR 29), is authorized.

(d) The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section eleven, article five-o, 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 5, 2014, relating to the Department of Health and Human Resources (medication administration and performance of health maintenance tasks by approved medication assistive personnel, 64 CSR 60), is authorized.

(e) The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section two, article six, chapter 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 November 6, 2014, relating to the Department of Health and Human Resources (nurse aid abuse and neglect registry, 69 CSR 6), is authorized.

(f) The legislative rule filed in the State Register on August 1, 2014, 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 6, 2014, relating to the Department of Health and Human Resources (nursing home licensure, 64 CSR 13), is authorized with the following amendments:

On page fifty-seven, subdivision 9.1.b., by striking the entirety of that subdivision and inserting in lieu thereof the following:

9.1.b. The standards for construction, renovations, and alterations are the relevant sections of the 1996-1997 edition of “The Guidelines for Design and Construction of Hospitals and Health Care Facilities”, as recognized by the American Institute of Architects, Academy of Architecture for Health with assistance from the U. S. Department of Health and Human Services. Beginning on June 1, 2019, the relevant standards for construction, renovations and alterations will be the latest edition of “The Guidelines for Design and Construction of Hospitals and Health Care Facilities”, according to Facilities Guidelines Institute (FGI) and published by American Society for Healthcare Engineering (ASHE) with assistance from the U. S. Department of Health and Human Services which can be located at www.hhs.gov;

On page fifty-eight, subdivision 9.1.c., immediately following the word “Facilities” by inserting the words “as adopted by the Centers for Medicare and Medicaid Services (CMS)”;

On page fifty-eight, subdivision 9.1.d., immediately following the word “Code” by inserting the words “as adopted by the State Fire Marshal”;

On page sixty-two, subdivision 9.7.f. by inserting a period after the word “program” and by striking the words “insecticidal strips are prohibitive”;

And,

On page sixty-two, by striking subdivision 9.7.g. and inserting a new subdivision 9.7.g. to read as follows:

9.7.g. Pesticides shall be applied only by an applicator certified by the West Virginia Department of Agriculture or a registered technician operating under the supervision of a certified applicator.

(g) The legislative rule filed in the State Register on July 31, 2014, 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 October 14, 2014, relating to the Department of Health and Human Resources (state-wide trauma/emergency care system, 64 CSR 27), is authorized with the following amendment:

On page one, subsection 3.1 by removing the inserted language “in the current edition of”, reinserting the stricken language “edition” and inserting a colon after the word “patient” and the following “2013”.

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

Engrossed Committee Substitute for Senate Bill No. 175, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 175) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 175) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill No. 187, Authorizing Department of Revenue promulgate legislative rules.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

On page six, section four, line nine, after the word “authorized” by striking out the period and inserting the following: with the amendments set forth below:

On page three, subsection 2.18., by striking out the following: Any container or jug not made of glass, ceramic or metal may be submitted to the Commissioner for review and approval or denial on a case-by-case basis.;

On page eight, paragraph 3.6.a.2., by striking out the words “the agents or employees” and inserting in lieu thereof the words “the agents, employees or members”;

And,

On page twenty-four, subdivision 13.2.a., by striking out the following: A franchise agreement as defined in subsection 2.15., is the agreement, that binds a brewer and a distributor so that an appointed distributor may distribute all of the brewer’s nonintoxicating beer products, brands or family of brands, including line extensions, imported and offered for sale in West Virginia, including, but not limited to, existing brands, new brands and line extensions in the brewer’s approved franchise distributor network and to a distributor’s assigned territory.

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

Engrossed Committee Substitute for Senate Bill No. 187, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 187) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Ferns and Prezioso—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 187) takes effect from passage.

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

At the request of Senator Walters, and by unanimous consent, Senator Walters addressed the Senate regarding the passing of his grandmother, Betty Walters.

Following a point of inquiry to the President, with resultant response thereto,

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the tenth order of business.

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

Senate Bill No. 195, Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs.

Com. Sub. for Senate Bill No. 254, Relating to Fire, EMS and Law-Enforcement Officer Survivor Benefit Act.

Com. Sub. for Com. Sub. for Senate Bill No. 336, Eliminating Health Care Authority's power to apply certain penalties to future rate applications.

Senate Bill No. 386, Excluding mobile x-ray services from health care provider tax.

Com. Sub. for Senate Bill No. 395, Modifying definitions of "battery" and "domestic battery".

Com. Sub. for Senate Bill No. 407, Implementing state safety oversight program.

Senate Bill No. 420, Relating to retirement benefits for certain employees in kindergarten programs.

Com. Sub. for Senate Bill No. 436, Relating to State Athletic Commission.

Com. Sub. for Senate Bill No. 439, Relating to higher education personnel.

Senate Bill No. 447, Allowing issuance of diploma by public, private or home school administrator.

Senate Bill No. 457, Relating to selection of school athletic coaches or other extracurricular activities coaches.

Senate Bill No. 479, Adding additional family court judges.

Com. Sub. for Senate Bill No. 529, Relating to PERS, SPRS and TRS benefits and costs.

Senate Bill No. 549, Establishing classifications and salary schedules for State Police forensic lab civilian employees.

Senate Bill No. 560, Establishing special revenue fund for use of certain Supreme Court advanced technology.

Senate Bill No. 577, Allowing higher education governing boards invest certain funds with nonprofit foundations.

Senate Bill No. 578, Relating to occupational disease claims.

And,

Senate Bill No. 579, Clarifying restriction on limited video lottery location near business selling petroleum products.

The end of today's first reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for Senate Bill No. 423, Amending Aboveground Storage Tank Act.

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

The question being "Shall Engrossed Committee Substitute for Senate Bill No. 423 pass?"

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—30.

The nays were: Walters—1.

Absent: Ferns, Leonhardt and Prezioso—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 423) passed with its title.

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

At the request of Senator Carmichael, and by unanimous consent, the Senate returned to the fourth order of business.

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

Your Committee on Finance has had under consideration

Senate Bill No. 310, Exempting nonprofit public utility companies from B&O tax.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Senate Bill No. 499, Creating Tourist-Oriented Directional Signs Program.

Now on second reading, having been read a first time and referred to the Committee on Government Organization on February 26, 2015;

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

Respectfully submitted,

Craig Blair,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Senate Bill No. 550, Authorizing agreements between county commissions and municipalities regarding structures unfit for human habitation.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Finance has had under consideration

Senate Bill No. 581 (originating in the Committee on Finance)—A Bill to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17-1-3 of said code, all relating to transferring the Courtesy Patrol from Division of Tourism to Division of Highways; eliminating requirement that moneys be transferred from the Tourism Promotion Fund to the Courtesy Patrol Fund; and specifying how funds may be spent.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Finance has had under consideration

Senate Concurrent Resolution No. 50 (originating in the Committee on Finance)—Providing for the issuance of not to exceed \$185.390 million of refunding bonds pursuant to the Safe Roads Amendment of 1996, article two-g, chapter thirteen of the Code of West Virginia and article twenty-six, chapter seventeen of said Code.

Resolved by the Legislature of West Virginia:

That safe road refunding bonds in the principal amount not to exceed \$185.390 million are authorized to be issued by the State of West Virginia and sold by the Governor by the fiscal year ending June 30, 2015; and, be it

Further Resolved, That the bonds shall be issued in registered form, in such denominations, maturing at such times and bearing such date or dates as the Governor may determine; and, be it

Further Resolved, That all such bonds shall be payable at the Office of the Treasurer of the State of West Virginia, or at a bank in the City of Charleston to be designated by the Governor; and, be it

Further Resolved, That the bonds shall bear interest at rates and be payable in amounts as determined by the Governor; and, be it

Further Resolved, That the State Treasurer shall pay the principal and/or interest then due on the bonds to the registered owners thereon at the addresses shown by the record of registration; and, be it

Further Resolved, That the bonds shall be signed as provided in section two, article twenty-six, chapter seventeen of the Code of West Virginia; and, be it

Further Resolved, That the bonds may be redeemable on such date or dates prior to maturity as determined by the Governor; and, be it

Further Resolved, That the Governor shall sell the bonds herein mentioned at such time or times in such amounts, not exceeding the aggregate principal amount described above, at such prices as he may determine necessary to provide funds for the purposes provided below and in article two-g, chapter thirteen of the Code of West Virginia and article twenty-six, chapter seventeen of said Code; and, be it

Further Resolved, That the net proceeds of sales of all bonds herein authorized shall be paid into a special and irrevocable trust fund, separate and apart from other funds of the State of West Virginia, to be held in the custody of an escrow trustee to be designated by the Governor; and, be it

Further Resolved, That an irrevocable deposit of said moneys in trust for, and such moneys and the investments thereof, together with any income or interest earned thereon, shall be applied to the payment of the principal of and interest on certain issued and outstanding safe road bonds to be refunded, to be selected by the Governor, on the date or dates, to be selected by the Governor, when any such outstanding bonds mature or may be called and are called for redemption, respectively, in connection with the refunding herein authorized.

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

Respectfully submitted,

Mike Hall,
Chair.

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senator Unger.

The Senate next proceeded to the thirteenth order of business.

Senator Trump called attention to today being the birthday of Donnie Adkins, Counsel to the Majority Leader, and on behalf of the Senate extended felicitations and good wishes to Donnie Adkins.

Senator Plymale called attention to today being the birthday of Hoppy Kercheval, Vice President of Operations of MetroNews, and on behalf of the Senate extended felicitations and good wishes to Hoppy Kercheval.

On motion of Senator Carmichael, leaves of absence for the day were granted Senators Ferns and Prezioso.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Sunday, March 1, 2015, at 3 p.m.

SUNDAY, MARCH 1, 2015

The Senate met at 3 p.m.

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

Prayer was offered by the Honorable C. Edward Gaunch, a senator from the eighth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Dave Sypolt, a senator from the fourteenth district.

Pending the reading of the Journal of Saturday, February 28, 2015,

On motion of Senator Laird, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

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

Eng. Senate Bill No. 382, Declaring claims against state.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2015, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill No. 2381—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-4-2c, relating to providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at persistently low performing schools; defining persistently low performing schools; defining mentoring; specifying method of payment; and specifying eligibility.

Referred to the Committee on Education; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2015, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill No. 2478—A Bill to amend and reenact §11-8-6f of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-4, §18-9A-5, §18-9A-7, §18-9A-11 and §18-9A-12 of said code, all relating to public school finance; removing the reduction in a county's basic foundation allowance to a county school system for professional educators and service personnel if the number employed is less than the maximum allowed for formula funding; adjusting the foundation school program allowance for transportation costs for

the school years 2015-2016 and 2016-2017; including propane as an eligible fuel for the ten percent additional percentage allowance for school bus systems using alternative fuels; fixing the amounts to be used for the replacement of buses for school years 2015-2016 and 2016-2017 as a component of the allowance in the foundation school program for transportation; eliminating requirements that payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education be deducted from the allocated state aid share for the county; and eliminating certain adjustments in basic foundation program.

Referred to the Committee on Education; and then to the Committee on Finance.

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

Eng. House Bill No. 2658—A Bill to amend and reenact §19-29-4 of the Code of West Virginia, 1931, as amended, relating to the inspection and slaughter of nontraditional agriculture; and removing the requirement that all nontraditional agriculture needing to be slaughtered be slaughtered in an inspected slaughterhouse.

Referred to the Committee on Agriculture and Rural Development.

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

Eng. House Bill No. 2760—A Bill making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2015, organization 0508, by supplementing and

amending the appropriations for the fiscal year ending June 30, 2015.

Referred to the Committee on Finance.

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

Eng. House Bill No. 2764—A Bill making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the State Department of Education - School Building Authority - Debt Service Fund, fund 3963, fiscal year 2015, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2793—A Bill to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to exemptions from mandatory school attendance; restoring historical exemption nomenclature; clarifying that parents and guardians of exempt children may not be prosecuted under §18-8-2; clarifying that exempt children are not status offenders; requiring leave of court and probable cause before petition may be filed to deny home schooling; providing for one-time notice of intent to home school and revising notice contents; removing waiting period; providing for notice of termination; providing for notice when children move between counties; removing required submissions; revising requirements and standards for annual assessments and acceptable progress; removing requirement that parents pay costs of assessments not

conducted in public schools; requiring parents to retain copies of assessments; and requiring evaluations for learning disabilities when children fail to make acceptable progress.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill No. 2811—A Bill to amend and reenact §33-20F-4 of the Code of West Virginia, 1931, as amended, relating to the Physicians' Mutual Insurance Company; deleting obsolete provisions regarding the Physicians' Mutual Insurance Company; and providing that the company need not be organized as a nonprofit corporation.

Referred to the Committee on Banking and Insurance.

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

Eng. Com. Sub. for House Bill No. 2812—A Bill to amend and reenact §20-7-1 of the Code of West Virginia, 1931, as amended, relating to certain subsistence allowance considered compensation for purposes of calculating pension benefits for natural resources police officers.

Referred to the Committee on Pensions.

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

Eng. Com. Sub. for House Bill No. 2823—A Bill to amend and reenact §11-13-2d of the Code of West Virginia, 1931, as

amended, relating to eliminating a certain tax on persons engaging or continuing within this state in the service or business of street and interurban and electric railways.

Referred to the Committee on Finance.

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

Eng. House Bill No. 2876—A Bill finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2934—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-5b, relating to repealing the certain common core standards and certain subsequent standards; making findings with respect to a thorough and efficient education and role of the Legislature; making findings with respect to the Elementary and Secondary Education act and the affect of certain amendments; making findings with respect to changes in standards and assessments; making findings with respect to reverse in trend of improving student National Assessment of Educational Progress scores and likely causes; making findings with respect to ESEA flexibility relief, state application and subsequent actions; and making findings with respect to school funding sources, the influence of federal funds and the use of federal funds to coerce changes in standards, assessments and accountability system; making findings with respect to inappropriate usurpation of state

sovereignty over public education and results sufficient to impede process for improving education; directing certain actions by state board in response to findings; directing comprehensive review of standards by board to ensure repeal of certain common core standards and certain subsequent standards; prohibiting certain assessments; ensuring certain college and career ready standards are aligned and revised as needed; ensuring adequate and appropriate curriculum and instructional strategies, sufficient training and professional development, and information and resources to engage and assist parents; directing state board appoint stakeholder commission to participate in review with certain legislative member appointments; directing state board appointment of standards development committees to advise and assist commission and providing for member selection and qualifications; directing state board conduct regional town hall meetings with certain format for discussion and input; directing suspension of use of summative assessment scores except for certain purpose until certain date; directing limit on number of statewide summative assessment per year; directing prohibition of collection and disclosure of certain student information; directing regular information to Legislature on actions with respect to standards, assessment, accountability and capacity building; providing responsibilities and structure of standards development committees; directing certain actions in response to findings by Governor, Legislature, state board and state superintendent with respect to reauthorization of Elementary and Secondary Education Act; and requiring monitoring by legislative oversight commission.

Referred to the Committee on Education; and then to the Committee on Finance.

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

Eng. House Bill No. 2976—A Bill to amend and reenact §18C-3-4 of the Code of West Virginia, 1931, as amended, relating

to expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded.

Referred to the Committee on Education.

The Senate proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 27, Relating to county solid waste disposal fees; exemption.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 27 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §7-5-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-15-11 of said code; to amend and reenact §22-16-4 of said code; and to amend and reenact §22C-4-30 of said code, all relating to county solid waste disposal fees generally; raising county solid waste assessment fee to 75 cents; exempting solid waste that is transported by rail to solid waste disposal facility located in a county, with a population of less than thirty thousand, bordering another state from the \$1.75 solid waste assessment fee, the \$3.50 solid waste assessment fee for the Solid Waste Landfill Closure Assistance Program and the \$1.00 solid waste assessment fee for the Solid Waste Planning Fund with approval of the solid waste authority, county commission and the voters of that county; and providing for a county option election.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

The bill (Com. Sub. for S. B. No. 27), under the original double committee reference, was then referred to the Committee on Finance.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill No. 352 (originating in the Committee on Natural Resources), Expanding scope of cooperative associations to goods and services including recycling.

And reports back a committee substitute for same with the following title:

Com. Sub. for Com. Sub. for Senate Bill No. 352 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §19-4-1, §19-4-2, §19-4-3, §19-4-4, §19-4-5, §19-4-13, §19-4-16 and §19-4-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-1-3 of said code, all relating to cooperative associations; clarifying definitions; expanding scope of cooperative associations to goods and services, including recycling; limiting scope of recycling cooperatives; expanding membership of cooperative associations; and revising exemptions for motor carriers to allow nonprofit recycling cooperatives.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 363, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill No. 385 (originating in the Committee on Transportation and Infrastructure), Regulating transportation network companies.

And reports back a committee substitute for same with the following title:

Com. Sub. for Com. Sub. for Senate Bill No. 385 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17 and §17-29-18, all relating to regulation of transportation network companies; defining terms; establishing a permit and permit fee; establishing requirements relating to insurance, disclosures, transportation network companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution No. 48, Requesting Joint Committee on Government and Finance study agreements between county commissions and municipalities regarding demolition of buildings unfit for human habitation.

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

Senate Concurrent Resolution No. 50, Providing for issuance of refunding bonds pursuant to Safe Roads Amendment of 1966.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

The Senate proceeded to the eighth order of business.

Com. Sub. for Senate Bill No. 14, Creating Public Charter Schools Act of 2015.

On third reading, coming up in regular order, with the right having been granted on Wednesday, February 25, 2015, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, and with the right for amendments to be considered on third reading remaining in effect.

Eng. Com. Sub. for Senate Bill No. 17, Permitting all-terrain vehicle operation on roadway under certain conditions; defining off-road motorcycle.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: None.

Absent: Miller, Takubo and Unger—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 17) passed with its title.

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

Eng. Senate Bill No. 332, Relating to administrative fees for Tax Division, Department of Revenue.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: None.

Absent: Miller, Takubo and Unger—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 332) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 342, Clarifying scope, application and requirements for error corrections by CPRB.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: None.

Absent: Miller, Takubo and Unger—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 342) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 455, Relating to public higher education procurement and payment of expenses.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 455) passed with its title.

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

Eng. Senate Bill No. 481, Relating to municipal policemen's and firemen's pension and relief funds' investment.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 481) passed with its title.

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

Eng. Senate Bill No. 510, Amending Uniform Interstate Family Support Act.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 510) passed with its title.

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

Eng. Senate Bill No. 514, Relating to investments of local policemen's and firemen's pension and relief funds.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 514) passed with its title.

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

Eng. Senate Bill No. 515, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 515) passed with its title.

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

Eng. Senate Bill No. 530, Extending income tax exemption for retirees receiving pensions from certain defined pension plans.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins,

Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 530) passed with its title.

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

Eng. Senate Bill No. 545, Removing certain prior bank overdraft approval by director or executive officer.

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

Senator Trump moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motion prevailed.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: None.

Absent: Miller and Unger—2.

Excused from voting: Trump—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 545) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 548, Changing procedure for filling U. S. Senator vacancies.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill No. 548 pass?”

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Williams, Woelfel and Yost—14.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 548) passed with its title.

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

Eng. Senate Bill No. 574, Relating to liquor sales by distilleries and mini-distilleries.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 574) passed with its title.

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

Eng. House Bill No. 2726, Clarifying choice of laws issues in product's liability actions.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Facemire—1.

Absent: Miller and Unger—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2726) passed.

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

Eng. House Bill No. 2726—A Bill to amend and reenact §55-8-16 of the Code of West Virginia, 1931, as amended, relating to choice of law in product liability actions; and establishing the effective date of the amendments enacted in 2015.

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

The Senate proceeded to the ninth order of business.

Senate Bill No. 195, Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs.

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

Com. Sub. for Senate Bill No. 254, Relating to Fire, EMS and Law-Enforcement Officer Survivor Benefit Act.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

Com. Sub. for Com. Sub. for Senate Bill No. 336, Eliminating Health Care Authority's power to apply certain penalties to future rate applications.

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

Senate Bill No. 386, Excluding mobile x-ray services from health care provider tax.

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

Com. Sub. for Senate Bill No. 395, Modifying definitions of “battery” and “domestic battery”.

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

Com. Sub. for Senate Bill No. 407, Implementing state safety oversight program.

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

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

On page two, section three, line thirteen, after “§5329” by changing the semicolon to a comma and inserting the following:

including:

(A) The development, implementation and application of the public transportation system safety plan;

(B) Inspection, investigations or hearings involving all aspects of the facility and its operations including infrastructure, documentation, including electronic data, and personnel and may conduct or cause to be conducted such inspections, investigations or hearings; and

(C) Respond to information obtained through inspection, investigations, hearings, other incidents or occurrences of significance to the State Safety Oversight Agency by the issuance of directives, appropriate suspension of service, withholding of funding or the imposition of civil or criminal penalties;.

The bill (Com. Sub. for S. B. No. 407), as amended, was then ordered to engrossment and third reading.

Senate Bill No. 420, Relating to retirement benefits for certain employees in kindergarten programs.

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

Com. Sub. for Senate Bill No. 436, Relating to State Athletic Commission.

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

Com. Sub. for Senate Bill No. 439, Relating to higher education personnel.

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

Senate Bill No. 447, Allowing issuance of diploma by public, private or home school administrator.

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

Senate Bill No. 457, Relating to selection of school athletic coaches or other extracurricular activities coaches.

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

Senate Bill No. 479, Adding additional family court judges.

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

Senate Bill No. 499, Creating Tourist-Oriented Directional Signs Program.

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

Com. Sub. for Senate Bill No. 529, Relating to PERS, SPRS and TRS benefits and costs.

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

Senate Bill No. 549, Establishing classifications and salary schedules for State Police forensic lab civilian employees.

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

Senate Bill No. 560, Establishing special revenue fund for use of certain Supreme Court advanced technology.

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

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

On page two, section twenty-two, line nine, after the word "Fund." by inserting the following: Any balance, including

accrued interest and other returns, remaining in the fund at the end of each fiscal year shall revert to the General Revenue Fund.

The bill (S. B. No. 560), as amended, was then ordered to engrossment and third reading.

Senate Bill No. 577, Allowing higher education governing boards invest certain funds with nonprofit foundations.

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

Senate Bill No. 578, Relating to occupational disease claims.

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

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

On page three, section seven, line two, after the words "settlement of" by inserting the words "medical benefits for".

Senator Walters moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motion prevailed.

The question being on the adoption of Senator Trump's amendment to the bill, the same was put and prevailed.

The bill (S. B. No. 578), as amended, was then ordered to engrossment and third reading.

Senate Bill No. 579, Clarifying restriction on limited video lottery location near business selling petroleum products.

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

The Senate proceeded to the tenth order of business.

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 Senate Bill No. 234, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction.

Senate Bill No. 310, Exempting nonprofit public utility companies from B&O tax.

Senate Bill No. 550, Authorizing agreements between county commissions and municipalities regarding structures unfit for human habitation.

Senate Bill No. 580, Relating to statute of limitations on health care injury claims for minors.

Senate Bill No. 581, Relating to Tourism Promotion Fund and Courtesy Patrol Fund.

And,

Eng. Com. Sub. for House Bill No. 2157, Relating to absentee ballot fraud.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Woelfel, D. Hall, M. Hall, Kessler, Carmichael, Karnes, Snyder, Kirkendoll, Blair and Plymale.

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senator Woelfel were ordered printed in the Appendix to the Journal.

At the request of Senator Carmichael, unanimous consent being granted, the remarks by Senators M. Hall and Kessler were ordered printed in the Appendix to the Journal.

At the request of Senator Trump, and by unanimous consent, the remarks by Senators Carmichael and Karnes were ordered printed in the Appendix to the Journal.

At the request of Senator M. Hall, unanimous consent being granted, the remarks by Senators Snyder and Kirkendoll were ordered printed in the Appendix to the Journal.

At the request of Senator Kessler, and by unanimous consent, the remarks by Senator Blair were ordered printed in the Appendix to the Journal.

On motion of Senator Carmichael, leaves of absence for the day were granted Senators Miller and Unger.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules and a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Monday, March 2, 2015, at 11 a.m.

MONDAY, MARCH 2, 2015

The Senate met at 11 a.m.

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

Prayer was offered by Dr. Mervin Smith, District Superintendent of the West Virginia South District Church of the Nazarene, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mike Hall, a senator from the fourth district.

Annabelle Vance and Janie Lester of Mathias, West Virginia, proceeded in the singing of "Home to West Virginia".

Pending the reading of the Journal of Sunday, March 1, 2015,

On motion of Senator Snyder, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill No. 357, Creating Coal Jobs and Safety Act of 2015.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

On pages sixty-nine through seventy-three, section six, by striking out all of section six and inserting in lieu thereof a new section, designated section six, to read as follows:

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. When equipment is being transported or trammed where trolley wire is energized on the split of air in which said equipment is being transported or trammed, no person shall be permitted to be in by the equipment in the ventilating split that is passing over such equipment, except those directly involved with transporting or trampling the equipment, and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.;

On page seventy-four, section twenty-eight, line nine, after the word “cameras” by inserting the words “if permitted by the director”;

On page seventy-four, section twenty-eight, lines eleven through thirteen, by striking out the following: The use of sideboards on shuttle cars on which cameras are installed shall not be prohibited by rule.;

And,

On page eighty-two, section thirty-seven, line one hundred fifty-nine, after the word “cameras” by striking out the remainder of the subsection and inserting in lieu thereof the words “if permitted by the director”.

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

Eng. Com. Sub. for Senate Bill No. 357—A Bill to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said code; to amend said code by adding thereto a new section, designated §22-11-22a; to amend said code by adding thereto a new section, designated §22A-1-41; to amend and reenact §22A-1A-1 of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said code; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code; and to amend said code by adding thereto a new section, designated §22A-2A-204a, all relating to coal mining generally; providing that discharges from waste piles do not exceed applicable water quality standards; promulgating rules regarding procedures for requesting and obtaining inactive status and rules relating to requirements for contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation Act; abolishing West Virginia Diesel Equipment Commission; transferring duties and responsibilities of West Virginia Diesel Equipment Commission to Director of the Office of Miners' Health, Safety and Training; defining terms; providing rule-making authority; providing that rules previously approved by Diesel Equipment Commission continue in full force and effect; requiring rules for statewide hardness-based aluminum water quality criteria for protection of aquatic life; prohibiting wholesale incorporation of water quality standards into permits; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; requiring suspension or revocation of a certificate held by a certified person under certain circumstances; disallowing prescription as a defense if prescription is more than one year old; setting forth requirements for movement of off-track

mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; increasing distance from the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail; requiring certain equipment be readily available in certain circumstances; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; establishing criteria for the use of sideboards on shuttle cars; changing distance of shelter holes along haulage entries; and setting requirements for riders on locomotives.

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

Engrossed Committee Substitute for Senate Bill No. 357, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)—24.

The nays were: Beach, Facemire, Kessler, Laird, Miller, Prezioso, Romano, Snyder, Unger and Yost—10.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 357) passed with its Senate amended title.

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

The Senate proceeded to the fourth order of business.

Senator Maynard, 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 2nd day of March, 2015, 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:

(Com. Sub. for H. B. No. 2002), Predicating actions for damages upon principles of comparative fault.

(Com. Sub. for H. B. No. 2010), Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division.

(Com. Sub. for H. B. No. 2025), Prohibiting certain sex offenders from loitering within one thousand feet of a school or child care facility.

(H. B. No. 2212), Changing the amount of severance tax revenue annually dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.

(Com. Sub. for H. B. No. 2234), Requiring a court to permit a party in a divorce proceeding to resume using the name he or she used prior to the marriage.

(Com. Sub. for H. B. No. 2568), The Pain-Capable Unborn Child Protection Act.

And,

(H. B. No. 2669), Relating to compulsory tuberculosis testing.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
John B. McCuskey,
Chair, House Committee.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 320, Standardizing notification process for revocation of certificates of authority.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 320 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §31B-10-1006 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-9-53a of said code, all relating to notices of revocation of certificate of authority; and requiring notice of revocation to foreign limited liability companies and foreign limited partnerships to be sent to their registered agent or if there is no registered agent to their principal office.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Carmichael requested unanimous consent that the bill (Com. Sub. for S. B. No. 320) contained in the preceding report from the Committee on the Judiciary be taken up for immediate consideration.

The question being on the adoption of Senator Carmichael's aforesaid request, and on this question, Senator Kessler demanded the yeas and nays.

At the request of Senator Kessler, and by unanimous consent, his demand for the yeas and nays was withdrawn.

Thereafter, the bill (Com. Sub. for S. B. No. 320) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 325, Relating to filing of candidates' financial disclosure statements.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 325 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §6B-2-6 of the Code of West Virginia, 1931, as amended, relating to filing dates for financial disclosure statements by candidates; setting deadlines for candidates to file financial disclosure statements with Ethics Commission; setting deadlines for Ethics Commission to file duplicate copies of statements to certain offices; clarifying to which office Ethics Commission sends copies of statements; and disqualifying candidates who fail to file statement by deadline.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 325) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 446, Increasing number of terminals authorized by limited video lottery retailer license.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 446 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §29-22B-1101 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at a retail location; and requiring Lottery Commission to conduct a bid for current permit holders prior to September 1, 2015.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 446) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 453, Relating to motor vehicle dealers, distributors, wholesalers and manufacturers.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 453 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers; adopting legislative findings; defining terms; modifying terms relating to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; adding conduct which is considered a prohibited practice; increasing to one hundred eighty days the notice period afforded dealers should a manufacturer or distributor not approve a successor dealer; clarifying that air miles are used to determine distances between dealerships; restricting manufacturer and distributor use of dealership

property; modifying obligations under warranties; and clarifying indemnity practices.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 453) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 541, Relating to regulation and control of elections.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 541 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-9, §3-8-10 and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §3-8-1b, §3-8-1c, §3-8-5c and §3-8-9a, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying what reporting qualifies for a federal reporting exemption; modifying reporting requirements for independent expenditures; clarifying scope of reporting obligations

by committee treasurers; requiring certain contributions be reported to State Election Commission within forty-eight hours of their receipt; requiring financial statements for candidates for State Senate, House of Delegates, circuit judge and family court judge to be filed electronically with Secretary of State; permitting certain financial statements to be filed by mail or in person; establishing a processing fee for financial statements not filed electronically; requiring Secretary of State to maintain an online searchable database; setting forth contribution limits for various offices; prohibiting contributions by foreign nationals; setting contribution limits for precandidacy contributions when candidate has declined to name the office for which he or she seeks to become a candidate; directing Secretary of State to publish an online list of late filing violators; clarifying penalties related to disclosure of information related to a complaint alleging violations or irregularities of this article; permitting a political committee to transfer funds to a national, state or local committee of a political party without limitation; permitting a political action committee to contribute to another political action committee; establishing expenditure limits by political party committees, political party caucuses and candidates; permitting candidates, after a general election, to transfer any unused contributions to state party executive committees, state party legislative caucus committees, local committees of a political party or any other candidate for public office without limitation; and creating criminal penalties.

With the recommendation that the committee substitute do pass; but with the further recommendation that it be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Carmichael requested unanimous consent that the bill (Com. Sub. for S. B. No. 541) contained in the preceding report

from the Committee on the Judiciary be taken up for immediate consideration.

Which consent was not granted, Senator Unger objecting.

Following a point of inquiry to the President, with resultant response thereto,

Senator Carmichael then moved that the bill (Com. Sub. for S. B. No. 541) contained in the preceding report from the Committee on the Judiciary be taken up for immediate consideration, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—16.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Carmichael's motion adopted.

Thereafter, the bill (Com. Sub. for S. B. No. 541) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Trump, the bill was then rereferred to the Committee on the Judiciary.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 542, Reforming provisions of Consumer Credit and Protection Act relating to debt collections.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 542 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend and reenact §46A-3-112 and §46A-3-113 of said code; to amend and reenact §46A-5-101 and §46A-5-106 of said code; and to amend said code by adding thereto a new section, designated §46A-5-107, all relating to clarifying permitted and prohibited actions with regard to the prohibition on oppression and abuse in the course of debt collection; clarifying permitted and prohibited actions with regard to the prohibition of unreasonable publication; clarifying permitted and prohibited actions and communications with regard to the prohibition on the use of unfair or unconscionable means in the course of debt collection; increasing permitted delinquency charges; modifying damages and penalties for violations; modifying the limitation of actions brought under this chapter; adjusting time allowed after discovery to correct an error without liability in certain circumstances; adjusting damages for inflation; and specifying venue of an action or proceeding brought by a consumer.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Carmichael requested unanimous consent that the bill (Com. Sub. for S. B. No. 542) contained in the preceding report from the Committee on the Judiciary be taken up for immediate consideration.

Which consent was not granted, Senator Unger objecting.

Thereafter, on motion of Senator Carmichael, the bill (Com. Sub. for S. B. No. 542) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 582 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §5-26-1 and §5-26-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §5-26-3 and §5-26-4, all relating to the Herbert Henderson Office of Minority Affairs; requiring office to report to Select Committee on Minority Affairs; requiring director to implement recommendations of select committee; defining terms; continuing Minority Affairs Fund; establishing a community-based pilot demonstration project; providing for operation and funding of pilot project; setting forth objectives and goals of pilot project; and requiring leverage of existing resources.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 582) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Ferns, Yost, Kessler, Leonhardt and Stollings offered the following resolution:

Senate Resolution No. 49—Recognizing Bethany College on the 175th anniversary of its charter.

Whereas, Bethany College, located at Bethany, Ohio County, was chartered by the Commonwealth of Virginia as a four-year liberal arts college on March 2, 1840, and was recognized as a college by the new State of West Virginia in 1863, and is therefore, the oldest college in the State of West Virginia; and

Whereas, Alexander Campbell, one of the principal founders of the Christian Church (Disciples of Christ) in the United States established Bethany College for the “Instruction of youth in the various branches of science and literature; the useful arts and foreign languages” and while Bethany College is affiliated with the Christian Church, the church exercises no sectarian control on the college; and

Whereas, Bethany College has provided its students with an excellent education to prepare them for service in a myriad of careers including the law, (Thomas Buergenthal, retired International Court of Justice, the Hague) medicine (Dr. John Niederhuber, chief executive officer, Inova Translational Medicine Institute), community service, (Dr. Arthur B. Keys Jr., former CEO International relief and Development) as well as broadcasters Dave Sims (Seattle Mariners), Faith Daniels and Bob Orr among many others; and

Whereas, Bethany College has benefitted from talented faculty members including Amos Emerson Dolbear, American physicist and inventor, who, while serving on the faculty at Bethany College in 1868, invented the electric static telephone, but even before that, had invented the first permanent magnet and metallic diaphragm for the telephone receiver. He was not sophisticated in the U. S. patent laws and lost out on the invention of the telephone to Alexander Graham Bell, even

though his invention predated Bell's by 11 years. However, Marconi had to purchase Dolbear's patent to market his radio in the U. S.; and

Whereas, Bethany College has benefitted from excellent lay leaders through the years, including U. S. President James A. Garfield, who served on the Bethany College board of trustees from 1866 until 1881, and was serving as a BC trustee at the time of his assassination. President Garfield was lieutenant in the Union Army and a staunch advocate for civil rights after the war and although he only served a few months in office, he appointed several former slaves including Frederick Douglass to prominent government positions; and

Whereas, In addition to President Garfield, four other U. S. presidents have visited the Bethany College campus including John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon and Gerald Ford. In addition, from 1840, when Alexander Campbell served as the first president of the college, only 19 individuals have served as president with Scott D. Miller, Ph. D., now serving in that position. Among the 19 presidents, the late, Governor Cecil Underwood served as Bethany College's 13th president and served from 1972-1975; and

Whereas, Bethany College admitted female students in 1877 and has continued its commitment to provide a quality liberal arts education to students from 28 states, the District of Columbia, Puerto Rico and nine countries; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes Bethany College on the 175th anniversary of its charter; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials of Bethany College.

At the request of Senator Ferns, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Petitions

Senator Nohe presented a petition from Cathy L. Mace and ten West Virginia residents, supporting Senate Bill No. 35 (*Permitting carrying of concealed weapons without license*).

Referred to the Committee on Government Organization.

Senator Carmichael announced that in the meeting of the Committee on Rules previously held, the committee had returned to the Senate calendar, on second reading, **Engrossed House Bill No. 2213**, having been removed from the Senate calendar under rule number seventeen of the Rules of the Senate on February 25, 2015.

The Senate proceeded to the eighth order of business.

Com. Sub. for Senate Bill No. 14, Creating Public Charter Schools Act of 2015.

On third reading, coming up in regular order, with the right having been granted on Wednesday, February 25, 2015, for amendments to be received on third reading, was reported by the Clerk.

Senator Sypolt requested unanimous consent that further consideration of the bill be deferred until the conclusion of bills on today's first reading calendar.

Which consent was not granted, Senator Unger objecting.

Thereafter, on motion of Senator Sypolt, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar.

Eng. Senate Bill No. 195, Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 195) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 195) takes effect from passage.

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

Com. Sub. for Senate Bill No. 254, Relating to Fire, EMS and Law-Enforcement Officer Survivor Benefit Act.

On third reading, coming up in regular order, with the right having been granted on yesterday, Sunday, March 1, 2015, for amendments to be received on third reading, was reported by the Clerk.

On motions of Senators Kessler and M. Hall, the following amendment to the bill was reported by the Clerk and adopted:

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

On motions of Senators Kessler, Beach, Facemire, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel, Yost and M. Hall, the following amendments to the bill (Com. Sub. for S. B. No. 254) were next reported by the Clerk and considered simultaneously:

On page four, section two, line eleven, by striking out “\$50,000” and inserting in lieu thereof “\$100,000”;

And,

On page six, section two, line one, by striking out “\$50,000” and inserting in lieu thereof “\$100,000”.

Following discussion,

The question being on the adoption of the amendments, and on this question, Senator Kessler demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes,

Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendments offered by Senators Kessler, Beach, Facemire, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel, Yost and M. Hall to the bill adopted.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill No. 254 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 254) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 336, Eliminating Health Care Authority's power to apply certain penalties to future rate applications.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 336) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 336) takes effect from passage.

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

Eng. Senate Bill No. 386, Excluding mobile x-ray services from health care provider tax.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 386) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 395, Modifying definitions of “battery” and “domestic battery”.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 395) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 407, Implementing state safety oversight program.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 407) passed with its title.

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

Eng. Senate Bill No. 420, Relating to retirement benefits for certain employees in kindergarten programs.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 420) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 436, Relating to State Athletic Commission.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt,

Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 436) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 439, Relating to higher education personnel.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 439) passed with its title.

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

Eng. Senate Bill No. 447, Allowing issuance of diploma by public, private or home school administrator.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 447) passed with its title.

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

Eng. Senate Bill No. 457, Relating to selection of school athletic coaches or other extracurricular activities coaches.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 457) passed with its title.

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

Eng. Senate Bill No. 479, Adding additional family court judges.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 479) passed with its title.

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

Eng. Senate Bill No. 499, Creating Tourist-Oriented Directional Signs Program.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 499) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 529, Relating to PERS, SPRS and TRS benefits and costs.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill No. 529 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt,

Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 529) passed with its title.

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

Eng. Senate Bill No. 549, Establishing classifications and salary schedules for State Police forensic lab civilian employees.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 549) passed with its title.

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

Eng. Senate Bill No. 560, Establishing special revenue fund for use of certain Supreme Court advanced technology.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 560) passed with its title.

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

Eng. Senate Bill No. 577, Allowing higher education governing boards invest certain funds with nonprofit foundations.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 577) passed with its title.

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

Eng. Senate Bill No. 578, Relating to occupational disease claims.

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

Senators Walters and Woelfel moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motions prevailed.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Yost and Cole (Mr. President)—30.

The nays were: Miller and Snyder—2.

Absent: None.

Excused from voting: Walters and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 578) passed with its title.

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

Eng. Senate Bill No. 579, Clarifying restriction on limited video lottery location near business selling petroleum products.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 579) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 579) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill No. 234, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

Senate Bill No. 310, Exempting nonprofit public utility companies from B&O tax.

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

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

On page three, section three, line four, by striking out the word “utility” and inserting in lieu thereof the words “water and sewer”.

The bill (S. B. No. 310), as amended, was then ordered to engrossment and third reading.

Senate Bill No. 550, Authorizing agreements between county commissions and municipalities regarding structures unfit for human habitation.

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

Senate Bill No. 580, Relating to statute of limitations on health care injury claims for minors.

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

Senate Bill No. 581, Relating to Tourism Promotion Fund and Courtesy Patrol Fund.

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

Eng. Com. Sub. for House Bill No. 2157, Relating to absentee ballot fraud.

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

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

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

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

On page three, section eighteen-d, lines thirty-one and thirty-two, by striking out the following: With a minimum of ten percent of the aforementioned fifty percent being used to fund veteran-related projects.

Following discussion,

The question being on the adoption of the Finance committee amendment to the bill, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)—29.

The nays were: Kessler, Laird, Leonhardt, Unger and Yost—5.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the Finance committee amendment to the bill adopted.

The bill (Eng. H. B. No. 2213), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

Com. Sub. for Com. Sub. for Senate Bill No. 352, Expanding scope of cooperative associations to goods and services including recycling.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

Senate Bill No. 363, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

Com. Sub. for Com. Sub. for Senate Bill No. 385, Regulating transportation network companies.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

At the request of Senator Plymale, and by unanimous consent, Senator Plymale addressed the Senate regarding Senate Bill No. 137 (*Exempting HEPC and CCTCS and member institutions from WVOASIS*).

Pending announcement of meetings of standing committees of the Senate, including a majority party caucus,

On motion of Senator Carmichael, the Senate recessed until 5 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Snyder, and by unanimous consent, returned to the sixth order of business, which agenda includes the making of main motions.

Senator Snyder moved that the full Senate hold a public hearing on Committee Substitute for Senate Bill No. 541 (*Relating to regulation and control of elections*).

Following discussion,

Senator D. Hall moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the adoption of Senator Snyder's aforesated motion, and on this question, Senator Snyder demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—16.

The nays were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Snyder's aforesaid motion rejected.

The Senate again proceeded to the tenth order of business.

The end of today's first reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for Senate Bill No. 14, Creating Public Charter Schools Act of 2015.

On third reading, coming up in deferred order, with the right having been granted on Wednesday, February 25, 2015, for amendments to be received on third reading, was again reported by the Clerk.

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

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

That §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §6C-2-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-9A-2 and §18-9A-12 of said code be amended and reenacted; that §18-20-5 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13,

§18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and that §29-12-5a 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE
ACT.**

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) “Agency” means the Public Employees Insurance Agency created by this article.

(2) “Director” means the Director of the Public Employees Insurance Agency created by this article.

(3) “Employee” means any person, including an elected officer, who works regularly full time in the service of the State of West Virginia and, for the purpose of this article only, the term “employee” also means any person, including an elected officer, who works regularly full time in the service of a county board of education; a public charter school established pursuant to article thirty-three, chapter eighteen of this code; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or ~~comprehensive mental retardation~~ intellectually

and developmentally disabled facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code; any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code; and any person who works as a long-term substitute as defined in section one, article one, chapter eighteen-a of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least one hundred thirty-three instructional days during an instructional term, and until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than one hundred thirty-three instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an “employee” during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the State Board of Education is considered an “employee” during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an

employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an “employee” if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the “employee” for purposes of this section; and

(iii) Works at least one third of the time required for a full-time employee.

(4) “Employer” means the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a public charter school established pursuant to article thirty-three, chapter eighteen of this code; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to article two, chapter sixteen of this code; and a corporation meeting the description set forth in section three, article twelve, chapter eighteen-b of this code that is employing a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century

Learner Fellow. Any matters of doubt as to who is an “employer” within the meaning of this article shall be decided by the director. The term “employer” does not include within its meaning the National Guard.

(5) “Finance board” means the Public Employees Insurance Agency finance board created by this article.

(6) “Person” means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) “Plan”, unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) “Retired employee” means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the state Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired

employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to article sixteen-d of this chapter. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

§5-16-22. Permissive participation; exemptions.

The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, or a county board of education or a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code and nothing contained in this article may be construed so as to compel any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of article two-b, chapter twenty-one-a of this code may not be required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes

any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs. The provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code, relating to group life insurance, accident and sickness insurance, and group accident and sickness insurance, are not applicable to the provisions of this article whenever the provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code are in conflict with or contrary to any provision set forth in this article or to any plan or plans established by the Public Employees Insurance Agency.

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, ~~or~~ a county board of education or a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than ten days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance program as authorized by this article shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, ~~or~~ a county

board of education or a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: *Provided, however*, That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-2. Definitions.

For the purpose of this article and article three of this chapter:

(a) “Board” means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) “Chief administrator” means, in the appropriate context, the commissioner, chancellor, director, president, secretary or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested

with the authority to resolve a grievance. If a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code includes in its approved charter application a determination that this article applies to the charter school and its employees, “chief administrator” also means the principal of the public charter school. A “chief administrator” includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) “Days” means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee’s workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.

(d) “Discrimination” means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e) (1) “Employee” means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an “employee” only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.

(3) “Employee” does not mean a member of the West Virginia State Police employed pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the superintendent of the State Police. “Employee” does not mean an employee of a constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature or a patient or inmate employed by a state institution.

(4) If a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code includes in its approved charter application a determination that this article applies to the charter school and its employees, “employee” also means a person employed by the public charter school.

(f) “Employee organization” means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer and membership criteria of the organization.

(g) “Employer” means a state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section. If a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code includes in its approved charter application a determination that this article applies to the charter school and its employees, “employer” also includes the public charter school.

(h) “Favoritism” means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i) (1) “Grievance” means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

(2) “Grievance” does not mean any pension matter or other issue relating to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer.

(j) “Grievance proceeding”, “proceeding” or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) “Grievant” means an employee or group of similarly situated employees filing a grievance.

(l) “Harassment” means repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession.

(m) “Party”, or the plural, means the grievant, intervenor, employer and the Director of the Division of Personnel or his or her designee, for state government employee grievances. The Division of Personnel shall not be a party to grievances involving higher education employees.

(n) “Representative” means any employee organization, fellow employee, attorney or other person designated by the grievant or

intervenor as his or her representative and may not include a supervisor who evaluates the grievant.

(o) “Reprisal” means the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) “Accumulated contributions” means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) “Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) “Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) “Average final salary” means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in

this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401 (a) (17) of the Internal Revenue Code.

(6) “Beneficiary” means the recipient of annuity payments made under the retirement system.

(7) “Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.

(8) “Deposit” means a voluntary payment to his or her account by a member.

(9) “Employer” means the agency of and within the state which has employed or employs a member.

(10) “Employer error” means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(11) “Employment term” means employment for at least ten months, a month being defined as twenty employment days.

(12) “Gross salary” means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive

payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(14) "Member" means any person who has accumulated contributions standing to his or her credit in the state Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to section thirteen of this article.

(15) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

(17) "New entrant" means a teacher who is not a present teacher.

(18) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; or (E) a governing

board, as defined in section two, article one, chapter eighteen-b of this code; or (F) a public charter school established pursuant to article thirty-three of this chapter: *Provided*, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) “Plan year” means the twelve-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) “Present member” means a present teacher or nonteacher who is a member of the retirement system.

(21) “Present teacher” means any person who was a teacher within the thirty-five years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) “Prior service” means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(23) “Public schools” means all publicly supported schools, including colleges and universities in this state.

(24) “Refund beneficiary” means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) “Regular interest” means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) “Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) “Required beginning date” means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.

(28) “Retirant” means any member who commences an annuity payable by the retirement system.

(29) “Retirement board” means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(30) “Retirement system” means the state Teachers Retirement System established by this article.

(31) “Teacher member” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or

the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; ~~and~~ (L) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (M) any person employed by a public charter school established pursuant to article thirty-three of this chapter.

(32) “Total service” means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of seventy years shall be considered to be seventy years.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) “Annual addition” means, for purposes of the limitations under Section 415 (c) of the Internal Revenue Code, the sum credited to a member’s account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or contributions as described in Section 415 (k) (3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) “Annuity account” or “annuity” means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(3) “Compensation” means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, “compensation” has the meaning given it in subsection (d), section thirteen of this article;

(4) “Consolidated board” or “board” means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

(5) “Defined contribution system” or “system” means the Teachers’ Defined Contribution Retirement System created and established by this article;

(6) “Employer” means the agency of and within the State of West Virginia which has employed or employs a member;

(7) “Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

(8) “Employment term” means employment for at least ten months in any plan year with a month being defined as twenty employment days;

(9) “Existing employer” means any employer who employed or employs a member of the system;

(10) “Existing retirement system” means the state Teachers Retirement System established in article seven-a of this chapter;

(11) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended;

(12) “Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; ~~and~~ (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers’ Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to article thirty-three of this chapter;

(13) “Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s

individual annuity account within the Teachers' Defined Contribution Retirement System;

(14) "Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness;

(15) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending on the following June 30;

(16) "Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state;

(17) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(18) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years;

(19) "Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(20) “Year of employment service” means employment for at least ten months, with a month being defined as twenty employment days: *Provided*, That no more than one year of service may be accumulated in any twelve-month period.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

For the purpose of this article:

(a) “State board” means the West Virginia Board of Education.

(b) “County board” or “board” means a county board of education.

(c) “Professional salaries” means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(d) “Professional educator” shall be synonymous with and shall have the same meaning as “teacher” as defined in section one, article one of this chapter and includes technology integration specialists.

(e) “Professional instructional personnel” means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance or psychologist duties.

(f) “Professional student support personnel” means a “teacher” as defined in section one, article one of this chapter who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor’s degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional

educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) “Service personnel salaries” means the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(h) “Service personnel” means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: *Provided*, That the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one-half an employment day.

(i) “Net enrollment” means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county, subject to the following:

(1) Net enrollment further shall include:

(†) (A) Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

(A) (i) Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency; and

(B) (ii) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student; and

~~(2)~~ (B) Students enrolled in early childhood education programs as provided in section forty-four, article five of this chapter, counted on the basis of full-time equivalency;

~~(3)~~ (2) No pupil shall be counted more than once by reason of transfer within the county or from another county within the state and no pupil shall be counted who attends school in this state from another state;

~~(4)~~ (3) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; ~~and~~

~~(5)~~ (4) For the purposes of determining the county's basic foundation program only, for any county whose net enrollment as determined under all other provisions of this definition is less than one thousand four hundred, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

(A) Divide the state's lowest county student population density by the county's actual student population density;

(B) Multiply the amount derived from the calculation in subparagraph (A) of this paragraph by the difference between one thousand four hundred and the county's actual net enrollment;

(C) If the increase in net enrollment as determined under this paragraph plus the county's net enrollment as determined under all other provisions of this section is greater than one thousand four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; and

(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this paragraph to determine whether or not

these provisions properly address the needs of counties with low enrollment and a sparse population density; and

(5) Net enrollment shall include students enrolled in a public charter school established pursuant to article thirty-three of this chapter.

(j) “Sparse-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is less than five.

(k) “Low-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than five but less than ten.

(l) “Medium-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than ten but less than twenty.

(m) “High-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than twenty.

(n) “Levies for general current expense purposes” means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to section six-f, article eight, chapter eleven of this code. *Provided, That beginning July 1, 2008, “levies for general current expense purposes” means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven*

~~of this code: *Provided, however,* That effective July 1, 2010, the definitions set forth in this subsection are subject to the provisions of section two-a of this article.~~

(o) “Technology integration specialist” means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

(p) “State aid eligible personnel” means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution or other specific funding source not listed.

§18-9A-12. County basic foundation; total basic state aid allowance.

(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine and ten of this article. On the first working day of July in each year, the state board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county’s basic foundation program shall be the difference between the cost of its basic foundation program and the county’s local share as determined in section eleven of this article except as provided in subsection (b) of this section.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: *Provided,* That prior to such adjustment, the State Tax Commissioner shall provide the state board, by January 15 of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to

each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is under a final court order, or a final decision of a board of assessment appeals under section twenty-four-b, article three, chapter eleven of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect or must refund due to the final court order or final decision of a board of assessment appeals: *Provided*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the Tax Commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the Tax Commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: *Provided*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however*, That

nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the Tax Commissioner: *Provided*, That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided further*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(4) In instances where a public charter school is authorized and has or will begin operations in a county school district pursuant to article thirty-three of this chapter, the total program allowance for the district shall be reduced by the county's per pupil total basic foundation allowance multiplied by the second month net enrollment of the public charter school authorized to operate in the county.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the

State Tax Commissioner, by January 1 of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The State Tax Commissioner then shall provide the State board, by January 15 of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the State board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

(a) The State Superintendent of Schools shall organize, promote, administer and be responsible for:

(1) Stimulating and assisting county boards ~~of education~~ in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) (A) Preparing the necessary rules, policies, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the State board of Education: *Provided*, That no state rule, policy or standard under this article or any

county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation.

(B) The state superintendent shall annually review the rules, policies and standards of the state and federal law for serving the needs of exceptional children enrolled in the public schools and shall report to the Legislative Oversight Commission on Education Accountability by December 1 ~~or as soon thereafter as requested by the commission, 2008, and in each year thereafter;~~ of each year the findings of the review along with an accounting of the services provided and the costs thereof for exceptional children enrolled in the public schools of this state during the latest available school year. An appropriation shall be made to the Department of Education to be distributed to county boards and public charter schools authorized pursuant to article thirty-three of this article to support children with high acuity needs that exceed the capacity of county or the public charter school to provide with funds available. Each county board and public charter school shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be distributed to county boards and public charter schools for this purpose before any of the state appropriation is distributed. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of this subdivision relating to distributing the funds to the county boards and public charter schools. The rule at least shall include a definition for “children with high acuity needs”.

(4) Receiving from county boards ~~of education~~ their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private

schools and correctional facilities as provided in section thirteen-f, article two of this chapter receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

~~(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight commission on education accountability no later than December 1, 1995.~~

(b) Nothing contained in this section shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

**ARTICLE 33. WEST VIRGINIANA PUBLIC CHARTER SCHOOLS
ACT OF 2015.**

§18-33-1. Legislative purpose and intent.

The West Virginia Legislature hereby establishes public charter schools to benefit students, parents, teachers and community members by creating new, innovative and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals and diversity of public education. The purposes of the charter school initiative are to:

(a) Improve student learning by creating more quality public schools with high standards for student performance;

(b) Encourage the use of different, high-quality models of teaching, governing, scheduling or other aspects of public schooling that meet a variety of student needs;

(c) Close achievement gaps between high-performing and low-performing groups of public school students;

(d) Allow schools freedom and flexibility in exchange for exceptional levels of results-driven accountability;

(e) Increase high-quality educational opportunities within the public education system for all students, especially those at risk of academic failure; and

(f) Provide students, parents, community members and local entities with expanded opportunities for involvement in the public education system.

§18-33-2. Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

(a) “Applicant” means teachers, parents, school administrators, community residents, public organizations, private nonprofit organizations, a noncharter public school, a noncharter public school program or a combination thereof that seek approval from a charter school authorizer to establish a public charter school;

(b) “Charter application” means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(c) “Authorizer” means an entity empowered under this article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee and monitor public charter schools and decide whether to renew, not renew or revoke charter contracts;

(d) “Charter contract” means a performance-based contract for a fixed term between a public charter school and an authorizer that describes performance expectations, defines operational responsibilities

and outlines the autonomy and accountability for each party to the contract;

(e) “Conversion public charter school” means a public charter school that existed as a noncharter public school before becoming a public charter school;

(f) “Education service provider” means an education management organization, charter management organization, school design provider or any other partner entity with whom a public charter school intends to contract for education services and resources, including education design, implementation or management;

(g) “Governing board” means the independent board of a public charter school that is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school’s application;

(h) “County board” means a board exercising management and control of a school district other than a public charter school formed under this article. A county board’s management and control of a public charter school is limited to only that granted under this article as the authorizer;

(i) “Noncharter public school” means a public school other than a school formed pursuant to this article;

(j) “Public charter school” means a public school formed pursuant to this article that:

(1) Is part of the state’s system of public education; is nonhome school based and not affiliated with or espousing any specific religious denomination, organization, sect or belief or the promotion or engaging in any religious practices in terms of its educational program. Nor shall a public charter school, as defined in this article, be affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified

through listings of such groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(2) Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum and instruction;

(3) Is governed by a board that is independent of a county board except for the county board's responsibilities under this article as the public charter school's authorizer;

(4) Is established and operated under the terms of a legally binding charter contract between the governing board and its authorizer in accordance with this article;

(5) Is a public school to which parents choose to send their children;

(6) Ensures student participation in required state assessments of student performance, as required of other public school students under section five, article two-e of this chapter;

(7) Designs its educational program to meet or exceed the student performance standards set forth in section five, article two-e of this chapter;

(8) Provides instructional time that is at least equal to the number of days or their equivalent required by section forty-five, article five of this chapter;

(9) Adheres to all generally accepted accounting principles;

(10) Requires a criminal history check pursuant to section ten, article three, chapter eighteen-a of this code for any staff person that would be required to be licensed if employed in a noncharter public school unless a criminal history check has already been completed for that staff person pursuant to that section;

(11) Prohibits contractors or service providers or their employees from making direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to section fifteen-c, article five of this chapter;

(12) Complies with the provisions of article one, chapter twenty-nine-b of this code relating to freedom of information and the provisions of article nine-a, chapter six relating to open governmental proceedings;

(13) Ensures students meet the compulsory school attendance requirements of section forty-four, chapter five of this chapter and section one-a, article eight of this chapter, as applicable;

(14) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12;

(B) May include a focus on students with special needs, such as at-risk pupils, English language learners or students involved with the juvenile justice system; and

(C) May include a specific academic approach or theme;

(15) Provides programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules and regulations. A charter school shall deliver the services directly or contract with another provider to deliver the services;

(16) Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and

(17) Operates under the oversight of the authorizer from which its charter contract is granted and in accordance with its approved charter contract; and

(k) “Start-up public charter school” means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

§18-33-3. Reports.

One year after public charter schools have been in operation, and each year thereafter, the state superintendent shall issue to the Governor, the Legislature and the general public a report on the state’s public charter school program, drawing from the annual reports submitted by authorizers pursuant to section five of this article as well as any additional relevant data compiled by the state superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program’s successes, challenges and areas for improvement in meeting the purposes of this chapter and any suggested changes in state law or policy necessary to strengthen the public charter school program.

§18-33-4. Public charter school eligibility; enrollment.

(a) *Eligibility.* – Any student residing in the state is eligible to apply to a public charter school.

(b) *Enrollment.* – A public charter school shall enroll students in accordance with this subsection.

(1) Public charter school organizers shall include all segments of the populations served by the existing noncharter public schools in their area in their recruitment efforts.

(2) Unless the number of students exceeds the enrollment capacity of a program, class, grade level or building, a public charter school shall:

(A) Automatically enroll all students residing in the attendance area in which the school is located except for any students that opt out of enrollment; and

(B) Enroll all other students who wish to attend the school.

(3) Enrollment decisions shall be made in a nondiscriminatory way and shall not be based on intellectual ability, measures of achievement of aptitude, athletic ability, disability, creed, race, gender, national origin, religion or ancestry.

(4) Except as otherwise provided in this subsection, if capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students from among the list of applicants by a random selection lottery. A list maintained to fill potential vacancies may be carried over to the succeeding year. Any student residing within the attendance area shall automatically be included in the list of applicants unless the student opts out of being included.

(5) Any noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy that gives enrollment preference to pupils who reside within the former attendance area of that noncharter public school and that requires automatic enrollment of pupils who were previously enrolled in the noncharter public school except for any students that opt out of enrollment in the school.

(6) A public charter school shall give enrollment preference to pupils enrolled in the public charter school the previous school year and to siblings of pupils already enrolled in the public charter school.

(7) A public charter school may establish enrollment preferences that enable the school to give enrollment preference to at-risk students and students not succeeding in noncharter public schools.

(8) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than ten percent of the school's total student population.

(c) *Discrimination prohibited.* – A public charter school may not discriminate on the basis of race, ethnicity, national origin, religion, gender, sexual orientation, income level, disabling condition, proficiency in the English language or academic or athletic ability, except that nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk pupils, students with disabilities and students who pose such severe disciplinary problems that they warrant a specific education program.

§18-33-5. Authorizers.

(a) *Eligible authorizer.* – A county board may authorize the creation of a start-up public charter school or the conversion of a noncharter public school to a public charter school within the boundaries of the school district governed by that county board pursuant to this article. This authority for a county board to authorize a charter school pursuant to this subsection is applicable even if the county school system is under state board intervention pursuant to section five, article two-e of this chapter.

(b) *Cap.* – No more than two public charter schools shall be authorized per calendar year for the first five years public charter schools are in operation. During the first five calendar years public charter schools are in operation:

(1) Year one is the first calendar year in which a public charter school is authorized;

(2) As soon as feasible after an authorizer authorizes a public charter school, the authorizer shall notify the state board;

(3) After two public charter schools have been authorized during any calendar year, the state board shall notify as soon as feasible all authorizers that no more public charter schools may be authorized for the remainder of that calendar year;

(4) In determining which schools are authorized under the cap, priority shall be given to the first two schools that are authorized, as determined by the date of authorization, and any other authorization during that calendar year is null and void; and

(5) If as a result of multiple schools being authorized on the same date the cap is exceeded, the state board shall determine which of the multiple schools authorized on the same date are to remain authorized and the other authorizations on the same date are null and void.

(c) *Duties.* – An authorizer shall:

(1) Evaluate applications from organizers of proposed public charter schools;

(2) Approve or deny applications pursuant to section eight of this article;

(3) Create a framework to guide the development of charter contracts;

(4) Negotiate and execute sound charter contracts with each approved public charter school;

(5) Monitor the performance and compliance of public charter schools;

(6) Determine whether each charter contract merits renewal or revocation; and

(7) Establish and follow charter granting policies and practices that are transparent, based on merit and avoid all conflicts of interest.

(d) *Principles and professional standards.* – An authorizer shall develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools, including standards relating to:

- (1) Organizational capacity and infrastructure;
- (2) Evaluating applications;
- (3) Performance contracting;
- (4) Ongoing public charter school oversight and evaluation; and
- (5) Charter approval, renewal and revocation decisionmaking.

(e) *Reporting and evaluation.* – An authorizer that has authorized at least one public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board an annual report within sixty days of the end of each school fiscal year summarizing:

(1) The authorizer’s strategic vision for chartering and progress toward achieving that vision;

(2) The performance of all operating public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(3) The status of the authorizer’s public charter school portfolio of approved charter applications, identifying all public charter schools within that portfolio as:

- (A) Approved, but not yet open;
- (B) Operating;
- (C) Renewed;

- (D) Transferred;
- (E) Terminated;
- (F) Closed; or
- (G) Never opened; and

(4) The authorizing duties and functions provided by the authorizer during the previous academic year.

(f) *Conflicts of interest.* – An employee, trustee, agent or representative of an authorizer may not simultaneously serve as an employee, trustee, agent, representative, vendor or contractor of a public charter school operating under that authorizer.

(g) *Services purchased from authorizer.* – A public charter school may not be required to purchase services from its authorizer as a condition of charter approval or of executing a charter contract, nor may any such condition be implied. However, a public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school.

§18-33-6. Appeals, training and other duties of the West Virginia Board of Education.

(a) *Duties.* – The state board shall, pursuant to this article:

(1) Establish training programs for charter school applicants, administrators and governing board members;

(2) Hear appeals from applicants for authorization and from public charter school governing boards relating to renewal and revocation: *Provided*, That the state board only may uphold the decision or remand

the issue to the authorizer with a recommendation and may not in any case reverse a decision of an authorizer;

(3) Issue and broadly publicize requests for proposals pursuant to section seven of this article to invite, solicit, encourage and guide the development of high-quality public charter school applications; and

(4) Pursuant to subsection (b), section five of this article, for the first five calendar years public charter schools are in operation:

(A) After the two per calendar year cap is exceeded, notifying authorizers that no more public charter schools may be authorized for the remainder of that calendar year; and

(B) Determining which schools are authorized when authorization of multiple schools on the same date results in the two per calendar year cap being exceeded.

(b) *Funding.* – The state board may charge up to one percent of the funding received pursuant to subsection (b), section fourteen of this article in order to perform its duties under this article.

(c) *Training.* – The state board shall consult with nationally recognized charter school organizations in establishing training programs for charter school applicants, administrators and governing board members. The training for administrators and governing board members shall include at least twelve training sessions annually. Administrators and governing board members may miss no more than one training session annually without a valid excuse, as determined by the authorizer. No charter may be granted until the applicant, administrators and governing board members have received the initial training offered by the state board.

§18-33-7. Request for proposals.

(a) *Issuance.* – To invite, solicit, encourage and guide the development of high-quality public charter school applications, the state board shall issue and broadly publicize requests for proposals by

June 30, 2016, and by June 30 of each year thereafter. The content and dissemination of the requests for proposals shall be consistent with the purposes and requirements of this article.

(b) *Content.* – The state board’s request for proposals shall contain information set forth in this subsection.

(1) A request for proposals shall present the state board’s strategic vision for and interest in chartering.

(2) The state board may give priority to proposals that expand opportunities for children who are not realizing their full potential, who may be disaffected or disengaged in their current education situations and who may be at risk of failure academically, socially, economically or personally. The state board may encourage proposals that include a specific academic approach or theme to address the diverse educational needs of communities in the state. A request for proposals shall include a clear statement of any priority or preference the state board wishes to grant to particular types of applications. Notwithstanding the state board’s statement of any priority or preference, an authorizer shall consider each application submitted to it based on the merits of that particular application.

(3) A request for proposals shall include or otherwise direct applicants to the performance framework that the state board has developed for public charter school oversight and evaluation in accordance with section ten of this article.

(4) A request for proposals shall include the criteria and standards that will guide the authorizer’s decision to approve or deny an application.

(5) A request for proposals shall state clear, appropriately detailed questions as well as guidelines concerning the format and content essential for applicants to demonstrate the capacities necessary to establish and operate a successful public charter school.

(6) A request for proposals shall require applications to provide or describe thoroughly, at a minimum, all of the following essential elements of the proposed public charter school plan:

(A) The proposed public charter school's vision, including:

(i) An executive summary; and

(ii) The mission and vision of the proposed public charter school, including identification of the targeted student population and the community the school hopes to serve; and

(B) The proposed public charter school's governance plan, which shall include:

(i) A governing board which shall include the following nine members: Three parents of children attending the public charter school; two faculty; one service person; a representative of business; a person knowledgeable of finance; and the principal of the school who shall be an ex officio voting member;

(ii) Background information on proposed governing board members, except the principal member, and any assurances or certifications required by the authorizer;

(iii) The election of the principal by the governing board;

(iv) Proposed governing bylaws which at least include good governing practices and provisions for the removal of board members;

(v) An organization chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, principal, staff and any related bodies such as advisory bodies or parent and teacher councils;

(vi) A clear description of the roles and responsibilities for the governing board, the principal and management team and any other entities shown on the organization chart; and

(vii) Identification of the proposed founding governing board members other than the principal member;

(C) The proposed public charter school's plan of organization, including:

(i) The location or geographic area of the school;

(ii) The grades to be served each year for the full term of the charter;

(iii) Minimum, planned and maximum enrollment per grade per year for the term of the charter;

(iv) The school's proposed calendar and sample daily schedule;

(v) Plans and timelines for student recruitment and enrollment, including lottery procedures;

(vi) Explanations of any partnerships or contractual relationships central to the school's operations or mission;

(vii) The school's proposals for providing transportation, food service and other significant operational or ancillary services;

(viii) A facilities plan, including backup or contingency plans if appropriate; and

(ix) A detailed school start-up plan, identifying tasks, timelines and responsible individuals; and

(D) The proposed public charter school's finances, including:

(i) A description of the school's financial plan and policies, including financial controls and audit requirements;

(ii) Start-up and three-year budgets with clearly stated assumptions;

(iii) Start-up and first-year cash flow projections with clearly stated assumptions;

(iv) Evidence of anticipated fund-raising contributions, if claimed in the application; and

(v) A description of the insurance coverage the school proposes to obtain, including a determination as to whether the public charter school will elect to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to section five-a, article twelve, chapter twenty-nine of this code;

(E) The proposed public charter school's student policy, including:

(i) The school's plans for identifying and successfully serving students with the wide range of learning needs and styles typically found in noncharter public schools of the sending area, including special education and English language learners;

(ii) The school's plans for compliance with all applicable federal and state laws, rules and regulations; and

(iii) The school's student discipline plans and policies, including those for special education students;

(F) The proposed public charter school's academic program, including:

(i) A description of the academic program the proposed charter school will use;

(ii) A description of the school's instructional design, including the type of learning environment, such as classroom-based or independent study, class size and structure, curriculum overview, teaching methods and research basis;

(iii) The school's plan for using internal and external assessments to measure and report student progress on the measures and metrics of the performance framework developed by the authorizer in accordance with section ten of this article; and

(iv) A description of co-curricular or extracurricular programs and how they will be funded and delivered;

(G) The proposed public charter school's staff policy, including:

(i) A staffing chart for the school's first year and a staffing plan for the term of the charter;

(ii) Plans for recruiting and developing school leadership and staff;

(iii) The school's leadership, teacher and service personnel employment policies, including performance evaluation plans and method or methods of selection, subject to subparagraph (iii), paragraph (B) of this subdivision;

(iv) A determination as to whether article two, chapter six-c of this code, relating to the public employees grievance procedure, applies to the charter school and its employees; and

(v) Opportunities and expectations for parent involvement; and

(H) The proposed public charter school's school closure protocol, including:

(i) Timely notification to parents;

(ii) Orderly transition of students and student records to new schools;

(iii) Proper disposition of school funds, property and assets in accordance with section twelve of this article; and

(iv) Tasks, timelines and responsible parties, including delineating the respective duties of the school and the authorizer.

(7) With respect to the conversion of an existing noncharter public school to public charter school status, in addition to the other requirements of this article, the request for proposals shall require applicants to demonstrate support for the proposed conversion to a public charter school by:

(A) Submitting certification that sixty percent of the teachers voted to apply for conversion to a public charter school; and

(B) Submitting a petition signed by the parents, guardians or custodians of sixty percent of the students enrolled in the school.

§18-33-8. Charter applications.

(a) *Application.* – An applicant for approval as a public charter school must submit an application that satisfies the requirements of the state board’s request for proposals required by section seven of this article. An applicant may submit a proposal for a particular public charter school to no more than one authorizer at a time. The purposes of the application are to present the proposed public charter school’s academic and operational vision and plans, demonstrate the applicant’s capacities to execute the proposed vision and plans to increase student achievement and provide the authorizer a clear basis for assessing the applicant’s plans and capacities.

(b) *Application review process.* – In reviewing and evaluating applications, authorizers shall employ procedures, practices, criteria and standards consistent with nationally recognized principles and standards for authorizing high-quality public charter schools.

(1) The application review process shall include a thorough evaluation of each application, an in-person interview with the applicant, a thirty-day comment period and a public hearing.

(2) In deciding whether to approve applications, authorizers shall:

(A) Grant charters only to applicants that have demonstrated competence in each element of the state board's published approval criteria and are likely to open and operate a public charter school that will increase student achievement;

(B) Base decisions on documented evidence collected through the application review process; and

(C) Follow charter-granting policies and practices that are transparent, based on merit and avoid conflicts of interest or any appearance of a conflict of interest.

(c) *Approval; denial.* – No later than ninety days after the filing of an application, an authorizer shall decide to approve or deny the application. The authorizer shall make and announce all charter approval or denial decisions in a meeting open to the public.

(1) An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed.

(2) If the authorizer denies an application, the authorizer shall clearly state, for public record, its reasons for denial at the time of rendering the decision to deny. An applicant may subsequently reapply to that authorizer or appeal to the state board.

(3) Within ten days of taking action to approve or deny an application, the authorizer shall report to the state superintendent the action it has taken. The authorizer shall provide a copy of the report to the applicant at the same time that the report is submitted to the state superintendent.

(4) The state superintendent shall register the charters approved by all chartering authorities in chronological order by date of approval.

(5) An approved application may not serve as a school's charter contract nor may it be incorporated by reference into the charter contract.

(6) A decision on an application shall be conveyed in writing to the applicant. A decision may grant approval or conditional approval, request resubmission or reject the application and must include written reasons for the decisions.

(7) Any appeal of a denial of an application shall be made to the state board within sixty days of the time the denial is received in writing by the applicant. Within sixty days, the state board only may uphold the decision or remand the issue to the authorizer with a recommendation. The state board may not reverse a decision of the authorizer. The state board shall report to the state superintendent any recommendation it has made on appeal within ten days. If the issue is remanded and the application is again denied by the authorizer, the applicant may continue to appeal within the sixty days, but the state board only may uphold the decision or remand any further appeal to the authorizer with a recommendation and may not reverse the authorizer's decision.

§18-33-9. Charter contracts.

(a) When an application is approved, a charter contract shall be executed in accordance with this section.

(b) After approval of an application and no later than ninety days after charter application approval, the authorizer and the governing board shall execute a charter contract that sets forth:

(1) The term of the charter contract;

(2) Performance provisions describing the academic and operational performance expectations and measures by which the public charter school will be judged;

(3) Administrative provisions articulating the administrative relationship between the authorizer and the public charter school, including each party's rights and duties;

(4) The process the authorizer will use to provide ongoing oversight, including a process to conduct annual site visits;

(5) The process the authorizer will use to notify the charter school of any deficiencies and the process by which the charter school may submit an improvement plan;

(6) The agreed-upon process for amending the approved charter contract;

(7) The process agreed to by the authorizer and the charter school that identifies how disputes will be handled and resolved; and

(8) Any conditions set by the authorizer and agreed to by the charter school to commence operations of the school.

(c) The performance provisions set forth in a charter contract under subsection (b) of this section shall include applicable federal accountability requirements and state accreditation requirements that will allow the state board to issue the public charter school a level of accreditation pursuant to subdivision (2), subsection (1), section five, article two-e of this chapter.

(d) The performance provisions set forth in a charter contract under subsection (b) of this section may be refined or amended by mutual agreement of the parties to the charter contract after the public charter school is operating and has collected baseline achievement data for its enrolled students.

(e) A charter contract shall be signed by a designated representative of the authorizer and of the public charter school's governing board.

(f) A public charter school may not commence operations without a charter contract executed in accordance with this section and approved in a meeting open to the public.

§18-33-10. Public charter school performance framework.

(a) *Performance framework.* – The performance provisions of a charter contract shall be based on a performance framework developed by the state board that sets forth the academic and operational performance indicators that will guide the authorizer’s evaluations of each public charter school.

(b) *Data elements.* – The performance framework developed under subsection (a) of this section shall include, at a minimum, indicators for:

- (1) Student academic proficiency;
- (2) Student achievement goals;
- (3) Achievement gaps in both proficiency and growth between major student subgroups;
- (4) Attendance;
- (5) Recurrent enrollment from year to year;
- (6) With respect to high school, post-secondary readiness;
- (7) Financial performance and sustainability;
- (8) Governing board performance and stewardship; and
- (9) Parent and community engagement.

(c) *Annual performance targets.* – Annual performance targets shall be set by a public charter school in conjunction with its

authorizer and shall be designed to help each school meet applicable federal and state requirements and authorizer expectations.

(d) *Data disaggregation.* – The performance framework developed under subsection (a) of this section shall require the disaggregation of all student performance data by major student subgroups.

§18-33-11. Oversight.

(a) *Data collection; monitoring.* – For each public charter school it oversees, the authorizer is responsible for collecting, analyzing and reporting all data from state assessments in accordance with the performance framework required by section ten of this article. An authorizer shall monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing all data to support ongoing evaluation according to the charter contract.

(b) *Notification of unsatisfactory performance or compliance.* – In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify in writing the public charter school of perceived problems and provide reasonable opportunity for the school to remedy the problems.

§18-33-12. Charter term renewal.

(a) *Initial charter term.* – An initial charter shall be granted for a term of five operating years. The charter term commences on the public charter school's first day of operation. An approved public charter school may delay its opening for one school year in order to plan and prepare for the school's opening. If the public charter school requires an opening delay of more than one school year, the public charter school shall request an extension from its authorizer. The authorizer may grant or deny the extension depending on the particular public charter school's circumstances.

(b) *Charter renewal term.* – A charter may be renewed for successive terms of five years, although an authorizer may grant a

renewal for a term not to exceed ten years based on the school's performance data, demonstrated capacities and particular circumstance of each public charter school.

(c) *Authorizer renewal responsibilities.* – No later than June 30 of a public charter school's fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a public charter school performance report. If the charter of the public charter school is expiring, the authorizer shall offer charter renewal application guidance to the school.

(1) The performance report required in this subsection shall summarize the public charter school's performance record to date, based on the data collected under the performance framework in section ten of this article and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer shall mutually agree to a reasonable time period for the charter school to respond to the performance report and submit any corrections for the report.

(2) The renewal application guidance required by this subsection shall include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions, which shall be based on the performance framework set forth in section ten of this article, as set forth in the charter contract and consistent with this article. The renewal application guidance shall, at a minimum, require and provide an opportunity for the public charter school to:

(A) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(B) Describe improvements undertaken or planned for the school;
and

(C) Detail the school's plans for the next charter term.

(d) *Renewal application.* – No later than September 30 of a public charter school’s fifth year of operation under a term of a charter contract or September 30 of a public charter school’s final authorized year of operation under a term of a charter contract, the governing board of a public charter school seeking renewal shall submit a renewal application to the authorizer pursuant to any renewal application guidance offered by the authorizer under subsection (c) of this section.

(e) *Renewal decision.* – An authorizer shall rule in a public meeting and by resolution on a renewal application no later than forty-five days after the filing of the renewal application. In making charter renewal decisions, every authorizer shall:

(1) Ground its decisions on a thorough analysis of evidence of the school’s performance over the term of the charter contract in accordance with the terms and measures established in the performance framework set forth in the charter contract;

(2) Ensure that data used in making renewal decisions are available to the public charter school and the public;

(3) Provide a public report summarizing the evidence basis for each decision; and

(4) In instances where the authorizer declines to renew the charter, allow the school twenty days to respond in writing to the decision and public report before that decision becomes final. The school shall be allowed to provide the authorizer with such arguments and supporting information as it sees fit, and the authorizer shall consider all such timely submitted material prior to rendering its final determination. The authorizer shall render its final determination within ten days of receiving the schools written response, arguments and supporting information.

(f) *Charter revocation and nonrenewal.* –

(1) A decision by an authorizer to revoke or not to renew the charter of a public charter school must be made in accordance with this subsection.

(2) A charter may be revoked at any time or not renewed if the authorizer determines that the public charter school failed to comply with the provisions of this article or:

(A) Committed a material violation of any of the terms, conditions, standards or procedures required under this chapter or the charter contract;

(B) Failed to meet the performance expectations set forth in the charter contract;

(C) Failed to meet generally accepted standards of fiscal management; or

(D) Violated any provision of law from which the school was not exempted.

(3) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state, in a resolution of its governing entity in a public meeting, the reasons for the revocation or nonrenewal.

(4) The charter school authorizer may place a charter school on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in revocation of the school's charter.

(5) If an authorizer revokes or does not renew a charter, the county board of the district in which the school is located shall determine whether the school converts to noncharter public school status or the school is to be closed.

(6) If the county board elects to close a public charter school, the board shall clearly state, in a resolution in a public meeting, the reasons for the closure.

(g) *Notification to state superintendent.* – Within ten days of taking action to renew, not renew or revoke a charter under this section and within ten days of taking action to close a public charter school, the authorizer or county board, as applicable, shall report to the state superintendent the action taken and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the state superintendent. The report shall include a copy of the governing entity of the authorizer’s or the county board’s resolution setting forth the action taken and reasons for the decision.

(h) *Appeal of nonrenewal or revocation.* – Any appeal of a nonrenewal or revocation of a charter shall be made to the state board within sixty days of the authorizer stating its reasons by resolution in a public meeting the reasons for the revocation or nonrenewal. Within sixty days, the state board only may uphold the decision or remand the issue to the authorizer with a recommendation. The state board may not reverse a decision of the authorizer. The state board shall report to the state superintendent any recommendation it has made on appeal within ten days. If the issue is remanded and the decision is again to not renew or to revoke the charter, the applicant may continue to appeal within the sixty days, but the state board only may uphold the decision or remand any further appeal to the authorizer with a recommendation and may not reverse the authorizer’s decision.

(i) *School closure and dissolution.* –

(1) In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol required to be included in the application pursuant to section seven of this article.

(2) If a public charter school closes for any reason:

(A) The authorizer shall oversee and work with the closing public charter school to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the requirements of this chapter; and

(B) The assets of the public charter school shall be distributed first to satisfy outstanding payroll obligations for employees of the public charter school and then to creditors of the public charter school. Any remaining funds shall be paid to the county board. If the assets of the public charter school are insufficient to pay all parties to whom the public charter school owes compensation, the prioritization of distribution of assets may be determined by decree of a court of law.

§18-33-13. Operations.

(a) *Legal status.* – Notwithstanding any provision of law to the contrary, to the extent that any provision of this article is inconsistent with any other state or local law, rule or regulation, the provisions of this article govern and are controlling.

(1) A public charter school is subject to all federal laws and authorities, and anything in this article that is in conflict with federal laws and authorities is null and void.

(2) A charter contract may include one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract must be separate and distinct from any others.

(3) A single governing board may be issued one or more charter contracts. Each public charter school operating under its own contract is a discrete legal entity, separate and distinct from any others.

(b) *Local educational agency status.* –

(1) The school district in which the public charter school is located remains the local educational agency and the public charter school is

a school within that local educational agency except that the public charter school is treated as a local educational agency for purposes of applying for competitive federal grants;

(2) The school district retains responsibility for special education and serves students in public charter schools in a manner consistent with local educational agency obligations under applicable federal, state and local law and the charter contract; and

(3) The county board remains accountable for the performance of the public charter school pursuant to subsection (m), section five, article two-e of this chapter.

(c) *Powers of public charter schools.* – A public charter school has all the powers necessary for carrying out the terms of its charter contract, including the powers to:

(1) Receive and disburse funds and gifts for educational purposes;

(2) Contract or cooperate with noncharter public schools for service for students with special needs, English language learner students and other specialized populations, as well as for mutually agreed administrative services;

(3) Secure appropriate insurance and enter into contracts and leases, free from the prevailing wage laws set forth in article five-a, chapter twenty-one of this code;

(4) Contract with an education service provider for education services and resources related to the management and operation of the public charter school, as long as the public charter school's governing board retains authority over the oversight and management of the public charter school;

(5) Incur debt in reasonable anticipation of the receipt of public or private funds, except that an authorizer is not responsible for any debt incurred by the public charter school;

(6) Pledge, assign or encumber its assets to be used as collateral for loans or extensions of credit;

(7) Solicit and accept any gifts or grants for public charter school purposes subject to applicable laws and the terms of its charter contract;

(8) Acquire real property for use as its facility or facilities from public or private sources; and

(9) Sue and be sued in its own name.

(d) *General requirements.* – A public charter school is subject to the general requirements set out in this subsection.

(1) A public charter school may not discriminate against any person on the basis of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin or on any other basis that would be unlawful if done by a noncharter public school.

(2) A public charter school may not engage in any religious practices in its educational program, admissions or employment policies or operations.

(3) A public charter school may not charge tuition and may only charge such fees as may be imposed by other noncharter public schools in the state.

(4) The powers, obligations and responsibilities set forth in a charter contract may not be delegated or assigned by either party.

(e) *Applicability of other laws, rules and regulations.* – The applicability of other laws, rules and regulations to public charter schools is as set out in this subsection.

(1) Public charter schools are subject to the same civil rights, health, life and safety, and financial requirements applicable to other

noncharter public schools in the state, except as otherwise specifically provided in this chapter.

(2) Public charter schools are subject to the same student assessment and accreditation requirements applicable to other noncharter public schools in the state, but only to the extent that will allow the state board to issue the public charter school a level of accreditation pursuant to subdivision (2), subsection (1), section five of this chapter. Nothing in this article precludes a public charter school from establishing additional student assessment measures that go beyond state requirements if the school's authorizer approves the measures.

(3) Governing boards are subject to and must comply with the state's open meeting law pursuant to article nine-a, chapter six of this code.

(4) Except as provided in this article and its charter contract, a public charter school is exempt from all statutes and rules applicable to a noncharter public school or a local school district.

(5) Employees, governing body members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to other noncharter public schools.

(6) No county board shall require any employee of the local school district to be employed in a charter school or any student enrolled in the school district to attend a charter school. No county board shall harass, threaten, discipline, discharge, retaliate or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a charter school as authorized under this section.

(7) A county board shall not discriminate against a charter school in publicizing the district's educational options through advertising, direct mail, availability of mailing lists or other informational activities.

(8) Public charter schools are subject to the same federal nutrition standards applicable to other noncharter public schools.

(f) *Teachers and other school personnel.* – This subsection governs school personnel employment in a public charter school.

(1) Personnel hired by a public charter school are employed by the charter school. The charter school is ultimately responsible for processing employee paychecks, managing its employees' participation in the applicable retirement system and managing its employees' participation in insurance plans established by the Public Employees Insurance Agency: *Provided*, That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to perform services relating to managing its employees' participation in the retirement system or insurance plan.

(2) A public charter school must comply with applicable federal laws and regulations regarding the qualification of teachers and other instructional staff.

(3) All classroom teachers in a public charter school are subject to the same licensing requirements applicable to classroom teachers in a noncharter public school.

(4) All personnel in a public charter school continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school for purposes of employment in noncharter public schools.

(g) *Accounting requirements.* – A public charter school shall comply with all applicable accounting and financial reporting requirements as prescribed for regular public schools, including adherence to generally accepted accounting principles. A public charter school shall annually engage an external auditor to perform an independent audit of the school's finances. The public charter school shall submit the audit to its authorizer and to the state superintendent

within nine months of the end of the fiscal year for which the audit is performed.

§18-33-14. Funding.

(a) *Enrollment count.* – Each charter school shall report to its county board the number of students enrolled in its school based on second month enrollment. Each county board shall report to the West Virginia Department of Education the enrollment of all public charter schools in the county based on second month enrollment.

(b) *Revenue provisions.* – On or before October 1 of each year, each public charter school shall submit its budget request to the state board. The request shall not exceed the statewide per pupil total program allowance as computed under article nine-a of this chapter multiplied by the second month net enrollment of the public charter school: *Provided*, That for the funding for the first year of operation, the limit on the appropriation request shall be based on the projected second month net enrollment of the public charter school, with the funding for the public charter school and the authorizing county board to be subsequently adjusted, if necessary, in the first year of operation, based on the actual second month net enrollment. The state board shall include in its appropriation request to the Governor a request for an appropriation for public charter schools equal to the total amount requested by all charter schools. The Governor shall request an appropriation in the amount requested by the state board at the next legislative session. The state board shall distribute the funding appropriated for the public charter schools to the county boards in which each charter school is located. Each county board shall distribute the funding received to each public charter school in a timely manner.

(c) *Special education funding.* – The following provisions govern special education funding:

(1) The county board shall pay directly to the public charter school any federal or state aid attributable to a student with a disability attending the public charter school in proportion to the level of services

for the student with a disability that the public charter school provides directly or indirectly; and

(2) Public charter schools have the same access as county boards to funding for students with high acuity needs pursuant to section five, article twenty of this chapter.

(d) *Federal funds.* – Except as otherwise provided in this article, the state shall send applicable federal funds to public charter schools attended by eligible students. Public charter schools with students eligible for funds under Title I of the federal Elementary and Secondary Education Act of 1965, 20 U. S. C., section 6301 *et seq.*, must receive and use these funds in accordance with federal and state law. During the first year of operation, a public charter school must receive Title I funds on the basis of an estimated enrollment of eligible students, as agreed with its authorizer.

(e) *Gifts and grants.* – A public charter school may receive gifts and grants from private sources in any manner that is available to a local school district. Nothing in this article may be construed to prohibit any person or organization from providing funding or other assistance for the establishment or operation of a public charter school. The governing board of a public charter school may accept gifts, donations or grants of any kind made to the school and expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor except that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

(f) *Disclosure of funding sources.* – Each public charter school annually shall submit to the state board its sources of funding along with its budget request required to be submitted to the state board pursuant to subsection (b) of this section. The state board shall make the public charter school's funding sources available publicly.

§18-33-15. Transportation.

(a) A charter school may contract with a local school district or other entity for transportation services.

(b) A charter school or any entity providing transportation for a charter school shall comply with all transportation and safety laws and administrative regulations applicable to public schools.

§18-33-16. Facilities.

(a) *Facilities; property.* – A public charter school may acquire facilities and property in accordance with this subsection.

(1) A public charter school has a right of first refusal to purchase or lease at or below fair market value a closed noncharter public school facility or property or unused portions of a noncharter public school facility or property located in a school district from which it draws its students if the school district decides to sell or lease the noncharter public school facility or property. The school district may not require purchase or lease payments that exceed the fair market value of the property.

(2) A public charter school may negotiate and contract with a school district, the governing board of a state institution of higher education or any other public or for-profit or nonprofit private entity for the use of a school building.

(3) Library, community service, museum, performing arts, theater, cinema, church, community college, college and university facilities may provide space to public charter schools within their facilities under their preexisting zoning and land-use designations.

(4) A public charter school may purchase or lease at or below fair market value part or all of any surplus or unused state-owned facility or property located in the state. The state agency in control of the facility may not require purchase or lease payments that exceed the fair market value of the property.

(5) The same zoning rules that apply to other noncharter public schools apply to public charter schools.

(b) Nothing in this section requires the county board to seek funds from any source, including the School Building Authority, for conversion of any existing district school facility or for constructing a district school or facility for use by the public charter school.

(c) *Inspection; building code.* – The West Virginia State Fire Marshal is the agency that has jurisdiction over inspection of any facility used by the public charter school and issuance of a certificate of occupancy for the facility. A facility used by a public charter school is subject to the same building codes, regulations and fees that apply to other noncharter public schools including inspections by the West Virginia Department of Education, Office of School Facilities as required by subsection (c), section sixteen, article nine-d of this chapter.

§18-33-17. Miscellaneous.

(a) *Transfer of credits.* – If a student who was previously enrolled in a public charter school enrolls in another noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools.

(b) *Access to extracurricular and interscholastic activities.* – A public charter school is eligible for state-sponsored or school district-sponsored interscholastic leagues, competitions, awards, scholarships and recognition programs for students, educators, administrators and schools to the same extent as noncharter public schools. A public charter school student is eligible to participate in extracurricular activities not offered by the student's public charter school at the noncharter public school within the attendance boundaries of which the student's custodial parent or legal guardian resides or the noncharter public school from which the student withdrew for the purpose of

attending a public charter school. A public charter school student is eligible for extracurricular activities at a noncharter public school subject to eligibility standards applied to full-time students of the noncharter public school. A school district or noncharter public school may not impose additional requirements on a public charter school student to participate in extracurricular activities that are not imposed on full-time students of the noncharter public school. Public charter school students shall pay the same fees as other students to participate in extracurricular or co-curricular activities. For each public charter school student who participates in an extracurricular or co-curricular activity at a noncharter public school, the public charter school must pay a reasonable share of the noncharter public school's costs for the activity, as determined through negotiations between the schools involved.

(c) *Retirement.* – All public charter school employees shall participate in the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, whichever is applicable in accordance with articles seven-a, seven-b and seven-d of this chapter.

(d) *Insurance.* – All public charter school employees shall participate in insurance plans established by the Public Employees Insurance Agency pursuant to article sixteen, chapter five of this code.

§18-33-18. Teacher approval of converting existing noncharter public school to public charter school status.

(a) A teacher shall be eligible to vote in accordance with the provisions of this section if the teacher is regularly employed at the school.

(b) A secret ballot vote at a special meeting of all teachers regularly employed at the school shall be conducted to determine the level of employee commitment to apply to convert to a public charter school.

(c) A panel consisting of the elected officers of the faculty senate of the school and three parent members appointed by the local school improvement council shall call the meeting required in subsection (b)

of this section, conduct the votes and certify the results. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote.

(d) At least sixty percent of the teachers who are eligible to vote in accordance with this section must vote to apply for conversion to a public charter school before the level of teacher commitment at the school is sufficient for the school to apply for conversion to a public charter school.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, public charter schools electing to obtain coverage, and for employees and officers of the state Division of Corrections.

(a) In accordance with the provisions of this article, the State Board of Risk and Insurance Management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members and for all employees and officers of the state Division of Corrections: *Provided*, That the ~~board~~ Board of Risk and Insurance Management is not required to provide insurance for every property, activity or responsibility of county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools and school board members and for all employees and officers of the state Division of Corrections.

(b) Insurance provided by the ~~board~~ Board of Risk and Insurance Management pursuant to the provisions of subsection (a) of this section

shall cover claims, demands, actions, suits or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the Division of Corrections was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the county board of education, or Commissioner of Corrections or in an official capacity as a county superintendent or as a school board member or as Commissioner of Corrections.

(c) Insurance coverage provided by the ~~board~~ Board of Risk and Insurance Management pursuant to subsection (a) of this section shall be in an amount to be determined by the State Board of Risk and Insurance Management, but in no event less than \$1 million for each occurrence. In addition, each county board of education shall purchase, through the ~~board~~ Board of Risk and Insurance Management, excess coverage of at least \$5 million for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the ~~board~~ Board of Risk and Insurance Management pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

(e) The county superintendent and other school personnel shall be defended by the county board of education or an insurer in the case of suit, unless the act or omission shall not have been within the course or

scope of employment or official responsibility or was motivated by malicious or criminal intent.

(f) The provisions of this section only apply to public charter schools authorized pursuant to article thirty-three, chapter eighteen of this code that have included in their approved charter application a determination to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to this section. If a public charter school elects to obtain coverage pursuant to this section:

(1) Any provision in this section applicable to a county board of education also applies to a charter school governing board;

(2) Any provision in this section applicable to a school board member also applies to a member of a charter school governing board; and

(3) Any provision of this section applicable to teachers, supervisory and administrative staff members and service personnel employed by a county board of education also applies to teachers, supervisory or administrative staff members and service personnel employed by a public charter school.

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill No. 14 was then read a third time and put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill No. 14 pass?”

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost-16.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 14) passed.

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

Eng. Com. Sub. for Senate Bill No. 14—A Bill to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §6C-2-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-9A-2 and §18-9A-12 of said code; to amend and reenact §18-20-5 of said code; to amend said code by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and to amend and reenact §29-12-5a of said code, all relating to public charter schools; setting forth legislative purpose and intent; defining terms; requiring state superintendent to report on the charter school program; setting forth provisions pertaining to eligibility and enrollment; prohibiting discrimination; allowing a county board to authorize the creation of a start-up public charter school or the conversion of a noncharter public school to a public charter school; capping the number of public charter schools authorized; setting forth the duties of the authorizer; requiring an authorizer to develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools; requiring certain authorizers to submit to the state superintendent an annual report summarizing certain information; prohibiting an employee, trustee, agent or representative of an authorizer from simultaneously serving as an employee, trustee,

agent, representative, vendor or contractor of a public charter school operating under that authorizer; prohibiting a public charter school from being required to purchase services from its authorizer; requiring West Virginia Board of Education to perform certain duties relating to training, appeals, requests for proposals and the two per calendar year cap; limiting West Virginia Board of Education authority on appeal to only upholding the decision or remanding the issue with a recommendation; allowing West Virginia Board of Education to charge up to a certain amount for performing its duties; requiring West Virginia Board of Education to issue and broadly publicize requests for proposals; setting forth such information the requests for proposals shall contain, including a determination on whether to participate in the public employees grievance procedures; setting forth provisions pertaining to application for approval as a public charter school; setting forth provisions pertaining to the application review process; setting forth provisions pertaining to application approval and denial; setting forth provisions pertaining to appeal of application denial; requiring the execution of a charter contract; requiring the performance provisions of a charter contract be based on a performance framework developed by West Virginia Board of Education that sets forth the academic and operational performance indicators that will guide the authorizer's evaluations of each public charter school; requiring performance targets be set by a public charter school in conjunction with its authorizer; setting forth authorizer responsibilities relating to oversight; providing for an initial charter term of five years and a renewal term of five to ten years; setting forth authorizer responsibilities relating to renewal; requiring submission of renewal application; setting forth provisions pertaining to the renewal decision by the authorizer; setting forth provisions pertaining to charter revocation and nonrenewal, including provisions allowing for appeal; providing for public charter school closure and dissolution; establishing priority in the application of laws, rules, regulations and authorities; allowing a charter contract to include one or more schools; allowing a single governing board to be issued one or more charter contracts; providing that the school district in which the public charter school is located remains the local education agency; providing that the school district retains responsibility for special education; declaring that the county board

remains accountable for the performance of the public charter school; setting forth powers of public charter schools; prohibiting public charter schools from certain activities relating to discrimination, religious practices, charging tuition and delegating or assigning responsibilities set forth in a charter contract; limiting fees that may be charged; setting forth provisions pertaining to the applicability of other laws, rules and regulations to public charter schools; prohibiting county boards from certain actions relating to public charter schools; declaring that personnel hired by the charter school are employed by the charter school; requiring a public charter school to comply with applicable federal laws and regulations regarding the qualifications of teachers and other instructional staff; providing that all public charter school classroom teachers are subject to the same licensing requirements applicable to classroom teachers in noncharter public schools; providing that all personnel in a public charter school continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school for purposes of employment in noncharter public schools; setting forth provisions pertaining to accounting, financial reporting and auditing; setting forth provisions pertaining to funding for public charter schools; allowing a public charter school to contract with a local school district or other entity for transportation services; requiring any entity providing transportation services to comply with all transportation and safety and administrative regulations applicable to noncharter public schools; setting forth provisions pertaining to public charter school facilities and property; clarifying that county boards not required to seek funds for certain facility-related purposes; setting forth provisions pertaining to building inspections, codes, regulations and fees; setting forth provisions pertaining to the transfer of credits; setting forth provisions pertaining to extracurricular and interscholastic activities; requiring that public charter school employees participate in the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, whichever is applicable; requiring that all public charter school employees participate in insurance plans established by the Public Employees Insurance Agency; providing for teacher approval of converting existing noncharter public school to public school prior to

application; and setting forth provisions related to Board of Risk and Insurance Management coverage of certain public charter schools.

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

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senators Laird, Beach and Unger regarding the passage of Engrossed Committee Substitute for Senate Bill No. 14 were ordered printed in the Appendix to the Journal.

At the request of Senator Walters, unanimous consent being granted, the remarks by Senators Gaunch and Leonhardt regarding the passage of Engrossed Committee Substitute for Senate Bill No. 14 were ordered printed in the Appendix to the Journal.

At the request of Senator Carmichael, and by unanimous consent, the remarks by Senator Sypolt regarding the passage of Engrossed Committee Substitute for Senate Bill No. 14 were ordered printed in the Appendix to the Journal.

Without objection, the Senate returned to the third order of business.

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

Eng. Senate Bill No. 508, Reorganizing Hatfield-McCoy Regional Recreation Authority.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

For purposes of this article only, and unless a different meaning plainly is required:

(1) “Criminal justice enforcement personnel” means those persons within the state criminal justice system who are actually employed as members of the State Police, members of the Division of Protective Services, natural resources police officers, chiefs of police and police of incorporated municipalities, and county sheriffs and their deputies and whose primary duties are the investigation of crime and the apprehension of criminals.

(2) “Head of a law-enforcement agency” means the Superintendent of the State Police, the Director of the Division of Protective Services, the chief natural resources police officer of the Division of Natural Resources, a chief of police of an incorporated municipality, a county sheriff or the Director of the Division of Forestry.

(3) “State or local law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, although those institutions may not be considered law-enforcement agencies. ~~The term includes persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article~~

~~fourteen, chapter twenty of this code, although the authority is not a law-enforcement agency.~~

(4) “Head of campus police” means the superintendent or administrative head of state or local law-enforcement officers employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code.

~~(5) “Head of the rangers of the Hatfield-McCoy Regional Recreation Authority” means the superintendent or administrative head of state or local law-enforcement officers employed as rangers by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code.~~

§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.

(a) The head of any law-enforcement agency, or the head of any campus police ~~or the head of the rangers of the Hatfield-McCoy regional recreational authority~~, as those terms are defined in section three of this article, may temporarily provide assistance and cooperation to another agency of the state criminal justice system or to a federal law-enforcement agency in investigating crimes or possible criminal activity if requested to do so in writing by the head of another law-enforcement agency or federal law-enforcement agency. Such assistance may also be provided upon the request of the head of the law-enforcement agency or federal law-enforcement agency without first being reduced to writing in emergency situations involving the imminent risk of loss of life or serious bodily injury. The assistance may include, but is not limited to, entering into a multijurisdictional task force agreement to integrate federal, state, county and municipal law-enforcement agencies or other groups of state or local law-enforcement officers, or any combination thereof, for the purpose of enhancing interagency coordination, intelligence gathering, facilitating multijurisdictional investigations, providing criminal justice enforcement personnel of the law-enforcement agency to work temporarily with personnel of another agency, including in an

undercover capacity, and making available equipment, training, technical assistance and information systems for the more efficient investigation, apprehension and adjudication of persons who violate the criminal laws of this state or the United States and to assist the victims of such crimes. When providing the assistance under this article, a head of a law-enforcement agency shall comply with all applicable statutes, ordinances, rules, policies or guidelines officially adopted by the state or the governing body of the city or county by which he or she is employed and any conditions or restrictions included therein.

(b) While temporarily assigned to work with another law-enforcement agency or agencies, criminal justice enforcement personnel and other state and local law-enforcement officers shall have the same jurisdiction, powers, privileges and immunities, including those relating to the defense of civil actions, as such criminal justice enforcement personnel would enjoy if actually employed by the agency to which they are assigned, in addition to any corresponding or varying jurisdiction, powers, privileges and immunities conferred by virtue of their continued employment with the assisting agency.

(c) While assigned to another agency or to a multijurisdictional task force, criminal justice enforcement personnel and other state and local law-enforcement officers shall be subject to the lawful operational commands of the superior officers of the agency or task force to which they are assigned, but for personnel and administrative purposes, including compensation, they shall remain under the control of the assisting agency. These assigned personnel shall continue to be covered by all employee rights and benefits provided by the assisting agency, including workers' compensation, to the same extent as though such personnel were functioning within the normal scope of their duties.

(d) No request or agreement between the heads of law-enforcement agencies, or the heads of campus police ~~or the head of the rangers of the Hatfield-McCoy regional recreation authority~~, made or entered into pursuant to this article shall remain in force or effect until a copy of said request or agreement is filed with the office of the circuit clerk of

the county or counties in which the law-enforcement agencies, or the campus police, ~~or the Hatfield-McCoy regional recreation authority rangers~~ involved operate. Agreements made pursuant to this article shall remain in effect unless and until the agreement is changed or withdrawn in writing by the head of one of the law-enforcement agencies. Upon filing, the requests or agreements may be sealed, subject to disclosure pursuant to an order of a circuit court directing disclosure for good cause. Nothing in this article shall be construed to limit the authority of the head of a law-enforcement agency or the head of campus police ~~or the head of the rangers of the Hatfield-McCoy regional recreation authority~~ to withdraw from any agreement at any time.

(e) Nothing contained in this article shall be construed so as to grant, increase, decrease or in any manner affect the civil service protection or the applicability of civil service laws as to any criminal justice enforcement personnel, or as to any state or local law-enforcement officer or agency operating under the authority of this article, nor shall this article in any way reduce or increase the jurisdiction or authority of any criminal justice enforcement personnel, or of any state or local law-enforcement officer or agency, except as specifically provided herein.

(f) Nothing contained in this article shall be construed so as to authorize the permanent consolidation or merger or the elimination of operations of participating federal, state, county and municipal law-enforcement agencies, or other groups of state and local law-enforcement officers, ~~the head~~ or campus police. ~~or the head of the rangers of the Hatfield-McCoy regional recreation authority.~~

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.

(a) The division's law-enforcement policies, practices and programs are under the immediate supervision and direction of the division law-enforcement officer selected by the director and designated as chief natural resources police officer as provided in section thirteen, article one of this chapter.

(b) Under the supervision of the director, the chief natural resources police officer shall organize, develop and maintain law-enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the division's comprehensive natural resources program. All division personnel detailed and assigned to law-enforcement duties and services under this section shall be known and designated as natural resources police officers and are under the immediate supervision and direction of the chief natural resources police officer except as otherwise provided. All natural resources police officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by division law-enforcement needs. The chief natural resources police officer may also assign natural resources police officers to perform law-enforcement duties on any trail, grounds, appurtenant facility or other areas accessible to the public within the Hatfield-McCoy Recreation Area, under agreement that the Hatfield-McCoy Regional Recreation Authority, created pursuant to article fourteen of this chapter, shall reimburse the division for salaries paid to the officers and shall either pay directly or reimburse the division for all other expenses of the officers in accordance with actual or estimated costs determined by the chief natural resources police officer.

(c) The chief natural resources police officer, acting under supervision of the director, is authorized to select and appoint emergency natural resources police officers for a limited period for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency natural resources police officers shall be selected from qualified civil service personnel of the division, except in emergency situations and circumstances when the director may designate officers, without regard to civil service requirements and

qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried natural resources police officers except the provisions of subdivision (8), subsection (b) of said section.

(d) The chief natural resources police officer, acting under supervision of the director, is also authorized to select and appoint as special natural resources police officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the division and who has satisfactorily completed a course of training established and administered by the chief natural resources police officer, when the action is considered necessary because of law-enforcement needs. The powers and duties of a special natural resources police officer, appointed under this provision, is the same within his or her assigned area as prescribed for full-time salaried natural resources police officers. The jurisdiction of the person appointed as a special natural resources police officer, under this provision, shall be limited to the division area or areas to which he or she is assigned and directly manages.

(e) The Director of the Division of Forestry is authorized to appoint and revoke Division of Forestry special natural resources police officers who are full-time civil service personnel who have satisfactorily completed a course of training as required by the Director of the Division of Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources police officers are set forth by the Director of the Division of Forestry pursuant to article three of this chapter and articles one-a and one-b, chapter nineteen of this code.

(f) The chief natural resources police officer, with the approval of the director, has the power and authority to revoke any appointment of an emergency natural resources police officer or of a special natural resources police officer at any time.

(g) Natural resources police officers are subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the division.

(h) The chief natural resources police officer shall designate the area of primary residence of each natural resources police officer, including himself or herself. Since the area of business activity of the division is actually anywhere within the territorial confines of the State of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

(i) Natural resources police officers shall receive, in addition to their base pay salary, a minimum monthly subsistence allowance for their required telephone service, dry cleaning or required uniforms, and meal expenses while performing their regular duties in their area of primary assignment in the amount of \$130 each month. This subsistence allowance does not apply to special or emergency natural resources police officers appointed under this section.

(j) After June 30, 2010, all those full-time law-enforcement officers employed by the Division of Natural Resources as conservation officers shall be titled and known as natural resources police officers. Wherever used in this code the term “conservation officer”, or its plural, means “natural resources police officer”, or its plural, respectively.

(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision (6), subsection (c), section twelve, article twenty-one, chapter eleven of this code are inapplicable to pensions of natural resources police officers paid through the Public Employees Retirement System.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway motor vehicle enthusiasts. ~~mountain bicyclists, equestrians and others.~~ The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented recreation facilities could exist on private property without diminishing the landowner's interest, control or profitability in the land and without increasing the landowner's exposure to liability.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a ~~statutory corporation~~ joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make available for public use through the Hatfield-McCoy Regional Recreation Authority land for these recreational purposes by limiting their liability for injury to persons entering thereon, by limiting their liability for injury to the property of persons entering thereon and by limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§20-14-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(a) “Authority” means the Hatfield-McCoy Regional Recreational Authority;

(b) “Board” means the board of the Hatfield-McCoy Regional Recreation Authority;

(c) “Charge” means, for purposes of limiting liability for recreational purposes set forth in this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion as set by the authority: *Provided*, That the authority may set charges in differing amounts for different categories of participants, including, but not limited to, in-state and out-of-state participants, as the authority sees fit;

(d) “Hatfield-McCoy Recreation Area” means a system of recreational trails and appurtenant facilities, including trailhead centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites and other facilities that are a part of the system;

(e) “Land” includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(f) “Owner” means those vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a dominant estate or other lawful occupant; or person in control of the premises;

~~(g) “Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking,~~

~~hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;~~

(g) “Participant” means any person using the land, trails and facilities of the Hatfield-McCoy Recreation Area;

(h) “Participating county or counties” means the counties of Boone, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Wayne and Wyoming and with the approval of the board, any other county or counties where trails and other recreational facilities relating to the Hatfield-McCoy recreation area are developed in the future with the cooperation of the county commission that have agreed to operate the Hatfield-McCoy Regional Recreation Authority as a joint development entity and to participate in its governance; and

(i) “Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or motor vehicle driving and riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user.

§20-14-3. Creation; appointment of board; terms.

(a) There is hereby created the “Hatfield-McCoy Regional Recreation Authority” which is a public corporation and a government instrumentality existing This joint development entity is created The public corporation, the Hatfield-McCoy Regional Recreation Authority, previously created by this section is hereby converted to a new public corporation created as a joint development entity of the participating counties for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by off-highway motor vehicle enthusiasts, equestrians, mountain bicyclists and others. This recreational trail system shall be

located in ~~southern West Virginia~~ the counties of Boone, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Wayne and Wyoming with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement or other appropriate legal form by a willing landowner.

(b) The authority shall be governed by a board of ~~at least seventeen~~ no more than eighteen members who shall be representative of the various interests involved in the Hatfield-McCoy Recreation Area project in the ~~southern region of the state~~ participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in section two of this article, shall appoint two members of the board as follows:

(A) One member who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the Hatfield-McCoy Recreation Area project or their designee. This member shall be appointed to a four-year term.

(B) One member who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas or other resource-extraction industry or who is a licensed land surveyor or licensed professional engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

~~(2) The members of the board appointed under subdivision (1); subsection (b) of this section by the county commissions shall appoint three additional board members, at least two of whom represent and are associated with recreational users of the Hatfield-McCoy recreation area project. These members shall serve three-year terms.~~

~~(3) The following three persons shall serve as nonvoting members representing the state: The director of the division of travel and~~

~~tourism, the director of the Division of Natural Resources, and the director of the Division of Forestry, or their respective designees:~~

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. The terms of the members serving as of the date of enactment of the amendments of this section made during the 2015 regular session of the Legislature shall expire on June 30, 2015, and each participating county shall appoint two members to the board of the newly converted public corporation with terms to commence on July 1, 2015. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

~~(c) Before the authority issues any revenue bonds or revenue refunding bonds under the authority of this article, each appointed voting member of the board shall execute a surety bond in the penal sum of \$25,000 and the officers and executive director of the board shall each execute a surety bond in the penal sum of \$50,000. Each surety bond shall be conditioned upon the faithful performance of the duties of the member, officer or director, shall be executed by a surety company authorized to transact business in this state as surety and shall be approved by the Governor and filed in the office of the Secretary of State. The authority shall pay premiums on the surety bonds from funds accruing to the authority.~~

The conversion of the Hatfield-McCoy Regional Recreation Authority to a joint development entity does not terminate or interrupt its status as a public corporation. The amendments to this article made during the 2015 regular session of the Legislature do not alter the debts, liabilities, responsibilities or other obligations of any party with regard to this public corporation.

(d) The Hatfield-McCoy Regional Recreation Authority is a public body for purposes of the West Virginia Freedom of Information Act, as provided in article one, chapter twenty-nine-b of this code.

§20-14-4. Board; quorum; executive director; expenses.

The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

The board shall meet quarterly, unless a special meeting is called by its chairman: *Provided*, That ~~on the second Monday of July of each even-numbered~~ at the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall ~~meet to~~ elect a chairman, secretary and treasurer from among its own members.

A majority of the members of the board constitutes a quorum, and a quorum shall be present for the board to conduct business. ~~Unless the bylaws require a larger number, action may be taken by majority vote of the members present.~~

The board ~~shall~~ may prescribe, amend and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants and shall review and approve an annual budget. The fiscal year for the authority begins on July 1, and ends on the thirtieth day of the following June.

The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title,

salary, cost of projected benefits and total compensation. Before August 15, the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

All costs incidental to the administration of the authority, including office expenses, personal services expense and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-14-4a. Financial review and oversight.

(a) The authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county and the Legislative Auditor. The cost of the audit shall be paid by the authority.

(b) If the authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures and performance of the Hatfield-McCoy Regional Recreation Authority and for these purposes shall have the power to inspect the properties, equipment, facilities of the authority and to request, inspect and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue

by account and recipient name for the previous fiscal year within forty-five days of the close of that fiscal year.

§20-14-5. Powers of authority.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(1) To acquire, own, hold and dispose of property, real and personal, tangible and intangible;

(2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license or other appropriate legal form, the right to develop and use property and open it to the use of the public;

(3) To mortgage or otherwise grant security interests in its property;

(4) To procure insurance against any losses in connection with its property, license or easements, contracts, including hold-harmless agreements, operations or assets in such amounts and from such insurers as the authority considers desirable;

(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other

agreements and provide such other legal services as may be requested by the authority;

(8) To adopt, use and alter at will a corporate seal;

(9) To make, amend, repeal and adopt bylaws for the management and regulation of its affairs;

(10) To appoint officers, agents and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from, and enter into contracts and other transactions with, any federal agency;

(13) To maintain an office at such places within the state as it may designate;

(14) To borrow money and to issue ~~its bonds, security interests or notes~~ and to provide for ~~and secure~~ the payment of ~~the bonds, security interests or notes~~ and to provide for the rights of the holders of the ~~bonds, security interests or notes~~ and to purchase, hold and dispose of any of its ~~bonds, security interests or notes~~;

(15) ~~To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article;~~

(16) ~~To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority, and the~~

authority may issue its ~~bonds, security interests or~~ notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:

(A) The payment, funding or refunding of the principal of, interest on or redemption premiums on ~~any bonds, security interests or~~ notes issued by it whether the ~~bonds, security interests,~~ notes or interest to be funded or refunded have or have not become due;

(B) The establishment or increase of reserves to secure or to pay ~~bonds, security interests,~~ notes or the interest on the ~~bonds, security interest or~~ notes and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. ~~Any bonds, security interests or notes~~ Notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever;

~~(17) (16)~~ To issue renewal notes ~~or security interests,~~ to issue ~~bonds to pay notes or security interests and,~~ whenever it considers refunding expedient, to refund ~~any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured~~ except that no renewal notes may be issued to mature more than ten years from the date of issuance of the notes renewed ~~and no refunding bonds may be issued to mature more than twenty-five years from the date of issuance;~~

~~(18) (17)~~ To apply the proceeds from the sale of renewal notes, ~~security interests of refunding bonds~~ to the purchase, redemption or payment of the notes ~~security interests or bonds~~ to be refunded;

~~(19) (18)~~ To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the federal government or from any governmental unit or any person, firm or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants;

~~(20)~~ (19) To the extent permitted under its contracts with the holders of ~~bonds, security interests or notes~~ of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any ~~bond, security interest,~~ note, contract or agreement of any kind to which the authority is a party;

~~(21)~~ To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note venues;

~~(22)~~ To promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law, including regulation of the conduct of persons using the Hatfield-McCoy recreation area. Notwithstanding any other provisions of this code to the contrary, until the Legislature has authorized the rules, the authority may promulgate emergency rules for those purposes pursuant to section fifteen, article three, chapter twenty-nine-a of this code;

~~(23)~~ (20) To construct, reconstruct, improve, maintain, repair, operate and manage the Hatfield-McCoy Recreation Area at the locations within the state participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the Hatfield-McCoy Recreation Area and to reimburse the Division of Natural Resources for its costs therefor;

~~(24)~~ (22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of the Hatfield-McCoy

Recreation Area at such locations within the ~~state~~ participating counties as may be determined by the authority;

~~(25)~~ (23) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;

~~(26)~~ (24) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

~~(27)~~ To provide for law enforcement within the Hatfield-McCoy recreational area by appointing rangers as provided in section six of this article;

~~(28)~~ (25) To develop, maintain and operate or to contract for the development, maintenance and operation of the Hatfield-McCoy Recreation Area;

~~(29)~~ (26) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for ~~public recreation~~ recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

~~(30)~~ (27) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers or other facilities which are part of the Hatfield-McCoy Recreation Area and to retain and utilize that revenue for any purposes consistent with this article;

~~(31)~~ To cooperate with the states of Kentucky and Virginia and appropriate state and local officials and community leaders in those states to connect the trails of the West Virginia portion of the

~~Hatfield-McCoy recreation area with similar recreation facilities in those states;~~

~~(32)~~ (28) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Hatfield-McCoy Recreation Area; and

~~(33)~~ (29) To directly operate and manage recreation activities and facilities within the Hatfield-McCoy Recreation Area.

§20-14-8. Prohibited acts, penalty.

(a) A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land and not for recreational purposes.

(b) A person may not consume or possess any alcoholic liquor at any time or any location within the Hatfield-McCoy Recreation Area.

(c) The operator or passenger of a motor vehicle within the Hatfield-McCoy Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Memorial Foundation safety standards for protective headgear for vehicle users.

(d) Each trail user shall obey all traffic laws, traffic-control devices and signs within the Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor vehicles, motorcycles or those equipped with roll cages.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area.

(f) A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time from one half-hour after sunset until one half-hour before sunrise, except in an emergency.

(g) Every person within the Hatfield-McCoy Recreation Area who is under sixteen years of age shall at all times be under the immediate supervision of and within sight of a person who is at least eighteen years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent, guardian or supervising adult may allow a child under the age of sixteen years to leave that person's sight and supervision within the Hatfield-McCoy Recreation Area.

(h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area except at a clearly marked location at a trailhead center.

(i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle in any competition or exhibition of speed, acceleration, racing, test of physical endurance or climbing ability unless in an event sanctioned by the authority.

(j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area shall be subject to all of the duties applicable to the driver of a motor vehicle by the provisions of chapter seventeen-c of this code except where inconsistent with the provisions of this article and except as to those provisions of chapter seventeen-c of this code which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

(k) A person may not possess a glass container while riding on a motor vehicle within the Hatfield-McCoy Recreation Area.

(l) A person may not operate or ride in a utility terrain vehicle, as defined in article one, chapter seventeen-f of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting at a minimum federal

motor vehicle safety standards and properly worn by the driver and all passengers.

(m) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100. Prosecution or conviction for the misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

§20-14-9. Limiting liability.

~~(a) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen, an~~ An owner of land used by or for the stated purposes of the Hatfield-McCoy Regional Recreation Authority, whether with or without charge, owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure or activity on the premises to persons entering for those purposes.

~~(b) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen of this code, the landowner or lessor of the property for recreational purposes does not thereby: (a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of these persons.~~

~~(c)~~ (b) Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the authority for recreational purposes, whether with or without charge, owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the authority for recreational purposes does not by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an

invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser or otherwise.

~~(d)~~ (c) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: *Provided*, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself. *Provided*, ~~however~~, That equestrians who are using the land upon which the Hatfield-McCoy recreation area is located but who are not engaged in a commercial profit-making venture are exempt from the provisions of subsection (d), section five, article four, chapter twenty of this code.

§20-14-10. Purchasing and bidding procedures.

(a) Whenever the authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed \$2,500 in cost, the purchase or contract shall be based on competitive bids. Where the purchase of particular commodities or services is reasonably anticipated to be \$25,000 or less, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority may purchase those commodities and services pursuant to state master contracts as provided in section ten-e, article three, chapter five-a of this code.

(b) Where the cost for the purchase of commodities or services is reasonably anticipated to exceed \$25,000, the executive director shall solicit sealed bids for the commodities or services to be provided: *Provided*, That the executive director may permit bids by electronic transmission be accepted in lieu of sealed bids. Bids shall be solicited

by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of article three, chapter fifty-nine of this code and by such other means as the executive director deems appropriate. The notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority's budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(c) For any contract that exceeds \$25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least fifty percent of the contract price conditioned upon faithful performance and completion of the contract.

(d) The bidding requirements specified in this section do not apply to any leases for real property upon which the authority makes improvements for public access to the recreation area, information distribution and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage or administrative facilities.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both confined and fined.

§20-14-11. Conflicts of interest prohibiting certain contracts.

(a) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the board or an employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority or to any vendor or prospective vendor in which a member of the board or employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority has an ownership interest of greater than five percent.

(b) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the West Virginia Legislature, or a spouse, sibling, child or parent of a member of the Legislature, or to any vendor or prospective vendor in which a member of the Legislature or a spouse, sibling, child or parent of a member of the Legislature has an ownership interest of greater than five percent.

(c) All responses to bid solicitations, requests for quotation, requests for proposal, contracts, change orders and contract renewals with the authority submitted or approved under the provisions of this article shall include an affidavit that the vendor or prospective vendor is not in violation of this section.

(d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both confined and fined.

§20-14-12. Civil remedies for unlawful purchasing and contracts.

The county commission of any participating county may challenge the validity of any contract or purchase entered, solicited or proposed by the authority in violation of section ten or eleven of this article by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of section ten or eleven of this article have

been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.

ARTICLE 15. ATV RESPONSIBILITY ACT.

§20-15-2. Definitions.

The terms in this article have the following meaning, unless the context clearly requires a different meaning:

(1) “All-terrain vehicle” or “ATV” means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

(2) “Authorized outfitter” or “licensee” means a commercial outfitter, which is a person, partnership, limited liability company (LLC), corporation, other organization, or any combination thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, who operates from any temporary or permanent camp, private or public lodge, or private home, who provides guided tours or the rental of all-terrain vehicles, utility-terrain vehicles or motorcycles for use on assigned lands for monetary profit or gain.

(3) “Low-pressure tire” means every tire in which twenty pounds per square inch or less of compressed air is designed to support the load.

(4) “Motorcycle” means any motor vehicle manufactured with no more than two wheels and having a seat or saddle for the use of the operator.

(5) “Participant” means any person using the land, trails and facilities of the Hatfield-McCoy Regional Recreation Authority.

(6) “Utility-terrain vehicle” or “UTV” means any motor vehicle with four or more low-pressure tires designed for off-highway use, having bench or bucket seating for each occupant and a steering wheel for control.

§20-15-5. Duties of participants.

(a) All participants:

(1) Shall comply with any requirements established by law, including those in section one, article one, chapter seventeen-f of this code, which defines those acts prohibited by operators of all-terrain vehicles;

(2) Shall comply with the rules or regulations established for use of the Hatfield-McCoy Recreation Area;

(3) Shall, as to the Hatfield-McCoy Regional Recreation Authority or to any recreation area landowner, lessor, authorized outfitter or licensee, expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in operating an all-terrain vehicle, utility-terrain vehicle or motorcycle, and caused by any of the following:

(A) Variations in terrain, slope or angle of terrain;

(B) Surface or subsurface conditions, including rocks, trees or other forms of forest growth or debris;

(C) Collisions with signs, markers, width restrictors, culverts, bridges, pipes, equipment, vehicles or any other objects or fixtures used in trail management, maintenance, construction or development;

(D) Collisions with signs, markers, pipes, equipment, vehicles or any component thereof used in natural resource maintenance, development or extraction;

(E) Collisions with electrical transmission poles, towers, lines, guy wires or any component thereof;

(4) Shall obey all rules or instructions announced by the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee with regard to the operation of the all-terrain vehicle or motorcycle he or she is operating; and

(5) Shall wear all safety equipment provided by the authorized outfitter or licensee, or which might otherwise be required by law.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her own ability to negotiate any slope or trail;

(2) Operating the ATV, UTV or motorcycle within the limits of the participant's own ability;

(3) Maintaining reasonable control of speed and course at all times;

(4) Heeding all posted warnings;

(5) Operating only on trails designated by the Hatfield-McCoy Regional Recreation Authority; and

(6) Refraining from acting in a manner which may a reasonable person would believe to be likely to cause or contribute to the injury of any person.

(c) If while riding an ATV, UTV or motorcycle any participant collides with any object or person, the responsibility for the collision shall be solely that of the participant or participants involved and not that of the Hatfield-McCoy Regional Recreation Authority, any recreation area landowner, lessor, authorized outfitter or licensee unless the Hatfield-McCoy Regional Recreation Authority, recreation area landowner, lessor, authorized outfitter or licensee or their agent caused the collision in a tortious manner.

(d) After an accident, a participant may not leave the area where the accident took place without:

(1) Leaving personal identification, including his or her name and address;

(2) Notifying the proper authorities; and

(3) Obtaining assistance when he or she knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) Where a participant is a lawful passenger, that participant may not distract or perform any act which might interfere with the safe operation of the all-terrain vehicle, utility-terrain vehicle or motorcycle of which he or she is a passenger.

(f) Any person under the age of sixteen years shall remain under the direct supervision and within sight of a parent or guardian both of whom must otherwise comply with state or federal laws and any rules or regulations promulgated thereunder.

(g) A participant may not make any alterations or tamper with the all-terrain vehicle, utility-terrain vehicle or motorcycle he or she is operating or of which he or she is a passenger in any way which would interfere with the continued safe operation of that machine.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) “Approved law-enforcement training academy” means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) “Chief executive” means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) “County” means the fifty-five major political subdivisions of the state;

(4) “Exempt rank” means any noncommissioned or commissioned rank of sergeant or above;

(5) “Governor’s Committee on Crime, Delinquency and Correction” or “Governor’s committee” means the Governor’s Committee on Crime, Delinquency and Correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

(6) “Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the ~~Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article~~

~~fourteen, chapter twenty of this code, or by resort area districts in accordance with the provisions of section twenty-three, article twenty-five, chapter seven of this code, although neither the authority nor any no resort area district may be considered a law-enforcement agency: *Provided*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term “law-enforcement officer” does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer;~~

(7) “Law-enforcement official” means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) “Municipality” means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) “Subcommittee” or “law-enforcement professional standards subcommittee” means the subcommittee of the Governor’s Committee on Crime, Delinquency and Correction created by section two of this article; and

(10) “West Virginia law-enforcement agency” means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: *Provided*, That neither ~~the Hatfield-McCoy Regional Recreation Authority~~, the Public Service Commission nor any state institution of higher education nor any resort area district is a law-enforcement agency.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

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;

(B) Carrying 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; or

(C) 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 eleven-c, article one, chapter 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 resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in section six-a of this article;

(7) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; and

~~(8) Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty; and~~

~~(9)~~ (8) 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 motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill No. 508, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 508) passed with its title.

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

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill No. 366, Creating Patient Protection and Transparency Act.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 366) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Senate Bill No. 583 (originating in the Committee on Finance)—A Bill to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, relating to increasing the tax rate on providers of certain nursing facility services for one year.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 583) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Senate Bill No. 584 (originating in the Committee on Finance)—A Bill to amend and reenact §18-2-16 and §18-2-16a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §18-2L-1, §18-2L-2, §18-2L-3, §18-2L-4, §18-2L-5, §18-2L-6, §18-2L-7, §18-2L-8, §18-2L-9, §18-2L-10 and §18-2L-11; and to amend and reenact §18-9D-15 of said code, all relating to the transfer of the Cedar Lakes Camp and Conference Center from the State Board of Education to a private, nonstock, not-for-profit corporation established under the laws of this state; and providing available funding for said corporation from the School Building Authority for a period of three years after the transfer.

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

Respectfully submitted,

Mike Hall,

Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 584) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Bill No. 585 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, §17H-1-15, §17H-1-16, §17H-1-17, §17H-1-18, §17H-2-1, §17H-2-2, §17H-2-3, §17H-2-4, §17H-2-5, §17H-2-6, §17H-2-7, §17H-2-8, §17H-2-9, §17H-2-10, §17H-2-11, §17H-2-12, §17H-2-13,

§17H-2-14, §17H-2-15, §17H-2-16, §17H-2-17, §17H-2-18 and §17H-2-19, all relating to regulation of transportation network companies and regulation of taxicab companies; defining terms; establishing permit and permit fee; establishing requirements relating to insurance, disclosures, transportation network companies and its drivers, safety and records; limiting controlling authority; permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval; exempting taxicab companies from regulatory jurisdiction of Public Service Commission; establishing permit and permit fee; establishing requirements relating to insurance, disclosures, taxicab companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 585) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Cole (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Concurrent Resolution No. 31, Authorizing meeting of Joint Select Committee on Tax Reform.

Senate Concurrent Resolution No. 37, Requesting Joint Committee on Government and Finance study pharmaceutical benefits management industry.

Senate Concurrent Resolution No. 39, Requesting Joint Committee on Government and Finance study Cedar Lakes Camp and Conference Center.

Senate Concurrent Resolution No. 47, Amending Joint Rules of Senate and House relating to printing enrolled bills.

And,

Senate Resolution No. 48, Amending Senate Rule No. 49 relating to Journal.

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

Respectfully submitted,

William P. Cole III,
Chairman ex officio.

Senator Nohe, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Eng. Com. Sub. for House Bill No. 2223, Including consumer credit sales that are secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate in the definitions of “primary mortgage loan” and “subordinate mortgage loan”.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

David Nohe,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance.

Senator Nohe, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Eng. House Bill No. 2879, Relating to certain limitations on amount of state funds on deposit in any depository.

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

Respectfully submitted,

David Nohe,
Chair.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Beach, Carmichael and Unger.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, March 3, 2015, at 4 p.m.

TUESDAY, MARCH 3, 2015

The Senate met at 4 p.m.

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

Prayer was offered by the Reverend A. Joseph Kusimo, Senior Pastor, Christ Life Fellowship, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mitch Carmichael, a senator from the fourth district.

Pending the reading of the Journal of Monday, March 2, 2015,

On motion of Senator Palumbo, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill No. 361, Eliminating prevailing hourly wage requirement for construction of public improvements.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

On page three, section one, line seven, after the word “subdivisions” by striking out the comma and the words “and this article shall apply to expenditures of such institutions made, in whole or in part, from such public funds”;

On page five, section one, lines forty-nine and fifty, by striking out all of subsection (6);

And renumbering the remaining subsection;

On page five, section one, after line fifty-five, by adding two new subsections, designated subsections (7) and (8), all to read as follows:

(7) The term “public money” means funds obtained by a public authority through taxes, fees, fines or penalties. For purposes of this article, public money does not include funds obtained by private donation, contribution, fund raising or insurance proceeds.

(8) The term “wages” means the hourly rate paid for work performed by an employee for an employer.;

On page seven, section three, line seventeen, by striking out the word “compensation” and inserting in lieu thereof the word “wages”;

On page seven, section three, line twenty-seven, by striking out the words “in excess of \$500,000 in cost on” and inserting in lieu thereof the word “for”;

On page seven, section three, line thirty-four, after the word “underway” by changing the period to a colon and inserting the following proviso: *Provided, however,* That this section applies only to contracts let for public improvements whose cost at the time the contract is awarded will be paid with public money in an amount greater than \$500,000.;

On page fourteen, section five, line one hundred fifteen, after the word “section” by changing the period to a colon and inserting the following proviso: *Provided*, That if the determination is not in place on July 1, 2015, for any reason, no prevailing hourly rate of wages shall be in effect until the determination is made: *Provided, however*, That in the event the determination is not in place on July 1, 2015, the Joint Committee on Government and Finance may extend the deadline to a date thereafter, but, in any event, no later than September 30, 2015. During the extension period only, the prevailing wage in place prior to July 1, 2015, shall remain the prevailing wage: *Provided further*, That in the event the determination is not in place at the conclusion of such extension period, no prevailing hourly rate of wages shall be in effect until the determination is made.;

On page fifteen, section five, line one hundred forty-six, after the word “article” by changing the period to a colon and inserting the following proviso: *Provided, however*, That any confidential, individual proprietor-level data submitted to Workforce West Virginia, the West Virginia University Bureau of Business and Economic Research or the Center for Business and Economic Research at Marshall University for the purpose of determining the prevailing wage rates shall not be considered a public record for purposes of section three, article one, chapter twenty-nine-b of this code.;

On page sixteen, section six, line ten, by striking out the words “public improvements in excess of \$500,000 in cost” and inserting in lieu thereof the words “contracts let for public improvements whose cost at the time the contract is awarded will be paid with public money in an amount greater than \$500,000.”;

And,

On pages seventeen and eighteen, section eleven, by striking out all of section eleven and inserting in lieu thereof a new section, designated section eleven, to read as follows:

§21-5A-11. Rulemaking.

(a) The Executive Director of Workforce West Virginia shall promulgate emergency rules and propose, for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this article. All rules, whether emergency or not, promulgated pursuant to this section shall at a minimum:

(1) Define the regions of the state as used in the article;

(2) Establish a process for addressing written objections regarding the methodology for calculating the prevailing hourly rate of wages and the calculation of the hourly rate of wages: *Provided*, That Workforce West Virginia may consolidate written objections for hearing and final determination purposes; and

(3) Propose any other rules necessary to effectuate the purposes of this article.

(b) Any legislative rule in effect prior to the effective date of this article implementing the provisions of this article is hereby repealed.

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

Engrossed Committee Substitute for Senate Bill No. 361, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams and Cole (Mr. President)—23.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Romano, Snyder, Unger, Woelfel and Yost—11.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 361) passed with its title.

Senator Carmichael moved that the bill take effect April 13, 2015.

On this question, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams and Cole (Mr. President)—23.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Romano, Snyder, Unger, Woelfel and Yost—11.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 361) takes effect April 13, 2015.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence in the changed effective date.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the reconsideration, amendment and passage as amended, to take effect from passage, by a vote of a majority of all the members elected to the House of Delegates, as a result of the objections of the Governor, of

Enr. Senate Bill No. 389, Relating to Board of Registration for Professional Engineers license renewals and reinstatements.

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

Eng. Senate Bill No. 473, Making supplementary appropriation of federal funds to DMAPS, WV State Police.

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

Eng. Senate Bill No. 476, Making supplementary appropriation to Department of Administration, Division of Purchasing, Purchasing Improvement Fund.

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

Eng. Com. Sub. for House Bill No. 2048—A Bill to amend and reenact §49-5-11 of the Code of West Virginia, 1931, as amended, relating to juvenile proceedings; and providing that costs for a school-based juvenile probation officer will be shared equally when a judicial circuit and a county board of education jointly establish a truancy program.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2368—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-7-37, relating to child welfare; and requiring certain reports.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill No. 2395—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6M-1, §46A-6M-2, §46A-6M-3, §46A-6M-4, §46A-6M-5 and §46A-6M-6, all relating generally to providing consumers with the right to cancel residential roofing contracts where the contract is expected to be paid from a property and casualty insurance policy; providing definitions; establishing a consumer's right to cancel; creating standard disclosure and notice requirements; providing for advanced payment prohibition, refunds, emergency repairs and unenforceability of contract; prohibiting certain acts; private remedies; and misdemeanor criminal offense and penalty.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2474—A Bill to amend and reenact §18-17-1 of the Code of West Virginia, 1931, as amended, relating to the compensation of personnel employed at the West Virginia Schools for the Deaf and the Blind; updating reference to minimum salaries in effect for personnel at facilities under jurisdiction of the State Board of Education; and authorizing board to establish salary schedules or compensation in excess of the minimums for certain teachers at the West Virginia Schools for the Deaf and the Blind.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2485—A Bill to amend and reenact §11-13A-5b of the Code of West Virginia, 1931, as amended, relating to the West Virginia Future Fund; and prohibiting deposits into the fund in years when certain state retirement systems are not funded to ninety percent or more of their actuarial accrued liabilities.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2496—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-1C-1, §30-1C-2, §30-1C-3, §30-1C-4, §30-1C-5, §30-1C-6, §30-1C-7, §30-1C-8, §30-1C-9, §30-1C-10, §30-1C-11, §30-1C-12, §30-1C-13, §30-1C-14, §30-1C-15, §30-1C-16, §30-1C-17, §30-1C-18, §30-1C-19, §30-1C-20, §30-1C-21, §30-1C-22, §30-1C-23 and §30-1C-24, all relating to the establishment and operation of an interstate compact for medical licensure of physicians in multiple states; setting forth purposes for the compact; setting forth definitions; providing physician eligibility requirements; requiring a physician to designate a state of principal license; setting forth the procedure for application and issuance of an expedited license; providing for fees regarding expedited licensure; providing requirements for renewal of an expedited license; establishing a shared database for member boards; providing for joint investigation of physicians by member boards; establishing the effect of disciplinary actions against a physician; creating the interstate medical licensure compact commission to administer the compact; setting forth commission composition; establishing the authority of the commission; providing for commission meetings;

setting forth provisions relating to disclosure of commission information and records; establishing an executive committee; setting forth provisions for funding; establishing member state's right to charge licensing fees; limiting commission authority to incur financial obligation; requiring a financial audit; requiring the creation of bylaws; requiring annual election or appointment of commission officers; establishing that commission officers serve without remuneration; providing certain individuals defense, immunity, or limitation of liability for civil actions in certain circumstances unless their conduct was intentional willful and wanton; requiring the commission to defend certain civil actions; establishing commission rule making authority and procedure; providing for judicial review; providing for state enforcement; requiring state courts take judicial notice of certain matters; providing the commission may intervene in proceedings; requiring service of process upon the commission; establishing that failure to serve process upon the commission voids a judicial decision; providing for legal enforcement of compact rules and provisions; setting forth provisions for default; providing for termination or withdrawal of a member state; setting forth provisions for resolution of disputes; establishing provisions for state eligibility; setting forth the circumstances under which the compact will become effective; providing for amending the compact; setting forth procedures for states to withdraw from the compact; establishing circumstances, effect and procedures related to dissolution of the compact; establishing provisions related to severability; and, establishing provisions related to the binding effect of the compact.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill No. 2536—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-32b, relating to travel insurance limited

lines producers; defining terms; authorizing the Commissioner of Insurance to issue travel insurance entity producer license; establishing fees, fines, and penalties; requiring licensee to maintain register of travel retailers offering insurance on its behalf and designate a responsible individual producer; authorizing travel retailer to offer travel insurance and receive compensation under certain conditions; requiring training of travel retailer employees offering travel insurance; exempting travel insurance entity producers and travel retailers and employees from examination and continuing education requirements; requiring travel retailer employees offering travel insurance to provide certain information; providing for enforcement; and permitting the Commissioner of Insurance to propose rules for legislative approval.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2550—A Bill to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to promoting regular school attendance; providing timely notice that five unexcused absences will require a conference meeting with designated school representatives; providing for written notice of a conference in the case of five unexcused absences to discuss circumstances related to unexcused absences including an adjustment of unexcused absences; and increasing the number of unexcused student absences during a school year to ten before an attendance director or assistant shall make complaint against a parent, guardian or custodian before a magistrate.

Referred to the Committee on Education.

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

Eng. House Bill No. 2576, Creating new code sections which separate the executive departments.

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

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

Senators Blair, Boso and Miller.

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

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

Eng. Com. Sub. for House Bill No. 2728—A Bill to amend and reenact §33-24-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-25-6 of said code; to amend and reenact §33-25A-24 of said code; to amend and reenact §33-25D-26 of said code; to amend and reenact §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code; and to amend said code by adding thereto a new article, designated §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12, all relating to risk-based capital reporting for health organizations; making health organizations subject to the statutory provisions concerning risk-based capital reporting; defining terms associated with risk-based capital reporting for health organizations; requiring a domestic health organization to file a risk-based capital report with the Insurance Commissioner; requiring a health organization to perform certain actions if the risk-based capital report indicates a negative financial trend or hazardous financial condition; requiring the Insurance Commissioner to conduct certain actions if the risk-based capital report of a health organization indicates a negative

financial trend or hazardous financial condition; providing a health organization a right to a confidential hearing with respect to its risk-based capital report; making risk-based capital reports confidential; prohibiting the use of risk-based capital reports in the rate-making of a health organization; granting the Insurance Commissioner the authority to promulgate rules; requiring a foreign health organization to file a risk-based capital report with the Insurance Commissioner; and providing immunity to the Insurance Commissioner and his employees or agents for actions taken with respect to monitoring the financial stability of a health organization.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2790—A Bill to amend and reenact §17D-4-2, §17D-4-7 and §17D-4-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-6-31 and §31-6-31d of said code; and to amend said code by adding thereto a new section, designated §33-6-31h, all relating to proof of financial responsibility limits for motor vehicles; increasing the minimum amounts of proof required; providing that insurers are not required to offer new or increased uninsured or underinsured motor vehicle coverage when coverage is increased to meet the increased requirements of proof of financial responsibility; providing that insurers who issue policies with named driver exclusions are not required to provide any coverage upon an insured vehicle covering the excluded driver, notwithstanding the requirements of proof of financial responsibility.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2829—A Bill to amend and reenact §16-5-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-5-10a, all relating to direct entry midwifery; defining certain terms and requiring a report.

Referred to the Committee on Health and Human Resources.

The Senate proceeded to the fourth order of business.

Senator Maynard, 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 3rd day of March, 2015, 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:

(S. B. No. 238), Limiting certain county board of education liability arising from unorganized recreation.

(Com. Sub. for S. B. No. 335), Creating Access to Opioid Antagonists Act.

And,

(S. B. No. 398), Extending expiration date for health care provider tax on eligible acute care hospitals.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
John B. McCuskey,
Chair, House Committee.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill No. 541, Relating to regulation and control of elections.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 2, 2015;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 541) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the further request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 20, Requesting DOH name stretch of road in McDowell County “U. S. 1SG Army Joe C. Alderman Memorial Road”.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution No. 20 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name the ten-mile stretch of Route 83 in McDowell County, beginning at milepost 18.05 and ending at milepost 8.05, between its intersection with Route 16 at Yukon and the Bradshaw city line, as the “U. S. Army 1SG Joe C. Alderman Memorial Road”.

Whereas, First Sergeant Alderman was born in Bartley, McDowell County, on September 11, 1940; and

Whereas, First Sergeant Alderman enlisted in the Army in 1958 following his graduation from Big Creek High School; and

Whereas, First Sergeant Alderman began his career with the Army Special Forces in 1962; and

Whereas, During his time in the Special Forces, First Sergeant Alderman spent seven years on special detachments in Vietnam; and

Whereas, First Sergeant Alderman’s awards and honors include the Silver Star, Legion of Merit, Soldier’s Medal, six Bronze Stars, the Meritorious Service Medal, five Air Medals, the Joint Service Medal, six Army Commendation Medals and three Purple Hearts. Other awards from his time in Vietnam include the Special Service Medal for Heroism, the Cross of Gallantry with a Silver Star, two Bronze Stars and the Armed Forces Honor Medal; and

Whereas, First Sergeant Alderman retired in November 1980, and his career achievements were marked with his 1996 induction into the prestigious U. S. Army Ranger Hall of Fame; and

Whereas, First Sergeant Alderman died on August 19, 1994, and was interred at Arlington National Cemetery with full military honors; and

Whereas, It is fitting to honor First Sergeant Alderman's life and service by naming the stretch of Route 83 after him; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the ten-mile stretch of Route 83 in McDowell County, beginning at milepost 18.05 and ending at milepost 8.05, between its intersection with Route 16 at Yukon and the Bradshaw city line, as the "U. S. Army 1SG Joe C. Alderman Memorial Road"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the road as the "U. S. Army 1SG Joe C. Alderman Memorial Road"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and U. S. Army First Sergeant Alderman's surviving relatives.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Chris Walters,
Chair.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 22, Requesting DOH name portion of U. S. Rt. 119 in Boone County “U. S. Army SGT Mark Andrew Messer Memorial Road”.

Senate Concurrent Resolution No. 25, Requesting DOH name bridge in Harrison County “U. S. Army PFC Nick A. Cavallaro Memorial Bridge” and “U. S. Army SSG Benjamin T. Portaro Memorial Bridge”.

Senate Concurrent Resolution No. 29, Requesting DOH name bridge in Kanawha County “Rosie the Riveter Memorial Bridge”.

Senate Concurrent Resolution No. 40, Requesting DOH name bridge in Putnam County “U. S. Army Sgt. Deforest Lee Talbert Memorial Bridge”.

And,

Senate Concurrent Resolution No. 41, Requesting DOH name bridge in Berkeley County “W. C. Honaker and Clyde Spies Memorial Bridge”.

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

Respectfully submitted,

Chris Walters,

Chair.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 34, Requesting DOH name bridge in Greenbrier County “Army Air Corps LT William H. Corkerean, Jr., Memorial Bridge”.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution No. 34 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name bridge number 13-64-165.87 on Interstate 64 near Lewisburg, Greenbrier County, the “U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge”.

Whereas, William H. Corkrean, Jr., was born on June 7, 1922, in Ronceverte, Greenbrier County. He lived in Ronceverte and was educated in Greenbrier County schools. He joined the West Virginia National Guard at age 15 in 1939 with his father’s permission. He was employed by the Hecht Co. before entering military service in 1941. In the military, he was a B-17 pilot assigned to 390th BG 570th BS. On May 11, 1944, while piloting the 42-31971 “Twenty-One or Bust” on his twenty-third mission, the aircraft was hit by flak and crashed at Gilz-Rijer, Belgium. It was reported that he remained with the plane until it crashed; and

Whereas, William H. Corkrean, Jr., died defending the principals of freedom upon which his country, state and community were established; and

Whereas, Naming bridge number 13-64-165.87 on Interstate 64 near Lewisburg, Greenbrier County, the “U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge” is an appropriate recognition of his contributions and his supreme sacrifice to his country, state, community and Greenbrier County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 13-64-165.87 on Interstate 64 near Lewisburg, Greenbrier County, the “U. S. Army Air Corps LT William H. Corkrean, Jr., 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 “U. S. Army Air Corps LT William H. Corkrean, 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 the surviving relatives of William H. Corkrean, Jr.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Chris Walters,
Chair.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 35, Requesting DOH name bridge in McDowell County “U. S. Army CPL Zane Joseph Gero and U. S. Marine Cpl John Anthony ‘Tony’ Gero Memorial Bridge”.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution No. 35 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name bridge number 24-13-0.01 (24A089), locally known as Gary Bridge, carrying County Route 13 over the Tug Fork of the Big Sandy River in McDowell County the “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”.

Whereas, Zane Joseph Gero was born January 26, 1911, in Thorpe, McDowell County, into a coal-mining family of immigrant ancestors; and

Whereas, While attending Gary High School, Zane Joseph Gero led the Gary Coaldigger football team to many victories and received an honorable mention as a state football player/quarterback; and

Whereas, While attending Gary High School, Zane Joseph Gero was also the band drum-major and at half time would lead the band in its performance; and

Whereas, As a high school senior, Zane Joseph Gero won the title of state drum-major in a statewide competition; and

Whereas, Following high school, Zane Joseph Gero earned a bachelor’s degree from Concord College qualifying him to teach social studies; and

Whereas, Concord College had no band at the time he enrolled there, so Zane Joseph Gero gained approval to start a band, now known as the Concord Commanders, and was the band leader; and

Whereas, Following college, as the emergency services chief for the U. S. Coal and Coke Company, Zane Joseph Gero taught volunteers to be well qualified in emergency responses, including fire and ambulance. He taught how to provide first response in mine

accidents. In a partly segregated community Zane Joseph Gero was welcomed by all ethnic and racial groups. He spoke numerous languages and at times acted as an interpreter; and

Whereas, The coal company allowed Zane Joseph Gero to enlist in the U. S. Army and, following training, he was attached to General Joseph Patton's 3rd Army with a specialization in demolitions, land mine, bridge and highway issues, serving in 1944 and 1945; and

Whereas, Zane Joseph Gero reached the rank of corporal and served with Company C, 314th Battalion, 89th Infantry Division, 3rd Army; and

Whereas, Corporal Gero's knowledge of several European languages helped him serve often as an interpreter. He led a squad which, under fire, helped put the first bridge across the Rhine River; and

Whereas, Corporal Gero's squad, on a mission April 4, 1945, to find and clear a route for advancing troops, was moving through a wooded area near Ohrdruf, Germany, when they encountered a lightly guarded facility containing piles of corpses, ovens with human remains, a terrible stench and a few surviving internees. The unit had come across the first concentration camp to be liberated by United States troops. It was part of the Buchenwald Concentration Camp network; and

Whereas, Corporal Gero later became a social studies teacher at Berwind Middle School, was the Big Creek High School Band Director and was honored with the Freedom's Foundation at Valley Forge Classroom Teacher's Medal for, through his life and work, having made a significant contribution to a better understanding of the American way of life; and

Whereas, Corporal Gero died October 23, 1968, in Welch, West Virginia; and

Whereas, John Anthony “Tony” Gero, son of Zane Joseph Gero, was born August 22, 1947, in Welch, McDowell County; and

Whereas, John Anthony Gero was named for his father’s friend, David Anthony, of New Martinsville, West Virginia, fulfilling a promise made by the senior Gero to his friend while the two were serving in Europe during World War II, to name any future son after him; and

Whereas, Members of the Gero family have served in the military as early as the American Revolution; and

Whereas, Corporal John Anthony Gero was a sniper in the 1st Platoon, Company G, 2nd Battalion, 3rd Marines, 3rd Marine Division; and

Whereas, Corporal John Anthony Gero was mortally wounded by friendly fire in combat in Vietnam and died on the U. S. Hospital Ship, USS Sanctuary, June 29, 1968; and

Whereas, Corporal John Anthony Gero was buried with honors at Fort Rosecrans Military Cemetery in San Diego, California; and

Whereas, Corporal John Anthony Gero was a late-discovered qualifying West Virginian to have his name on the State Capitol military monument and his name is on a list to be added to the monument in the future; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 24-13-0.01 (24A089), locally known as Gary Bridge, carrying County Route 13 over the Tug Fork of the Big Sandy River in McDowell County the “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”; and, be it

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

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Chris Walters,
Chair.

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

Your Committee on Finance has had under consideration

Eng. House Bill No. 2760, Making a supplementary appropriation to the Bureau of Senior Services - Lottery Senior Citizens Fund.

Eng. House Bill No. 2764, Making a supplementary appropriation to the State Department of Education - School Building Authority.

Eng. House Bill No. 2770, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.

And,

Eng. House Bill No. 2933, Making a supplementary appropriation to the Department of Administration, Public Defender Services.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Transportation and Infrastructure has had under consideration

Com. Sub. for House Concurrent Resolution No. 6, The Army Air Force SGT Everett Wayne “Bud” Sell Memorial Bridge.

And,

Com. Sub. for House Concurrent Resolution No. 20, The Virginia & U. S. Army Major Woodrow Cook Memorial Road.

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

Respectfully submitted,

Chris Walters,
Chair.

The Senate proceeded to the sixth order of business.

Petitions

Senator Blair presented a petition from Jenni Vincent and numerous West Virginia residents, supporting the retiring of outdated barriers to health care in West Virginia.

Referred to the Committee on Health and Human Resources.

Senator Nohe presented a petition from Charles D. Wilson and nine West Virginia residents, supporting Senate Bill No. 35 (*Permitting carrying of concealed weapons without license*).

Referred to the Committee on Government Organization.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution No. 31, Authorizing meeting of Joint Select Committee on Tax Reform.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 37, Requesting Joint Committee on Government and Finance study pharmaceutical benefits management industry.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 39, Requesting Joint Committee on Government and Finance study Cedar Lakes Camp and Conference Center.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 47, Amending Joint Rules of Senate and House relating to printing enrolled bills.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Resolution No. 48, Amending Senate Rule No. 49 relating to Journal.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

The Senate proceeded to the eighth order of business.

Com. Sub. for Senate Bill No. 234, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, March 2, 2015, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, and with the right for amendments to be considered on third reading remaining in effect.

Eng. Senate Bill No. 310, Exempting nonprofit public utility companies from B&O tax.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 310) passed with its title.

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

Eng. Senate Bill No. 550, Authorizing agreements between county commissions and municipalities regarding structures unfit for human habitation.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 550) passed with its title.

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

Eng. Senate Bill No. 580, Relating to statute of limitations on health care injury claims for minors.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 580) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 580) takes effect from passage.

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

Eng. Senate Bill No. 581, Relating to Tourism Promotion Fund and Courtesy Patrol Fund.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 581) passed with its title.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 581) takes effect July 1, 2015.

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

Eng. Com. Sub. for House Bill No. 2157, Relating to absentee ballot fraud.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2157) passed with its title.

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

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

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

Pending discussion,

The question being “Shall Engrossed House Bill No. 2213 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—23.

The nays were: Facemire, Kessler, Kirkendoll, Laird, Miller, Romano, Snyder, Unger, Williams, Woelfel and Yost—11.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2213) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—23.

The nays were: Facemire, Kessler, Kirkendoll, Laird, Miller, Romano, Snyder, Unger, Williams, Woelfel and Yost—11.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2213) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill No. 320, Standardizing notification process for revocation of certificates of authority.

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

Com. Sub. for Senate Bill No. 325, Relating to filing of candidates' financial disclosure statements.

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

Com. Sub. for Com. Sub. for Senate Bill No. 352, Expanding scope of cooperative associations to goods and services including recycling.

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

Senate Bill No. 363, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims.

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

Com. Sub. for Senate Bill No. 366, Creating Patient Protection and Transparency Act.

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

Com. Sub. for Com. Sub. for Senate Bill No. 385, Regulating transportation network companies.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §17H-1-1, §17H-1-2,

§17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, §17H-1-15, §17H-1-16, §17H-1-17 and §17H-1-18, all to read as follows:

**CHAPTER 17H. TRANSPORTATION NETWORK
AND TAXICAB COMPANIES.**

**ARTICLE 1. REGULATION OF TRANSPORTATION NETWORK
COMPANIES.**

§17H-1-1. Definitions.

As used in this article:

(a) “Transportation network company” or “TNC” means an entity licensed pursuant to this article and operating in West Virginia that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. A TNC is not deemed to own, control, operate or manage the vehicles used by TNC drivers and is not a taxicab association or a for-hire vehicle owner.

(b) “Transportation network company (TNC) driver” means an individual who operates a motor vehicle that is:

(1) Owned, leased or otherwise authorized for use by the individual;

(2) Not a taxicab; and

(3) Used to provide transportation network company services.

(c) “Transportation network company (TNC) service” means transportation of a passenger between points chosen by the passenger and prearranged with a TNC driver through the use of a TNC digital network or software application. TNC services begin when a TNC driver accepts a request for transportation received

through the TNC's digital network or software application service, continue while the TNC driver transports the passenger in the TNC driver's vehicle and end when the passenger exits the TNC driver's vehicle. TNC service is not a taxicab or street hail service.

§17H-1-2. Exemption from Public Service Commission regulation.

TNCs or TNC drivers are not common carriers by motor vehicle or contract carriers by motor vehicle, or motor carriers, as defined in section two, article one, chapter twenty-four-a of this code, nor do they provide taxicab service. It is the express intent of this Legislature to exclude and exempt TNCs and TNC drivers from regulation of the Public Service Commission.

§17H-1-3. TNC permit required; permit fee; and use of fees.

(a) A person may not operate a TNC in West Virginia without first having obtained a permit from the Division of Motor Vehicles pursuant to this article.

(b) The Division of Motor Vehicles shall issue a permit to each applicant that meets the requirements for a TNC set forth in this article and has paid an annual permit fee of \$5,000 to the Division of Motor Vehicles. Any fees collected under the provisions of this article shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code. The Division of Motor Vehicles shall use the fees collected for the payment of the costs and expenses necessary for the administration of this article.

§17H-1-4. Agent.

A TNC shall maintain an agent for service of process in the state of West Virginia.

§17H-1-5. Fare charged for services.

A TNC may charge a fare for the TNC services provided to passengers: *Provided*, That if a fare is charged, the TNC shall

disclose to passengers the fare calculation method on its website or within the software application service. The TNC shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC driver's vehicle.

§17H-1-6. Identification of TNC vehicles and drivers.

The TNC's software application or website shall display a picture of the TNC driver and the license plate number of the motor vehicle to be used for providing the TNC service before the passenger enters the TNC driver's vehicle.

§17H-1-7. Electronic receipt.

Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the passenger that lists:

- (a) The origin and destination of the trip;
- (b) The total time and distance of the trip; and
- (c) An itemization of the total fare paid, if any.

§17H-1-8. TNC and TNC driver insurance requirements.

(a) TNCs and TNC drivers shall comply with the automobile liability insurance requirements of this section.

(b) The following automobile liability insurance requirements apply during the time that a TNC driver is logged into the TNC's digital network and available to receive requests for transportation, but is not providing TNC services:

(1) Primary automobile insurance that covers the driver and recognizes that such driver is a transportation network company

driver or otherwise uses the covered vehicle to transport passengers for compensation.

(2) The primary automobile liability insurance required in subdivision (1) of this subsection shall meet at least the minimum coverage requirements of section two, article four, chapter seventeen-d of this code and subsection (b), section thirty-one, article six, chapter thirty-three of this code: *Provided*, That the minimum coverage shall not be less than the amount of \$50,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, in the amount of \$100,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$25,000 because of injury to or destruction of property of others in any one accident.

(3) The automobile liability insurance required in this subsection may be satisfied by any of the following:

(A) Automobile liability insurance maintained by the TNC driver;
or

(B) Automobile liability insurance maintained by the TNC; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(c) While a TNC driver is providing TNC services, the TNC shall:

(1) Provide primary automobile liability insurance that recognizes the TNC driver's provision of TNC services;

(2) Provide automobile liability insurance of at least \$1 million for death, personal injury and property damage;

(3) Provide uninsured motorist coverage as required by subsection (b), section thirty-one, article six, chapter thirty-three of this code;

(4) The coverage requirements of this subsection may be satisfied by any of the following:

(A) Automobile liability insurance maintained by the TNC driver; or

(B) Automobile liability insurance maintained by the TNC; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(d) In every instance where insurance maintained by a TNC driver to fulfill the insurance requirements of this section has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a TNC shall provide the coverage required by this section beginning with the first dollar of a claim.

(e) Insurance required by this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-three of this code.

(f) Insurance required by this section satisfies the financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of this code.

§17H-1-9. TNC and insurer disclosure requirements.

(a) The TNC shall disclose in writing to TNC drivers the following before they are allowed to accept a request for TNC services on the TNC's digital network:

(1) The insurance coverage and limits of liability that the TNC provides while the TNC driver uses a personal vehicle in connection with a TNC's digital network;

(2) That the TNC driver's own insurance policy, depending on its terms, may not provide coverage while the TNC driver uses a vehicle in connection with a TNC's digital network; and

(3) That the TNC driver should identify each vehicle used to provide TNC services to his or her insurer.

(b) In a claims coverage investigation, the TNC's insurer and any insurer providing coverage under this section shall cooperate to facilitate the exchange of information, including the precise times that a TNC driver logged on and off of the TNC's digital network in the 24-hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.

§17H-1-10. Zero tolerance for drug or alcohol use.

(a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC services, and shall provide notice of this policy on its website. The website shall set forth procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend the TNC driver's access to the TNC's digital platform and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The TNC shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a passenger complaint is received by the TNC.

§17H-1-11. TNC driver requirements.

(a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(1) Require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance and other information required by the TNC;

(2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include review of a:

(A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offender Registry database;

(3) Obtain and review a driving history research report for the applicant.

(b) The TNC shall deny the application an individual to act as a TNC driver on its digital platform who:

(1) Has had more than three moving violations in the prior three-year period or one major violation in the prior three-year period, including, but not limited to, attempting to evade the police, reckless driving or driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, or theft, acts of violence or acts of terror;

(3) Is a match in the National Sex Offender Registry database;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicles used to provide TNC services;

(6) Does not possess proof of automobile liability insurance for the motor vehicles used to provide TNC services; or

(7) Is not at least nineteen years of age.

§17H-1-12. Vehicle safety.

The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC services meets the inspection requirements of section four, article sixteen, chapter seventeen-c of this code or the inspection requirements of the state in which the motor vehicle is registered.

§17H-1-13. Street hails prohibited.

A TNC driver shall exclusively accept rides booked through a TNC's digital network or software application service and may not solicit or accept street hails.

§17H-1-14. No cash trips.

The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC drivers of the policy. TNC drivers may not solicit or accept cash payments from passengers. A passenger may only pay for TNC services shall be made only electronically using the TNC's digital network or software application.

§17H-1-15. No discrimination; accessibility.

(a) The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or

affiliation, sex, disability, age or sexual orientation/identity with respect to passengers and potential passengers and notify TNC drivers of the policy.

(b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity.

(c) TNC drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing TNC services to persons with physical disabilities because of those disabilities.

(e) A TNC shall provide passengers an opportunity to indicate that they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

§17H-1-16. Records.

A TNC shall maintain:

(a) Individual trip records for at least one year from the date each trip was provided; and

(b) TNC driver records at least until the one year anniversary of the date on which a TNC driver's activation on the TNC digital network has ended.

§17H-1-17. Personally identifiable information.

A TNC may not disclose a passenger's personally identifiable information to a third party unless: The passenger consents, disclosure is required by a legal obligation, disclosure is required to

protect or defend the terms of use of the TNC service or to investigate violations of those terms. A TNC may also share a passenger's name and telephone number with the TNC driver providing TNC services to the passenger in order to facilitate correct identification of the passenger by the TNC driver, or to facilitate communication between the passenger and the TNC driver.

§17H-1-18. Rules; controlling authority.

The Commissioner of the Division of Motor Vehicles may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the implementation and exercise of the authority granted by this article and the oversight of TNCs and TNC drivers. Notwithstanding any other provision of law, TNCs and TNC drivers are governed exclusively by this article and any rules promulgated by the Division of Motor Vehicles consistent with this article. A municipality or other local entity may not impose a tax on, or require a license for, a TNC or TNC driver or subject a TNC to the municipality or other local entity's rate, entry, operational or other requirements.

The bill (Com. Sub. for Com. Sub. for S. B. No. 385), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill No. 446, Increasing number of terminals authorized by limited video lottery retailer license.

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

Com. Sub. for Senate Bill No. 453, Relating to motor vehicle dealers, distributors, wholesalers and manufacturers.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

Com. Sub. for Senate Bill No. 542, Clarifying provisions of Consumer Credit and Protection Act relating to debt collection.

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

Senate Bill No. 582, Relating to Herbert Henderson Office of Minority Affairs.

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

Senate Bill No. 583, Increasing tax rate on providers of certain nursing facility services.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

Senate Bill No. 584, Transferring Cedar Lakes Camp and Conference Center to private, nonstock, not-for-profit corporation.

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

Senate Bill No. 585, Relating to regulation of transportation network and taxicab companies.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

The Senate proceeded to the tenth order of business.

Eng. House Bill No. 2879, Relating to certain limitations on amount of state funds on deposit in any depository.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

The Senate proceeded to the twelfth order of business.

Remarks were made Senator Kirkendoll.

Thereafter, at the request of Senator Trump, and by unanimous consent, the remarks by Senator Kirkendoll were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Wednesday, March 4, 2015, at 11 a.m.

WEDNESDAY, MARCH 4, 2015

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Thomas Price, Roxalana Gospel Tabernacle, Dunbar, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ryan J. Ferns, a senator from the first district.

Pending the reading of the Journal of Tuesday, March 3, 2015,

On motion of Senator Facemire, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

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

Eng. Senate Bill No. 294, Eliminating certain unnecessary, inactive or redundant councils, committees and boards.

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

Eng. Com. Sub. for Senate Bill No. 357, Creating Coal Jobs and Safety Act of 2015.

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

Eng. Com. Sub. for Senate Bill No. 435, Creating WV Sheriffs' Bureau of Professional Standards.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

On page three, section one, line one, by striking out the word “seven” and inserting in lieu thereof the word “nine”;

On page three, section one, line four, by striking out the word “and” and inserting in lieu thereof a comma;

And,

On page three, section one, line six, after the word “Association” by inserting a comma and the words: “and two citizen members representing the general public who shall be appointed by the Secretary of the Department of Military Affairs and Public Safety, with the consent of the Senate, and whose service shall be conditioned upon signing all necessary nondisclosure agreements relating to confidential law-enforcement information”.

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

Engrossed Committee Substitute for Senate Bill No. 435, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 435) passed with its title.

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

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

Eng. Senate Bill No. 477, Supplementing, amending, decreasing and increasing appropriation from State Road Fund to DOH.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

On page two, by striking out all of lines fifteen and sixteen.

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

Engrossed Senate Bill No. 477, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale-1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 477) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)-33.

The nays were: None.

Absent: Plymale-1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 477) takes effect from passage.

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

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

Eng. Senate Bill No. 463, Making supplementary appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund.

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

Eng. Senate Bill No. 466, Making supplementary appropriation of federal funds to Department of Commerce.

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

Eng. Senate Bill No. 467, Making supplementary appropriation of federal funds to Department of Agriculture, State Conservation Committee.

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

Eng. Senate Bill No. 469, Making supplementary appropriation of federal funds to DEP, Division of Environmental Protection.

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

Eng. Senate Bill No. 471, Making supplementary appropriation of federal funds to DHHR, Human Rights Commission, and DHHR, DHS.

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

Eng. Com. Sub. for House Bill No. 2015—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 and reenact §4-10-3 of said code, all relating to the examination of spending units by the Legislative Auditor generally; requiring the legislative auditor to make certain post audits during 2015 and to make a report on the post audit process at the direction of the Joint Committee on Government and

Finance on or before December 1, 2015, that includes recommendations for the formulation of a regular schedule for making post audits of each spending unit of the state government; providing for a report to the Legislature by the Joint Committee on Government and Finance; and clarifying definitions of certain terms.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2239—A Bill to amend and reenact §30-1-19 of the Code of West Virginia, 1931, as amended, relating to logistical advisory committee; setting forth a purpose of the committee; requiring participation from certain entities; providing for membership; providing the committee with certain authority; and requiring certain reporting.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill No. 2377—A Bill to amend and reenact §18-2-5 of the Code of West Virginia, 1931, as amended, relating to authorizing State Board of Education to approve certain alternatives with respect to instructional time proposed by a county board or school that meet the spirit and intent of affected statutes and are intended to optimize student learning; removing outdated and conflicting provisions related to school entrance and kindergarten; stating the purpose of subsection and providing context; providing limitations on alternatives; and making findings on learning time for consideration by state board.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill No. 2466—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-16-11b; and to amend and reenact §60-6-7 and §60-8-3 of said code, all relating to the sale of alcoholic beverages by certain non-profit organizations; creating a one-day special license; establishing a license fee; allowing non-intoxicating beer, wine and liquor from a licensed mini-distillery to be sold and served at fundraising events.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2502—A Bill to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to persons possessing deadly weapons on school buses or on the premises of educational facilities; authorizing active law-enforcement officers in certain circumstances to possess a firearm or deadly weapon on a school bus, on school property or at school sponsored functions; authorizing retired law-enforcement officers in certain circumstances to carry deadly weapons on a school bus, on school property or at school sponsored functions when certain conditions are met; and establishing reporting requirements for the school principal.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2515—A Bill to amend and reenact §20-2-4 and §20-2-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-5h, all relating to wildlife generally; requiring persons required to deliver wildlife to an official checking station to electronically register that wildlife in lieu of its delivery to an official checking station; establishing a fine for the illegal taking of elk; requiring the Division of Natural Resources to take an active role in the reintroduction of the elk species; authorizing the director to propose legislative rules; and providing for criminal penalties.

Referred to the Committee on Natural Resources; and then to the Committee on Finance.

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

Eng. House Bill No. 2521—A Bill to amend and reenact §5-10-44 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-7a of said code; to amend and reenact §8-22A-8; to amend said code by adding thereto a new section, designated §8-22A-8a of said code; to amend said code by adding thereto a new section, designated §15-2-54; to amend said code by adding thereto a new section, designated §15-2A-23; to amend and reenact §16-5V-8a of said code; to amend and reenact §18-7A-14c of said code; to amend and reenact §18-7B-21 of said code; and to amend said code by adding thereto a new section, designated §51-9-18, all relating to the correction of errors under the West Virginia Public Employees Retirement System, the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, the West Virginia Emergency Medical Services

Retirement System, the State Teachers Retirement System, the Teachers' Defined Contribution Retirement System, the West Virginia State Police Death, Disability and Retirement System, the West Virginia State Police Retirement System and the Judges' Retirement System; and clarifying the scope, application and requirements for error correction by the Consolidated Public Retirement Board.

Referred to the Committee on Pensions; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2585—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-9b, relating to requiring leaseholders of mineral interests to notify the owners of the minerals in writing when there is an assignment of the lease to another party.

Referred to the Committee on the Judiciary.

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

Eng. House Bill No. 2675—A Bill to amend and reenact §11-13V-4 of the Code of West Virginia, 1931, as amended, relating to reducing certain severance taxes that are dedicated to the Workers' Compensation Debt Reduction Fund, beginning after June 30, 2015.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2718—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22A-10g, relating to suspending the collection and transfer of racetrack video lottery revenues to the Licensed Racetrack Modernization Fund for one fiscal year; collecting and allocating \$9 million from racetrack video lottery revenues to the state road fund and other funds for specific purposes during the fiscal year ending June 30, 2016; creating a new fund in the state treasury; and extending the availability of any unexpended balance in the Licensed Racetrack Modernization Fund for matching for two additional fiscal years.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, to take July 1, 2015, and requested the concurrence of the Senate in the changed effective date, as to

Eng. House Bill No. 2726, Clarifying choice of laws issues in product's liability actions.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

On further motion of Senator Carmichael, the Senate concurred in the changed effective date of the bill, that being to take effect July 1, 2015, instead of ninety days from passage.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo,

Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2726) takes effect July 1, 2015.

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

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

Eng. House Bill No. 2797—A Bill to amend and reenact §17A-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-20-1a of said code; to amend and reenact §28-1-2 of said code; and to amend and reenact §28-5-31 of said code, all relating to changing the term “mentally retarded” to “intellectually disabled;” and changing the term “handicapped” to “disabled”.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2015, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill No. 2840—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-45a, relating to authorizing a county board of education in certain circumstances to provide instruction to students during emergency closures under an alternative plan to make up lost days of traditional instruction in a manner that meets the instructional day and time requirements for not more than four instructional days of

accumulated time so that the board is not required to repurpose other days or add additional days of instruction to maintain compliance in reaching the mandatory one hundred eighty separate instructional days.

Referred to the Committee on Education.

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

Eng. House Bill No. 2877—A Bill to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13V-7 of said code, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; and raising to \$25,000 the tax liability threshold amount at which taxpayers must file returns electronically or pay by electronic funds transfers.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2878—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-1-131, relating to creating a one-stop electronic business portal in West Virginia.

Referred to the Committee on Government Organization.

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

Eng. House Bill No. 2880—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto by adding thereto a new

article, designated §62-15A-1, §62-15A-2, §62-15A-3 and §62-15A-4 relating to creating an addiction treatment pilot program.

Referred to the Committee on Health and Human Resources.

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

Eng. House Bill No. 2914—A Bill to amend and reenact §7-25-11 and §7-25-15 the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary dissolution of a resort area district; establishing a procedure for a dissolution; permitting nominations for resort area board members be made by mail or electronic means; permitting property owners to make nominations; providing for election of board members by plurality vote instead of by a majority vote; limiting the amount of assessments that may be levied against a parcel of real property; establishing a procedure for assessments proposed by a board on its own initiative; and providing for the effect of 2015 amendments.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2916—A Bill to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to providing limited authority to the Governor to borrow amounts from the Revenue Shortfall Reserve Fund for the completion of renovations to Capitol Complex Building 3.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2999—A Bill to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-2D-5f, to amend said code by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3; all relating to neonatal abstinence centers; authorizing neonatal abstinence centers; requiring the secretary to promulgate a licensure program and rules; requiring the state agency to consider neonatal abstinence care as a unique service in conducting certificate of need review; exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities from current moratoriums.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill No. 3006—A Bill to amend and reenact §11-10-17a of the Code of West Virginia, 1931, as amended, relating to the determination of the adjusted rate of interest by the Tax Commissioner for the administration of tax deficiencies and overpayments for tax years beginning after December 31, 2016.

Referred to the Committee on Finance.

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

Eng. House Bill No. 3017—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25b, relating to addressing sudden cardiac arrest in interscholastic athletes; requiring promulgation and minimum contents of rules by West Virginia Secondary School Activities Commission; defining interscholastic athletes; providing guidelines and information about the nature and warning signs of sudden cardiac arrest and the risks; requiring signature and return of information by athlete and parent or guardian prior to practice or competition; requiring head coach complete a commission-approved sudden cardiac arrest recognition and return-to-play protocol course annually; requiring head coach receive instruction on proper administration of cardiopulmonary resuscitation including use of hands-on practicing to support cognitive learning; and listing available sources for potential use in program development.

Referred to the Committee on Education.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 3, 2015, he had approved **Enr. Committee Substitute for Senate Bill No. 13, Enr. Committee Substitute for Senate Bill No. 255, Enr. Senate Bill No. 298, Enr. Senate Bill No. 299, Enr. Senate Bill No. 302, Enr. Committee Substitute for Senate Bill No. 378, Enr. Committee Substitute for House Bill No. 2004, Enr. Committee Substitute for House Bill No. 2025, Enr. House Bill No. 2212, Enr. Committee Substitute for House Bill No. 2234 and Enr. House Bill No. 2669.**

The Senate proceeded to the fourth order of business.

Senator Sybolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2381, Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2755, Relating to service and professional employee positions at jointly established schools.

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

Respectfully submitted,

Dave Sypolt,
Chair.

The Senate proceeded to the sixth order of business.

Senators Stollings and Kirkendoll offered the following resolution:

Senate Concurrent Resolution No. 51—Requesting the Division of Highways name the bridge locally known as Hewett Creek Box Beam

2.01, bridge number 03-9-2.01 (03A051), (37.96246, -81.85199), near Hewett, Boone County, the “U. S. Army PFC Samuel C. Ball Memorial Bridge”.

Whereas, Samuel C. Ball was born on January 12, 1925, to Bert and Beulah Ball of Hewett, Boone County, and he was a lifelong resident of West Virginia; and

Whereas, Samuel C. Ball entered the United States Army in World War II in 1943 and served as a Private First Class with the 142nd Infantry, 36th Division, and after eleven months of service to his country, PFC Samuel C. Ball made the ultimate sacrifice in battle near Tendon, France, on September 30, 1944; and

Whereas, It is fitting that West Virginia should honor the memory and service of this young man with a lasting memorial; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the bridge locally known as Hewett Creek Box Beam 2.01, bridge number 03-9-2.01 (03A051), (37.96246, -81.851999), near Hewett, Boone County, the “U. S. Army PFC Samuel C. Ball 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 “U. S. Army PFC Samuel C. Ball 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 the surviving relatives of PFC Samuel C. Ball.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Com. Sub. for Senate Concurrent Resolution No. 20, Requesting DOH name stretch of road in McDowell County “U. S. Army 1SG Joe C. Alderman Memorial Road”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 22, Requesting DOH name portion of U. S. Rt. 119 in Boone County “U. S. Army SGT Mark Andrew Messer Memorial Road”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 25, Requesting DOH name bridge in Harrison County “U. S. Army PFC Nick A. Cavallaro Memorial Bridge” and “U. S. Army SSG Benjamin T. Portaro Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 29, Requesting DOH name bridge in Kanawha County “Rosie the Riveter Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for Senate Concurrent Resolution No. 34, Requesting DOH name bridge in Greenbrier County “U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for Senate Concurrent Resolution No. 35, Requesting DOH name bridge in McDowell County “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 40, Requesting DOH name bridge in Putnam County “U. S. Army Sgt. Deforest Lee Talbert Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 41, Requesting DOH name bridge in Berkeley County “W. C. Honaker and Clyde Spies Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for House Concurrent Resolution No. 6, The Army Air Force SGT Everett Wayne “Bud” Sell Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for House Concurrent Resolution No. 20, The Virginia & U. S. Army Major Woodrow Cook Memorial Road.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

The Senate proceeded to the eighth order of business.

Com. Sub. for Senate Bill No. 234, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction.

On third reading, coming up in regular order, with the right having been granted on Monday, March 2, 2015, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator M. Hall, the following amendment to the bill was reported by the Clerk:

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

That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and

reenacted; that §24-1-1, §24-1-1b and §24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and that §24-3-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-12-17. Sale or lease of municipal public utility.

In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system or other public utility, and a majority of not less than sixty percent of the members of the governing body deem it for the best interest of such municipality that such utility be sold or leased, the governing body may so sell or lease such gas system, electric system, waterworks system, sewer system or other public utility upon such terms and conditions as said governing body, in its discretion, considers in the best interest of the municipality: *Provided*, That such sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the municipality, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than sixty percent of the members of the governing body, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: *Provided*, That if at any time after such approval and before the execution of the authority, any person should present to the governing body an offer to buy such public utility at a price which exceeds by at least five percent the sale

price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been previously approved, the governing body shall have the power to accept such subsequent offer and to make such sale or such lease to the person making the offer, upon approval of the offer by a majority of not less than sixty percent of the members of the governing body; if a sale shall have been approved by the governing body, and such subsequent proposition be for a lease, or, if a lease shall have been approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have the authority to accept the same upon approval of the offer by a majority of not less than sixty percent of the members of the governing body. The person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than twenty-five percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved by the governing body. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in payment and discharge of any indebtedness created in respect to such public utility and, in case there be no indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of fire-fighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to locate the same, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers and other like permanent improvements, and for no other purposes. In case there be a surplus after the payment of such indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility.

§8-16-19. Appeal to Public Service Commission from rates fixed.

If any party in interest is dissatisfied with the rates fixed under the provisions of ~~the immediately preceding section of this article~~ section eighteen, article sixteen, chapter eight of this code, such party shall have the right to appeal to the Public Service Commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the Public Service Commission.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.**PART IV. REVENUE BOND FINANCING.****§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.**

Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment and other details in connection with the issuance of the bonds. ~~Such~~ The bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may, by ordinance or order, specify. All ~~such~~ the bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed

according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by ~~such~~ the municipality or county: *Provided*, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for ~~such~~ the real and personal property: (1) Physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed ~~such~~ the electric power system and there was in place prior to the effective date of the amendments to this section made in the year 1992 an agreement between the municipality and the county commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate: *Provided, however*, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad valorem property taxation. ~~Such~~ The bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal at such times, not exceeding fifty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commission shall otherwise determine, ~~such~~ the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the

revenues derived from the waterworks or electric power system for the purpose of paying ~~such~~ the bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of ~~such~~ the revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from ~~such~~ the waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-1a. Jurisdiction of the Public Service Commission.

The jurisdiction of the Public Service Commission relating to public service districts shall be expanded to include the following powers and ~~such~~ the powers shall be in addition to all other powers of the Public Service Commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans created under section one-b of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the Public Service Commission to provide assistance to public service districts in

technological, operational, financial and regulatory matters, including, upon written request of the public service board, assistance to the board in deliberations regarding a proposed rate change or project.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a) (1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish, in accordance with this article, rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees

or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) The board of a public service district with annual combined gross revenue of \$3 million or more from its separate or combined services may make, enact and enforce all needful rules in connection with the enactment or amendment of rates, fees and charges of the district. At a minimum, these rules shall provide for:

(A) Adequate prior public notice of the contemplated rates, fees and charges by causing a notice of intent to effect such a change to be specified on the monthly billing statement of the customers of the district for the month next preceding the month in which the contemplated change is to be before the board on first reading.

(B) Adequate prior public notice of the contemplated rates, fees and charges by causing to be published as a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for publication shall be all territory served by the district. If the district provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall state the current rates, fees and charges and the proposed changes to said rates, fees and charges; the date, time and place of both a public hearing on the proposal and the proposed final vote on adoption; and the place or places within the district where the proposed rates, fees and charges may be inspected by the public. A reasonable number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed rates, fees and charges.

(D) The proposed rates, fees and charges shall be read at two meetings of the board with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(E) Rates, fees and charges approved by an affirmative vote of the board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall publish notice of the proposed rates, fees and charges by a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. Within forty-five days of receipt of the proposed rates, fees and charges, the county commission shall take action to approve or reject the proposed rates, fees and charges. After forty-five days, and absent action by the county commission, the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event, this 45-day period may be extended by the official action of both the board proposing the rates, fees and charges, and the appointing county commission.

(F) Enactment of the proposed rates, fees and charges shall follow an affirmative vote or inaction by the county commission and shall be effective no sooner than forty-five days following action or inaction by the county commission. The 45-day waiting period may be waived by public vote of the county commission only if the commission finds and declares the district to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.

~~(2)~~ (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the

district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or \$50, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50 has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent: *Provided, however*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the board to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service

district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service fees and charges: *Provided*, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: *Provided, however*, That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Division of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of Health, including, but not limited to, vacuum and pressure

systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the Division of Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for services established under this article only

after thirty-day notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district's authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System's designated service area. It is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-days' notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the other remedies provided in this

section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by section eleven of said article, is exempt from the provisions of this section.

(h) A public service district which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

§16-13A-25. Borrowing and bond issuance; procedure.

(a) ~~Notwithstanding any other provisions of this article to the contrary, a~~ A public service district may not has plenary power to borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, ~~without the prior consent and approval of the Public Service Commission. *Provided*, That approval of funding set forth in section eleven, article two,~~

~~chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and where the cost of the project changes but the change does not affect the rates established for the project. Upon written request of the public service board contemplating such transaction or project. The Public Service Commission shall provide technical support to the public service board, including, but not limited to, engineering, design and financial analysis of the proposed transaction or project.~~

~~(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:~~

~~(b) In the event that the public service district has significant insufficiencies in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, a bondholder may petition the circuit court of Kanawha County for such redress as will bring the accounts into compliance with bond covenants pledged by the district.~~

~~(1) Experience with the same engineering firm; or~~

~~(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.~~

~~(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:~~

~~(1) A contract with a public service district that is a Class A utility on April 1, 2003, or subsequently becomes a Class A utility as defined by commission rule;~~

~~(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;~~

~~(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or~~

~~(4) A contract that does not exceed \$15,000.~~

~~(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.~~

~~(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.~~

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with Joint Committee on Government and Finance.

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the Public Service Commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

(1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

(2) Provide the availability of adequate, economical and reliable utility services throughout the state;

(3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in article two-a of this chapter and based primarily on the costs of providing these services;

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises; and

(6) Encourage removal of artificial barriers to rail carrier service, stimulate competition, stimulate the free flow of goods and passengers throughout the state and promote the expansion of the tourism industry, thereby improving the economic condition of the state.

(b) The Legislature creates the Public Service Commission to exercise the legislative powers delegated to it. The Public Service Commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature directs the Public Service Commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment, and shall report to the Governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year 1985, and every two years thereafter.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and forecast of the probable balance for the next ten years; and

(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the Public Service Commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year 1980 upon:

(1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells; their probable extent of future production and the reasons given and any justification for capping off or shutting in such wells; the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells; and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year 1980, the Public Service Commission shall

submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the Public Service Commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decisionmaking and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the Public Service Commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the Public Service Commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry

analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the Public Service Commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, 1979, and entitled "A Plan for Regulatory Reform and Management Improvement".

The commission shall, before January 5, 1980, adopt said plan by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than December 31, 1980. Certified copies of such order and rule shall be filed on the first day of the 1980 regular session of the Legislature, by the chairman of the commission with the clerk of each house of the Legislature, the Governor and the Secretary of State. The chairman of the commission shall also file with the Office of the Secretary of State the receipt of the clerk of each house and of the Governor, which receipt shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule, the clerk of each house of the Legislature shall report the same to their respective houses and the presiding officer thereof shall refer the same to appropriate standing committee or committees.

Within the limits of funds appropriated therefor, the rule of the Public Service Commission shall be effective upon the date specified in the order of the commission promulgating it unless an alternative

plan be adopted by general law or unless the rule is disapproved by a concurrent resolution of the Legislature adopted prior to adjournment *sine die* of the regular session of the Legislature to be held in the year 1980: *Provided*, That if such rule is approved in part and disapproved in part by a concurrent resolution of the Legislature adopted prior to such adjournment, such rule shall be effective to the extent and only to the extent that the same is approved by such concurrent resolution.

The rules promulgated and made effective pursuant to this section shall be effective notwithstanding any other provisions of this code for the promulgation of rules or regulations.

(g) The Public Service Commission is hereby directed to cooperate with the Joint Committee on Government and Finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the Railroad Safety Division of the Public Service Commission and any similar studies.

(h) (1) The Legislature hereby finds that rates for natural gas charged to customers of all classes have risen dramatically in recent years to the extent that such increases have adversely affected all customer classes. The Legislature further finds that it must take action necessary to mitigate the adverse consequences of these dramatic rate increases.

(2) The Legislature further finds that the practices of natural gas utilities in purchasing high-priced gas supplies, in purchasing gas supplies from out-of-state sources when West Virginia possesses abundant natural gas, and in securing supplies, directly or indirectly by contractual agreements including take-or-pay provisions, indefinite price escalators or most-favored nation clauses have contributed to the dramatic increase in natural gas prices. It is, therefore, the policy of the Legislature to discourage such purchasing practices in order to protect all customer classes.

(3) The Legislature further finds that it is in the best interests of the citizens of West Virginia to encourage the transportation of natural gas in intrastate commerce by interstate or intrastate pipelines or by local distribution companies in order to provide competition in the natural gas industry and in order to provide natural gas to consumers at the lowest possible price.

(i) The Legislature further finds that transactions between utilities and affiliates are a contributing factor to the increase in natural gas and electricity prices and tend to confuse consideration of a proper rate of return calculation. The Legislature, therefore, finds that it is imperative that the Public Service Commission have the opportunity to properly study the issue of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level when compared to return or profit that affiliates earn on transactions with sister utilities.

(j) The Legislature further finds that water and sewer utilities that are political subdivision of the states providing separate or combined services and having annual gross revenues of \$3 million or more are most fairly and effectively regulated by the local governing body with respect to rates, borrowing and capital projects. Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public Service Commission over water and sewer utilities that are political subdivisions of the state is limited to that granted specifically in this code.

§24-1-1b. Supplemental rule for reorganization.

The Public Service Commission shall, by general order, create a division within its staff which shall, upon written request of the governing body of a political subdivision that operates a water, sewer and/or stormwater utility, provide legal, operational, engineering, financial, ratemaking and accounting advice and assistance to water, sewer and/or stormwater utilities that are political subdivisions of the state, and may perform or participate in the studies required under section one-b, article thirteen-a, chapter sixteen of this code.

§24-1-2. Definitions.

Except where a different meaning clearly appears from the context, the words “public utility” when used in this chapter shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service. Whenever in this chapter the words “commission” or “Public Service Commission” occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the Public Service Commission of West Virginia. Whenever used in this chapter, “customer” shall mean and include any person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale. Whenever in this chapter the words “governing body” occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the municipal body charged with the authority and responsibility of enacting ordinances of the municipality, as defined in section two, article one, chapter eight of this code, or a public service board of a public service district, as defined in section three, article thirteen-a, chapter sixteen of this code.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal

and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: *Provided further*, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: ~~*And provided further*, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article. *And provided further*, That the decision-making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision-making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.~~

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined services and having annual combined gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in section five of this article;

(2) Regulation of measurements, practices, acts or services, as granted and described in section seven of this article;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in section eight of this article;

(4) Submission of information to the commission regarding rates, tolls, charges or practices, as granted and described in section nine of this article;

(5) Authority to subpoena witnesses, take testimony and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in section ten of this article; and

(6) Investigation and resolution of disputes involving political subdivisions of the state regarding inter-utility agreements, service areas and contested utility combinations;

(7) Customers of water and sewer utilities operated by a political subdivision of the state and customers of stormwater utilities operated by a public service district may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints.

~~(b)~~ (c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

~~(c)~~ (d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article as if the certificate of public convenience and necessity for such facility were a siting certificate issued under said section and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to

commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: *Provided*, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that will generate electric energy solely for

sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of section eleven of this article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to section eleven of this article to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to section eleven-c of this article if the application for the

certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by, and described in this subsection, shall not be deemed to affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

§24-2-2. General power of commission to regulate public utilities.

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and timetables in effect and used by the public utility or other person to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals ~~direct~~ directly, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost of the service. Every order entered by

the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, modified or revoked by order or decree of a court of competent jurisdiction: *Provided*, That in the case of utilities used by emergency shelter providers, the commission shall prescribe such rates, charges or tolls that are the lowest available. “Emergency shelter provider” means any nonprofit entity which provides temporary emergency housing and services to the homeless or to victims of domestic violence or other abuse.

(b) Notwithstanding any other provision of this code to the contrary, rates are not discriminatory if, when considering the debt costs associated with a future water or sewer project which would not benefit existing customers, the commission establishes rates which ensure that the future customers to be served by the new project are solely responsible for the debt costs associated with the project.

(c) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state providing a separate or combined services and having annual combined gross revenues of \$3 million or more shall be limited to those powers enumerated in subsection (b), section one of this article.

§24-2-3. General power of commission with respect to rates.

(a) The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities except for water and/or sewer utilities that are political subdivisions of this state providing a separate or combined services and having annual combined gross revenues of \$3 million or more: *Provided*, That the commission may exercise such rate authority over ~~municipal~~ municipally owned electric or natural gas utilities only under the circumstances and limitations set forth in section four-b of this article. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules

enacted or maintained by a utility regulated under the provisions of this section to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of such railroad.

(b) In determining just and reasonable rates, the commission may audit and investigate management practices and policies, or have performed an audit and investigation of such practices and policies, in order to determine whether the utility is operating with efficiency and is utilizing sound management practices. The commission shall adopt rules and regulations setting forth the scope, frequency and application of such audits and investigations to the various utilities subject to its jurisdiction. The commission may include the cost of conducting the management audit in the cost of service of the utility.

(c) In determining just and reasonable rates, the commission shall investigate and review transactions between utilities and affiliates. The commission shall limit the total return of the utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.

§24-2-4a. Procedure for changing rates after June 30, 1981.

(a) After June 30, 1981, no public utility subject to this chapter, ~~except those utilities subject to the provisions of section four-b and section four-d of this article~~ except for water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having annual gross revenue of \$3 million or more from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly

state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may either upon complaint or upon its own initiative without complaint enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decisions thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than two hundred seventy days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided*, That in the case of a public utility having two thousand five hundred customers or less and which is not a political subdivision principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not

for a longer period than one hundred twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than two thousand five hundred customers, but not more than five thousand customers, and which is not a political subdivision principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than five thousand customers, but not more than seven thousand five hundred customers, and which is not a political subdivision principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred eighty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided, however,* That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code, and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. The public service district shall provide notice by Class I legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates

at least fourteen days prior to the effective date of the increased rates. Any refund determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: *Provided further*, That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not subject to refund: *And provided further*, That if any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the suspension period are prospective in effect only.

(c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation

or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

(d) Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

(e) Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

(g) No utility regulated under the provisions of this section may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this subsection shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipally operated public utilities municipal water and/or sewer utilities that are political subdivisions of the state with annual combined gross revenue of less than \$3 million dollars, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities that are political subdivisions of the state providing water, sewer, electric and natural gas services and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination ~~or preference~~ between or preference for any customer or class of customer and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service, and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The rates and charges shall be adopted by the electric, natural gas, ~~or~~ telephone cooperative or political subdivision's governing board or body and, in the case of the municipally operated public utility, by municipal ordinance to be effective not sooner than forty-five days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services: *Provided*, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective ~~or~~ and the utility governing body shall give its customers and, in the case of a cooperative, its customers, members and stockholders, other reasonable notices as will allow filing of timely objections to the proposed rate change ~~or~~ and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative or telephone

cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify the rates and charges of electric cooperatives, natural gas cooperatives, telephone cooperatives, or municipal electric or natural gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of the state and having less than \$3 million dollars of annual combined gross revenues upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by the municipally operated electric or natural gas public utility or municipally owned water and/or sewer utility having less than \$3 million dollars annual combined gross revenues or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally operated or natural gas public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers of the municipally owned electric or natural gas public utility who is affected by the

change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between a customer or group of customers and other customers of the municipal utility. The petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated electric or natural gas public utility or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state under ~~subdivision (1)~~ subsection (c) of this section shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or state code that establishes or proposes a rate increase that results in an increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the municipally operated public utility, the utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall, within one

hundred days from the date the rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article, consistent with the applicable rate provisions of section twenty, article ten, chapter eight of this code, section four, article nineteen of said chapter and section sixteen, article thirteen, chapter sixteen of this code. The commission may determine the method by which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

~~(g) A municipal utility shall be required to refund revenues collected from rates enacted that are disapproved or modified upon subsequent order of the commission entered in a proceeding under this section. Any refund determined to be due and owing as a result of any difference between the municipal rates placed into effect subject to refund and any final rates approved the commission shall be refunded by the municipal utility as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully refunded by credit within six months after entry of the commission's final order shall be directly refunded to the individual customer by check.~~

~~(h)~~ (g) The commission may, upon petition by a municipality or an electric, natural gas or telephone cooperative, or municipal electric or natural gas public utility allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or

interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission shall waive the 45-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) The commission shall, upon written request of the governing body of a political subdivision, provide technical assistance to the governing body in its deliberations regarding a proposed rate increase.

(i) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the State of West Virginia.

(j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state and having annual gross combined revenues of \$3 million or more shall be limited to those powers enumerated in subsection (b), section one of this article.

§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.

(a) Whenever, under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable.

(b) If the Public Service Commission shall determine that any utility is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers, the commission may petition to the circuit court of any county wherein the utility does business for an order attaching the assets of the utility and placing such utility under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, that the allegations contained in the petition are true, it shall grant the same and shall order that the utility be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission, shall appoint a receiver who shall be a responsible individual, partnership or corporation knowledgeable in public utility affairs and who shall maintain control and responsibility for the running and management of the affairs of ~~such~~ the utility. In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of said utility in an amount to be determined by the court.

(c) Control of and responsibility for said utility shall remain in the receiver until the same can, in the best interest of the customers, be returned to the owners, transferred to other owners or assumed by another utility or public service corporation: *Provided*, That if the court after hearing, determines that control of and responsibility for the affairs of the utility should not, in the best interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets of ~~such~~ the utility in the manner provided by law.

(d) The laws generally applicable to receivership shall govern receiverships created pursuant to this section.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person or corporation other than a political subdivision of the state providing water, sewer and/or stormwater services and having annual gross combined revenues of \$3 million

dollars or more may not begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no substantial protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having combined annual gross revenue of \$3 million dollars or more shall give the commission at least thirty days' notice of the filing of any application for a certificate of public convenience and necessity under this section: *Provided*, That the commission may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application

for decision following a hearing: *Provided*, That if the application is for authority to construct a water and sewer project and the projected total cost is less than \$10 million, the commission shall render its final decision within two hundred twenty-five days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one hundred eighty days after filing of the application: *Provided*, That if a substantial protest is received within thirty days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within two hundred seventy days or two hundred twenty-five days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or section eleven-a of this article is greater than \$50 million, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the time frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company for the

transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.

(l) Water, sewer and/or stormwater utilities that are political subdivisions of the state and having combined gross revenues of \$3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide notice to both current customers and those citizens who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the contemplated construction is to be before the governing body on first reading.

(2) Adequate prior public notice of the contemplated construction by causing to be published as a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the political subdivision provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction, the current rates, fees and charges, the proposed changes to said rates, fees and charges; the date, time, and place of both a public hearing on the proposal and the proposed final vote on adoption; and, the place or places within the political subdivision where the proposed construction and the rates, fees and charges may be inspected by the public. A reasonable number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the political subdivision and be heard with respect to the proposed construction and the proposed rates, fees and charges.

(4) The proposed construction and the proposed rates, fees and charges shall be read at two meetings of the governing body with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(5) Enactment of the proposed construction and the proposed rates, fees and charges shall follow an affirmative vote of the governing body and shall be effective no sooner than forty-five days following the action of the governing body. If the political subdivision proposes rates that will go into effect prior than the completion of construction of the proposed project, the 45-day waiting period may be waived by public vote of the governing body only if the political subdivision finds and declares the political subdivision to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the political subdivision to deliver continued and compliant public

services: *Provided*, That, in no event shall the rate become effective prior to the date that the county commission has entered an order approving the action of the public service district board.

(6) Rates, fees and charges approved by an affirmative vote of the public services district board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall, within forty-five of receipt of the proposed rates, fees and charges, take action to approve or reject the proposed rates, fees and charges. After forty-five days, and absent action by the county commission, the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event this 45-day period may be extended by official action of both the board proposing the rates, fees and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of this code, of the meeting where it shall consider the proposed increases in rates, fees and charges no later than one week prior to the meeting date.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-5. Schedule of rates to be filed with commission.

Every public utility ~~subject to the provisions of this chapter~~ shall file with the commission, and keep open to public inspection, schedules showing all the rates, charges and tolls for service to be rendered by it or by other persons, firms or corporations in connection with it: *Provided*, That the reports and tariffs filed by interstate carriers with the Public Service Commission may be copies of its reports and tariffs filed with the Interstate Commerce Commission; but nothing herein shall preclude the Public Service Commission from requiring interstate carriers to furnish information bearing upon any complaint or question pending before said Public Service Commission and with which it has a right to deal.

On motions of Senators Snyder and Blair, the following amendments to Senator M. Hall's amendment to the bill (Com. Sub. for S. B. No. 234) were reported by the Clerk, considered simultaneously, and adopted:

On page eight, section nine, subsection (a), subdivision (2), after the words "district with" by inserting the words "at least 4,500 customers and";

On page twenty-five, section one, subsection (j), after the word "having" by inserting the words "at least 4,500 customers and";

On page twenty-eight, section one, subsection (b), after the word "having" by inserting the words "at least 4,500 customers and";

On page thirty-four, section two, subsection (c), after the word "having" by inserting the words "at least 4,500 customers and";

On page thirty-four, section three, subsection (a), after the word "having" by inserting the words "at least 4,500 customers and";

On page thirty-five, section four-a, subsection (a), after the word "having" by inserting the words "at least 4,500 customers and";

On page forty-one, section four-b, subsection (a), after the word "with" by inserting the words "at least 4,500 customers and";

On page forty-three, section four-b, subsection (c), after the word "than" by inserting the words "4,500 customers or";

On page forty-three, section four-b, subsection (a), subdivision (1), after the word "than" by inserting the words "4,500 customers or";

On page forty-six, section four-b, subsection (j), after the word "having" by inserting the words "at least 4,500 customers and";

On page forty-seven, section eleven, subsection (a), after the word “having” by inserting the words “at least 4,500 customers and”;

On page forty-eight, section eleven, subsection (c), after the word “having” by inserting the words “at least 4,500 customers and”;

And,

On page fifty, section eleven, subsection (l), after the word “having” by inserting the words “at least 4,500 customers and”.

The question now being on the adoption of Senator M. Hall’s amendment to the bill, as amended, the same was put and prevailed.

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill No. 234 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 234) passed.

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

Eng. Com. Sub. for Senate Bill No. 234—A Bill to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-19 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1, §24-1-1b and §24-1-2 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to modifying the jurisdiction of the Public Service Commission as it pertains to certain water and sewer utilities owned or operated by political subdivisions of the state; relating to the authority of bondholders to petition the Public Service Commission for redress when there is a deficiency in bond revenue or bond reserve accounts or is otherwise in breach of bond covenants; expanding jurisdiction of the Public Service Commission to provide assistance to public service districts and municipal corporations regarding proposed rate changes; providing for a working capital allowance; expanding powers of certain public service boards; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services.

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

Eng. Com. Sub. for Senate Bill No. 320, Standardizing notification process for revocation of certificates of authority.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo,

Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 320) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 325, Relating to filing of candidates' financial disclosure statements.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 325) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 352, Expanding scope of cooperative associations to goods and services including recycling.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Williams—1.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 352) passed with its title.

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

Eng. Senate Bill No. 363, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 363) passed.

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

Eng. Senate Bill No. 363—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2A-19b, relating to allowing the Court of Claims to establish maximum rates and service limitations for reimbursement of health care services; requiring rates to be filed with Joint Committee on Government and Finance; setting effective date for changes to rates and limitations; prohibiting payment from other sources, as well as claimants; and authorizing court to review claims.

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

Eng. Com. Sub. for Senate Bill No. 366, Creating Patient Protection and Transparency Act.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 366) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 385, Regulating transportation network companies.

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

At the request of Senator Carmichael, unanimous consent being granted, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar.

Eng. Com. Sub. for Senate Bill No. 446, Increasing number of terminals authorized by limited video lottery retailer license.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Facemire, Ferns, D. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)-29.

The nays were: Carmichael, Gaunch, M. Hall and Unger-4.

Absent: Plymale-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 446) passed with its title.

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

(Senator Boley in the Chair.)

Com. Sub. for Senate Bill No. 453, Relating to motor vehicle dealers, distributors, wholesalers and manufacturers.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was reported by the Clerk.

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

On page eight, section eight, lines nineteen and twenty, after the words “vehicle inventory” by inserting the words: “including motor homes and travel trailers, regardless of gross vehicle weight”.

Senator Cole (Mr. President) moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motion prevailed.

The question being on the adoption of Senator Trump’s amendment to the bill, the same was put and prevailed.

On motion of Senator Trump, the following amendments to the bill (Com. Sub. for S. B. No. 453) were next reported by the Clerk, considered simultaneously, and adopted:

On page seventeen, section ten, line nine, after the word “affiliates.” by inserting the following: If a manufacturer, factory branch, distributor or distributor branch offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a program offered after the effective date of this subdivision and available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image

elements required by and approved by the manufacturer, factory branch, distributor or distributor branch and completed within ten years preceding the program shall be deemed to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed with that ten-year period. This subsection shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of such program, nor to a modification that is not a substantial modification of a material term or condition of such program.;

And,

On page thirty, section twelve-a, lines thirteen through seventeen, by striking out all of subsection (3) and inserting in lieu thereof a new subsection, designated subsection (3), to read as follows:

(3) If a manufacturer and new motor vehicle dealer are in parties to a property use agreement, the dealer agreement between the manufacturer and new motor vehicle dealer is terminated by a manufacturer or by a successor manufacturer or by operation of law and the reason for the termination is not a reason described in paragraphs (1) through (5), inclusive, subdivision (c), section seven of this article, the property use agreement terminates and ceases to be effective at the time the dealer agreement is terminated.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill No. 453 was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill No. 453 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Yost—32.

The nays were: None.

Absent: Plymale—1.

Excused from voting: Cole (Mr. President)—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 453) passed with its title.

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

Thereafter, at the request of Senator Unger, and by unanimous consent, the remarks by Senator Kessler regarding the passage of Engrossed Committee Substitute for Senate Bill No. 453 were ordered printed in the Appendix to the Journal.

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

Com. Sub. for Senate Bill No. 541, Relating to regulation and control of elections.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Tuesday, March 3, 2015, for further

amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, further consideration of the bill and the pending unreported Judiciary committee amendment was deferred until the conclusion of bills on today's first reading calendar, following consideration of Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 385, already placed in that position.

Eng. Com. Sub. for Senate Bill No. 542, Clarifying provisions of Consumer Credit and Protection Act relating to debt collection.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 542) passed with its title.

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

Eng. Senate Bill No. 582, Relating to Herbert Henderson Office of Minority Affairs.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill No. 582 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 582) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 582) takes effect from passage.

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

Thereafter, at the request of Senator Gaunch, and by unanimous consent, the remarks by Senators Trump and Miller regarding the passage of Engrossed Senate Bill No. 582 were ordered printed in the Appendix to the Journal.

Senate Bill No. 583, Increasing tax rate on providers of certain nursing facility services.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was reported by the Clerk.

There being no amendments offered,

The bill was ordered to engrossment.

Engrossed Senate Bill No. 583 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Unger—1.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 583) passed with its title.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Unger—1.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 583) takes effect July 1, 2015.

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

Eng. Senate Bill No. 584, Transferring Cedar Lakes Camp and Conference Center to private, nonstock, not-for-profit corporation.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Plymale-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 584) passed with its title.

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

Senate Bill No. 585, Relating to regulation of transportation network and taxicab companies.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar, following consideration of Engrossed Committee Substitute for Senate Bill No. 541, already placed in that position.

The Senate proceeded to the ninth order of business.

Eng. House Bill No. 2879, Relating to certain limitations on amount of state funds on deposit in any depository.

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

The Senate proceeded to the tenth order of business.

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

Eng. House Bill No. 2760, Making a supplementary appropriation to the Bureau of Senior Services, Lottery Senior Citizens Fund.

Eng. House Bill No. 2764, Making a supplementary appropriation to the State Department of Education, School Building Authority.

Eng. House Bill No. 2770, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.

And,

Eng. House Bill No. 2933, Making a supplementary appropriation to the Department of Administration, Public Defender Services.

At the request of Senator D. Hall, and by unanimous consent, Senator D. Hall addressed the Senate regarding the results of several recent winter storms in Southern West Virginia.

Thereafter, at the request of Senator Walters, and by unanimous consent, the remarks by Senator D. Hall were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate recessed until 5 p.m. today.

Upon expiration of the recess, the Senate reconvened.

The end of today's first reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 385, Regulating transportation network companies.

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

Senator Trump moved to table the bill.

The question being on the adoption of Senator Trump's aforesaid motion, the same was put and prevailed and the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 385) was laid upon the table.

Action as to Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 385 having been concluded, the Senate returned to the consideration of

Com. Sub. for Senate Bill No. 541, Relating to regulation and control of elections.

On third reading, coming up in deferred order, with an unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Tuesday, March 3, 2015, for further amendments to be received on third reading, was again reported by the Clerk.

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

On motions of Senators Trump and Kessler, the following amendment to the bill was reported by the Clerk:

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

That §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9, §3-8-10, §3-8-12 and §3-8-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto five new sections,

designated §3-8-1b, §3-8-1c, §3-8-5c, §3-8-8a and §3-8-9a, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

(1) “Ballot issue” means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

(2) “Billboard advertisement” means a commercially available outdoor advertisement, sign or similar display regularly available for lease or rental to advertise a person, place or product.

(3) “Broadcast, cable or satellite communication” means a communication that is publicly distributed by a television station, radio station, cable television system or satellite system.

(4) “Candidate” means an individual who:

(A) Has filed a certificate of announcement under section seven, article five of this chapter or a municipal charter;

(B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(5) “Candidate's committee” or “candidate committee” means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(6) “Clearly identified” means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as “the Governor”, “your Senator” or “the incumbent” or through an unambiguous reference to his or her status as a candidate, such as “the Democratic candidate for Governor” or “the Republican candidate for ~~Supreme Court of Appeals~~ House of Delegates”.

~~(7) “Contribution” means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation. *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.~~

~~(8)~~ (7) “Corporate political action committee” means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

~~(9)~~ (8) “Direct costs of purchasing, producing or disseminating electioneering communications” means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs and postage; or

(B) The cost of air time on broadcast, cable or satellite radio and television stations, the costs of disseminating printed materials, studio time, use of facilities and the charges for a broker to purchase air time.

~~(10)~~ (9) “Disclosure date” means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of \$5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling \$5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications.

~~(11)~~ (10) “Election” means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term “nomination” as used in this article.

~~(12)~~ (11) (A) “Electioneering communication” means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement or published in any newspaper, magazine or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate: ~~Provided, That for purposes of the general election of 2008 the amendments to this article are effective October 1, 2008.~~

(B) "Electioneering communication" does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: *Provided*, That a news story disseminated through a medium owned or controlled by a political party, political committee or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) Activity by a candidate committee, party executive committee or political party caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five of

this article or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided*, That independent expenditures by a party executive committee or caucus committee or a political action committee required to be reported pursuant to subsection (b), section two of this article are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization, in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or

election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

~~(13)~~ (12) “Expressly advocating” means any communication that:

(A) Uses phrases such as “vote for the Governor”, “reelect your Senator”, “support the ~~Democratic nominee~~ incumbent candidate for Supreme Court”, “cast your ballot for the Republican challenger for House of Delegates”, “Smith for House”, “Bob Smith in ‘04”, “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as pro-life or pro-choice, “vote against Old Hickory”, “defeat” accompanied by a picture of one or more candidates, or “reject the incumbent”;

(B) Communications of campaign slogans or individual words, that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say “Smith’s the One”, “Jones ‘06”, “Baker”, etc.; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

~~(14)~~ (13) “Financial agent” means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

~~(15)~~ (14) “Fundraising event” means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

~~(16)~~ (15) “Independent expenditure” means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents.

Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

~~(17)~~ (16) "Mass mailing" means a mailing by United States mail, facsimile or electronic mail of more than five hundred pieces of mail matter of an identical or substantially similar nature within any thirty-day period. For purposes of this subdivision "substantially similar" includes communications that contain substantially the same template or language, but vary in nonmaterial respects such as communications customized by the recipient's name, occupation or geographic location.

~~(18)~~ (17) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to its members and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

(18) "Membership organization political action committee" means a political action committee that is a separate segregated fund of a membership organization that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(19) “Name” means the full first name, middle name or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(20) “Person” means an individual, corporation, partnership, committee, association and any other organization or group of individuals.

(21) “Political action committee” means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined by subdivision ~~(8)~~ (7) of this section;

(B) A membership organization political action committee, as that term is defined by subdivision (18) of this section;

(C) An unaffiliated political action committee, as that term is defined by subdivision (29) of this section.

(22) “Political committee” means any candidate’s committee, political action committee or political party committee, as defined in subdivision (5), (21) or (25) of this section.

(23) “Political party” means a political party as that term is defined by section eight, article one of this chapter or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

(24) “Political party caucus” means the committees that are established by the Republican and Democrat caucuses of both the West Virginia House of Delegates and the West Virginia State

Senate, or by any other political party recognized by the State of West Virginia.

~~(24)~~ (25) “Political party committee” means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

~~(25)~~ (26) “Political purposes” means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

~~(26)~~ (27) “Targeted to the relevant electorate” means that a communication ~~which~~ refers to a clearly identified candidate for statewide office or the Legislature and ~~which~~ can be received by one hundred forty thousand or more individuals in the state in the case of a candidacy for statewide office, eight thousand two hundred twenty or more individuals in the district in the case of a candidacy for the State Senate and two thousand four hundred ten or more individuals in the district in the case of a candidacy for the House of Delegates.

~~(27)~~ (28) “Telephone bank” means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions or trained volunteers.

~~(28)~~ “Two-year election cycle” means ~~the twenty-four month period that begins the day after a general election and ends on the day of the subsequent general election.~~

(29) “Unaffiliated political action committee” means a political action committee that is not affiliated with a corporation or a membership organization.

§3-8-1b. Political contribution defined.

(a) “Political contribution” means:

(1) Any gift, subscription, loan, advance, deposit of money or payment or anything of value given to any entity that is registered or is required to be registered as a political committee at the time the political contribution is made, or that is given to be used specifically for making political contributions to other recipients or for making political expenditures; or

(2) Any political expenditure, as that term is defined in section one-c of this article, that is made in coordination with a candidate, candidate committee or party committee.

(b) The term “political contribution” does not include:

(1) Any gift, subscription, loan, advance, deposit of money or payment or anything of value made or given as part of a bona fide commercial transaction, including, but not limited to, any loans, refunds, rebates or discounts offered to the general public or similar customers on substantially the same material terms;

(2) The payment by any corporation or membership organization for the costs of establishing, administering and soliciting contributions from its restricted class to its separate segregated fund;

(3) The payment by any corporation or membership organization for the costs of communicating with its restricted class about any subject;

(4) The appearance of a candidate at any residence or the facilities of any corporation, membership organization, social or civic organization, or educational institution to speak about the

candidate's campaign: *Provided*, That the use of such venue is furnished by the venue's owner and is not paid for by a third party;

(5) The costs of hosting a debate or candidates' forum: *Provided*, That at least two opposing candidates with respect to any given office sought are invited with the same or similar advance notice and method of invitation;

(6) The preparation and distribution of voter guides, subject to the following:

(A) The sponsor may include in the voter guide similar biographical information on each featured candidate, such as education, employment positions, offices held and community involvement;

(B) Comparable information shall be provided on each candidate featured in the voter guide for a particular office or each candidate featured shall be provided an equal opportunity to respond to questions;

(C) No featured candidate may receive greater prominence in the voter guide than any other candidate, or substantially more space for descriptions of his or her positions or responses; and

(D) The sponsor of the voter guide shall not include the sponsor's own message meeting the definition of a political expenditure under section one-c of this article;

(7) The value of services provided without compensation by any individual who volunteers on behalf of any candidate, candidate committee, party committee or other political committee, or any unreimbursed payment for expenses related to the volunteer activity;

(8) Any cost incurred for covering or carrying a news story, commentary or editorial by a broadcasting station or cable television operator, Internet website, or newspaper or other periodical publication, including an Internet or other electronic publication:

Provided, That the cost for the news story, commentary or editorial is not paid for by, and the medium is not owned or controlled by, a candidate, candidate committee, party committee or other political committee; and

(9) The payment for or provision of legal and accounting services rendered to a candidate, candidate committee, party committee or other political committee if the services are solely for the purpose of ensuring compliance with or challenging the constitutional validity or interpretation of the provisions of this chapter;

(c) The term “political contribution” may not be construed to include any transactions not specifically listed in subsection (b) of this section if those contributions do not otherwise meet the definition of “political contribution” as set forth in subsection (a) of this section.

§3-8-1c. Political expenditure defined.

(a) “Political expenditure” means the payment for:

(1) Any communication that constitutes express advocacy or electioneering communications, as those terms are defined in subdivisions (11) and (12), section one-a of this article; or

(2) The republication of campaign materials for any candidate, candidate committee, party committee or political committee, except for:

(A) The republication of materials in a voter guide described under subdivision (6), subsection (b), section one-b of this article;

(B) The republication of campaign materials commenting or explaining a candidate’s position on any issue that does not otherwise in express terms call for the election or defeat of any clearly identified candidate; or

(C) The republication of publicly available photographs or video footage of a candidate that is devoid of any text or audio content in or from the original material.

(b) The term “political expenditure” does not include anything that is excluded from the definition of a “political contribution”, as set forth in subsection (b), section one-b of this article of the definition of “political contribution”.

(c) A “political expenditure” is “made in coordination” or otherwise considered to be coordinated if:

(1) The communication is paid for, in whole or in part, by a person other than a candidate, candidate committee or party committee; and

(2) It satisfies at least one of the following conduct standards:

(A) The political expenditure is created, produced, distributed or undertaken at the request or suggestion of a candidate, candidate committee, party committee; or

(B) The political expenditure is created, produced, distributed or undertaken at the suggestion of a person paying for the expenditure and the candidate, candidate committee or party committee affirmatively assents to the suggestion.

(d) A “political expenditure” is not “made in coordination” or otherwise considered to be coordinated if any of the following occur:

(1) A candidate committee or a political party committee responds to an inquiry about the candidate’s or political party committee’s positions on legislative or policy issues, including substantive discussion of the legislative or policy issues, but not including a discussion of campaign plans, projects, activities or needs;

(2) Information or materials used in the creation, production, distribution or undertaking of the political expenditure was obtained from a publicly available source;

(3) A candidate endorses another candidate;

(4) A candidate solicits funds for another candidate, a political committee, a party committee or organizations eligible to receive tax-deductible donations under 26 U. S. C. §170 (or any successor provision) and regulations of the U. S. Department of Treasury;

(5) A candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, if the communication does not refer to an election or another candidate who seeks the same office as that candidate; or

(6) A commercial vendor, former employee or political committee has established and implemented a firewall that meets the following requirements: *Provided*, That the communication does not qualify for this exemption if specific information indicates that, despite the firewall, information about a candidate's, candidate committee's, measure committee's or party committee's campaign plans, projects, activities or needs that is material to the creation, production or distribution of the political expenditure was used or conveyed to the person paying for the political expenditure:

(A) The firewall must be designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to a candidate or party committee, or a candidate committee or measure committee supporting or opposing a candidate or measure clearly identified in the political expenditure; and

(B) The firewall must be described in a written policy that is distributed to all relevant employees, consultants and clients affected by the policy.

(e) Political expenditures may only be made in coordination with a candidate or candidate's committee as set forth in section nine-a of this article.

(f) Any political expenditure that is made in coordination with a candidate or candidate's committee must contain a disclaimer that clearly identifies that the expenditure is coordinated.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except for: (1) Candidates for party committeeman and committeewoman; ~~and~~ (2) federal committees required to file under the provisions of 2 U. S. C. §434; and (3) candidates for delegate to a national convention, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes; Provided, That any federal committee that makes state level independent expenditures or engages in state level electioneering communications is not exempt from the recordkeeping and reporting provisions of this article. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) ~~(1)~~ In addition to any other reporting required by the provisions of this chapter, any person who makes independent expenditures in an aggregate amount or value in excess of \$1,000 during a calendar year shall file a disclosure statement, on a form prescribed by the Secretary of State, that contains all of the requirements set forth in section eight-a of this article. following information:

~~(A) The name of (i) the person making the expenditure; (ii) the name of any person sharing or exercising direction or control over the activities of the person making the expenditure; and (iii) the name of the custodian of the books and accounts of the person making the expenditure;~~

~~(B) If the person making the expenditure is not an individual, the principal place of business of the partnership, corporation, committee, association, organization or group which made the expenditure;~~

~~(C) The amount of each expenditure of more than \$1,000 made during the period covered by the statement and the name of the person to whom the expenditure was made;~~

~~(D) The elections to which the independent expenditure pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the expenditure is intended to support or oppose the identified candidates and the amount of the total expenditure reported pursuant to paragraph (C) of this subdivision spent to support or oppose each of the identified candidates;~~

~~(E) The name and address of any person who contributed a total of more than \$250 between the first day of the preceding calendar year, and the disclosure date, and whose political contributions were made for the purpose of furthering the expenditure.~~

~~(F) With regard to the contributors required to be listed pursuant to paragraph (E) of this subdivision, the statement shall also include:~~

~~(i) The month, day and year that the contributions of any single contributor exceeded \$250;~~

~~(ii) If the contributor is a political action committee, the name and address the political action committee registered with the Secretary of State, county clerk or municipal clerk;~~

~~(iii) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual's current employer, if any, or, if the individual is self-employed, the name and address of the individual's business, if any;~~

~~(iv) A description of the contribution, if other than money; and~~

~~(v) The value in dollars and cents of the contribution.~~

~~(G) (1) A certification that such independent expenditure was not "made in coordination" or otherwise a coordinated contribution as defined in section one-c of this article.~~

~~(2) Any person who makes a contribution for the purpose of funding an independent expenditure under this subsection shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.~~

~~(3) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of, or for, or against each candidate, as reported under this subsection, and for periodically publishing such indices on a timely preelection basis.~~

~~(c) (1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating \$1,000 or more for any statewide, legislative or multicounty judicial candidate or \$500 or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the fifteenth day, but more than twelve hours, before the date of an election, shall file a report on a form prescribed by the Secretary of State, describing the expenditures within twenty-four hours. *Provided, That* a person~~

~~making expenditures in the amount of \$1,000 or more for any statewide or legislative candidate on or after the fifteenth day but more than twelve hours before the day of any election shall report such expenditures in accordance with section two-b of this article and shall not file an additional report as provided herein:~~

~~(2) Any person who files a report under subdivision (1) of this subsection, shall file an additional report within twenty-four hours after each time the person makes or contracts to make independent expenditures aggregating an additional \$500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates:~~

~~(d) (1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating \$10,000 or more at any time up to and including the fifteenth day before the date of an election shall file a report on a form prescribed by the Secretary of State, describing the expenditures within forty-eight hours:~~

~~(2) A person who files a report under subdivision (1) of this subsection, the person shall file an additional report within forty-eight hours after each time the person makes or contracts to make independent expenditures aggregating an additional \$10,000 with respect to the same election as that to which the initial report relates:~~

~~(e) (c)~~ Any communication paid for by an independent expenditure must include a clear and conspicuous public notice that:

(1) Clearly states that the communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure, as required by section fourteen of this article: ~~Provided, That if the~~

~~communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.~~

~~(f)~~ (d) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of six months following the filing of a disclosure pursuant to subsection (a) of this section and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in section seven of this article.

~~(g)~~ (e) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more than one year, or both fined and confined.

~~(h)~~ (f) (1) Any person who is required to file a statement under this section may file the statement by facsimile device or electronic mail, in accordance with such rules as the Secretary of State may promulgate.

(2) The Secretary of State shall make any document filed electronically pursuant to this subsection accessible to the public on the Internet not later than twenty-four hours after the document is received by the secretary.

(3) In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified under any of the methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

(i) (g) This section does not apply to candidates for federal office.

(j) (h) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

§3-8-3. Committee treasurers; required to receive and disburse funds.

Every political committee shall appoint and retain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members, for election expenses, and, unless such treasurer is first appointed and thereafter retained, it shall be unlawful for any such committee or any of its members to collect, receive or disburse money for any such purposes. All moneys collected or received by any such committee, or by any of its members, for election expenses shall be paid over to, and pass through the hands of, the treasurer, and shall be disbursed by ~~him~~ the treasurer, and it shall be unlawful for any such committee, or any of its members, to disburse any money for election expenses unless such money shall be paid to, and disbursed by, the treasurer. The same person may be designated to act as treasurer for two or more political party committees. This section creates no obligation upon any entity or individual, other than a political committee as defined in this article.

§3-8-4. Treasurers and financial agents; written designation requirements.

(a) No person may act as the treasurer of any political action committee or political party committee supporting, aiding or opposing the nomination, election or defeat of any candidate for an office encompassing an election district larger than a county unless a written statement of organization, on a form to be prescribed by the Secretary of State, is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard time, of that day or, if mailed, is

postmarked before that hour. The form shall include the name of the political action committee or political party committee; the name of the treasurer; the mailing address, telephone number and e-mail address, if applicable, of the committee and of the treasurer if different from the committee information; the chairman of the committee; the affiliate organization, if any; type of committee affiliation, as defined in subdivisions (21) and ~~(24)~~ (25), section one-a of this article, if any; and whether the committee will participate in statewide, county or municipal elections. The form shall be certified as accurate and true and signed by the chairman and the treasurer of the committee: *Provided*, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as the treasurer for any candidate for nomination or election to any statewide office, or to any office encompassing an election district larger than a county or to any legislative office unless a written statement designating that person as the treasurer or financial agent is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: *Provided*, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(c) No person may act as treasurer of any committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, except legislative candidates, or as the financial agent for a candidate for the nomination or election to any other office, unless a written statement designating him or her as the treasurer or financial agent is filed with the clerk of the county commission at least twenty-eight days before the election at which he or she is to act and is received before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: *Provided*, That a change of treasurer may be made at any

time by filing a written statement with the clerk of the county commission.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this section, a filing designating a treasurer for a state or county political executive committee may be made anytime before the committee either accepts or spends funds. Once a designation is made by a state or county political executive committee, no additional designations are required under this section until a successor treasurer is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee's account. This written request shall be filed with either the Secretary of State or the clerk of the county commission as provided by subsections (a), (b) and (c) of this section.

(e) This section creates no obligation upon any entity or person other than a political action committee, political party committee, candidate, or treasurer or financial agent for any candidate as described in this section.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, treasurer, person and association of persons, organization of any kind, including every membership organization or corporation, directly, or by an independent expenditure, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection ~~(b)~~(c), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, and the treasurer of every political committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value and of all expenditures and disbursements made, liabilities incurred, by the

candidate, financial agent, person, association or organization or political committee, for political purposes, or by any of the officers or members of the committee, or any person acting under its authority or on its behalf.

(b) Every ~~person or association of persons~~ candidate or political committee required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement:

(1) Of all financial transactions, whenever the total exceeds \$500, which have taken place before the last Saturday in March, to be filed within six days thereafter and annually whenever the total of all financial transactions ~~relating to an election~~ for each candidate or political committee exceeds \$500;

(2) Of all financial transactions which have taken place before the ~~fifteenth~~ tenth day preceding each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the ~~fifteenth~~ tenth day;

(3) Of all financial transactions which have taken place before the thirteenth day after each primary or other election and subsequent to the previous statement, if any, to be filed within twenty business days after the thirteenth day; and

(4) Of all financial transactions, whenever the total exceeds \$500 or whenever any loans are outstanding, which have taken place before the forty-third day preceding the general election day, to be filed within four business days after the forty-third day.

(c) Every person who announces as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

(d) For purposes of this section, the term “financial transactions” includes all political contributions or loans received and all repayments of loans or expenditures made ~~to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on~~ political committee.

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article twenty-one-a, chapter nineteen of this code are required to file only the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the primary election. ~~Provided, That during the election in the year 2008, the statements required by this subsection shall be filed immediately prior to and after the general election.~~

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article, other than a disclosure of electioneering communications pursuant to section two-b of this article, shall contain only the following information:

(1) The name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person and the name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The name of any person making a political contribution and the amount of the contribution. If the total contributions of any one person in any one election cycle amount to more than \$250, the residence and mailing address of the contributor and, if the contributor is an individual, his or her major business affiliation and occupation shall also be reported. A contribution totaling more than

\$50 of currency of the United States or currency of any foreign country by any one contributor is prohibited and a violation of section five-d of this article. The statement on which contributions are required to be reported by this subdivision may not distinguish between contributions made by individuals and contributions made by partnerships, firms, associations, committees, organizations or groups.

(4) The total amount of political contributions received during the period covered by the financial statement.

(5) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

(6) The name, residence and mailing address of any individual or the name and mailing address of each partnership, firm, association, committee, organization or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The name, residence and mailing address of any person to whom each expenditure was made or liability incurred, including expenditures made on behalf of a candidate or political committee that otherwise are not made directly by the candidate or political committee, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person supporting, aiding or opposing the

nomination, election or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a beginning balance in the next financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fundraising event held during the period covered by the financial statement:

(1) The type of event, date held and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fundraising event.

(4) The expenditures incident to the fundraising event.

(5) The net receipts of the fundraising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any political contribution or political expenditure made, pursuant to section ten of this article, by or on behalf of a candidate

for public office to any other candidate or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person may make any political contribution except from his, her or its own funds, unless such person discloses in writing to the person required to report under this section the name, residence, mailing address, major business affiliation and occupation of the person which furnished the funds to the contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No political contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person may accept any political contribution for ~~the purpose of influencing the nomination, election or defeat of a any candidate or for the passage or defeat of any ballot issue~~ unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any person receives an anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals \$25 or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals \$25 or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(l) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party committee in filing financial reports for fundraising events if the total profit does not exceed \$5,000 per year. A political party committee may report gross receipts for the sale of food, beverages, services,

novelty items, raffle tickets or memorabilia, except that any receipt of more than \$50 from an individual or organization shall be reported as a contribution. A political party committee using this alternative method of reporting shall report:

(i) (1) The name of the committee;

(ii) (2) The type of fund-raising activity undertaken;

(iii) (3) The location where the activity occurred;

(iv) (4) The date of the fundraiser;

(v) (5) The name of any individual who contributed more than \$50 worth of items to be sold;

(vi) (6) The name and amount received from any person or organization purchasing more than \$50 worth of food, beverages, services, novelty items, raffle tickets or memorabilia;

(vii) (7) The gross receipts of the fundraiser; and

(viii) (8) The date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than \$50 were purchased for resale.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

(a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices, circuit judge, family court judge, and for statewide and other offices to be nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a

political division within a single county, except for legislative offices, circuit judge and family court judge; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

~~(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission. *Provided*, That the financial~~ Financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, ~~and State Senate, House of Delegates, Supreme Court of Appeals, circuit judge and family court judge~~ shall be filed electronically by the means of an Internet program to be established by the Secretary of State. Candidates for House of Delegates, State Senate, circuit judge and family court judge may file financial statements in person, or by facsimile or other electronic means of submission until the total amount of contributions received by the candidate exceeds \$10,000 for the election cycle. The Secretary of State shall charge a \$25 processing fee for any financial statements that are not filed electronically.

(c) Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(d) Candidates for all other offices than those identified in subsection (b) of this section may file statements by mail, in person or by facsimile or other electronic means of transmission. For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of such office.

(e) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the Internet by the Secretary of State within ten business days from the date the financial statement was filed.

(f) The Secretary of State shall maintain an online searchable database accessible to the public on the Secretary of State's website. The database shall include the ability to search contribution and expenditure data submitted by candidates and political action committees. Information capable of search shall include, but not be limited to, a contributor's first name, last name, city, state, occupation, employer, contribution amount, date, expenditure payee, payer, city, state, purpose and amount.

§3-8-5c. Contribution limitations to candidate committees; indexing of candidate's committee thresholds; prohibition against contributions by foreign nationals.

(a) Except as provided in section eight of this article, a person, political party or political action committee may not:

(1) Contribute more than \$2,700, as adjusted pursuant to subsection (c) of this section, directly to a candidate's committee for a candidate seeking nomination; or

(2) Contribute more than \$2,700, as adjusted pursuant to subsection (c) of this section, directly to a candidate's committee for a candidate seeking election: *Provided*, That no candidate may receive contributions for the general election until he or she has been nominated.

(b) The contribution limits contained in subsection (a) of this section apply only to elections to be held after the effective date of this section, and do not apply to candidate committees that were created for elections held prior to the effective date of this section.

(c) Notwithstanding the provisions of subsection (a) of this section to the contrary, an individual may not, directly or indirectly,

make contributions to a state party executive committee, or subsidiary thereof, or state party legislative caucus committee which, in the aggregate, exceed the value of \$10,000 in any calendar year: *Provided*, That a person may not earmark or otherwise designate any portion of a contribution made pursuant to this section to be used to support or oppose the election of a particular candidate: *Provided, however*, That any such designation or earmark that accompanies a contribution made pursuant to this subsection shall not be binding on the entity that receives the contribution.

(d) On the last day of every calendar year in which an election for House of Delegates is held, the Secretary of State shall adjust the dollar values for the fixed dollar amounts for limitations on contributions under this chapter by comparing the percentage increase or decrease in the consumer price index by the corresponding consumer price index since the same date after the last such regular election year, as determined by the most comprehensive index of consumer prices available for West Virginia from the Bureau of Labor Statistics of the United States Department of Labor. The Secretary of State shall multiply these thresholds by that percentage change in the consumer price index, and shall round up each dollar value adjustment made to the nearest \$100. The State Election Commission shall announce the adjustments made under this subsection within thirty days after the relevant index of consumer prices is published.

(e) *Prohibition against contributions by foreign nationals.* –

(1) It shall be unlawful for:

(A) A foreign national, directly or indirectly, to make:

(i) A contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a state or local election;

(ii) A contribution or donation to a committee of a political party;
or

(iii) A political expenditure, independent expenditure or disbursement for an electioneering communication, as those terms are defined in this article; or

(B) A person to solicit, accept or receive a contribution or donation described in subparagraph (i) or (ii), paragraph (A) of this subdivision.

(2) As used in this section, the term “foreign national” means:

(A) A foreign principal, as such term is defined in 22 U. S. C. § 611(b), which includes:

(i) A government of a foreign country;

(ii) A foreign political party;

(iii) A person outside of the United States, unless it is established that such person:

(I) Is an individual and a citizen of the United States; or

(II) That such person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(iv) A partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country; and

(B) An individual who is not a citizen of the United States or a national of the United States, as defined in 8 U. S. C. §1101(a)(22), and who is not lawfully admitted for permanent residence, as defined by 8 U. S. C. §1101(a)(20).

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any ~~person~~, candidate, ~~financial agent~~ or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more than one year, or both, in the discretion of the court. Sixty days after any primary or other election, the Secretary of State, or county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent or treasurer resides, is located or has its principal place of business.

(b) (1) Any ~~person~~, candidate, ~~financial agent~~ or treasurer of a political ~~party~~ committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement ~~may~~ shall be assessed a civil penalty by the Secretary of State of ~~\$25~~ \$10 a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political ~~party~~ committee and forward copies of such delinquent, incomplete or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to this section shall be payable to the State of West Virginia and is collectible as authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of

the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The Secretary of State shall publish online a list of all late filing violators for each deadline in an election cycle. This list shall be maintained and be publicly available online to include late activity for the previous five years to the current year.

~~(4)~~ (5) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

~~(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by this article, shall have his or her name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his or her financial agent, if any, the financial statement relating to nominations required by this article. (1) Any candidate, whether nominated by primary election or appointed by executive committee or executive committee chair, who has failed to file any sworn statement as required by this article, relating to the immediately preceding primary election for any office by the eighty-fourth day before the general election, is disqualified and may not have his or her name appear on the general election ballot. The provisions of subsection (d), section five-b of this article notwithstanding, any sworn statement filed after the deadline required by section five of this article must be received in the office indicated by subsection (a), section five-b of this article by the close of business on the eighty-fourth day before the general election.~~

(2) It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a any sworn statement as required by this article and no person may enter upon the duties of his or her

office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of such the statement.

§3-8-8. Corporation and membership organization contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) An officer, agent or person acting on behalf of any membership organization or any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may not pay, give, lend or authorize to be paid any money or other thing of value belonging to the corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(b) A person may not solicit or receive any payment, contribution or other thing from any membership organization or corporation or from any officer, agent or other person acting on behalf of the membership organization or corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(c) (1) The provisions of this section do not prohibit a membership organization or corporation from soliciting, through any officer, agent or person acting on behalf of the membership organization or corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees;

(2) It is unlawful for:

(A) A membership organization, corporation or separate segregated fund to make a primary or other election contribution or expenditure by using money or anything of value secured: (i) By

physical force, job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial reprisal; or (iii) as a condition of employment;

(B) Any person soliciting a membership organization member, stockholder or executive or administrative personnel and members of their families for a contribution to a membership organization, corporation or separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a contribution to a membership organization, corporation or separate segregated fund to fail to inform the person solicited at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) A separate segregated fund established by a membership organization or corporation: (i) To solicit contributions to the fund from any person other than the membership organization's members or the corporation's stockholders, ~~and~~ their families and ~~its~~ their executive or administrative personnel and their families; or (ii) to contribute any membership organization or corporate funds;

(E) A separate segregated fund established by a membership organization or corporation to receive contributions to the fund from any person other than the membership organization's members or corporation's stockholders, ~~and~~ their immediate families and ~~its~~ their executive or administrative personnel and their immediate families;

(F) A membership organization or corporation to engage in job discrimination or to discriminate in job promotion or transfer because of a member's or an employee's failure to make a contribution to the membership organization or corporation or a separate segregated fund;

(G) A separate segregated fund to make any contribution, directly or indirectly, in excess of ~~\$1,000~~ the amounts permitted in section

five-c of this article in connection with or on behalf of any campaign for nomination or election to any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any such office;

(H) A membership organization or corporation to pay, give or lend or to authorize payment, giving or lending of any moneys or other things of value belonging to the membership organization or corporation to a separate segregated fund for the purpose of making a contribution to a candidate or a candidate's committee. This provision does not prohibit a separate segregated fund from using the property, real or personal, facilities and equipment of a membership organization or corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (d) of this section: *Provided*, That any such membership organization or corporation shall also permit any group of its employees represented by a bona fide political action committee to use the real property of the membership organization or corporation solely to establish, administer and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission promulgated in accordance with said subsection.

(3) For the purposes of this section, the term "executive or administrative personnel" means individuals employed by a membership organization or corporation who are paid on a salary rather than hourly basis and who have policy-making, managerial, professional or supervisory responsibilities.

(d) Any person, membership organization or corporation violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000. A membership organization or corporation may not reimburse any person the amount of any fine imposed pursuant to this section.

(e) To ensure uniform administration and application of the provisions of this section and of those of the Federal Election Campaign Act Amendments of 1976 relating to membership organization and corporate contributions, the State Election Commission 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 section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 2 U. S. C. §441b.

(f) In addition to the powers and duties set forth in article one-a of this chapter, the State Election Commission has the following powers and duties:

(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(g) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(h) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State Election Commission

and shall remain undisclosed except upon an indictment by a grand jury.

(i) Any person who discloses the fact of any complaint, investigation or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and shall be confined in jail not less than six months nor more than one year.

~~(j) The amendments to this section enacted during the second extraordinary session of 2008 are intended to conform to the existing proscription to constitutionally permissible limits and not to create a new offense or offenses.~~

~~(k) The effective date of the amendments to this section enacted during the second extraordinary legislative session of 2008 is October 1, 2008.~~

§3-8-8a. Disclosure requirements for covered organizations.

(a) *Disclosure statement.* –

(1) Any covered organization that makes political disbursements aggregating more than \$1,000 in a calendar year shall, not later than forty-eight hours after the \$1,000 threshold is met, file a statement with the Secretary of State that contains the information described in subdivision (2) of this subsection. Subsequent reports shall be filed within forty-eight hours of each additional campaign-related political expenditure aggregating more than \$1,000:

(A) In the case of the first statement filed under this subsection, for the period beginning on the first day of the preceding calendar year and ending on the first such disclosure date; and

(B) In the case of any subsequent statement filed under this subsection, for the period beginning on the previous disclosure date and ending on such disclosure date.

(2) The information to be included in the statement required by this subsection is as follows:

(A) The name of the covered organization and the principal place of business of that organization.

(B) The amount of each campaign-related disbursement made by that organization during the period covered by the statement of more than \$1,000.

(C) In the case of a campaign-related disbursement that is not a covered transfer, the election to which the campaign-related disbursement pertains and, if the disbursement is made for a public communication, the name of any candidate identified in that communication and whether that communication is in support of or in opposition to that candidate.

(D) A certification by the chief executive officer or the head of the covered organization that the campaign-related disbursement is not made in cooperation, consultation or concert with or at the request or suggestion of a candidate, authorized committee or agent of a candidate, political party or agent of a political party.

(E) If the covered organization makes campaign-related disbursements exclusively using funds in a segregated bank account consisting of funds that were contributed, donated, transferred or paid directly to that account by persons other than the covered organization that controls the account, for each contribution, donation, transfer, payment of dues or other payment to the account:

(i) The name and address of each person who made that contribution, donation, transfer, payment of dues or other payment during the period covered by the statement: *Provided*, That if an individual's contribution is \$250 or less, then the individual's name alone should be reported;

(ii) The date and amount of that contribution, donation, transfer, payment of dues or other payment; and

(iii) The aggregate amount of all those contributions, donations, transfers, payments of dues and other payments made by the person during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(F) Subject to subdivision (4) of this subsection, if the covered organization makes campaign-related disbursements using funds other than funds in a segregated bank account described in paragraph (E) of this subdivision, for each contribution, donation, transfer or payment of dues to the covered organization:

(i) The name and address of each person who made that contribution, donation, transfer or payment of dues during the period covered by the statement: *Provided*, That if an individual's contribution is \$250 or less, then the individual's name alone should be reported;

(ii) The date and amount of that contribution, donation, transfer or payment of dues; and

(iii) The aggregate amount of all those contributions, donations, transfers and payments of dues made by the person during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) *Exceptions.* –

(A) The requirement to include in a statement filed under subdivision (1) of this subsection the information described in subdivision (1) of this subsection does not apply to amounts received by the covered organization in the ordinary course of any trade or business conducted by the covered organization or in the form of investments in the covered organization.

(B) *Donor restriction on use of funds.* – The requirement to include in a statement submitted under subdivision (1) of this subsection the information described in paragraph (F), subdivision (2) of this subsection does not apply if:

(i) The person described in that subdivision prohibited, in writing, the use of the contribution, donation, transfer, payment of dues or other payment made by that person for campaign-related disbursements; and

(ii) The covered organization agreed to follow the prohibition and deposited the contribution, donation, transfer, payment of dues or other payment in an account which is segregated from any account used to make campaign-related disbursements.

(4) *Disclosure date.* –

(A) Except as provided in paragraph (B) of this subdivision, the term “disclosure date” means:

(i) The first date during any calendar year by which a person has made campaign-related disbursements aggregating more than \$1,000; and

(ii) Each date following the date described in subparagraph (i) of this paragraph during that calendar year by which a person has made campaign-related disbursements aggregating more than \$1,000.

(B) In the case of a statement filed with respect to a campaign-related disbursement which is a covered transfer described in paragraph (E), subdivision (1), subsection (f) of this section, the term “disclosure date” means the date on which the covered organization making that transfer knew or should have known that the recipient of that transfer made campaign-related disbursements in an aggregate amount of \$50,000 or more during the two-year period beginning on the date of the transfer.

(b) *Coordination with other provisions.* – A segregated bank account referred to in paragraph (E), subdivision (2), subsection (a) of this section may be treated as a separate segregated fund for purposes of Section 527(f)(3) of the Internal Revenue Code of 1986.

(c) *Filing.* – Statements required to be filed under subsection (a) of this section shall be subject to the requirements of subsection (h), section two of this article to the same extent and in the same manner as if those reports had been required under said section.

(d) *Campaign-related disbursement defined.* – As used in this section, the term “campaign-related disbursement” means a disbursement by a covered organization for any of the following:

(1) An independent expenditure consisting of a public communication, as defined in section two of this article;

(2) An electioneering communication, as defined in section two of this article; or

(3) A covered transfer.

(e) *Covered organization defined.* – In this section, the term “covered organization” means any of the following:

(1) A membership organization, corporation and any other legal entity, including, but not limited to, a limited liability company, limited liability partnership, cooperative, estate, trust, partnership or other legal entity authorized to exist by the laws of this state, another state or the federal government;

(2) An organization described in Section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under Section 501(a) of that code;

(3) Any political organization under Section 527 of the Internal Revenue Code of 1986, other than a political committee under this article, except as provided in subdivision (4) of this subsection; or

(4) A political committee with an account established for the purpose of accepting donations or contributions that do not comply with the contribution limits or source prohibitions under this article, but only with respect to the accounts established for that purpose.

(f) *Covered transfer defined.* –

(1) *General.* – In this section, the term “covered transfer” means any transfer or payment of funds by a covered organization to another person if the covered organization:

(A) Designates, requests or suggests that the amounts be used for:

(i) Campaign-related disbursements other than covered transfers; or

(ii) Making a transfer to another person for the purpose of making or paying for that campaign-related disbursements;

(B) Made that transfer or payment in response to a solicitation or other request for a donation or payment for:

(i) The making of or paying for campaign-related disbursements other than covered transfers; or

(ii) Making a transfer to another person for the purpose of making or paying for those campaign-related disbursements;

(C) Engaged in discussions with the recipient of the transfer or payment regarding:

(i) The making of or paying for campaign-related disbursements other than covered transfers; or

(ii) Donating or transferring any amount of that transfer or payment to another person for the purpose of making or paying for those campaign-related disbursements;

(D) Made campaign-related disbursements other than a covered transfer in an aggregate amount of \$50,000 or more during the two-year period ending on the date of the transfer or payment, or knew or had reason to know that the person receiving the transfer or payment made those disbursements in that an aggregate amount during that two-year period; or

(E) Knew or had reason to know that the person receiving the transfer or payment would make campaign-related disbursements in an aggregate amount of \$50,000 or more during the two-year period beginning on the date of the transfer or payment.

(2) The term “covered transfer” does not include any of the following:

(A) A disbursement made by a covered organization in the ordinary course of any trade or business conducted by the covered organization or in the form of investments made by the covered organization.

(B) A disbursement made by a covered organization if:

(i) The covered organization prohibited, in writing, the use of that disbursement for campaign-related disbursements; and

(ii) The recipient of the disbursement agreed to follow the prohibition and deposited the disbursement in an account which is segregated from any account used to make campaign-related disbursements.

(3) *Exception for certain transfers among affiliates.* –

(A) The term “covered transfer” does not include an amount transferred by one covered organization to another covered organization which is treated as a transfer between affiliates under paragraph (B) of this subdivision if the aggregate amount transferred during the year by that covered organization to that same covered organization is equal to or less than \$50,000.

(B) A transfer of amounts from one covered organization to another covered organization shall be treated as a transfer between affiliates if:

(i) One of the organizations is an affiliate of the other organization; or

(ii) Each of the organizations is an affiliate of the same organization; except that the transfer shall not be treated as a transfer between affiliates if one of the organizations is established for the purpose of making campaign-related disbursements.

(C) For purposes of paragraph (B) of this subdivision, a covered organization is an affiliate of another covered organization if:

(i) The governing instrument of the organization requires it to be bound by decisions of the other organization;

(ii) The governing board of the organization includes persons who are specifically designated representatives of the other organization or are members of the governing board, officers or paid executive staff members of the other organization, or whose service on the governing board is contingent upon the approval of the other organization; or

(iii) The organization is chartered by the other organization.

(D) This subdivision applies with respect to an amount transferred by a covered organization to an organization described in paragraph (3), Section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under Section 501(a) of that code in the same manner as this paragraph applies to an amount transferred by a covered organization to another covered organization.

(g) Any person who makes a contribution for the purpose of funding an independent expenditure under this section shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual

is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(h) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of, or for, or against each candidate, as reported under this subsection, and periodically publish such indices on a timely preelection basis.

(i) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more than one year, or both fined and confined.

(j) (1) Any person who is required to file a statement under this section may file the statement by facsimile device or electronic mail, in accordance with such rules as the Secretary of State may promulgate.

(k) The Secretary of State shall make any document filed electronically pursuant to this subsection accessible to the public on the Internet not later than twenty-four hours after the document is received by the secretary.

(l) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section. In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified under any of the methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

(a) No financial agent or treasurer of a political committee shall pay, give or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment and other furnishing of offices to be used as political headquarters and for the payment of necessary ~~clerks, stenographers, typists, janitors and messengers~~ employees actually employed therein;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary ~~clerks, stenographers and typists~~ employees actually employed;

(3) For printing and distributing books, pamphlets, circulars and other printed matter and radio and television broadcasting and painting, printing and posting signs, banners and other advertisements, including contributions to charitable, educational or cultural events, for the promotion of the candidate, or the candidate's name ~~or an issue on the ballot~~;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents and committees and for stationery, postage, telegrams, telephone, express, freight and public messenger service;

(6) For preparing, circulating and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase “conducting of public opinion poll or polls” shall mean and be limited to the gathering, collection, collation and evaluation of information reflecting public opinion, needs and preferences as to any candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition or other matter to be voted on by the public at any election: *Provided*, That nothing herein shall prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For payment for food and drink for campaign-related purposes and for entertaining of campaign volunteers;

(12) For payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;

(13) For the payment of any fees associated with the campaign, except that a candidate may not pay any fines assessed against the candidate or the candidate’s committee pursuant to this article;

~~(11)~~ (14) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9) and (10) of this subsection;

~~(12)~~ (15) For the purchase of memorials, flowers or citations by political party executive committees or political action committees representing a political party;

~~(13)~~ (16) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within thirty days thereafter;

~~(14)~~ (17) For the payment of dues or subscriptions to any national, state or local committee of any political party without limitation;

(18) For transfers to any national, state or local committee of any political party when that committee is acting in the role of a vendor: *Provided*, That no such transfer shall involve any coordination between the candidate and the political party committee;

~~(15)~~ (19) For contributions to a county party executive committee, state party executive committee or a state party legislative caucus political committee;

(20) For any political expenditure; and

~~(16)~~ (21) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by section ten of this article.

(b) A political action committee may not contribute to another political action committee or receive contributions from another political action committee: *Provided*, That a political action committee may receive contributions from its national affiliate, if any.

(c) Every liability incurred and payment made shall be for the fair market value of the services rendered.

(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by section five-a of this article, the financial statements required by section five of this article at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by him the candidate which shall be in such form and filed in accordance with the provisions of section four of this article.

§3-8-9a. Expenditures by political party committees, political party caucuses and state candidates.

(a) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the state committee of a political party and political party caucus may make expenditures in an amount not to exceed \$20,000 in connection with the general election campaign of candidates for Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate and House of Delegates.

(b) For purposes of this section, all communications that are made in coordination with a candidate or candidate's committee must include a statement clearly identifying that the communications were made in coordination with the candidate or candidate's committee.

§3-8-10. Use of excess campaign contributions.

(a) Notwithstanding any provision of this code to the contrary, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be:

(1) Used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office; and

(2) Contributed by the candidate, after the general election, to:

(A) Any charitable organization or subsequent campaign by the same candidate, without limitation;

(B) Any national committee in accordance with federal requirements;

(C) Any state party executive committee or state party legislative caucus committee in an amount not to exceed ~~\$15,000~~ \$20,000 in a calendar year; or

(D) Any local committee of any political party in an amount not to exceed \$20,000; or

(E) Any other candidate for public office in accordance with the existing limitations on contributions.

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; public contractors; penalty.

(a) A person may not publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) An owner, publisher, editor or employee of a newspaper or other periodical may not insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision of the state. An officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office or room, occupied for any official purpose, may not knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision of the state.

(d) Except as provided in section eight of this article, a person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may not, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly, make any contribution to any political party, committee or candidate for public office or to any

person for political purposes or use; nor may any person or firm solicit any contributions for any purpose during any period.

(e) A person may not, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) Except as provided in section eight of this article, a person may not, directly or indirectly, make any contribution in excess of the ~~value of \$1,000~~ amounts permitted by section five-c of this article in connection with any campaign for nomination or election to or on behalf of any statewide office, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

(g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its existence and of the purposes for which it was formed. ~~During the two-year election cycle, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than \$1,000 from any one person prior to the primary election and contributions totaling more than \$1,000 from any one person after the primary and before the general election.~~

(h) ~~It is unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.~~

(~~h~~) (h) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person may not, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, ~~exceed the value of \$1,000~~ are in excess of the amounts permitted by section five-c of this article in any calendar year.

(~~j~~) (i) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party's legislative caucus political committee from national committees of the same political party: *Provided*, That transfers permitted by this subsection may not exceed \$50,000 in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: *Provided, however*, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(~~k~~) (j) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: *Provided*, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. A person may not coerce or intimidate any nonelective salaried employee into making a contribution. A person may not coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation or solicitation.

(~~l~~) A person may not solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive

~~as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.~~

~~(m)~~ (k) A person may not place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subsection does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term "roadside receptacle" means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

~~(n)~~ (l) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one year, or both fined and confined.

~~(o)~~ (m) The provisions of subsection (k) of this section permitting contributions to a campaign for or against a county or local government ballot issue shall become operable on and after January 1, 2005.

~~(p)~~ (n) The limitations on contributions established by subsection (g) of this section do not apply to contributions made for the purpose of supporting or opposing a ballot issue, including a constitutional amendment.

§3-8-14. Publication and distribution of statements and solicitations; charge for newspaper or magazine space.

(a) Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing

or any other type of general public political advertising, or whenever any person makes a disbursement for a campaign-related disbursement, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing or any other type of general public political advertising or makes a disbursement for an electioneering communication, that communication:

(1) If paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by that authorized political committee;

(2) If paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by those other persons and authorized by that authorized political committee; or

(3) If not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with that candidate's campaign, may charge any amount for that space which exceeds the amount charged for comparable use of that space for other purposes.

(c) *Specification.* – Any printed communication described in subsection (a) of this section shall:

(1) Be of sufficient type size to be clearly readable by the recipient of the communication;

(2) Be contained in a printed box set apart from the other contents of the communication; and

(3) Be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) *Additional requirements.* –

(1) *Communications by candidates or authorized persons.* –

(A) *By radio.* – Any communication described in subdivision (1) or (2), subsection (a) of this section which is transmitted through radio shall include, in addition to the requirements of that subdivision, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) *By television.* – Any communication described in subdivision (1) or (2), subsection (a) of this section which is transmitted through television shall include, in addition to the requirements of that subdivision, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement:

(i) Shall be conveyed by:

(I) An unobscured, full-screen view of the candidate making the statement; or

(II) The candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) Shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds.

(2) *Communications by certain political committees.* – Any communication described in subdivision (3), subsection (a) of this section which, except to the extent provided in the last sentence of this subdivision, is paid for by a political committee, including a political committee of a political party, and which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: “_____ is responsible for the content of this advertising.” The foregoing blank shall be filled in with the name of the political committee paying for the communication and the name of any connected organization of the payor. If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee making the statement, or by a representative of that political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds. This subdivision does not apply to a communication paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a and with respect to which a covered organization files a statement under that section.

(e) *Communications by others.* –

(1) Any communication described in subdivision (3), subsection (a) of this section which is transmitted through radio or television, other than a communication to which subdivision (2), subsection (d) of this section applies, shall include, in addition to the requirements of that subdivision, the following:

(A) The individual disclosure statement described in paragraph (A), subdivision (2) of this subsection if the person paying for the communication is an individual, or the organizational disclosure statement described in paragraph (B), subdivision (2) of this subsection if the person paying for the communication is not an individual.

(B) If the communication is transmitted through television and is paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a of this article the top five contributors list, if applicable, unless, on the basis of criteria established in rules promulgated by the Secretary of State, the communication is of such short duration that including the top five contributors list in the communication would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the content of the communication to consist of the top five contributors list.

(C) If the communication is transmitted through radio and is paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a of this section the top two contributors list, if applicable, unless, on the basis of criteria established in rules promulgated by the secretary, the communication is of such short duration that including the top two contributors list in the communication would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the content of the communication to consist of the top two contributors list.

(2) *Disclosure statements described.* –

(A) *Individual disclosure statements.* – The individual disclosure statement described in this paragraph is the following:

“I am _____, and I approve this message.”
The foregoing blank filled in with the name of the applicable individual.

(B) *Organizational disclosure statements.* The organizational disclosure statement described in this paragraph is the following: “I am _____, the _____ of _____, and _____ approves this message.”, with:

(i) The first blank to be filled in with the name of the applicable individual;

(ii) The second blank to be filled in with the title of the applicable individual; and

(iii) The third and fourth blanks each to be filled in with the name of the organization or other person paying for the communication.

(3) *Method of conveyance of statement.* –

(A) In the case of a communication to which this subsection applies which is transmitted through radio, the disclosure statements required under subdivision (1) of this subsection shall be made by audio by the applicable individual in a clearly spoken manner.

(B) In the case of a communication to which this subsection applies which is transmitted through television, the information required under subdivision (1) of this subsection:

(i) Shall appear in writing at the end of the communication or in a crawl along the bottom of the communication in a clearly readable manner, with a reasonable degree of color contrast between the background and the printed statement, for a period of at least six seconds; and

(ii) Shall also be conveyed by an unobscured, full-screen view of the applicable individual or by the applicable individual making the statement in voice-over accompanied by a clearly identifiable photograph or similar image of the individual, except in the case of a top five contributors list.

(4) *Definitions.* – In this subsection:

(A) “Applicable individual” means, with respect to a communication to which this subsection applies:

(i) If the communication is paid for by an individual, the individual involved;

(ii) If the communication is paid for by a corporation, the chief executive officer of the corporation or, if the corporation does not have a chief executive officer, the highest ranking official of the corporation; and

(iii) If the communication is paid for by any other person, the highest ranking official of that person.

(B) “Campaign-related disbursement” and “covered organization” have the meanings given them in section eight-a of this article.

(C) “Top five contributors list” means, with respect to a communication paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a, a list of the five persons who provided the largest payments of any type in an aggregate amount equal to or exceeding \$1,000 which are required under subsection (a), section eight-a of this article to be included in the reports filed by a covered organization with respect to that communication during the twelve-month period ending on the date of the disbursement and the amount of the payments each such person provided. If two or more people provided the fifth largest of those payments, the covered organization involved shall select one of those persons to be included on the top five contributors list.

(D) “Top two contributors list” means, with respect to a communication paid for, in whole or in part, with a payment which is treated as a campaign related disbursement under section eight-a of this article a list of the persons who provided the largest and the second largest payments of any type in an aggregate amount equal to or exceeding \$1,000 which are required under subsection (a) of that section to be included in the reports filed by a covered organization with respect to that communication during the twelve-month period ending on the date of the disbursement and the amount of the payments each such person provided. If two or more persons

provided the second largest of those payments, the covered organization involved shall select one of those persons to be included on the top two contributors list.

Following discussion,

The question being on the adoption of the amendment offered by Senators Trump and Kessler to the bill, the same was put and prevailed.

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill No. 541 was then read a third time and put upon its passage.

Pending discussion,

Senator Karnes moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for Senate Bill No. 541.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Beach, Facemire, Karnes, Laird, Prezioso and Unger—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 541) passed.

On motions of Senators Trump and Kessler, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for Senate Bill No. 541—A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9, §3-8-10, §3-8-12 and §3-8-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §3-8-1b, §3-8-1c, §3-8-5c, §3-8-8a and §3-8-9a, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying what committees qualify for a federal reporting exemption; modifying reporting requirements for independent expenditures; clarifying scope of reporting obligations by committee treasurers; requiring certain contributions be reported to State Election Commission within forty-eight hours of their receipt; requiring financial statements for candidates for State Senate, House of Delegates, circuit judge and family court judge to be filed electronically with Secretary of State; permitting certain financial statements to be filed by mail, in person or by facsimile or other electronic means; establishing a processing fee for financial statements not filed electronically; requiring Secretary of State to maintain an online searchable database; setting contribution limits for candidate nomination and general election; prohibiting contribution of moneys to general election campaign prior to candidate's nomination; providing for indexing of contribution limits; setting contribution limits to state party executive committee, or subsidiary thereof, or state party legislative caucus committee; prohibiting contributions by foreign nationals; directing Secretary of State to publish an online list of late filing violators; prohibiting contributions to candidates or candidate committees by corporations or membership organizations; clarifying and modifying disclosure requirements for covered organizations; identifying additional lawful election expenses; permitting coordinated contributions by state political party committees and political party caucuses for certain elections; identifying additional lawful expenditures for excess campaign funds; creating criminal offenses and setting

penalties; setting requirements for disclosures on certain communications; and setting requirements for the sale of newspaper or magazine space to candidates or their agents.

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

Thereafter, at the request of Senator Kirkendoll, and by unanimous consent, the remarks by Senators Romano, Trump and Kessler regarding Engrossed Committee Substitute for Senate Bill No. 541 were ordered printed in the Appendix to the Journal.

Action as to Engrossed Committee Substitute for Senate Bill No. 541 having been concluded, the Senate returned to the consideration of

Senate Bill No. 585, Relating to regulation of transportation network and taxicab companies.

On third reading, coming up in deferred order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was again reported by the Clerk.

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, §17H-1-15, §17H-1-16, §17H-1-17, §17H-1-18, §17H-2-1, §17H-2-2, §17H-2-3, §17H-2-4, §17H-2-5, §17H-2-6, §17H-2-7, §17H-2-8, §17H-2-9, §17H-2-10, §17H-2-11, §17H-2-12, §17H-2-

13, §17H-2-14, §17H-2-15, §17H-2-16, §17H-2-17 and §17H-2-18, all to read as follows:

CHAPTER 17H. TRANSPORTATION NETWORK AND TAXICAB COMPANIES.

ARTICLE 1. REGULATION OF TRANSPORTATION NETWORK COMPANIES.

§17H-1-1. Definitions.

As used in this article:

(a) “Transportation network company” or “TNC” means an entity licensed pursuant to this article and operating in West Virginia that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. A TNC is not deemed to own, control, operate or manage the vehicles used by TNC drivers and is not a taxicab company or a for-hire vehicle owner.

(b) “Transportation network company (TNC) driver” means an individual who operates a motor vehicle that is:

(1) Owned, leased or otherwise authorized for use by the individual;

(2) Not a taxicab; and

(3) Used to provide transportation network company services.

(c) “Transportation network company (TNC) service” means transportation of a passenger between points chosen by the passenger and prearranged with a TNC driver through the use of a TNC digital network or software application. TNC services begin when a TNC driver accepts a request for transportation received through the TNC’s digital network or software application service, continue while the TNC driver transports the passenger in the TNC

driver's vehicle and end when the passenger exits the TNC driver's vehicle. TNC service is not a taxicab or street hail service.

§17H-1-2. Exemption from Public Service Commission regulation.

TNCs or TNC drivers are not common carriers by motor vehicle or contract carriers by motor vehicle, or motor carriers, as defined in section two, article one, chapter twenty-four-a of this code, nor do they provide taxicab service. It is the express intent of this Legislature to exclude and exempt TNCs and TNC drivers from regulation of the Public Service Commission.

§17H-1-3. TNC permit required; permit fee; and use of fees.

(a) A person may not operate a TNC in West Virginia without first having obtained a permit from the Division of Motor Vehicles pursuant to this article.

(b) The Division of Motor Vehicles shall issue a permit to each applicant that meets the requirements for a TNC set forth in this article and has paid an annual permit fee of \$5,000 to the Division of Motor Vehicles. Any fees collected under the provisions of this article shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code. The Division of Motor Vehicles shall use the fees collected for the payment of the costs and expenses necessary for the administration of this article.

§17H-1-4. Agent.

A TNC shall maintain an agent for service of process in the State of West Virginia.

§17H-1-5. Fare charged for services.

A TNC may charge a fare for the TNC services provided to passengers: *Provided*, That if a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or

within the software application service. The TNC shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC driver's vehicle.

§17H-1-6. Identification of TNC vehicles and drivers.

The TNC's software application or website shall display a picture of the TNC driver, and the license plate number of the motor vehicle to be used for providing the TNC service before the passenger enters the TNC driver's vehicle.

§17H-1-7. Electronic receipt.

Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the passenger that lists:

- (a) The origin and destination of the trip;
- (b) The total time and distance of the trip; and
- (c) An itemization of the total fare paid, if any.

§17H-1-8. TNC and TNC driver insurance requirements.

(a) TNCs and TNC drivers shall comply with the automobile liability insurance requirements of this section.

(b) The following automobile liability insurance requirements apply during the time that a TNC driver is logged into the TNC's digital network and available to receive requests for transportation, but is not providing TNC services:

(1) Primary automobile insurance recognizes that the driver is a transportation network company driver and covers the driver's provision of TNC services while the driver is logged into the TNC's digital network.

(2) The primary automobile liability insurance required in subdivision (1) of this subsection shall meet at least the minimum coverage requirements of section two, article four, chapter seventeen-d and subsection (b), section thirty-one, article six, chapter thirty-three, both of this code: *Provided*, That the minimum coverage shall not be less than the amount of \$50,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$100,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$25,000 because of injury to or destruction of property of others in any one accident.

(3) The automobile liability insurance required in subsection (b) of this section may be satisfied by any of the following:

(A) Automobile liability insurance maintained by the TNC driver;
or

(B) Automobile liability insurance maintained by the TNC; or

(C) Any combination of paragraphs (A) and (B).

(c) While a TNC driver is providing TNC services, the TNC shall:

(1) Provide primary automobile liability insurance that recognizes the TNC driver's provision of TNC services;

(2) Provide automobile liability insurance of at least \$1 million for death, personal injury and property damage;

(3) Provide uninsured motorist coverage as required by subsection (b), section thirty-one, article six, chapter thirty-three of this code;

(4) The coverage requirements of this subsection may be satisfied by any of the following:

(A) Automobile liability insurance maintained by the TNC driver;
or

(B) Automobile liability insurance maintained by the TNC; or

(C) Any combination of paragraphs (A) and (B).

(d) In every instance where insurance maintained by a TNC driver to fulfill the insurance requirements of this section has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a TNC shall provide the coverage required by this section beginning with the first dollar of a claim.

(e) Insurance required by this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-three of this code.

(f) Insurance required by this section satisfies the financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of this code.

§17H-1-9. TNC and insurer disclosure requirements.

(a) The TNC shall disclose in writing to TNC drivers the following before they are allowed to accept a request for TNC services on the TNC's digital network:

(1) The insurance coverage and limits of liability that the TNC provides while the TNC driver uses a personal vehicle in connection with a TNC's digital network;

(2) That the TNC driver's own insurance policy, depending on its terms, may not provide coverage while the TNC driver uses a vehicle in connection with a TNC's digital network; and

(3) That the TNC driver should identify each vehicle used to provide TNC services to his or her insurer.

(b) In a claims coverage investigation, the TNC's insurer and any insurer providing coverage under this section shall cooperate to facilitate the exchange of information, including the precise times that a TNC driver logged on and off of the TNC's digital network in the 24-hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.

§17H-1-10. Zero tolerance for drug or alcohol use.

(a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC services, and shall provide notice of this policy on its website. The website shall set forth procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend the TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The TNC shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a passenger complaint is received by the TNC.

§17H-1-11. TNC driver requirements.

(a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(1) Require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance and other information required by the TNC;

(2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include review of a:

(A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offender Registry database;

(3) Obtain and review a driving history research report for the applicant.

(b) The TNC shall deny the application an individual to act as a TNC driver on its digital platform who:

(1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period, including, but not limited to, attempting to evade the police, reckless driving or driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, theft, acts of violence or acts of terror;

(3) Is a match in the National Sex Offender Registry database;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicles used to provide TNC services;

(6) Does not possess proof of automobile liability insurance for the motor vehicles used to provide TNC services; or

(7) Is not at least nineteen years of age.

§17H-1-12. Vehicle safety.

The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC services meets the inspection requirements of section four, article sixteen, chapter seventeen-c of this code or the inspection requirements of the state in which the motor vehicle is registered.

§17H-1-13. Street hails prohibited.

A TNC driver shall exclusively accept rides booked through a TNC's digital network or software application service and may not solicit or accept street hails.

§17H-1-14. No cash trips.

The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC drivers of the policy. TNC drivers may not solicit or accept cash payments from passengers. Any payment for TNC services shall be made only electronically using the TNC's digital network or software application.

§17H-1-15. No discrimination; accessibility.

(a) The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity with respect to passengers and potential passengers and notify TNC drivers of the policy.

(b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers on the

basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity.

(c) TNC drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing TNC services to persons with physical disabilities because of those disabilities.

(e) A TNC shall provide passengers an opportunity to indicate that they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

§17H-1-16. Records.

A TNC shall maintain:

(a) Individual trip records for at least one year from the date each trip was provided; and

(b) TNC driver records at least until the one-year anniversary of the date on which a TNC driver's activation on the TNC digital network has ended.

§17H-1-17. Personally identifiable information.

A TNC may not disclose a passenger's personally identifiable information to a third party unless: The passenger consents, disclosure is required by a legal obligation, disclosure is required to protect or defend the terms of use of the TNC service or to investigate violations of those terms. A TNC may also share a passenger's name and telephone number with the TNC driver providing TNC services to the passenger in order to facilitate correct identification of the passenger by the TNC driver or to facilitate communication between the passenger and the TNC driver.

§17H-1-18. Rules; controlling authority.

The Commissioner of the Division of Motor Vehicles may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the implementation and exercise of the authority granted by this article and the oversight of TNCs and TNC drivers. Notwithstanding any other provision of law, TNCs and TNC drivers are governed exclusively by this article and any rules promulgated by the Division of Motor Vehicles consistent with this article. A municipality or other local entity may not impose a tax on, or require a license for, a TNC or TNC driver or subject a TNC to the municipality or other local entity's rate, entry, operational or other requirements.

ARTICLE 2. TAXICAB COMPANIES.**§17H-2-1. Definitions.**

As used in this article:

(a) "Taxicab" means a motor vehicle equipped with at least (3) doors and having a seating capacity of less than 15 passengers.

(b) "Taxicab company" means an entity licensed pursuant to this article and operating in West Virginia that uses a dispatch system, hail system, digital network or software application service or any other means to connect passengers to taxicab services provided by taxicab drivers or individual taxicab drivers. A taxicab company is not a transportation network company, pursuant to chapter seventeen-h of this code.

(c) "Taxicab driver" or "TD" means an individual who operates a motor vehicle that is owned or leased by the taxicab company.

(d) "Individual taxicab driver" or "ITD" means an individual operating his own vehicle in connection with a taxicab company's

dispatch system, hail system, digital network or software application service.

(e) “Taxicab service” means transportation of a passenger between points chosen by the passenger and arranged with a TD or ITD through the use of a taxicab company dispatch system, hail system, digital network or software application. Taxicab services begin when a TD or ITD accepts a request for transportation received through the taxicab company’s dispatch system, hail system, digital network or software application service, continue while the TD or ITD transports the passenger in the TD’s or ITD’s vehicle, and end when the passenger exits the TD’s or ITD’s vehicle. Taxicab service does not include transportation network service under this chapter.

§17H-2-2. Exemption from Public Service Commission regulation.

On the effective date of this article, notwithstanding any other provisions of the laws of the State of West Virginia to the contrary, no taxicab company or taxicab service is subject to Public Service Commission jurisdiction under this code and is not subject to Public Service Commission motor carrier rules.

§17H-2-3. Taxicab company permit required; permit fee.

(a) A person may not operate a taxicab company in West Virginia without first having obtained a permit from the Division of Motor Vehicles pursuant to this article.

(b) The Division of Motor Vehicles shall issue a permit to each applicant that meets the requirements for a taxicab company set forth in this article and has paid an annual permit fee of \$5,000 to the Division of Motor Vehicles. Any fees collected under the provisions of this article shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code. Fees collected shall be used by the Division of Motor Vehicles for the payment of the costs and expenses necessary for the administration of this article.

§17H-2-4. Agent.

A taxicab company shall maintain an agent for service of process in the State of West Virginia.

§17H-2-5. Fare charged for services.

A taxicab company may charge a fare for the taxicab services provided to passengers: *Provided*, That if a fare is charged, the taxicab company shall disclose to passengers the fare calculation method on its website or within the software application service. The taxicab company shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TD's or ITD's vehicle.

§17H-2-6. Identification of taxicab company vehicles and drivers.

The taxicab company's software application or website shall display a picture of the TD or ITD and the license plate number of the motor vehicle utilized for providing the taxicab service before the passenger enters the TD's or ITD's vehicle when the passenger books a trip using a software system.

§17H-2-7. Electronic receipt.

When a passenger uses a software system, within a reasonable period of time following the completion of a trip, a taxicab company shall transmit an electronic receipt to the passenger that lists:

- (a) The origin and destination of the trip;
- (b) The total time and distance of the trip; and
- (c) An itemization of the total fare paid, if any.

§17H-2-8. Insurance requirements for taxicab company and TD and ITD.

(a) Taxicab company and TDs and ITDs shall comply with the automobile liability insurance requirements of this section.

(b) The following automobile liability insurance requirements apply during the time that an ITD is using his or her personal vehicle and logged into the taxicab company's digital network and available to receive requests for transportation, but is not providing taxicab services.

(1) Primary automobile insurance recognizes that the driver is an ITD and covers the driver's provision of TNC services while the driver is logged into the taxicab service's digital network.

(2) The primary automobile liability insurance required in subdivision (1) of this subsection shall meet at least the minimum coverage requirements of section two, article four, chapter seventeen-d and subsection (b), section thirty-one, article six, chapter thirty-three, both of this code: *Provided*, That the minimum coverage shall not be less than the amount of \$50,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$100,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$25,000 because of injury to or destruction of property of others in any one accident.

(3) The automobile liability insurance required in subdivision (1) of this subsection may be satisfied by any of the following:

(A) Automobile liability insurance maintained by the TD or ITD;
or

(B) Automobile liability insurance maintained by the taxicab company; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(c) While an ITD is providing taxicab services while using his or her personal vehicle, the taxicab company shall:

(1) Provide primary automobile liability insurance that recognizes the ITD's provision of taxicab services;

(2) Provide automobile liability insurance of at least \$1 million for death, personal injury and property damage;

(3) Provide uninsured motorist coverage as required by subsection (b), section thirty-one, article six, chapter thirty-three of this code;

(4) The coverage requirements of this subsection may be satisfied by any of the following:

(A) Automobile liability insurance maintained by the ITD; or

(B) Automobile liability insurance maintained by the taxicab company; or

(C) Any combination of paragraphs (A) and (B) of this subdivision.

(d) In every instance where insurance maintained by the ITD to fulfill the insurance requirements of this section has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a taxicab company shall provide the coverage required by this section beginning with the first dollar of a claim.

(e) The following automobile liability insurance requirements apply at all times for taxicabs owned or leased by taxicab companies:

(1) A minimum of \$100,000 limit for bodily injuries to or death of one person;

(2) A minimum of \$200,000 limit for bodily injuries to or death of all persons injured or killed in any one accident;

(3) A minimum of \$25,000 limit for loss or damage in any one accident to property of others (excluding cargo).

(f) Insurance required by this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-three of this code.

(g) Insurance required by this section satisfies the financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of this code.

§17H-2-9. Taxicab company and insurer disclosure requirements.

(a) The taxicab company shall disclose in writing to ITDs the following before they are allowed to accept a request for taxicab services on the taxicab company's digital network:

(1) The insurance coverage and limits of liability that the taxicab company provides while the ITD uses a personal vehicle in connection with a taxicab company's digital network;

(2) That the ITD's own insurance policy may not provide coverage while the ITD uses a personal vehicle in connection with a taxicab company's digital network depending on its terms; and

(3) That the ITD should identify each vehicle used to provide taxicab services to his or her insurer.

(b) In a claims coverage investigation, taxicab company's and any insurer providing coverage under this section shall cooperate to facilitate the exchange of information, including the precise times that a TD or ITD logged on and off of the taxicab company's digital network in the 24-hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.

§17H-2-10. Zero tolerance for drug or alcohol use.

(a) The taxicab company shall implement a zero tolerance policy on the use of drugs or alcohol while a TD or ITD is providing taxicab services or is logged into the taxicab company's digital network but is not providing taxicab services and shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of such passenger complaint alleging a violation of the zero tolerance policy, the taxicab company shall immediately suspend such TD's or ITD's access to the taxicab company's digital platform and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The taxicab company shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a passenger complaint is received by the taxicab company.

§17H-2-11. Taxicab driver and individual taxicab driver requirements.

(a) Prior to permitting an individual to act as a TD or ITD on its dispatch system, hail system or digital platform, the taxicab company shall:

(1) Require the individual to submit an application to the taxicab company, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance and other information required by the taxicab company;

(2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include review of a:

(A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offender Registry database;

(3) Obtain and review a driving history research report for such individual.

(b) The taxicab company may not permit an individual to act as a TD or ITD on its digital platform who:

(1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period, including, but not limited to, attempting to evade the police, reckless driving or driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence or acts of terror;

(3) Is a match in the National Sex Offender Registry database;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicle(s) used to provide taxicab services;

(6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide taxicab services; or

(7) Is not at least nineteen years of age.

§17H-2-12. Vehicle safety and emissions.

The taxicab company shall require that any motor vehicle that a TD or ITD will use to provide taxicab services meets the inspection

requirements of section four, article sixteen, chapter seventeen-c of this code or the inspection requirements of the state in which the motor vehicle is registered.

§17H-2-13. Street hails.

An ITD driver shall exclusively accept rides booked through a taxicab company's dispatch system, hail system or digital platform and may not solicit or accept street hails. Only TDs may solicit or accept street hails.

§17H-2-14. Cash trips.

TDs and ITDs may solicit or accept cash payments from passengers.

§17H-2-15. No discrimination; accessibility.

(a) The taxicab company shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity with respect to passengers and potential passengers and notify TDs and ITDs of such policy.

(b) TDs and ITDs shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity.

(c) TDs and ITDs shall comply with all applicable laws relating to accommodation of service animals.

(d) A taxicab company shall not impose additional charges for providing taxicab services to persons with physical disabilities because of those disabilities.

(e) A taxicab company shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a taxicab company cannot arrange wheelchair-accessible taxicab

service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

§17H-2-16. Records.

A taxicab company shall maintain:

(a) Individual trip records for at least one year from the date each trip was provided; and

(b) TD or ITD records at least until the one-year anniversary of the date on which a TD's or ITD's activation on the taxicab company digital network has ended.

§17H-2-17. Personally identifiable information.

A taxicab company may not disclose a passenger's personally identifiable information to a third party unless: The passenger consents, disclosure is required by a legal obligation, disclosure is required to protect or defend the terms of use of the taxicab service or to investigate violations of those terms. In addition to the foregoing, a taxicab company is permitted to share a passenger's name and/or telephone number with the TD or ITD providing taxicab services to such passenger in order to facilitate correct identification of the passenger by the TD or ITD or to facilitate communication between the passenger and the TD or ITD.

§17H-2-18. Rules; controlling authority.

The Commissioner of the Division of Motor Vehicles may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the implementation and exercise of the authority granted by this article and the oversight of taxicab companies and TDs or ITDs. Notwithstanding any other provision of law, taxicab companies and TDs or ITDs are governed exclusively by this article and any rules promulgated by the Division of Motor Vehicles consistent with this article. No municipality or other local entity may impose a tax on, or require a license for, a taxicab company or TD

or ITD or subject a taxicab company to the municipality or other local entity's rate, entry, operational or other requirements.

The bill, as just amended, was ordered to engrossment.

Engrossed Senate Bill No. 585 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Takubo—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 585) passed.

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

Eng. Senate Bill No. 585—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, §17H-1-15, §17H-1-16, §17H-1-17, §17H-1-18, §17H-2-1, §17H-2-2, §17H-2-3, §17H-2-4, §17H-2-5, §17H-2-6, §17H-2-7, §17H-2-8, §17H-2-9, §17H-2-10, §17H-2-11, §17H-2-12, §17H-2-13, §17H-2-14, §17H-2-15, §17H-2-16, §17H-2-17 and §17H-2-18, all relating to regulation of transportation network companies and regulation of taxicab companies; defining terms; establishing a permit and permit fee; establishing requirements relating to insurance, disclosures,

transportation network companies and its drivers, safety and records; limiting controlling authority; permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval; exempting taxicab companies from the regulatory jurisdiction of Public Service Commission; establishing a permit and permit fee; establishing requirements relating to insurance, disclosures, taxicab companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval.

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

The Senate proceeded to the thirteenth order of business.

At the request of Senator Plymale, unanimous consent being granted, it was ordered that the Journal show had Senator Plymale been present in the chamber in earlier proceedings today, he would have voted “yea” on the passage of Engrossed Committee Substitute for Senate Bill No. 234, Engrossed Committee Substitute for Senate Bill No. 320, Engrossed Committee Substitute for Senate Bill No. 325, Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 352, Engrossed Senate Bill No. 363, Engrossed Committee Substitute for Senate Bill No. 366, Engrossed Committee Substitute for Senate Bill No. 446, Engrossed Committee Substitute for Senate Bill No. 453, Engrossed Committee Substitute for Senate Bill No. 542, Engrossed Senate Bill No. 582, Engrossed Senate Bill No. 583 and Engrossed Senate Bill No. 584.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Thursday, March 5, 2015, at 11 a.m.

THURSDAY, MARCH 5, 2015

The Senate met at 11 a.m.

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

Prayer was offered by Bishop Joe Thomas, Nondenominational Fellowship Pentecostal Ministries, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mitch Carmichael, a senator from the fourth district.

Pending the reading of the Journal of Wednesday, March 4, 2015,

On motion of Senator Palumbo, the Journal was approved and the further reading thereof dispensed with.

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

The Clerk presented a communication from the Division of Juvenile Services, submitting its annual report as required by chapter forty-nine, article five, section thirteen-e of the Code of West Virginia.

Which communication and report were received and filed with the Clerk.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced that that body had agreed to the effective date, to take effect April 13, 2015, of

Eng. Com. Sub. for Senate Bill No. 361, Eliminating prevailing hourly wage requirement for construction of public improvements.

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

Com. Sub. for Senate Concurrent Resolution No. 14, Requesting DOH erect signs in Marion County designated “Home of Francis H. Pierpont, Father of West Virginia and Governor of Restored Virginia”.

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

Eng. Com. Sub. for House Joint Resolution No. 13—Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof by adding thereto a new section, designated section one-d, relating to homestead exemption increase; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2148—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and to amend and reenact §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of alcoholic beverages in certain areas of vehicles; providing comity with federal law governing open containers of alcoholic beverages in vehicles; providing penalties; defining terms; providing exceptions; and specifying procedure upon arrest.

Referred to the Committee on Transportation and Infrastructure.

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

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

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

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

Senators M. Hall, Walters and Prezioso.

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

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

Eng. House Bill No. 2226—A Bill to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-43a of said code, all relating to railroads and railways generally; providing a refundable exemption from the flat rate component of the state motor fuel excise tax on all gallons of motor fuel sold for use or consumed in railroad diesel locomotives beginning on January 1, 2017; and expiring, nulling and voiding provisions requiring the Tax Commissioner to pay into the Special Railroad and Intermodal Enhancement Fund any amount from annual collections of the state corporate net income tax for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state

bonds issued for railway purposes, as approved by the West Virginia Public Port Authority, on and after July 1, 2015.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2233—A Bill to amend and reenact §29A-3-16 of the Code of West Virginia, 1931, as amended, relating to requiring the Legislative Rule-Making Committee with the assistance of the Legislative Auditor’s Office to review each interpretive, procedural and legislative rule promulgated in or after 2015 within at least five years from its effective date, and make recommendations to the Legislature for modification or repeal of any such rule; and requiring submission of summary of findings and recommendations to the Joint Committee on Government and Finance.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2263—A Bill to amend and reenact §49-4-501 and §49-4-502 of the Code of West Virginia, 1931, as amended, relating to the responsibilities of prosecuting attorneys when representing the Department of Health and Human Resources; clarifying the independence of prosecuting attorneys in abuse and neglect matters and explaining the nature of the attorney-client relationship; and establishing procedure when a dispute or conflict arises.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2366—A Bill to amend and reenact §61-3C-14b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8A-4 of said code, all relating generally to the solicitation of minors; clarifying the law pertaining to the use of a computer to solicit a minor; deleting reference to offenses defined in the Uniform Controlled Substances Act; defining a new felony offense of soliciting a minor through use of a computer and traveling to engage in prohibited sexual activity with the minor; setting a new criminal penalty; and prohibiting the use or distribution of obscene materials by an adult to solicit or seduce a minor, or a person believed to be a minor, for unlawful sexual activity.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2429—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-12A-1, §15-12A-2 and §15-12A-3, relating to requiring a convicted sex offender who volunteers for an organization whose volunteers have contact with minors to inform that organization of his or her conviction; providing legislative intent and findings; requiring the organization that accepts the sex offender as a volunteer to notify the parents or guardians of those minors of his or her conviction; providing for a limited immunity for organizations; and setting forth penalties.

Referred to the Committee on the Judiciary.

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

Eng. House Bill No. 2479—A Bill to amend and reenact §60-7-10 of the Code of West Virginia, 1931, as amended, relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs; clarifying that the grant of authority to the Alcohol Beverage Control Commissioner and his or her agents to enter and inspect the premises of a private club does not limit or restrict the authority of local law enforcement to enter any public area on or adjacent to any private club or taking other appropriate police action or investigation to enforce the underage drinking laws of this state.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2518—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-16-18, relating to requiring insurers issuing group accident and sickness insurance policies to certain employers to furnish claims loss experience to policyholders upon request of a policyholder; identifying the claims loss experience information to be provided; and providing claims information may not include information prohibited from disclosure by any applicable federal or state law.

Referred to the Committee on Banking and Insurance.

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

Eng. Com. Sub. for House Bill No. 2549—A Bill to amend and reenact §7-5-16 of the Code of West Virginia, 1931, as amended, relating to changing the deadline of disclosure of county financial statements; requiring publication as a Class I-0 legal advertisement of

the county financial statements; and permitting counties to publish financial statements on the county's website.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill No. 2557—A Bill to amend and reenact §33-6-29 of the Code of West Virginia, 1931, as amended, relating generally to motor vehicle insurance policies and coverage provided for rented or leased motor vehicles; clarifying that an insured driver of a motor vehicle is covered by the driver's motor vehicle insurance policy when renting or leasing a motor vehicle; and providing that if the driver renting or leasing a motor vehicle does not have motor vehicle insurance coverage, the rental or leasing car company is the provider of security.

Referred to the Committee on Banking and Insurance.

A message from The Clerk of the House of Delegates announced that that body had agreed to the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. House Bill No. 2576, Creating new code sections which separate the executive departments.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Arvon, Hill and R. Phillips.

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

Eng. Com. Sub. for House Bill No. 2636—A Bill to amend and reenact §29B-1-2 and §29B-1-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29B-1-3a; to amend and reenact §29B-1-4 of said code; and to amend and reenact §61-7-4 of said code, all relating to the Freedom of Information Act; redefining the term “public record”; defining and exempting certain fees and costs for reproduction of records; directing the Secretary of State to establish a database of Freedom of Information requests and publication on the Secretary of State’s website; directing public bodies to report Freedom of Information request information to the Secretary of State; authorizing emergency and legislative rulemaking authority to the Secretary of State; establishing a presumption of public accessibility to public records; revising the exemption for communications received or prepared by any public body; exempting information contained in a concealed weapon permit application from the Freedom of Information Act; authorizing disclosure of exempt information to law enforcement agency; protecting the confidentiality of information collected in an application for a concealed weapon permit; and providing criminal penalties.

Referred to the Committee on the Judiciary.

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

Eng. House Bill No. 2645—A Bill to amend and reenact §18C-4A-1, §18C-4A-2, and §18C-4A-3 of the Code of West Virginia, 1931, as amended, all relating to modifying the Underwood-Smith Teacher Loan Assistance Program; increasing annual award from program; and expanding teacher eligibility for program awards.

Referred to the Committee on Education.

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

Eng. House Bill No. 2664—A Bill to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to creating “Andrea and Willy’s Law”; and increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2688—A Bill to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4 and §22C-9-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22C-9-7a, all relating to oil and gas conservation; reconstituting the membership of the Oil and Gas Conservation Commission; providing for the unitization of interests in drilling units in connection with horizontal oil or gas wells generally; setting forth application requirements; establishing the standard of review; providing for unit orders; requiring notice and timeliness; providing for hearings; addressing oil and gas produced from horizontal wells, vertical wells and unconventional reservoirs; providing for reunification of interests of unknown and unlocatable interest owners with surface owners in certain circumstances and providing procedures therefor; adding new definitions; and modifying existing definitions.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2796—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-15b, relating to providing that certain state employees may be granted a leave of absence with pay while providing

assistance as an essential member of an emergency aid provider during a declared state of emergency.

Referred to the Committee on Finance.

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

Eng. House Bill No. 2892—A Bill to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing certain legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding capital project management, Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program; and authorizing legislative rule for the Council for Community and Technical College Education regarding capital project management.

Referred to the Committee on the Judiciary.

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

Eng. House Bill No. 2931—A Bill to amend and reenact §60A-2-204 of the Code of West Virginia, 1931, as amended, relating to adding drugs to the classification of schedule I drugs.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill No. 2939—A Bill to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-803 and §49-2-812 of said code, all

relating to requirements for mandatory reporting of sexual offenses on school premises involving or between students; defining terms; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; creating criminal penalties for failure to report; and increasing penalties for other reporting requirements.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2968—A Bill to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting from property tax certain real properties in this state owned by nonprofit youth organizations and built at a cost of at least \$100 million; specifying restrictions affecting the property; specifying permitted activities; requiring property owner to pay one and one quarter percent of gross revenues from specified uses, operations and activities; specifying how one and one quarter percent fee is administered, specifying how monies derived from one and one quarter percent fee are distributed; requiring reports; and defining terms.

Referred to the Committee on Finance.

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

House Concurrent Resolution No. 91—Designating days for the display of the Honor and Remember Flag.

Referred to the Committee on Military.

The Senate proceeded to the fourth order of business.

Senator Maynard, 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 March, 2015, 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:

(Com. Sub. for S. B. No. 175), Authorizing DHHR promulgate legislative rules.

(Com. Sub. for S. B. No. 187), Authorizing Department of Revenue promulgate legislative rules.

And,

(S. B. No. 382), Declaring claims against state.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
John B. McCuskey,
Chair, House Committee.

Senator Gaunch, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Eng. Com. Sub. for House Bill No. 2139, Relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Education.

Respectfully submitted,

C. Edward Gaunch,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Education.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2266, Relating to the publication requirements of the administration of estates.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2462, Relating to certain deposits of tax proceeds.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2478, Relating to public school finance.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Education pending.

Senator Gaunch, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Eng. Com. Sub. for House Bill No. 2505, Relating to retirement system participation and concurrent employment provisions.

And,

Eng. Com. Sub. for House Bill No. 2507, Relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

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

Respectfully submitted,

C. Edward Gaunch,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2527, Creating a Task Force on Prevention of Sexual Abuse of Children; “Erin Merryn’s Law”.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2535, Relating generally to suicide prevention training.

And has amended same.

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

Respectfully submitted,

Dave Sypolt,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2550, Increasing the number of unexcused absences of a student before action may be taken against the parent.

And has amended same.

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

Respectfully submitted,

Dave Sypolt,
Chair.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2562, Relating to sales tax increment financing.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Finance has had under consideration

Eng. House Bill No. 2626, Relating to use of the Abandoned Land Reclamation Fund.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2702, Redefining service personnel class titles of early childhood classroom assistant teacher.

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

Respectfully submitted,

Dave Sypolt,
Chair.

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

Your Committee on Finance has had under consideration

Eng. House Bill No. 2876, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Gaunch, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

House Concurrent Resolution No. 83, Requesting the Joint Committee on Government and Finance to study the needs, challenges, and issues facing municipalities in this state as to the funding of their police and firefighter pension plans.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended; but under the original double committee reference first be referred to the Committee on Rules.

Respectfully submitted,

C. Edward Gaunch,
Chair.

The Senate proceeded to the sixth order of business.

Senators Sypolt, Beach, Boley, Boso, Ferns, Gaunch, Karnes, Plymale and Stollings offered the following resolution:

Senate Concurrent Resolution No. 52—Requesting the West Virginia Board of Education study: (1) The standards or criteria by which it approves teacher preparation programs in the state’s public and private colleges; (2) approved teacher preparation programs at the state’s public and private colleges and universities, including admission and graduation requirements; (3) the experiences and assessment of first, second and third year teachers of their in-state teacher preparation programs and teaching practices; and (4) the extent to which, and reasons why, teachers are leaving the profession in West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the West Virginia Board of Education study: (1) The standards or criteria by which it approves teacher preparation programs in the state’s public and private colleges; (2) approved teacher preparation programs at the state’s public and private colleges and universities, including admission and graduation requirements; (3) the experiences and assessment of first, second and third year teachers of their in-state teacher preparation programs and teaching practices; and (4) the extent to which, and reasons why, teachers are leaving the profession in West Virginia; and, be it

Further Resolved, That the West Virginia Board of Education is requested to engage out-of-state, independent experts to study teacher preparation and retention; and, be it

Further Resolved, That the West Virginia Board of Education report to the regular session of the Legislature, 2016, 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 West Virginia Board of Education.

Which, under the rules, lies over one day.

Senators Boso and Stollings offered the following resolution:

Senate Concurrent Resolution No. 53—Requesting the Division of Highways name bridge number 42-5/12-4.32 (42A014) (38.91199, -79.70571), locally known as the Bowden Bridge, carrying County Route 5/12 over Shavers Fork of Cheat River in Randolph County, the “U. S. Army PFC Samuel Reed Summerfield Memorial Bridge”.

Whereas, Samuel Reed Summerfield was born at Harman, Randolph County, on January 9, 1949, the son of John R. and Lillian Gabbert Summerfield. He attended grade school in Bowden, West Virginia, and graduated from Elkins High School in 1957; and

Whereas, Samuel Summerfield came from modest and humble circumstances and entered the United States Army in 1968, where he became accomplished as a helicopter crew chief with the 68th American Helicopter Company, the “Top Tigers”, and served at the rank of Private First Class; and

Whereas, PFC Summerfield lost his life, at the age of nineteen years, when his helicopter was shot down in action in Bing Duong

Province in the Republic of Vietnam on August 16, 1968, for which he was posthumously awarded the Purple Heart Medal; and

Whereas, It is fitting that the Legislature recognize his service and his sacrifice for his country and his community; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 42-5/12-4.32 (42A014) (38.91199, -79.70571), locally known as the Bowden Bridge, carrying County Route 5/12 over Shavers Fork of Cheat River in Randolph County, the “U. S. Army PFC Samuel Reed Summerfield 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. Army PFC Samuel Reed Summerfield 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 members of PFC Summerfield’s family.

Which, under the rules, lies over one day.

Senators D. Hall, Stollings and Yost offered the following resolution:

Senate Resolution No. 50—Designating March 10, 2015, as “American Red Cross Day”.

Whereas, Founded in 1881 and chartered by Congress in 1905, the American Red Cross acts in times of need in West Virginia, this country and around the world; and

Whereas, The American Red Cross is one of the most recognized humanitarian organizations and provides compassionate care to those who suffer disasters and life-altering emergencies; and

Whereas, When an injured service member ends up in a hospital far from home, the Red Cross offers comfort. When a hospital patient needs blood, American Red Cross blood donors help them. When a lifeguard jumps in to save a drowning child or someone steps up to help a heart attack victim, the American Red Cross is there; and

Whereas, American Red Cross volunteers have provided food, clothing, shelter and mental health support to victims of disasters every year including 1,252 West Virginia families last year who experienced a disaster; and

Whereas, The generous contributions of time and money by the people of West Virginia help the American Red Cross alleviate human suffering and restore vital services to families in our state in times of need; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 10, 2015, as “American Red Cross Day”; and, be it

Further Resolved, That the Senate hereby recognizes the American Red Cross for its contributions to the State of West Virginia, the United States and the world; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia chapter of the American Red Cross.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution No. 51, Requesting DOH name bridge in Boone County “U. S. Army PFC Samuel C. Ball Memorial Bridge”.

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

The Senate proceeded to the eighth order of business.

Eng. House Bill No. 2879, Relating to certain limitations on amount of state funds on deposit in any depository.

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

Senator Trump moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motion prevailed.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: None.

Absent: Miller and Nohe—2.

Excused from voting: Trump—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2879) passed with its title.

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

The Senate proceeded to the ninth order of business.

Eng. House Bill No. 2760, Making a supplementary appropriation to the Bureau of Senior Services, Lottery Senior Citizens Fund.

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

Eng. House Bill No. 2764, Making a supplementary appropriation to the State Department of Education, School Building Authority.

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

Eng. House Bill No. 2770, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.

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

Eng. House Bill No. 2933, Making a supplementary appropriation to the Department of Administration, Public Defender Services.

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

The Senate proceeded to the tenth order of business.

Eng. Com. Sub. for House Bill No. 2755, Relating to service and professional employee positions at jointly established schools.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

On motion of Senator Carmichael, leaves of absence for the day were granted Senators Miller and Nohe.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Friday, March 6, 2015, at 11 a.m.

FRIDAY, MARCH 6, 2015

The Senate met at 11 a.m.

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

Prayer was offered by Dr. Jesse Waggoner, Senior Pastor, Mount Calvary Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Daniel J. Hall, a senator from the ninth district.

Pending the reading of the Journal of Thursday, March 5, 2015,

On motion of Senator Carmichael, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

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

Eng. House Bill No. 2595—A Bill to amend and reenact §16-2D-2 and §16-2D-6 of the Code of West Virginia, 1931, as amended, relating to certificates of need for the development of health facilities in this state; eliminating out-of-state health care facilities or providers from the definition of “affected persons” and from consideration in the state agency’s evaluation process.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Health and Human Resources.

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

Eng. House Bill No. 2712—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3 and §21-5G-4, all relating to employment and privacy protection; prohibiting an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through certain electronic communications devices; prohibiting an employer from taking or threatening to take, certain disciplinary actions for an employee’s refusal to disclose certain password and related information; prohibiting an employer from failing or refusing to hire an applicant as a result of the applicant’s refusal to disclose certain password and related information; prohibiting an employee from downloading certain unauthorized information or data to certain Web sites or Web-based accounts; providing that an employer is not prevented from conducting certain investigations for certain purposes, including gathering information needed for compliance with

mandatory state or federal regulations; and duties not created under this article.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2717—A Bill to amend and reenact §18-5-15c of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of said code; to amend and reenact §18A-3-10 of said code; to amend and reenact §18A-4-7a of said code; and to amend and reenact §18A-4-8b and §18A-4-8e of said code, all relating to hiring employees in the public schools; expanding the sources from which background checks may be obtained; modifying certain dates regarding certain actions, notices and hearings; modifying certain time periods and required methods of providing notice; modifying individuals to whom certain notice is required; limiting transfers from certain positions and providing exceptions; specifying certain actions of the county board to be in open, public meetings and authorizing certain executive sessions; authorizing county board to require certain actions of superintendent regarding job applicants; and removing requirement of county board to provide certain training.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill No. 2756—A Bill to amend and reenact §61-7-6 of the Code of West Virginia, 1931, as amended, relating to exceptions to prohibitions against carrying concealed handguns; and authorizing appointees or employees of the Alcohol Beverage Control Commissioner to carry concealed handguns.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2795—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §56-4-72, all relating to production of medical records; providing in certain circumstances medical records must be produced without court order; prohibiting unilateral restrictions on the maintenance, use or retention of the medical records; requiring the insurance commissioner to promulgate rules; providing that objection to production of medical records is not limited; providing that court ordered production of medical records does not affect application of this section; establishing that an order protecting privacy of medical records may be entered; and, establishing that any action related to unauthorized distribution of medical records is unaffected.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2805—A Bill to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday; requiring transfer of juvenile in adult jurisdiction upon reaching 18 if he or she has either been convicted or is in a pre-trial status; directing the division of juvenile services to notify the circuit court of the age of a juvenile reaching the age of 18; authorizing the circuit court to conduct a hearing as to alternative placement; mandating that the position of victim be taken under consideration by the court in considering disposition or alternative placement; prohibiting juveniles that commit an adult offense while under the custody of the Division of Juvenile Services from returning back to the placement in a juvenile facility if the juvenile has attained the age of 18; and requiring the court to conduct a hearing as to placement of a juvenile that has turned 18 and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2810—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-18-28, generally relating to implementing the West Virginia Property Rescue Initiative; providing legislative findings relating to the need of such program; requiring the West Virginia Housing Development Fund to facilitate the West Virginia Property Rescue Initiative; providing that the West Virginia Housing Development Fund provide technical assistance to counties and

municipalities for identification, purchase, removal and rehabilitation of dilapidated properties; requiring that the West Virginia Housing Development Fund establish and fund a revolving loan fund; directing the West Virginia Housing Development Fund to deposit monies into the revolving loan fund over a five year period; providing that no obligation of the state shall be created by the West Virginia Property Rescue Initiative; and requiring annual reports over five years; and requiring a final report on the effectiveness of the West Virginia Property Rescue Initiative.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2828—A Bill to amend and reenact §62-6B-2, §62-6B-3 and §62-6B-4 of the Code of West Virginia, 1931, as amended, all relating to modifying the requirements that allow a child witness to testify by closed circuit television.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2867—A Bill to of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-14-2, relating to providing for

recommendations regarding expanded transfer of course credits among higher education institutions in the state; requiring higher education policy commission and council for community and technical college education to report the recommendations to Legislative Oversight Commission on Education Accountability.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill No. 2902—A Bill to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4, §16-46-5, §16-46-6, §16-46-7 and §16-46-8, all relating to providing for the establishment of a program to allow savings accounts for individuals with a disability and their families to save private funds to support the individual with a disability, to be known as the West Virginia ABLE Act; definitions; implementation and administration of the program by the Treasurer; powers and responsibilities of the Treasurer; use of financial organizations as account depositories and managers; establishing procedures and requirements for establishment of an ABLE savings account; limitations on deposits; provisions for change of a designated beneficiary; distributions from accounts; limiting liability of the Treasurer and the state; and establishment of the West Virginia ABLE savings program trust fund and the West Virginia ABLE Savings Expense Fund.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Banking and Insurance.

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

Eng. House Bill No. 2926—A Bill to amend and reenact §46A-3-114 of the Code of West Virginia, 1931, as amended, relating to making and collecting deferral charges in connection with a consumer credit sale or consumer loan, refinancing or consolidation; making and collecting modification charges in connection with a consumer credit sale or consumer loan, refinancing or consolidation; specifying the requirements for a modification; and requiring the Commissioner of Financial Institutions to prescribe by rule the method or procedure for the calculation of deferral charges for certain consumer credit sale or consumer loans.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

Eng. House Bill No. 3019—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §2-2-13, all relating to requiring official business and records of the state and its political subdivisions be conducted in English, and providing exceptions, limitations, and a definition.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, referred to the Committee on Government Organization; and then to the Committee on the Judiciary.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 5, 2015, he had approved **Enr. Committee Substitute for Senate Bill No. 187, Enr. Senate Bill No. 238, Enr. Senate Bill No. 382, Enr. Senate Bill No. 398** and **Enr. Committee Substitute for House Bill No. 2002.**

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 5, 2015

The Honorable William P. Cole III
President, West Virginia Senate
State Capitol
Charleston, West Virginia

Dear President Cole:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 6 on technical grounds.

The bill's enacting clause *[sic]* on page 2 contains two fatal errors. First, the enacting clause *[sic]* provides that the bill *repeals* W. Va. Code §55-7B-1, which it does not. Rather, the bill *amends* §55-7B-1. Second, the enacting clause *[sic]* fails to reference the bill's amendment of §55-7B-10.

If the Legislature chooses to repair the enacting clause *[sic]* it also may consider revising some aspects of the bill's title on page 1.

For instance, the phrase “providing rebuttable presumptions and evidentiary requirements related to admission of certain government, health care provider or health care facility information” arguably is vague. Greater clarity could be provided by revising the phrase to read, “providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments, and staffing.” *See, e.g.*, §55-7B-7a, page 11.

The title’s description of the bill’s amendment to §55-7B-8(d) also may be inadequate. The phrase “clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations” could be added to the title to better explain the “aggregate” amendment to §55-7B-8(d). *See, e.g.*, §55-7B-8(d), pages 12-13.

Finally, the title’s reference to “providing definitions” may not sufficiently describe the many revisions reflected in §55-7B-2 of the bill, which significantly expand the scope of the Medical Professional Liability Act. *See* §55-7B-2, pages 5-9.

Sincerely,

Earl Ray Tomblin,
Governor.

cc: The Honorable Tim Armstead
The Honorable Natalie E. Tennant

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

Enr. Com. Sub. for Senate Bill No. 6, Relating to medical professional liability.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Committee Substitute for Senate Bill No. 6, the same was put and prevailed.

On motion of Senator Trump, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

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

That §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all to read as follows;:

And,

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

Enr. Com. Sub. for Senate Bill No. 6—An Act to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating to medical professional liability generally; providing additional legislative findings and purposes related to medical professional liability; modifying definitions; amending existing definitions of “health care”, “health care facility”, “health care provider” and “medical professional liability” and creating a new definition for “related entity” all of which expand the scope of the Medical Professional Liability Act; modifying the qualifications for

the competency of experts who testify in medical professional liability actions; providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments and staffing; modifying the maximum amount of recovery for, and availability of, noneconomic damages; clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations; clarifying that a health care provider is not vicariously liable unless the alleged agent does not maintain certain insurance; clarifying eligibility for, and application of, emergency medical services caps; providing a methodology for determining the amount of trauma care caps to account for inflation; providing certain limitations of verdicts for past medical expenses of the plaintiff; establishing effective date; and providing for severability.

The question now being on the passage of the bill, disapproved by the Governor and amended by the Senate.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Beach, Facemire, Romano and Snyder—4.

Absent: Miller and Walters—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for S. B. No. 6) passed with its title, as amended, as a result of the objections of the Governor.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird,

Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Beach, Facemire, Romano and Snyder—4.

Absent: Miller and Walters—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for S. B. No. 6) takes effect from passage.

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

Senator Cole (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 2, 2015

The Honorable Tim Armstead
Speaker, West Virginia House of Delegates
State Capitol
Charleston, West Virginia

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 2568. I am advised the bill is unconstitutional under controlling precedent of the Supreme Court of the United States because it prohibits the termination of certain pregnancies prior to viability. *See Planned*

Parenthood of Southeastern Pennsylvania v. Casey, 505 U. S. 833, 879 (1992) (holding a state “may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability”); *see also Isaacson v. Horne*, 716 F.3d 1213 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (Jan. 13, 2014) (declaring Arizona’s fetal pain statute unconstitutional; statute prohibited the termination of pregnancy at twenty weeks gestation, before the fetus is viable).

Sincerely,

Earl Ray Tomblin,
Governor.

cc: The Honorable William P. Cole III
The Honorable Natalie E. Tennant

A message from The Clerk of the House of Delegates announced the reconsideration and passage of a bill disapproved and returned by the Governor with his objections, and requested the concurrence of the Senate in the passage, of

Enr. Com. Sub. for House Bill No. 2568, The Pain-Capable Unborn Child Protection Act.

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

Enr. Com. Sub. for House Bill No. 2568, The Pain-Capable Unborn Child Protection Act.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael’s motion that the Senate reconsider Enrolled Committee Substitute for House Bill No. 2568, the same was put and prevailed.

The question now being on the passage of the bill, disapproved by the Governor.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—27.

The nays were: Beach, Facemire, Palumbo, Romano and Snyder—5.

Absent: Miller and Walters—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for H. B. No. 2568) passed with its title, as a result of the objections of the Governor.

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

The Senate proceeded to the fourth order of business.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 3, Requesting DOH name portion of Rt. 25 in Kanawha County “U. S. Army Sgt. James Lawrence Taylor Memorial Road”.

Senate Concurrent Resolution No. 23, Requesting DOH name bridge in McDowell County “U. S. Army SFC Anthony Barton Memorial Bridge”.

Senate Concurrent Resolution No. 42, Requesting DOH name bridge in Fayette County “Tygrett Brothers Seven Veterans Bridge”.

Senate Concurrent Resolution No. 43, Requesting DOH name bridge in Nicholas County “U. S. Army SPC Richard Nesselrotte Bridge”.

Senate Concurrent Resolution No. 44, Requesting DOH name bridge in Randolph County “U. S. Navy PO2 Robert Paul Laderach Memorial Bridge”.

And,

Senate Concurrent Resolution No. 45, Requesting DOH name bridge in Jackson County “James P. Spano, Jr., Memorial Bridge”.

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

Respectfully submitted,

Chris Walters,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2053, Relating to the form of trust deeds.

And has amended same.

And,

Eng. Com. Sub. for House Bill No. 2648, Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. Nos. 2053 and 2648) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from 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

Eng. House Bill No. 2100, Caregiver Advise, Record and Enable Act.

And has amended same.

Eng. House Bill No. 2272, Relating to the authority of the Board of Pharmacy.

And has amended same.

Eng. Com. Sub. for House Bill No. 2368, Relating to child welfare.

And has amended same.

Eng. House Bill No. 2776, Relating to prescribing hydrocodone combination drugs for a duration of no more than three days.

And has amended same.

Eng. House Bill No. 2880, Creating an addiction treatment pilot program.

And has amended same.

And,

Eng. Com. Sub. for House Bill No. 2999, Relating to neonatal abstinence centers.

And has amended same.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. H. B. No. 2100, Eng. H. B. No. 2272, Eng. Com. Sub. for H. B. No. 2368, Eng. H. B. No. 2776, Eng. H. B. No. 2880 and Eng. Com. Sub. for H. B. No. 2999) contained in the preceding report from the Committee on Health and Human Resources were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill No. 2432, Relating to the licensure requirements to practice pharmacist care.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2432) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. House Bill No. 2632, Exempting the procurement of certain instructional materials for use in and in support of public schools from the division of purchasing requirements.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2632) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2645, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2645) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. House Bill No. 2657, Allowing members of the Livestock Care Standards Board to be reimbursed for expenses consistent with the West Virginia Department of Agriculture Travel Policy and Procedure.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2657) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2778, State Infrastructure Fund Program.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2778) contained in the preceding report from the Committee on Finance was taken up

for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Kirkendoll and Stollings offered the following resolution:

Senate Concurrent Resolution No. 54—Requesting the Division of Highways name the stretch of road beginning at Route 10 and the Logan and Lincoln county lines, going one mile into Logan County, the “USMC LCpl Larry G. Williamson Memorial Highway”.

Whereas, Larry G. Williamson was born on February 9, 1947, in Lincoln County to John B. and Georgia Napier Williamson. He had three sisters, Patty Egnor, Peggy Perry (deceased) and Robin Williamson. Larry G. Williamson attended Harts High School, played varsity basketball, was on the school newspaper and was secretary/treasurer of his senior class. He graduated in 1964 and attended Marshall University’s Logan branch for two years. On September 9, 1967, at the age of twenty, Larry G. Williamson married Wanda Brumfield and moved to Columbus, Ohio, where he became manager of car parts and tires at a Firestone Automotive Center; and

Whereas, In January 1969, Larry G. Williamson was drafted from West Virginia. While on a bus taking him for Army training, he was among the draftees separated and reassigned to the Marines. He received basic training at Camp Pendleton, California, and after a brief visit home was ordered to Vietnam and assigned to the 5th Marine Division. He soon received a promotion to Lance Corporal. In Vietnam, LCpl Larry G. Williamson was assigned as a squad leader in the First Platoon of Company G. On March 11, 1970, the squad was acting as a blocking force and was located approximately two miles northeast of An Hoa Combat Base in Quang Nam Province. LCpl Larry G. Williamson was killed when a well-concealed explosive device detonated. A squad corpsman rushed to his aid but death had been instantaneous. LCpl Larry G. Williamson

received a Purple Heart, Rifle Sharpshooter, National Defense, Republic of Vietnam Service, Chien Dich Vietnam Medal and Boi-Tinh 1960 Medals; and

Whereas, LCpl Larry G. Williamson made the ultimate sacrifice for his country and in doing so represented West Virginia and his country with the highest levels of honor and courage and his sacrifice should not go unnoticed. Naming that stretch of road in Logan County the “USMC LCpl Larry G. Williamson Memorial Highway” is an appropriate recognition of his ultimate sacrifice for state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the stretch of road beginning at Route 10 and the Logan and Lincoln county lines, going one mile into Logan County, the “USMC LCpl Larry G. Williamson 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 road as the “USMC LCpl Larry G. Williamson 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 LCpl Larry G. Williamson.

Which, under the rules, lies over one day.

Senators Kirkendoll and Stollings offered the following resolution:

Senate Concurrent Resolution No. 55—Requesting the Division of Highways name a one-mile section of Buffalo Creek Road, beginning at the intersection of Route 10 and extending through the

Town of Man, West Virginia, also known as Main Street, the “U. S. Army SP4 Terry Robert Albright Memorial Road”.

Whereas, Terry Robert Albright was born on February 1, 1950, the son of Robert and Sylvia Bailey Albright; and

Whereas, Terry Robert Albright attended public schools in Logan County and graduated from Man High School in 1968; and

Whereas, Terry Robert Albright entered the Army on September 17, 1969, and was deployed to Vietnam on April 4, 1970; and

Whereas, Specialist 4th Class Terry Robert Albright was serving with the 3rd Squadron, 4th Cavalry Regiment, B Troop when he was killed in Vietnam on October 11, 1970; and

Whereas, Specialist 4th Class Terry Robert Albright’s military awards include the Vietnam Gallantry Cross Unit Citation, Order of the Spur, Good Conduct Medal, National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal and expert badge with rifle and automatic rifle medallions; and

Whereas, Specialist 4th Class Terry Robert Albright’s name appears on the Vietnam War Memorial, Panel 07W, Line 125; and

Whereas, Terry Robert Albright is survived by a brother, Kerry Albright, who lived through the infamous Buffalo Creek Flood in 1972 as an infant and became known as the “miracle baby of Buffalo Creek”; and

Whereas, Terry Robert Albright’s mother, Sylvia, and brother, Steven, were among 125 people who perished in the Buffalo Creek Flood. His father, Robert, passed away in 2000; and

Whereas, It is only fitting that an appropriate memorial recognizing Specialist 4th Class Terry Robert Albright’s service and sacrifice be established in the area where he lived; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a one-mile section of Buffalo Creek Road, beginning at the intersection of Route 10 and extending through the Town of Man, West Virginia, also known as Main Street, the “U. S. Army SP4 Terry Robert Albright Memorial Road”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the designated highway containing bold and prominent letters proclaiming that section of Buffalo Creek Road the “U. S. Army SP4 Terry Robert Albright Memorial Road”; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to Terry Robert Albright’s brother, Kerry Albright, and his cousin, Kathy Yeager.

Which, under the rules, lies over one day.

Senators Kirkendoll and Stollings offered the following resolution:

Senate Concurrent Resolution No. 56—Requesting the Division of Highways name a section of County Route 3 near Chapmanville, Logan County, lying between County Route 3/1 and County Route 3/16, consisting of approximately 1.2 miles and locally known as Smoke House Fork Crawley Creek Road, the “U. S. Army Colonel Anna M. Butcher Road”.

Whereas, Anna M. Butcher was born in Shively, West Virginia, attended Chapmanville High School from 1940 to 1942 and graduated from Logan General Hospital School of Nursing in 1946; and

Whereas, Anna M. Butcher, the daughter of Mr. and Mrs. T. E. Butcher, grew up with four sisters and three brothers; and

Whereas, Anna M. Butcher entered the United States Army Nurse Corps in November 1951 and completed basic training at Fort Meade, Maryland, in December 1951; and

Whereas, First Lieutenant Anna M. Butcher was assigned as a staff nurse to Fort Belvoir, Virginia, in December 1951; and

Whereas, First Lieutenant Anna M. Butcher enjoyed a long and distinguished career in the Army Nurse Corps, reaching the rank of Colonel before retiring; and

Whereas, Col. Anna M. Butcher completed assignments with increasing responsibilities as staff nurse, head nurse or chief nurse at U. S. Army medical facilities in Korea, Vietnam, Germany and Japan, as well as at home in Kentucky, Alabama, Virginia and Washington, D. C.; and

Whereas, Col. Anna M. Butcher's last assignment before retiring was as Chief of the Department of Nursing at the U. S. Army Hospital in Fort Polk, Louisiana; and

Whereas, Col. Anna M. Butcher was awarded a Bronze Star, Army Commendation Medal with two oak leaf clusters and a Meritorious Service Medal; and

Whereas, Following her military career, Col. Anna M. Butcher returned home to her native Logan County where she cared for her family and friends and continues to live and serve her community; and

Whereas, It is the wish of the Legislature to commemorate the service Col. Butcher offered to her country and to the many sick and injured members of the military; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a section of West Virginia Route 3 near Chapmanville, Logan County, lying between County Route 3/1 and County Route 3/16, consisting of approximately 1.2 miles and locally known as Smoke House Fork Crawley Creek Road, the “U. S. Army Colonel Anna M. Butcher Road”; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the road as the “U. S. Army Colonel Anna M. Butcher Road”; and, be it

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

Which, under the rules, lies over one day.

Senators D. Hall, M. Hall, Kirkendoll, Snyder and Stollings offered the following resolution:

Senate Concurrent Resolution No. 57—Requesting the Joint Committee on Government and Finance study issue of regulation of public utilities by political subdivisions of the State of West Virginia.

Whereas, Municipalities and county commissions possess certain powers to enact, administer and enforce ordinances; and

Whereas, Such powers possessed by municipalities and county commissions are intended to be used in order to serve the public interest and welfare of their respective citizens and respond to their citizens; and

Whereas, Public utilities provide vital services and products to the public as a whole, not constrained by the boundaries of political subdivisions of the state; and

Whereas, The nature of public utility services and products are to serve the general welfare, need and public good of the state; and

Whereas, Public utilities in West Virginia are governed by various federal and state agencies, including, but not limited to, the United States Environmental Protection Agency, the Federal Energy Regulatory Commission, the West Virginia Department of Environmental Protection and the West Virginia Public Service Commission; and

Whereas, Regulation of public utilities at the local level can conflict with and, indeed, frustrate, confuse and confound the operations, service and products provided to the public by such public utilities; and

Whereas, The cost of regulatory compliance at any level is ultimately borne by the ratepayers and customers of the public utilities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study issue of regulation of public utilities by political subdivisions of the State of West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Which, under the rules, lies over one day.

At the request of Senator Carmichael, and by unanimous consent, the Senate returned to the fourth order of business.

Senator Takubo, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

Senate Concurrent Resolution No. 58 (originating in the Committee on Economic Development)—Requesting the Joint Committee on Government and Finance study need and feasibility of the state creating a cost-effective and portable group retirement savings program for small businesses and their employees, including comparing costs of establishing the program with currently available private sector financial and retirement security opportunities for small businesses.

Whereas, An employer with less than 50 employees is considered a small business; and

Whereas, Seventy percent of small businesses in West Virginia do not offer employer-sponsored retirement plans to their employees; and

Whereas, More than one half of the employees of small businesses do not have access to an employer-sponsored payroll deduction retirement savings plan; and

Whereas, Without an employer-sponsored retirement plan, there is a concern that workers will not have enough money to cover living expenses upon retirement; and

Whereas, Social Security plays a key role in providing retirement security for workers in West Virginia, but it should not be the sole source of retirement income; and

Whereas, If a significant portion of retirees rely only on Social Security for income, then there would be a growing demand for taxpayer-supported services which would increase costs for the state; and

Whereas, In addition to Social Security benefits, access to a retirement savings program would be beneficial to an employee's retirement; and

Whereas, It is preferable to enable an individual to have his or her own retirement plan rather than being forced to depend on taxpayer-supported programs and services; and

Whereas, Currently, there are commercial employer-sponsored retirement plans that are available to help workers accumulate retirement savings and improve their retirement security, but small business employers feel these plans are too expensive; and

Whereas, Small business employers think the State of West Virginia should do more to encourage workers to save for retirement by enacting legislation that gives small business employers in West Virginia the option of creating a retirement savings plan; and

Whereas, Illinois recently enacted legislation that created a retirement savings program for its citizens to save money for their retirement, and 30 other states are considering such a program, including California, Oregon, Minnesota, Connecticut and Maryland, which are conducting formal studies to ascertain a retirement savings program that will best assist their citizens to build a more secure retirement; and

Whereas, In West Virginia, a retirement savings program for small businesses would offer an opportunity for small business employers to establish a basic retirement savings option for employees which would provide workers a simple way to save for retirement which would result in fewer West Virginians relying on taxpayer-supported services, saving taxpayer dollars; and

Whereas, There is a need to determine if any potential state retirement savings program would be less expensive and not in direct competition with those employee and employer portable retirement programs already offered by banks, financial institutions, insurance brokers and private insurers; and

Whereas, A complete fiscal analysis is needed to determine the financial implications of a state retirement savings program, including the start-up costs, the compliance costs, legal implications to the state and its small businesses, costs of investment, actuarial compliance with federal securities laws and comparing the cost of a potential state-sponsored retirement savings program to the cost of existing private sector alternatives; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study need and feasibility of the state creating a cost-effective and portable group retirement savings program for small businesses and their employees, including comparing costs of establishing the program with currently available private sector financial and retirement security opportunities for small businesses; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, 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 reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Tom Takubo,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. No. 58) contained in the preceding report from the Committee on Economic Development was taken up for immediate consideration.

On motion of Senator Takubo, the resolution was referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution No. 52, Requesting Board of Education study teacher preparation programs.

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

Senate Concurrent Resolution No. 53, Requesting DOH name bridge in Randolph County “U. S. Army PFC Samuel Reed Summerfield Memorial Bridge”.

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

Senate Resolution No. 50, Designating March 10, 2015, American Red Cross Day.

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

The Senate proceeded to the eighth order of business.

Eng. House Bill No. 2760, Making a supplementary appropriation to the Bureau of Senior Services, Lottery Senior Citizens Fund.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2760) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2760) takes effect from passage.

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

Eng. House Bill No. 2764, Making a supplementary appropriation to the State Department of Education, School Building Authority.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2764) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2764) takes effect from passage.

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

Eng. House Bill No. 2770, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2770) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2770) takes effect from passage.

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

Eng. House Bill No. 2933, Making a supplementary appropriation to the Department of Administration, Public Defender Services.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2933) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Walters—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2933) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill No. 2755, Relating to service and professional employee positions at jointly established schools.

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

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

The Senate proceeded to the tenth order of business.

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

Eng. Com. Sub. for House Bill No. 2462, Relating to certain deposits of tax proceeds.

Eng. Com. Sub. for House Bill No. 2505, Relating to retirement system participation and concurrent employment provisions.

Eng. Com. Sub. for House Bill No. 2507, Relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

Eng. Com. Sub. for House Bill No. 2527, Creating a Task Force on Prevention of Sexual Abuse of Children; “Erin Merryn’s Law”.

Eng. House Bill No. 2535, Relating generally to suicide prevention training.

Eng. Com. Sub. for House Bill No. 2550, Increasing the number of unexcused absences of a student before action may be taken against the parent.

Eng. Com. Sub. for House Bill No. 2562, Relating to sales tax increment financing.

Eng. House Bill No. 2626, Relating to use of the Abandoned Land Reclamation Fund.

Eng. Com. Sub. for House Bill No. 2702, Redefining service personnel class titles of early childhood classroom assistant teacher.

And,

Eng. House Bill No. 2876, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

On motion of Senator Carmichael, a leave of absence for the day was granted Senator Walters.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until Sunday, March 8, 2015, at 5 p.m.

SUNDAY, MARCH 8, 2015

The Senate met at 5 p.m.

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

Prayer was offered by the Honorable Mike Hall, a senator from the fourth district, and Pastor, New River Presbytery, Pliny, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Tom Takubo, a senator from the seventeenth district.

Pending the reading of the Journal of Friday, March 6, 2015,

On motion of Senator Williams, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill No. 351, Relating to charitable organization contribution levels requiring independent audit reports.

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

Eng. Com. Sub. for Senate Bill No. 374, Permitting in absentia parole hearings in certain instances.

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

Eng. Com. Sub. for Senate Bill No. 375, Specifying who receives parole hearing notices via regular or certified mail.

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

Eng. Senate Bill No. 472, Making supplementary appropriation to DOT, DMV, Motor Vehicle Fees Fund.

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

Eng. Senate Bill No. 475, Making supplementary appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund.

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

Eng. Senate Bill No. 507, Relating to monitoring inmates' electronic communications.

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

Senate Concurrent Resolution No. 50, Providing for issuance of refunding bonds pursuant to Safe Roads Amendment of 1966.

A message from The Clerk of the House of Delegates announced that that body had agreed to the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates E. Nelson, Anderson and Boggs.

Executive Communications

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 6, 2015

The Honorable William P. Cole III
President, West Virginia Senate
The Honorable Tim Armstead

Speaker, West Virginia House of Delegates
State Capitol
Charleston, West Virginia

Dear President Cole and Speaker Armstead:

After the submission of my recommended FY 2016 Executive Budget on January 14, 2015, and my first adjustment letter on January 22, 2015, there have been a few areas that require adjustments, and therefore, pursuant to Section 51, Article VI of the Constitution of the State of West Virginia, I submit additional revisions to the FY 2016 Budget Bill for the TITLE II – APPROPRIATIONS as follows:

Section 1. Appropriations from general revenue.

Executive

Governor's Office, Fund 0101, Fiscal Year 2016, Org 0100

(To move GO HELP funding to the Department of Health and Human Resources and to restore budget reductions.)

- Decrease “GO HELP” Appropriation 11600 by \$241,571.
- Increase “Current Expenses” Appropriation 13000 by \$599,600.

Department of Administration

Department of Administration - Office of the Secretary, Fund 0186, Fiscal Year 2016, Org 0201

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$46,824.
- Decrease “Financial Advisor” Appropriation 30400 by \$100,000.

Division of Finance, Fund 0203, Fiscal Year 2016, Org 0209

(To adjust the budget reduction due to vacancies.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$7,235.

- Decrease “Current Expenses” Appropriation 13000 by \$30,000.
- Increase “GAAP Project” Appropriation 12500 by \$14,032.

Division of General Services, Fund 0230, Fiscal Year 2016, Org 0211

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$95,349.

Division of Purchasing, Fund 0210, Fiscal Year 2016, Org 0213

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$102,829.
- Decrease “Current Expenses” Appropriation 13000 by \$50,000.

Travel Management, Fund 0615, Fiscal Year 2016, Org 0215

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$154,936.
- Decrease “Repairs and Alterations” Appropriation 06400 by \$200,000.

Commission on Uniform State Laws, Fund 0214, Fiscal Year 2016, Org 0217

(To adjust the budget reduction due to vacancies.)

- Decrease “Current Expenses” Appropriation 13000 by \$1,000.

West Virginia Public Employees Grievance Board, Fund 0220, Fiscal Year 2016, Org 0219

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$1,823.

Ethics Commission, Fund 0223, Fiscal Year 2016, Org 0220

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$30,651.

Public Defender Services, Fund 0226, Fiscal Year 2016, Org 0221

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$94,785.
- Decrease “Public Defender Corporations” Appropriation 35200 by \$120,967.

Committee for the Purchase of Commodities and Services from the Handicapped, Fund 0233, Fiscal Year 2016, Org 0224

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$1,104.
- Decrease “Current Expenses” Appropriation 13000 by \$1,000.

West Virginia Prosecuting Attorneys Institute, Fund 0557, Fiscal Year 2016, Org 0228

(To adjust the budget reduction due to vacancies.)

- Increase “Forensic Medical Examinations” Appropriation 68300 by \$736.
- Increase “Federal Funds/Grant Match” Appropriation 74900 by \$1,533.

Children’s Health Insurance Agency, Fund 0588, Fiscal Year 2016, Org 0230

(To move the Children’s Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$110,992.
- Decrease “Current Expenses” Appropriation 13000 by \$9,379,734.

- Decrease “Autism Spectrum Disorder Coverage” Appropriation 85600 by \$497,035.

Real Estate Division, Fund 0610, Fiscal Year 2016, Org 0233

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$145.
- Decrease “Current Expenses” Appropriation 13000 by \$35,617.

Department of Commerce

West Virginia Development Office, Fund 0256, Fiscal Year 2016, Org 0307

(To combine the National Coal Heritage Area Authority and the Coal Heritage Highway Authority in accordance with House Bill No. 2227.)

- Delete the directive language from “Highway Authorities” Appropriation 43100 “\$85,239 is for Coal Heritage Highway Authority;”.
- Increase the directive language from “Highway Authorities” Appropriation 43100 for the Coal Heritage Area Authority by \$85,239.

Division of Natural Resources, Fund 0265, Fiscal Year 2016, Org 0310

(To provide funding for the increase in minimum wage.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$500,000.

Department of Education

State Board of Education - School Lunch Program, Fund 0303, Fiscal Year 2016, Org 0402

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$24,801.
- Decrease “Unclassified” Appropriation 09900 by \$24,801.

State Board of Education - State Department of Education, Fund 0313, Fiscal Year 2016, Org 0402

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$150,000.
- Decrease “21st Century Learners” Appropriation 88600 by \$150,000.

State Board of Education - Aid for Exceptional Children, Fund 0314, Fiscal Year 2016, Org 0402

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Special Education - Institutions” Appropriation 16000 by \$389,443.

State Board of Education - State Aid to Schools, Fund 0317, Fiscal Year 2016, Org 0402

(To adjust School Aid Formula based on latest estimates.)

- Decrease “Transportation” Appropriation 15400 by \$3,789,007.
- Increase “Improved Instructional Programs” Appropriation 15600 by \$1,300,228.
- Increase “21st Century Strategic Technology Learning Growth” Appropriation 93600 by \$2,600,457.
- Increase “Less Local Share” line by \$12,486,259 from (\$443,582,379) to (\$456,068,638).

State Board of Education - West Virginia Schools for the Deaf and the Blind, Fund 0320, Fiscal Year 2016, Org 0403

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$500,000.

Department of Education and the Arts*Educational Broadcasting Authority, Fund 0300, Fiscal Year 2016, Org 0439*

(To adjust the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$63,825.
- Decrease “Current Expenses” Appropriation 13000 by \$63,825.

State Board of Rehabilitation - Division of Rehabilitation Services, Fund 0310, Fiscal Year 2016, Org 0932

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$500,000.

Department of Health and Human Resources*Department of Health and Human Resources - Office of the Secretary, Fund 0400, Fiscal Year 2016, Org 0501*

(To move funding for GO HELP from the Governor’s Office.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$212,720.
- Increase “Unclassified” Appropriation 09900 by \$2,506.
- Increase “Current Expenses” Appropriation 13000 by \$26,345.

Division of Human Services, Fund 0403, Fiscal Year 2016, Org 0511

(To increase the appropriation for Medical Services and to move the Children’s Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Increase “Medical Services” Appropriation 18900 by \$9,145,000.
- Add “Autism Spectrum Disorder Coverage” Appropriation 85600 for \$497,035.

- Add “CHIP Administrative Costs” Appropriation 85601 for \$112,064.
- Add “CHIP Services” Appropriation 85602 for \$9,379,734.

Department of Military Affairs and Public Safety

Department of Military Affairs and Public Safety - Office of the Secretary, Fund 0430, Fiscal Year 2016, Org 0601

(To restore the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$911.
- Increase “Fusion Center” Appropriation 46900 by \$19,128.
- Increase “Homeland State Security Administrative Agency” Appropriation 95300 by \$48,609.

Division of Homeland Security and Emergency Management, Fund 0443, Fiscal Year 2016, Org 0606

(To adjust the budget reduction to maintain federal maintenance of effort.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$82,634.
- Increase “Radiological Emergency Preparedness” Appropriation 55400 by \$11,652.
- Increase “Federal Funds/Grant Match” Appropriation 74900 by \$139,625.
- Increase “Mine and Industrial Accident Rapid Response Call Center” Appropriation 78100 by \$93,113.
- Increase “Early Warning Flood System” Appropriation 87700 by \$35,723.

Division of Corrections - Correctional Units, Fund 0450, Fiscal Year 2016, Org 0608

(To adjust reappropriation language.)

- Add following to the end of the reappropriation language “...with the exception of fund 0450, fiscal year 2015, appropriation 13000 (\$8,000,000) and fund 0450, fiscal year 2015, appropriation 53500 (\$3,000,000) which shall expire on June 30, 2015.”

Division of Protective Services, Fund 0585, Fiscal Year 2016, Org 0622

(To restore the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$132,533.

Department of Revenue

Tax Division, Fund 0470, Fiscal Year 2016, Org 0702

(To adjust reappropriation language.)

- Add following to the end of the reappropriation language “...with the exception of fund 0470, fiscal year 2015, appropriation 00100 (\$1,000,000) which shall expire on June 30, 2015.”

Department of Transportation

Aeronautics Commission, Fund 0582, Fiscal Year 2016, Org 0807

(To restore the budget reduction due to vacancies.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$23,279.

Bureau of Senior Services

Bureau of Senior Services, Fund 0420, Fiscal Year 2016, Org 0508

(To move part of the appropriation for Title XIX Waiver from the Lottery Fund.)

- Increase “Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens” Appropriation 53900 by \$150,000.

Section 3. Appropriations from other funds.

Executive

Auditor’s Office - Local Government Purchasing Card Expenditure Fund, Fund 1224, Fiscal Year 2016, Org 1200

(To add language relating to statutory revenue distributions.)

- Add the language “There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer and revenue distribution requirements to provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.Va. Code §6-9-2b.”

Department of Education and the Arts

State Board of Rehabilitation - Division of Rehabilitation Services - West Virginia Rehabilitation Center Special Account, Fund 8664, Fiscal Year 2016, Org 0932

(To adjust the appropriations to add an appropriation for equipment.)

- Decrease “Current Expenses” Appropriation 13000 by \$220,000.
- Add “Equipment” Appropriation 00700 for \$220,000.

Department of Health and Human Resources

Division of Human Services - Medical Services Trust Fund, Fund 5185, Fiscal Year 2016, Org 0511

(To adjust the appropriation due to the reduced transfer from the Revenue Shortfall Reserve Fund.)

- Decrease “Medical Services” Appropriation 18900 by \$9,145,000.

Department of Revenue

Office of the Secretary - Revenue Shortfall Reserve Fund, Fund 7005, Fiscal Year 2016, Org 0701

(To reduce the transfer to the Medical Services Trust Fund now funded from General Revenue.)

- Decrease “Medical Services Trust Fund - Transfer” Appropriation 51200 by \$9,145,000.

Department of Transportation

Division of Motor Vehicles - Motor Vehicle Fees Fund, Fund 8223, Fiscal Year 2016, Org 0802

(To continue an increase in special revenue spending authority from supplemental appropriation bill.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$184,000.
- Increase “Current Expenses” Appropriation 13000 by \$2,000,000.
- Add “Equipment” Appropriation 00700 for \$75,000.

Section 4. Appropriations from lottery net profits.**Department of Commerce**

West Virginia Development Office - Division of Tourism, Fund 3067, Fiscal Year 2016, Org 0304

(To restore the budget reduction due to vacancies.)

- Increase “Tourism - Operations” Appropriation 66200 by \$150,000.

Bureau of Senior Services

Bureau of Senior Services - Lottery Senior Citizens Fund, Fund 5405, Fiscal Year 2016, Org 0508

(To adjust the appropriation for Title XIX Waiver moved to General Revenue.)

- Decrease “Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens” Appropriation 53900 by \$150,000.

Section 6. Appropriations of federal funds.**Executive**

Department of Agriculture - State Conservation Committee, Fund 8783, Fiscal Year 2016, Org 1400

(To continue an increase in federal spending authority from supplemental appropriation bill.)

- Increase “Current Expenses” Appropriation 13000 by \$12,382,910.

Department of Administration

Children’s Health Insurance Agency, Fund 8838, Fiscal Year 2016, Org 0230

(To move the Children’s Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$533,752.
- Decrease “Current Expenses” Appropriation 13000 by \$47,422,974.

Department of Commerce

Division of Natural Resources, Fund 8707, Fiscal Year 2016, Org 0310

(To increase federal spending authority for improvements at Wildlife Management Areas.)

- Increase “Repairs and Alterations” Appropriation 06400 by \$100,000.
- Increase “Equipment” Appropriation 07000 by \$250,000.
- Increase “Other Assets” Appropriation 69000 by \$700,000.

Department of Health and Human Resources

Division of Human Services, Fund 8722, Fiscal Year 2016, Org 0511

(To move the Children’s Health Insurance Agency to the Department of Health and Human Resources in accordance with Senate Bill No. 262.)

- Add “CHIP Administrative Costs” Appropriation 85601 for \$533,752.

- Add “CHIP Services” Appropriation 85602 for \$47,422,974.

Miscellaneous Boards and Commissions

National Coal Heritage Area Authority, Fund 8869, Fiscal Year 2016, Org 0941

(To combine the National Coal Heritage Area Authority and the Coal Heritage Highway Authority in accordance with House Bill No. 2227.)

- Increase “Personal Services and Employee Benefits” Appropriation 00100 by \$47,059.
- Increase “Current Expenses” Appropriation 13000 by \$152,941.

Coal Heritage Highway Authority, Fund 8861, Fiscal Year 2016, Org 0942

(To combine the National Coal Heritage Area Authority and the Coal Heritage Highway Authority in accordance with House Bill No. 2227.)

- Decrease “Personal Services and Employee Benefits” Appropriation 00100 by \$47,059.
- Decrease “Current Expenses” Appropriation 13000 by \$152,941.

Section 8. Awards for claims against the state.

Amend the language to read as follows:

“There are hereby appropriated for fiscal year 2016, from the fund as designated, in the amounts as specified, general revenue funds in the amount of \$203,331, special revenue funds in the amount of \$747,870, and state road funds in the amount of \$730,433 for payment of claims against the state.”

Section 9. Appropriations from lottery net profits surplus accrued.

Bureau of Senior Services

Bureau of Senior Services - Lottery Senior Citizens Fund, Fund 5405, Fiscal Year 2016, Org 0508

(To adjust appropriation from surplus lottery revenue based on most recent estimates.)

- Decrease “Senior Services Medicaid Transfer - Lottery Surplus” Appropriation 68199 by \$10,000,000.

Section 10. Appropriations from state excess lottery revenue surplus accrued.**Department of Health and Human Resources**

Division of Human Services, Fund 5365, Fiscal Year 2016, Org 0511

(To adjust appropriation from surplus lottery revenue based on most recent estimates.)

- Increase “Medical Services - Lottery Surplus” Appropriation 68100 by \$10,000,000.

Thank you for your prompt attention of this matter. Your cooperation is always appreciated. Should you have any questions or require additional information, please call me at any time.

Sincerely,

Earl Ray Tomblin,
Governor.

Which communication was received and referred to the Committee on Finance.

The Senate proceeded to the fourth order of business.

Senator Maynard, 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 6th day of March, 2015, 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:

(Com. Sub. for S. B. No. 357), Creating Coal Jobs and Safety Act of 2015.

And,

(Com. Sub. for S. B. No. 361), Eliminating prevailing hourly wage requirement for construction of public improvements.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
John B. McCuskey,
Chair, House Committee.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2586, Allowing for an alternative form of service of process in actions against nonresident persons by petitioners seeking domestic violence or personal safety relief.

And has amended same.

And,

Eng. House Bill No. 2914, Providing for voluntary dissolution of resort area district.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. No. 2586 and Eng. H. B. No. 2914) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 5:15 p.m. today:

Eng. House Bill No. 2576, Creating new code sections which separate the executive departments.

The Senate proceeded to the sixth order of business.

Senators Plymale, Gaunch, Yost and Stollings offered the following resolution:

Senate Concurrent Resolution No. 59—Requesting the Joint Committee on Government and Finance study how the accomplishments of the Luke Lee Listening, Language and Learning Lab at Marshall University could be expanded throughout the state in order to provide additional programs in West Virginia that help

provide listening and spoken language outcomes to children with hearing loss.

Whereas, The Luke Lee Listening, Language and Learning Lab at Marshall University was founded in 2006 as the first preschool program in West Virginia providing listening and spoken language outcomes to children with hearing loss; and

Whereas, The Luke Lee Listening, Language and Learning Lab provides services to infants, toddlers, preschoolers and school-age children with hearing loss to allow them to mainstream into their home schools with age-level listening and spoken language skills to communicate with their hearing-aged peers; and

Whereas, The Luke Lee Listening, Language and Learning Lab uses hearing technology, including hearing aids and cochlear implants, to help teach deaf children to listen and speak; and

Whereas, The Luke Lee Listening, Language and Learning Lab has had great successes in reaching their goals and has shown itself as a program that should be expanded across the state to help deaf children in other areas of West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance study how the accomplishments of the Luke Lee Listening, Language and Learning Lab at Marshall University could be expanded throughout the state in order to provide additional programs in West Virginia that help provide listening and spoken language outcomes to children with hearing loss; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of

any legislation necessary to effectuate its recommendations; and, be it

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

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution No. 3, Requesting DOH name portion of Rt. 25 in Kanawha County “U. S. Army Sgt. James Lawrence Taylor Memorial Road”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 23, Requesting DOH name bridge in McDowell County “U. S. Army SFC Anthony Barton Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 42, Requesting DOH name bridge in Fayette County “Tygrett Brothers Seven Veterans Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 43, Requesting DOH name bridge in Nicholas County “U. S. Army SPC Richard Nesselrotte Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 44, Requesting DOH name bridge in Randolph County “U. S. Navy PO2 Robert Paul Laderach Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 45, Requesting DOH name bridge in Jackson County “James P. Spano, Jr., Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 54, Requesting DOH name stretch of road in Logan County “USMC LCpl Larry G. Williamson Memorial Highway”.

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

Senate Concurrent Resolution No. 55, Requesting DOH name section of road in Logan County “U. S. Army SP4 Terry Robert Albright Memorial Road”.

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

Senate Concurrent Resolution No. 56, Requesting DOH name section of road in Logan County “U. S. Army Colonel Anna M. Butcher Road”.

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

Senate Concurrent Resolution No. 57, Requesting Joint Committee on Government and Finance study public utility regulation by political subdivisions.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill No. 2053, Relating to the form of trust deeds.

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

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

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

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-2. Form of deed of trust; memorandum of deed of trust may be recorded.

A ~~trust deed~~ deed of trust to secure debts or indemnify sureties may be in the following form or to the same effect: "This deed made the day of, in the year, between (the grantor) of the one part, and (the trustee) of the other part, witnesseth: That the said (the grantor) doth (or do) grant unto the said (the trustee) the following property (here describe it). In trust to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants, or any other provisions the parties may agree upon). Witness the following signature."

In lieu of the recording of a deed of trust, there may be recorded with like effect a memorandum of the deed of trust, executed by all persons who are grantors under the deed of trust and acknowledged

in the manner to entitle a conveyance to be recorded. A memorandum of deed of trust entitled to be recorded shall contain at least the following information with respect to the deed of trust: (1) The name and the address of each grantor, the name and the address of each trustee and the name and the address of each beneficiary as set forth in the deed of trust; (2) a reference to the indebtedness secured by the deed of trust including the amount of the indebtedness and the date the indebtedness was incurred or if the indebtedness is evidenced by a note or contract, the date the instrument was executed; (3) the date of execution of the deed of trust if different than the date the evidence of indebtedness was executed; (4) the date of maturity of the indebtedness; (5) the description of the real estate against which a lien is claimed to secure the indebtedness; (6) a title in compliance with subsection (b), section fourteen, article one, chapter thirty-eight of this code if the indebtedness is a line of credit; (7) a statement of whether advances are obligatory if the indebtedness is a line of credit; (8) provisions of the deed of trust regarding substitution of a trustee; (9) a summary of the applicable notice and publication requirements if there is a default; (10) whether the loan was originated or serviced pursuant to a program of the following agencies or organizations, and if so, any form number actually used: (a) Federal Housing Administration; (b) Veterans Administration; (c) Federal National Mortgage Association; (d) Federal Home Loan Administration; (e) United States Department of Agriculture; or (f) West Virginia Housing Development Fund; and (11) the name of the person from whom, upon written request from any interested party, the original deed of trust, or a copy thereof, may be obtained. The memorandum shall constitute notice of only the information contained therein but, as against creditors and purchasers, it is as valid as if the complete deed of trust were recorded on the date the memorandum is admitted to record. Prior to the commencement of any foreclosure or other execution of the deed of trust, the original deed of trust shall be recorded.

CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.

ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS AND PURCHASERS.

§40-1-9. Contracts, deeds and mortgages invalid as to creditors and purchasers until recorded.

Every such contract, every deed conveying any such estate or term, and every deed of gift, or ~~trust deed~~ deed of trust or memorandum of deed of trust pursuant to section two, article one, chapter thirty-eight of this code, or mortgage, conveying real estate shall be void, as to creditors, and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract, deed, ~~trust deed~~ deed of trust or memorandum of deed of trust or mortgage may be.

The bill (Eng. Com. Sub. for H. B. No. 2053), as amended, was then ordered to third reading.

Eng. House Bill No. 2100, Caregiver Advise, Record and Enable Act.

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

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

On page eight, section five, lines five through nine, by striking out all of subsection (b) and inserting in lieu thereof two new subsections, designated subsections (b) and (c), to read as follows:

(b) Nothing in this act shall be construed to create a private right of action against a hospital, hospital employee, a duly authorized agent of the hospital or any consultants or contractors with whom the hospital has a contractual relationship.

(c) A hospital, a hospital employee or any consultants or contractors with whom a hospital has a contractual relationship shall not be held liable in any way for services rendered or not rendered by the lay caregiver.

The bill (Eng. H. B. No. 2100), as amended, was then ordered to third reading.

Eng. House Bill No. 2272, Relating to the authority of the Board of Pharmacy.

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

Eng. Com. Sub. for House Bill No. 2368, Relating to child welfare.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported Health and Human Resources committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill No. 2432, Relating to the licensure requirements to practice pharmacist care.

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

Eng. Com. Sub. for House Bill No. 2462, Relating to certain deposits of tax proceeds.

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

Eng. Com. Sub. for House Bill No. 2505, Relating to retirement system participation and concurrent employment provisions.

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

Eng. Com. Sub. for House Bill No. 2507, Relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

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

Eng. Com. Sub. for House Bill No. 2527, Creating a Task Force on Prevention of Sexual Abuse of Children; “Erin Merryn’s Law”.

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

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §49-2-8 and §49-2-12a, all to read as follows:

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION
AND CARE OF CHILDREN.**

§49-2-8. Task Force on Prevention of Sexual Abuse of Children.

(a) This section may be referred to as “Erin Merryn’s Law”.

(b) The Task Force on Prevention of Sexual Abuse of Children is established. The task force consists of the following members:

(1) The Chair of the West Virginia Senate Committee on Health and Human Resources, or his or her designee;

(2) The Chair of the House of Delegates Committee on Health and Human Resources, or his or her designee;

(3) The Chair of the West Virginia Senate Committee on Education, or his or her designee;

(4) The Chair of the House of Delegates Committee on Education, or his or her designee;

(5) One citizen member appointed by the President of the Senate;

(6) One citizen member appointed by the Speaker of the House of Delegates;

(7) One citizen member, who is a survivor of child sexual abuse, appointed by the Governor;

(8) The President of the State Board of Education, or his or her designee;

(9) The State Superintendent of Schools, or his or her designee;

(10) The Secretary of the Department of Health and Human Resources, or his or her designee;

(11) The Director of the Prosecuting Attorney’s Institute, or his or her designee;

(12) One representative of each statewide professional teachers' organization, each selected by the leader of his or her respective organization;

(13) One representative of the statewide school service personnel organization, selected by the leader of the organization;

(14) One representative of the statewide school principals' organization, appointed by the leader of the organization;

(15) One representative of the statewide professional social workers' organization, appointed by the leader of the organization;

(16) One representative of a teacher preparation program of a regionally accredited institution of higher education in the state, appointed by the Chancellor of the Higher Education Policy Commission;

(17) The Chief Executive Officer of the Center for Professional Development, or his or her designee;

(18) The Director of Prevent Child Abuse West Virginia, or his or her designee;

(19) The Director of the West Virginia Child Advocacy Network, or his or her designee;

(20) The Director of the West Virginia Coalition Against Domestic Violence, or his or her designee;

(21) The Director of the West Virginia Foundation for Rape Information and Services, or his or her designee;

(22) The Administrative Director of the West Virginia Supreme Court of Appeals, or his or her designee;

(23) The Executive Director of the West Virginia Sheriffs' Association, or his or her designee;

(24) One representative of an organization representing law enforcement, appointed by the Superintendent of the West Virginia State Police; and

(25) One practicing school counselor appointed by the leader of the West Virginia School Counselors Association.

(c) To the extent practicable, members of the task force shall be individuals actively involved in the fields of child abuse and neglect prevention and child welfare.

(d) At the joint call of the House of Delegates and Senate Education Committee Chairs, the task force shall convene its first meeting and by majority vote of members present elect presiding officers. Subsequent meetings shall be at the call of the presiding officer.

(e) The task force shall make recommendations for decreasing incidence of sexual abuse of children in West Virginia. In making those recommendations, the task force shall:

(1) Gather information regarding sexual abuse of children throughout the state;

(2) Receive related reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(3) Create goals for state education policy that would prevent sexual abuse of children;

(4) Create goals for other areas of state policy that would prevent sexual abuse of children; and

(5) Submit a report with its recommendations to the Governor and the Legislature.

(f) The recommendations may include proposals for specific statutory changes and methods to foster cooperation among state agencies and between the state and local governments. The task force shall consult with employees of the Bureau for Children and Family Services, the Division of Justice and Community Services, the West Virginia State Police, the State Board of Education, and any other state agency or department as necessary to accomplish its responsibilities under this section.

(g) Task force members serve without compensation and do not receive expense reimbursement.

§49-2-12a. Legislative findings and declaration of intent for goals for foster children.

(a) The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the goals for children in foster care. A child in foster care should have:

(1) Protection by a family of his or her own, and be provided readily available services and support through care of an adoptive family or by plan, a continuing foster family;

(2) Nurturing by foster parents who have been selected to meet his or her individual needs, and who are provided services and support, including specialized education, so that the child can grow to reach his or her potential;

(3) A safe foster home free of violence, abuse, neglect and danger;

(4) The ability to communicate with the assigned social worker or case worker overseeing the child's case and have calls made to

the social worker or case worker returned within a reasonable period of time;

(5) Permission to remain enrolled in the school the child attended before being placed in foster care, if at all possible;

(6) Participation in school extracurricular activities, community events, and religious practices;

(7) Communication with the biological parents. Communication is necessary if the child placed in foster care receives any immunizations and if any additional immunizations are needed, if the child will be transitioning back into a home with his or her biological parents;

(8) A bank or savings account established in accordance with state laws and federal regulations;

(9) Identification and other permanent documents, including a birth certificate, social security card and health records by the age of sixteen, to the extent allowed by federal and state law;

(10) The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings; and

(11) Meaningful participation in a transition plan for those phasing out of foster care.

(b) A person shall not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing in this section requires the expenditure of funds to meet the goals established in this section, except funds specifically appropriated for that purpose.

(c) The West Virginia Department of Health and Human Resources shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to ensure that a child has an effective means of being heard if he or she believes the goals of this section are not being met.

(d) When a child who was previously placed into foster care, but left the custody or guardianship of the department, is again placed into foster care, the department shall notify the foster parents who most recently cared for the child of the child's availability for foster care placement to determine if the foster parents are desirous of seeking a foster care arrangement for the child. The arrangement may only be made if the foster parents are otherwise qualified or can become qualified to enter into the foster care arrangement with the department and if the arrangement is in the best interests of the child: *Provided*, That the department may petition the court to waive notification to the foster parents. This waiver may be granted, *ex parte*, upon a showing of compelling circumstances.

The bill (Eng. Com. Sub. for H. B. No. 2527), as amended, was then ordered to third reading.

Eng. House Bill No. 2535, Relating generally to suicide prevention training, "Jamie's Law".

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

On motion of Senator Sypolt, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page three, section forty, after the section caption, by inserting a new subsection, designated subsection (a), to read as follows:

(a) This section, section seven, article one-b, chapter eighteen-b of this code and section one, article six, chapter twenty-seven of this code shall be known as “Jamie’s Law”.

And,

On page three, section forty, line one, before the word “On” by inserting “(b)”.

The bill (Eng. H. B. No. 2535), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2550, Increasing the number of unexcused absences of a student before action may be taken against the parent.

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

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

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

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for ~~inexcusable~~ unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article; ~~and~~

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so; and

(3) For the purposes of this article, the following definitions shall apply:

(A) “Excused absence” shall be defined to include:

(i) Personal illness or injury of the student or in the family;

(ii) Medical or dental appointment with written excuse from physician or dentist;

(iii) Chronic medical condition or disability that impacts attendance;

(iv) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(v) Calamity, such as a fire or flood;

(vi) Death in the family;

(vii) School-approved or county-approved curricular or extra-curricular activities;

(viii) Judicial obligation or court appearance involving the student;

(ix) Military requirement for students enlisted or enlisting in the military; and

(x) Such other situations as may be further determined by the county board: *Provided*, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

(B) “Unexcused absence” shall be any absence not specifically included in the definition of “excused absence”.

(b) In the case of ~~five~~ three total unexcused absences of a student during a school year, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal or other designated representative will be required.

(c) In the case of five total unexcused absences, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of the student that within ~~ten~~ five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the ~~inexcusable~~ unexcused absences of the student, including the adjustment of unexcused absences based upon such meeting.

(d) In the case of ten total unexcused absences of a student during a school year, and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial

service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(~~c~~) (e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

(~~d~~) (f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(~~e~~) (g) The county attendance director and assistants shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(f) (h) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not ~~be~~ limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

The bill (Eng. Com. Sub. for H. B. No. 2550), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2562, Relating to sales tax increment financing.

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

Eng. House Bill No. 2626, Relating to use of the Abandoned Land Reclamation Fund.

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

Eng. House Bill No. 2632, Exempting the procurement of certain instructional materials for use in and in support of public schools from the division of purchasing requirements.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendment pending and the right for further amendments to be considered on that reading.

Eng. House Bill No. 2645, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program.

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

Eng. Com. Sub. for House Bill No. 2648, Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency.

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

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

On page three, section two, line five, after the word “programs” by changing the semicolon to a period;

On page four, section three, line eight, by striking out the word “an”;

On page four, section four, lines one and two, by striking out the words “An authorized health care practitioner may prescribe to an authorized entity an epinephrine injector.” and inserting in lieu thereof the following: An authorized health care practitioner may prescribe an epinephrine injector to an authorized entity.;

And,

On page six, section five, line thirteen, after the word “administers” by inserting the words “or provides”.

The bill (Eng. Com. Sub. for H. B. No. 2648), as amended, was then ordered to third reading.

Eng. House Bill No. 2657, Allowing members of the Livestock Care Standards Board to be reimbursed for expenses consistent with the West Virginia Department of Agriculture Travel Policy and Procedure.

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

Eng. Com. Sub. for House Bill No. 2702, Redefining service personnel class titles of early childhood classroom assistant teacher.

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

Eng. Com. Sub. for House Bill No. 2755, Relating to service and professional employee positions at jointly established schools.

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

Eng. House Bill No. 2776, Relating to prescribing hydrocodone combination drugs for a duration of no more than three days.

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

Eng. Com. Sub. for House Bill No. 2778, State Infrastructure Fund Program.

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

Eng. House Bill No. 2876, Finding and 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 third reading.

Eng. House Bill No. 2880, Creating an addiction treatment pilot program.

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

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

On page two, by striking out all of section one and inserting in lieu thereof a new section, designated section one, to read as follows:

§62-15A-1. Definitions.

As used in this article:

(1) “Addiction service provider” means a person licensed by this state to provide addiction and substance abuse services to persons addicted to opioids, alcohol or both.

(2) “Adult drug court judge” means a circuit court judge operating a drug court as defined in subsection (a), section one of this article.

(3) “Adult Drug Court Program” means an adult treatment court established by the Supreme Court of Appeals of West Virginia pursuant to this article.

(4) “Circuit court” means those courts set forth in article two, chapter fifty-one of this code.

(5) “Court” means the Supreme Court of Appeals of West Virginia.

(6) “Division” means the Division of Corrections.

(7) “LS/CMI assessment criteria” means the level of service/case management inventory which is an assessment tool that measures the risk and need factors of adult offenders.

(8) “Medication-assisted treatment” means the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

(9) “Parole” means the release of a prisoner by the Division of Corrections temporarily or permanently before the completion of a sentence, on the promise of good behavior.

(10) “Prescriber” means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.

The bill (Eng. H. B. No. 2880), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2999, Relating to neonatal abstinence centers.

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

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

On page fifteen, section one, line one, by striking out “(a)”;

On page sixteen, section one, lines fifteen and sixteen, by striking out all of subsection (c);

On pages sixteen and seventeen, section two, by striking out all of section two and inserting in lieu thereof a new section, designated section two, to read as follows:

§16-2M-2. Rules; minimum standards for neonatal abstinence centers.

(a) The secretary shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-two of this code to carry out the purpose of this article. These rules shall include at a minimum:

(1) Licensing procedures for neonatal abstinence centers. These procedures shall be in place by July 1, 2015;

(2) The minimum standards of operation for neonatal abstinence facilities including the following:

(A) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(B) Qualifications of facility's administrators, medical directors, nurses, aides and other personnel;

(C) Safety requirements;

(D) Sanitation requirements;

(E) Therapeutic services to be provided;

(F) Medical records;

(G) Pharmacy services;

(H) Nursing services;

(I) Medical services;

(J) Physical facility;

(K) Visitation privileges; and

(L) Admission, transfer and discharge policies.

(b) The provisions of the rules promulgated pursuant to this section shall apply only to those facilities regulated pursuant to section five, article two-d of this chapter and shall not apply to a hospital-based acute care unit.;

And,

On page seventeen, section three, line one, by striking out “(a)”.

The bill (Eng. Com. Sub. for H. B. No. 2999), as amended, was then ordered to third reading.

Pending announcement of meetings of standing committees of the Senate, including a majority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Monday, March 9, 2015, at 10:30 a.m.

MONDAY, MARCH 9, 2015

The Senate met at 10:30 a.m.

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

Prayer was offered by Pastor Monty Brown, St. Marks United Methodist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Donna J. Boley, a senator from the third district.

At the request of Senator Carmichael, and by unanimous consent, Senator Carmichael addressed the Senate.

The Senate then stood in observance of a moment of silence in recognition of the victims of a mining accident in Marshall County.

Pending the reading of the Journal of Sunday, March 8, 2015,

On motion of Senator Beach, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

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

Eng. Senate Bill No. 559, Relating to social work licensing exemptions.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

That §30-30-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-16. Provisional license to practice as a social worker.

(a) To be eligible for a provisional license to practice as a social worker, the applicant must:

- (1) Submit an application to the board;
- (2) Be at least eighteen years of age;
- (3) Be of good moral character;

(4) Have a baccalaureate degree in a related field, as provided by legislative rule: *Provided, That an individual seeking employment as a provisionally licensed social worker with the West Virginia Department of Health and Human Resources shall have a baccalaureate degree;*

(5) Have obtained regular supervised employment, or the reasonable promise of regular supervised employment contingent upon receiving a provisional license, in a critical social work workforce shortage position, area or setting requiring a social work license: *Provided, That such employment shall not be as an independent practitioner, contracted employee, sole proprietor, consultant, or other nonregular employment;*

(6) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(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 an acknowledged substance abuse treatment and/or recovery program may be considered;*

(8) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed;

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed; and

(10) Meet any other requirements established by the board: ; and

(11) The board shall promulgate emergency rules, in accordance with section fifteen, article three, chapter twenty-nine-a of this code, to implement the provisions of this subsection.

(b) A provisionally licensed social worker may become a licensed social worker, by completing the following:

(1) Be continuously employed for four years as a social worker and supervised. The board shall promulgate by legislative rule the supervision requirements;

(2) Complete twelve credit hours of core social work study from a program accredited by the council on social work education, as defined by legislative rule, within the four-year provisional license period: Provided, That an individual employed as a provisionally licensed social worker with the West Virginia Department of Health and Human Resources shall satisfy this requirement upon completion of the social work training program with the West Virginia Department of Health and Human Resources. The Secretary of the West Virginia Department of Health and Human Resources shall, with the advice of the Higher Education Policy Commission, West Virginia University School of Social Work, and Marshall University Department of Social Work, promulgate legislative rules, in accordance with article three, chapter twenty-nine-a of this code, to implement the provisions of this subdivision;

(3) Complete continuing education as required by legislative rule; and

(4) Pass an examination approved by the board.

~~(c) A provisionally licensed social worker or a person previously licensed as a provisionally licensed social worker may not reapply for licensure through this process if the process is not completed.~~

(c) On or before July 1, 2020, the Legislative Auditor shall cause to be performed a performance audit of the provisional license to practice as a social worker application process and the application process by which a provisional licensee may become a licensed social worker.;

And,

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

Eng. Senate Bill No. 559—A Bill to amend and reenact §30-30-16 of the Code of West Virginia, 1931, as amended, all relating to qualifications for a provisional license to practice as a social worker; providing that certain individuals applying for a provisional license to practice social work meet the education requirement with a baccalaureate degree; requiring the board of social work to promulgate emergency rules; providing an education alternative for a provisionally licensed social worker seeking to become a licensed social worker; requiring the Secretary of the West Virginia Department of Health and Human Resources to promulgate rules; and requiring a legislative audit of the social worker license application process.

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

Engrossed Senate Bill No. 559, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 559) passed with its House of Delegates amended title.

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

The Senate proceeded to the fourth order of business.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2005, Relating to alternative programs for the education of teachers.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Sypolt, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2005) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Education pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2011, Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2011) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2128, Permitting those individuals who have been issued concealed weapons permits to keep loaded firearms in their motor vehicles on the State Capitol Complex grounds.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2128) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2478, Relating to public school finance.

With amendments from the Committee on Education pending;

And has also amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2478) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2502, Possessing deadly weapons on school buses or on the premises of educational facilities.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2502) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2536, Relating to travel insurance limited lines producers.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2536) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2892, Authorizing certain legislative rules regarding higher education.

And reports the same back without recommendation as to passage; but with the recommendation that it first be referred to the Committee on Education.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2892) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Carmichael, the bill was referred to the Committee on Education.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2934, Repealing the common core standards.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Sypolt, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2934) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second

reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Education pending.

The Senate proceeded to the fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 11:08 a.m. today:

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

The Senate proceeded to the sixth order of business.

Senators D. Hall, Stollings, Ferns, Prezioso, Gaunch, Walters and Williams offered the following resolution:

Senate Resolution No. 51—Honoring Nancy Stuart Tonkin for her dedicated public service and many contributions to the citizens of West Virginia.

Whereas, Nancy Stuart Tonkin was born in Harrison County, West Virginia, and graduated from Washington Irving High School and West Virginia University, with a master's degree in social work; and

Whereas, Nancy Stuart Tonkin has dedicated the past thirty-five years of her life advocating for women, children and families; and

Whereas, Nancy Stuart Tonkin began her career in public service when she served as a head page in the West Virginia Legislature; and

Whereas, Nancy Stuart Tonkin continued her public service by earning leadership positions with the Community Council of

Kanawha Valley, the West Virginia Hospital Association and as founder and president of the Tonkin Management Group; and

Whereas, Nancy Stuart Tonkin served as the first executive director of the West Virginia Human Resources Association and as communications director for the West Virginia Healthy Kids Coalition when the West Virginia Children's Health Insurance Program (WVCHIP) was first formed; and

Whereas, During her time at the West Virginia Healthy Kids Coalition, Nancy Stuart Tonkin implemented a successful grassroots and communication plan, which resulted in over 20,000 children being enrolled in WVCHIP; and

Whereas, Nancy Stuart Tonkin, while at the WV Hospital Association, established HOSNET, a grassroots organization of hospital staff and volunteers for legislative action, and developed community educational programs; and

Whereas, During the course of her career, Nancy Stuart Tonkin has exemplified the ingredients of being a successful advocate through her passion, leadership, coalition building, strategic thinking and perseverance at the State Capitol, earning her a reputation as a trusted source on rural health and children welfare issues and resulting in numerous policy victories for women, children and families throughout the state of West Virginia; and

Whereas, Nancy Stuart Tonkin has served as President of the Board of Directors for the Children's Home Society of West Virginia and currently serves on the YWCA Charleston Board as the chair of public policy; and

Whereas, Nancy Stuart Tonkin was in the first graduating class of Leadership West Virginia and has given her time and talent to volunteering for many civic and nonprofit organizations; and

Whereas, In addition to advocating for children, women, and families throughout West Virginia, Nancy Stuart Tonkin has taken the time to mentor other advocates as they learn the legislative process; and

Whereas, Nancy Stuart Tonkin is a model for honesty, integrity and moral virtue, and a shining example to all West Virginians of what can be accomplished with hard work, dedication and spirit; therefore, be it

Resolved by the Senate:

That the Senate hereby honors Nancy Stuart Tonkin for her dedicated public service and many contributions to the citizens of West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Nancy Stuart Tonkin.

At the request of Senator D. Hall, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators D. Hall, Stollings, Kessler and Ferns regarding the adoption of Senate Resolution No. 51 were ordered printed in the Appendix to the Journal.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

Senate Concurrent Resolution No. 59, Requesting Joint Committee on Government and Finance study expansion of outcomes of MU Luke Lee Listening, Language and Learning Lab.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill No. 2053, Relating to the form of trust deeds.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2053) passed.

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

Eng. Com. Sub. for House Bill No. 2053—A Bill to amend and reenact §38-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §40-1-9 of said code, all relating to deeds of trust; permitting the recording of a memorandum of deed of trust in lieu of the deed of trust; setting requirements for content of memorandum of deed of trust; and requiring recording of original deed of trust prior to commencement of foreclosure action or other execution thereof.

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

Eng. House Bill No. 2100, Caregiver Advise, Record and Enable Act.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Spolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2100) passed.

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

Eng. House Bill No. 2100—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5X-1, §16-5X-2, §16-5X-3, §16-5X-4, §16-5X-5 and §16-5X-6, all relating to permitting hospital patients to designate a lay caregiver; providing definitions; requiring patient consent; requiring certain notation in medical records; permitting modifications to the lay caregiver designations; requiring certain notices to a lay caregiver; requiring hospital to consult with a lay caregiver to prepare for aftercare and to issue discharge plan; providing for circumstances in which hospital is unable to contact a

lay caregiver; providing immunity; and prohibiting use of state or federal funds for payment of a lay caregiver.

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

Eng. House Bill No. 2272, Relating to the authority of the Board of Pharmacy.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2272) passed.

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

Eng. House No. Bill 2272—A Bill to repeal §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6, §16-5W-7 and §16-5W-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-5-7 of said code, relating generally to the rule-making authority of the Board of Pharmacy; repealing the current statutory official prescription paper program and allowing the Board of Pharmacy to develop and maintain an official

prescription paper program through rulemaking; and clarifying rule-making authority of the Board of Pharmacy to include the ability of pharmacy interns to administer certain immunizations.

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

Eng. Com. Sub. for House Bill No. 2368, Relating to child welfare.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Sunday, March 8, 2015, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend on third reading remaining in effect and with the unreported Health and Human Resources committee amendment pending.

Eng. Com. Sub. for House Bill No. 2432, Relating to the licensure requirements to practice pharmacist care.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2432) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2462, Relating to certain deposits of tax proceeds.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Beach, Kessler, Snyder, Unger and Williams—5.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2462) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2505, Relating to retirement system participation and concurrent employment provisions.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2505) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2507, Relating to membership provisions in the West Virginia Municipal Police and Firefighters Retirement System.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2507) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2527, Creating a Task Force on Prevention of Sexual Abuse of Children; “Erin Merryn’s Law”.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2527) passed.

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

Eng. Com. Sub. for House Bill No. 2527—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §49-2-8 and §49-2-12a, all relating to the welfare of children; establishing the Task Force on Prevention of Sexual Abuse of Children; authorizing section to be called “Erin Merryn’s Law”; specifying membership; specifying responsibilities,

including report of recommendations to Legislature and Governor; precluding member compensation or expense reimbursement; relating to legislative findings and declaration of intent for goals for foster children; requiring the Department of Health and Human Resources to propose legislative rules; providing that no new cause of action against the state is created; no expenditure of funds is required; and notify former foster parents of child's availability for placement.

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

Eng. House Bill No. 2535, Relating generally to suicide prevention training, "Jamie's Law".

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2535) passed.

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

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

Eng. House Bill No. 2535—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-40; to amend said code by adding thereto a new section, designated §18B-1B-7; and to amend said code by adding thereto a new article, designated §27-6-1, all relating to creating “Jamie’s Law”; requiring a public middle and high school administrator to disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students; requiring each public and private institution of higher education to develop and implement a policy to advise students and staff on suicide prevention programs available on and off campus; requiring each public and private institution of higher education to provide all incoming students with information about depression and suicide prevention resources available to students; requiring the posting of certain information on the website of the public and private institutions of higher education, the Higher Education Policy Commission, and the Council for Community and Technical College Education; and requiring the Bureau for Behavioral Health and Health Facilities to post on its website suicide prevention awareness information.

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

Eng. Com. Sub. for House Bill No. 2550, Increasing the number of unexcused absences of a student before action may be taken against the parent.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo,

Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Facemire and Williams—2.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2550) passed.

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

Eng. Com. Sub. for House Bill No. 2550—A Bill to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to defining excused and unexcused absences; providing that notice of a student's three unexcused absences be given to parent, guardian or custodian; providing that a parent, guardian or custodian have a mandatory conference with the principal or other designated representative of the school when the student has five unexcused absences; and increasing number of unexcused absences by a student before a complaint must be made against the parent, guardian or custodian of the student.

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

Eng. Com. Sub. for House Bill No. 2562, Relating to sales tax increment financing.

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

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

Eng. House Bill No. 2626, Relating to use of the Abandoned Land Reclamation Fund.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2626) passed with its title.

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

Eng. House Bill No. 2632, Exempting the procurement of certain instructional materials for use in and in support of public schools from the division of purchasing requirements.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Sunday, March 8, 2015, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator M. Hall, as chair of the Committee on Finance, and by unanimous consent, the unreported Finance committee amendment to the bill was withdrawn.

On motion of Senator M. Hall, the following amendment to the bill was reported by the Clerk and adopted:

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

That §5A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5A-3-3 of said code be amended and reenacted; that §18-2E-7 of said code be amended and reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

(1) To establish centralized offices to provide purchasing and travel services to the various state agencies;

(2) To simplify, clarify and modernize the law governing procurement by this state;

(3) To permit the continued development of procurement policies and practices;

(4) To make as consistent as possible the procurement rules and practices among the various spending units;

(5) To provide for increased public confidence in the procedures followed in public procurement;

(6) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(7) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(8) To foster effective broad-based competition within the free enterprise system;

(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units in order for those spending units to better serve this state's businesses and residents.

(b) The Director of the Purchasing Division shall, at the time of appointment:

(1) Be a graduate of an accredited college or university; and

(2) Have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(c) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(d) The provisions of this article do not apply to the judicial branch, the West Virginia State Police Forensics Laboratory, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks, for instructional

materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by the State Board of Education for use in and in support of the public schools.

(e) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds.

§5A-3-3. Powers and duties of Director of Purchasing.

The director, under the direction and supervision of the secretary, shall be the executive officer of the Purchasing Division and shall have the power and duty to:

(1) Direct the activities and employees of the Purchasing Division;

(2) Ensure that the purchase of or contract for commodities and services shall be based, whenever possible, on competitive bid;

(3) Purchase or contract for, in the name of the state, the commodities, services and printing required by the spending units of the state government;

(4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;

(5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;

(6) Have charge of central storerooms for the supply of spending units, as the director deems advisable;

(7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions

for that purpose as hereinafter provided, as the director deems advisable;

(8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve such contracts as to form: *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation: *Provided, however*, That the provisions of this subdivision do not apply in any respect whatever to contracts entered into by the University of West Virginia Board of Trustees or by the Board of Directors of the State College System, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: *Provided further*, That the provisions of this subdivision do not apply to the West Virginia State Police Forensic Laboratory and the West Virginia Office of Laboratory Services;

(10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor. If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided, either before or after the bids are opened, that a commodity or service having different specifications or quality or in different quantity can be

bought, the director may rewrite the solicitation and the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated competitive bidding or other requirements established by this article and the rules promulgated hereunder. Failure to abide by such notice may result in penalties set forth in section seventeen of this article.

CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-7. Providing for instruction and learning in all public schools.

(a) The Legislature finds that:

(1) The knowledge and skills children need to succeed ~~in the twenty-first century~~ are changing dramatically and that West Virginia students must develop proficiency in ~~twenty-first century~~ the subject matter content, technology tools and learning skills to succeed and prosper in life, in school and on the job;

(2) Students must be equipped to live in a multitasking, multifaceted, technology-driven world;

(3) The provision ~~of twenty-first century~~ technologies and software resources in grades prekindergarten through twelve is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment;

(4) This goal reflects a fundamental belief that the youth of the state exit the system equipped with the skills, competencies and attributes necessary to succeed, to continue learning throughout their lifetimes and to attain self-sufficiency;

(5) To promote ~~twenty-first century~~ learning, teachers must be competent in ~~twenty-first century~~ content and learning skills and must be equipped to fully integrate technology to transform instructional practice and to support ~~twenty-first century~~ skills acquisition;

(6) For students to learn ~~twenty-first century~~ technology skills, students and teachers must have equitable access to high quality, ~~twenty-first century~~ technology tools and resources;

(7) When aligned with standards and curriculum, technology-based assessments can be a powerful tool for teachers; and

(8) Teachers must understand how to use technology to create classroom assessments for accurate, timely measurements of student proficiency in attainment of academic content. ~~and twenty-first century skills~~

(b) The state board shall ensure that the resources to be used to provide technology services to students in grades prekindergarten through twelve are included in a West Virginia ~~21st Century~~ Strategic Technology Learning Plan to be developed by the Department of Education as an integral component of the county electronic strategic improvement plan required in section five of this article. The provision of technologies and services to students and teachers shall be based on a county technology plan developed by a team that includes school building-level professional educators and is aligned with the goals and objectives of the West Virginia ~~21st Century~~ Strategic Technology Learning Plan. This plan shall be an integral component of the county electronic strategic improvement plan as required in section five of this article. Funds shall be allocated equitably to county school systems following peer review of the plans that includes providing necessary technical assistance prior to submission and allows timely review and approval by the West Virginia Department of Education. ~~Technology tools, including hardware, software, network cabling, network electronics and related professional development, shall be purchased pursuant~~

to the provisions of article three, chapter five-a of this code in the amount equal to anticipated revenues being appropriated and based on the approved county plans. ~~County allocations that support this legislation~~ Equitable allocation shall be defined by the state board and may include per school-site equity for technologies requiring a site license or other per school application. Technology tools purchased from appropriations for this section shall adhere to state contract prices: *Provided*, That contingent upon approval of the county technology plan, counties that identify, within that plan, specific software or peripheral equipment not listed on the state contract, but necessary to support implementation, ~~of twenty-first century skills~~, may request the West Virginia Department of Education to secure state purchasing prices for those identified items. Total expenditure to purchase these additional items may not exceed ten percent of the annual county allocation. To the extent practicable, the technology shall be used:

(1) To maximize student access to learning tools and resources at all times including during regular school hours, before and after school or class, in the evenings, on weekends and holidays and for public education, noninstructional days and during vacations; and

(2) For student use for homework, remedial work, personalized learning, independent learning, career planning and adult basic education.

(c) The implementation of this section should provide a technology infrastructure capable of supporting multiple technology-based learning strategies designed to enable students to achieve at higher academic levels. The technology infrastructure should facilitate student development by addressing the following areas:

(1) Mastery of rigorous core academic subjects in grades prekindergarten through eight by providing software, other technology resources or both aligned with state standards in reading, mathematics, writing, science, social studies ~~twenty-first century learning skills and twenty-first century~~ and learning tools;

(2) Mastery of rigorous core academic subjects in grades nine through twelve by providing appropriate ~~twenty-first century~~ technology tools aligned with state standards for learning skills and technology tools;

(3) Attainment of ~~twenty-first century~~ skill outcomes for all students in the use of technology tools and learning skills;

(4) Proficiency in new, emerging ~~twenty-first century~~ content;

(5) Participation in relevant, contextual instruction that uses dynamic, real-world contexts that are engaging and meaningful for students, making learning relevant to life outside of school and bridging the gap between how students live and how they learn in school;

(6) Ability to use digital and emerging technologies to manage information, communicate effectively, think critically, solve problems, work productively as an individual and collaboratively as part of a team and demonstrate personal accountability and other self-directional skills;

(7) Providing students with information on post-secondary educational opportunities, financial aid and the skills and credentials required in various occupations that will help them better prepare for a successful transition following high school;

(8) Providing greater access to advanced and other curricular offerings than could be provided efficiently through traditional on-site delivery formats, including increasing student access to quality distance learning curricula and online distance education tools;

(9) Providing resources for teachers in differentiated instructional strategies, technology integration, sample lesson plans, curriculum resources and online staff development that enhance student achievement; and

(10) Providing resources to support basic skills acquisition and improvement at the above mastery and distinguished levels.

(d) Developed with input from appropriate stakeholder groups, the West Virginia ~~21st Century~~ Strategic Technology Learning Plan shall be an integral component of the electronic strategic county improvement plan as required in section five of this article. The West Virginia ~~21st Century~~ Strategic Technology Learning Plan shall be comprehensive and shall address, but not necessarily be limited to, the following provisions:

(1) Allocation of adequate resources to provide students with equitable access to ~~twenty-first century~~ technology tools, including instructional offerings and appropriate curriculum, assessment and technology integration resources aligned to both the content and rigor of state content standards as well as to learning skills and technology tools;

(2) Providing students and staff with equitable access to a technology infrastructure that supports the acquisition of ~~twenty-first century~~ skills in the use of technology, including the ability to access information, solve problems, communicate clearly, make informed decisions, acquire new knowledge, construct products, reports and systems and access online assessment systems;

(3) Inclusion of various technologies that enable and enhance the attainment of ~~twenty-first century~~ the skills outcomes for all students;

(4) Collaboration with various partners, including parents, community organization, higher education, schools of education in colleges and universities, employers and content providers;

(5) Seeking of applicable federal government funds, philanthropic funds, other partnership funds or any combination of those types of funds to augment state appropriations and encouraging the pursuit of funding through grants, gifts, donations or any other sources for uses related to education technology;

(6) Sufficient bandwidth to support teaching and learning and to provide satisfactorily for instructional management needs;

(7) Protection of the integrity and security of the network, as well as student and administrative workstations;

(8) Flexibility to adjust the plan based on developing technology, federal and state requirements and changing local school and county needs;

(9) Incorporation of findings based upon validation from research-based evaluation findings from previous West Virginia-based evaluation projects;

(10) Continuing study of emerging technologies for application in a ~~twenty-first century~~ learning environment and inclusion in the technology plan, as appropriate;

(11) An evaluation component to determine the effectiveness of the program and make recommendations for ongoing implementation;

(12) A program of embedded, sustained professional development for teachers that is strategically developed to support a ~~twenty-first century~~ thorough and efficient education for all students and that aligns with state standards for technology, integrates ~~twenty-first century~~ technology skills into educational practice and supports the implementation of ~~twenty-first century~~ software, technology and assessment resources in the classroom;

(13) Providing for uniformity in technological hardware and software standards and procedures;

(14) The strategy for ensuring that the capabilities and capacities of the technology infrastructure is adequate for acceptable performance of the technology being implemented in the public schools;

(15) Providing for a comprehensive, statewide uniform, integrated education management and information system for data collection and reporting to the Department of Education ~~as provided in section twenty-six, article two of this chapter and commonly referred to as the West Virginia Education Information System~~ and the public;

(16) Providing for an effective model for the distance delivery, virtual delivery or both types of delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program such as the West Virginia Virtual School;

(17) Providing a strategy to implement, support and maintain technology in the public schools;

(18) Providing a strategy to provide ongoing support and assistance to teachers in integrating technology into ~~twenty-first century~~ instruction such as with technology integration specialists and technology system specialists;

(19) A method of allowing public education to take advantage of appropriate bulk purchasing abilities and to purchase from competitively bid contracts initiated through the southern regional education board educational technology cooperative and the America TelEdCommunications Alliance;

(20) Compliance with United States Department of Education regulations and Federal Communications Commission requirements for federal E-rate discounts; and

(21) Other provisions as considered appropriate, necessary or both to align with applicable guidelines, policies, rules, regulations and requirements of the West Virginia Legislature, the Board of Education and the Department of Education.

(e) Any state code and budget references to the Basic Skills/Computer Education Program and the SUCCESS Initiative will be understood to refer to the statewide technology initiative referenced in this section, commonly referred to as the 21st Century Tools for 21st Century Schools Technology Initiative.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) The total allowance to improve instructional programs shall be the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, ~~an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. *Provided, That effective July 1, 2014,*~~ an amount equal to ten percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be distributed to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by provision of this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by section five, article

two-e of this chapter and approved by the state board: *Provided*, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section also may be used in the implementation and maintenance of the uniform integrated regional computer information system.

Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia ~~21st Century~~ Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy.

The provisions relating to the use of any funds from this subdivision for personnel costs are subject to the following: (1) The funds available for personnel under this subsection may not be used to increase the total number of professional noninstructional personnel in the central office beyond four; and (2) For the school year beginning July 1, 2013, and thereafter, any funds available to a county for use for personnel under this subsection above the

amount available for the 2012-2013 school year, only may be used for technology systems specialists until the state superintendent determines that the county has sufficient technology systems specialists to serve the needs of the county.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

~~(2) For the purposes of improving instructional technology, an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. *Provided, That effective July 1, 2014,* an amount equal to twenty percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as provided in section seven, article two-e of this chapter to meet the objectives of the West Virginia 21st Century Strategic Technology Learning Plan. *Provided, That effective July 1, 2014,* the sum of these amounts shall be distributed to the counties as follows:~~

~~(A) Thirty thousand dollars shall be allocated to each county; and~~

~~(B) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.~~

Effective July 1, 2014, moneys allocated by provision of this subdivision shall be used to improve instructional technology programs according to the county and school strategic improvement plans; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced

placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the state Board of Education shall annually deposit an amount equal to \$24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

(c) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.

Having been engrossed, the bill (Eng. H. B. No. 2632), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2632) passed.

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

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

Eng. House Bill No. 2632—A Bill to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-2E-7 of said code; and to amend and reenact §18-9A-10 of said code, all relating to purchasing guidelines; exempting the West Virginia State Police Forensics Laboratory and the West Virginia Office of Laboratory Services from state purchasing guidelines; exempting procurement of instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services for use in and in support of public schools; exempting procurement of these items from division of purchasing requirements; removing outdated language and updating name of state technology plan; requiring the State Board of Education to define “equitable distribution”; requiring certain technology tools to adhere to state contract prices; adding personalized learning as potential student use for technology; providing for technology system specialists; and removing expired transitional funding language and references to the twenty-first century.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2632) takes effect from passage.

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

Eng. House Bill No. 2645, Expanding the availability of the Underwood-Smith Teacher Loan Assistance Program.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2645) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2648, Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2648) passed.

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

Eng. Com. Sub. for House Bill No. 2648—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2, §16-46-3, §16-46-4 and §16-46-5, all relating to availability and use of epinephrine auto-injectors; providing definitions; providing for legislative rules;

providing for training; providing prescriptive authority to health care practitioners in certain circumstances; providing authority to pharmacists to dispense epinephrine auto-injectors in certain circumstances; providing for the storage and emergency use of epinephrine auto-injectors; providing that in certain circumstances the use of epinephrine auto-injectors is not the practice of medicine; providing that in certain circumstances one authorized to prescribe, possess or train regarding epinephrine auto-injectors is not liable for civil damages; and further providing that certain individuals who administer or provide an epinephrine auto-injector to a person is immune from liability for civil action unless the act or omission was grossly negligent or willful misconduct.

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

Eng. House Bill No. 2657, Allowing members of the Livestock Care Standards Board to be reimbursed for expenses consistent with the West Virginia Department of Agriculture Travel Policy and Procedure.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2657) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2702, Redefining service personnel class titles of early childhood classroom assistant teacher.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2702) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller-1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2702) takes effect from passage.

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

Eng. Com. Sub. for House Bill No. 2755, Relating to service and professional employee positions at jointly established schools.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)-33.

The nays were: None.

Absent: Miller-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2755) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt,

Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2755) takes effect from passage.

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

Eng. House Bill No. 2776, Relating to prescribing hydrocodone combination drugs for a duration of no more than three days.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2776) passed.

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

Eng. House Bill No. 2776—A Bill to amend and reenact §30-3E-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-7-15a of said code; and to amend and reenact §30-8-9 of said code, all relating to allowing physician assistants, advance practice registered nurses and optometrists to prescribe hydrocodone combination drugs for a duration of no more than three days in a thirty-day period.

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

Eng. Com. Sub. for House Bill No. 2778, State Infrastructure Fund Program.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill No. 2778 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Plymale—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2778) passed with its title.

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

Eng. House Bill No. 2876, Finding and 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 and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Plymale—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2876) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Plymale—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2876) takes effect from passage.

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

Eng. House Bill No. 2880, Creating an addiction treatment pilot program.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Plymale—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2880) passed with its title.

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

Eng. Com. Sub. for House Bill No. 2999, Relating to neonatal abstinence centers.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Miller and Plymale—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2999) passed.

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

Eng. Com. Sub. for House Bill No. 2999—A Bill to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-2D-5f; to amend said code by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3, all relating to neonatal abstinence centers; authorizing neonatal abstinence centers; requiring the secretary to promulgate and emergency rules; requiring the rules to set out a licensing procedure by July 1, 2015; requiring the rules to set minimum standards of operation for neonatal abstinence centers; clarifying that the provision of the rules on relate to specified facilities; requiring the state agency to consider neonatal abstinence care as a unique service in conducting certificate of need review; exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities from current moratoriums.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill No. 2586, Allowing for an alternative form of service of process in actions against nonresident persons by petitioners seeking domestic violence or personal safety relief.

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

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

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

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART III. PROCEDURE.

§48-27-311. Service of process.

A protective order may be served on:

(1) On the respondent by means of a Class I legal advertisement published notice, with the publication area being the most current known county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if personal service by law enforcement has been unsuccessful. Simultaneously with the publication, the respondent shall be served with the protective order and the order of

publication by first class mail to the respondent's most current known residential address.

(2) Against nonresident persons by the manner prescribed in section thirty-three-a, article three, chapter fifty-six of this code.

Any protective order issued by the court of this state which is served in compliance with the provisions of Rule 4(f) of the West Virginia Rules of Civil Procedure served outside the boundaries of this state shall carry the same force and effect as if it had been personally served within this state's boundaries.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; service of process; authorizing Secretary of State to receive process against nonresidents.

(a) Any person who is:

(1) Not a resident of this state; or

(2) A resident of this state who has left this state; or

(3) A person whose residence is unknown shall be considered to have submitted to the jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection (b) of this section, if such conduct was:

(A) Committed in this state; or

(B) If such conduct was not committed in this state if the conduct was purposely directed at a resident and has an effect within this state.

(b) Conduct compelling application of this section consists of:

(1) Any act constituting domestic violence or abuse as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code; or

(2) Any act constituting a basis for seeking personal safety relief as defined in section four, article eight, chapter fifty-three of this code; or

(3) Any act or omission violating the provisions of a duly authorized protective or restraining order, whether issued by this state or another jurisdiction, for the protection of any person within this state.

(c) Any person subject to or considered to have submitted to the jurisdiction of the courts of this state who is made a respondent in an action may be served with the petition and order initiating such action either:

(1) By law-enforcement officers, wherever the respondent may be found, whether inside or outside the boundaries of this state; or

(2) If the respondent is alleged to have committed conduct specified in subsection (b) of this section, this shall be considered equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any court in this state, for a cause of action arising from or growing out of such conduct, and the engaging in such conduct is a signification of such nonresident's agreement that any such process against him or her, which is served in the manner hereinafter provided, is of the same legal force and validity as though such nonresident were personally served within this state.

(A) Such service shall be made by leaving two copies of both the petition and order, with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: *Provided*, That notice of such service and a copy of the petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at his or her nonresident address and the respondent's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of the notice, petition and order has been signed, the Secretary of State shall notify the clerk's office of the court from which the petition and order were issued by a means which may include electronic notification. If the notice, petition and order were refused or undeliverable by the United States Postal Service, the Secretary of State shall return refused or undeliverable mail to the clerk's office of the court from which the petition and order were issued. If any respondent served with a petition and order fails to appear and defend at the time and place set forth in the order, judgment may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the respondent an opportunity to defend the action or proceeding.

(B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-three of this code regarding personal safety proceedings, no fees may be charged for service of petitions or orders until the matter is brought before the appropriate court for final resolution. Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of service shall be deferred and taxed in the costs of the action or proceeding.

(C) Data and records regarding service maintained by law-enforcement agencies and by the office of the Secretary of State for purposes of fulfilling the obligations of this section are not public records subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

(d) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such acts or acts covered by this section.

The bill (Eng. Com. Sub. for H. B. No. 2586), as amended, was then ordered to third reading.

Eng. House Bill No. 2914, Providing for voluntary dissolution of resort area district.

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

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

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

That §7-25-6, §7-25-11 and §7-25-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §7-25-7a and §7-25-27, all to read as follows:

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication.

(a) Before the adoption of an order creating a resort area district, the governing body shall cause notice to be given to the owners of real property located within the proposed resort area district that ~~such~~ the order will be considered for adoption at a public meeting of the governing body at a date, time and place named in the notice and that all persons at that meeting, or any adjournment ~~thereof~~ of the meeting, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the order. At or after the meeting the governing body may amend, revise or otherwise modify the information in the petition for formation or expansion of a resort area district as it may ~~deem~~ consider appropriate after taking into account any comments received at ~~such~~ the meeting.

(b) A resort area district may not be created by a governing body if, at the public meeting required by this section, written protest is filed by at least twenty-five percent of the owners of real property proposed to be included within the district. In the event of a ~~such~~ protest, the petition for the creation of the resort area district may not be resubmitted to the governing body for a period of at least one year from the date of the original submission.

(c) At least sixty days prior to the date of the meeting the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property to be included in the proposed resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous public locations within ~~such~~ the proposed district and published as a Class II legal advertisement in compliance

with the provisions of article three, chapter fifty-nine of this code and the publication area for ~~such~~ the publication shall be the county in which the proposed resort area district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

“NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN (here describe the boundaries of the proposed resort area district) IN THE COUNTY OF (name of county):

A petition has been presented to the county commission of the County of (name of county) requesting establishment of a resort area district and authorization of a resort service fee under article twenty-five, chapter seven of the code of West Virginia, 1931, as amended, to (describe potential projects and/or services to be provided) in the county of (name of county) as the county commission may deem proper. A copy of the petition is available in the office of the clerk of the county commission of the County of (name of county) for review by the public during regular office hours.

The petition to create a resort area district will be considered by the county commission at a public meeting to be held on the day of,, at ... m. at, Any owner of real property whose property may be affected by the creation of the above-described resort area district, and any owner of real property whose property is not located within said resort area district but wishes his or her property to be included, will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof:

..... (name of clerk)

(d) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of ~~such~~ the

publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of ~~said~~ the notice upon all persons owning any interest in any real property located within the proposed resort area district shall conclusively be ~~deemed~~ determined to have been given upon completion of mailing as provided in subsection (g) of this section and ~~such~~ the newspaper publication.

(e) The petitioners shall bear the expense of publication of the notice, the meeting and the mailing of the proposed order, as requested by subsection (f) of this section.

(f) After the public meeting and before the governing body may adopt an order creating a resort area district, the governing body shall, using reasonable efforts, mail a true copy of the proposed order creating the resort area district to the owners of real property in the proposed district as provided in subsection (g) of this section and shall post copies of ~~such~~ the proposed order in multiple, conspicuous public locations within ~~such~~ the proposed district. Unless waived in writing, any petitioning owner of real property ~~shall have~~ has thirty days from mailing of the proposed order in which to withdraw his or her signature from the petition in writing prior to the vote of the governing body on ~~such~~ the order. If any signatures on the petition are ~~so~~ withdrawn, the governing body may adopt the proposed order only upon certification by the petitioners that the petition otherwise continues to meet the requirements of this article. If all petitioning owners of real property waive the right to withdraw their signatures from the petition, then the governing body may immediately adopt the order.

(g) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail ~~such~~ the notice to all owners of real property proposed to be included within ~~such~~ the resort area district using the real property tax records and land books of the county in which ~~such~~ the proposed district is located and any lists maintained by a resort operator or

homeowners association within ~~such~~ the proposed district. ~~Such~~ The notice shall be also mailed to each president of a homeowners association, if any, located within a proposed district which has registered with a resort operator to receive ~~such~~ the information. Immaterial defects in the mailing of ~~such~~ the notices shall not affect the validity of ~~such~~ the notices: Provided, That in the case of any resort area district to be voted upon after the effective date of this amendment adopted during the 2015 regular session of the Legislature, any notice shall be mailed to the property owner's primary place of abode by certified mail, return receipt requested.

§7-25-7a. Voluntary dissolution resort area district.

(a) The owners of twenty-five percent or more of the real property in a resort area district may petition the board to dissolve that resort area district.

(b) Within sixty days of the submission of a petition for the dissolution of a resort area district, the board shall verify the total number of eligible petitioners to determine whether the required percentage of petitioners has been obtained. If the board determines that the petition has met the requirements of subsection (a) of this section, the board shall set a date for a special election on the question of continuing or dissolving the resort area district. The board shall, using reasonable efforts, cause a notice to be mailed by certified mail, return receipt requested, to each owner of real property located within the resort area district's of a special election to determine continuance or dissolution of the resort area district: *Provided, That any notice shall be mailed to the property owner's primary place of abode by certified mail, return receipt requested.*

The date set by the board for the special election required by this section may be no less than sixty nor more than ninety days from the date the board mails the notice, in the form described in subsection (c) of this section, to the owners of real property located within the district. The board shall make a copy of the petition available for inspection by interested persons before the special election. If the

board determines that the petition has not met the requirements of subsection (a) of this section, the petition shall be returned to the petitioners with a statement of the reason why the petition was rejected.

(c) The notice mailed to real property owners regarding the special election to determine the continuance or dissolution of the resort area district shall contain the following:

(1) The purpose, location, date and time for the special election;

(2) A proxy, in the form described in subsection (d) of this section, which may be used by owners of any class of property to grant proxies to any person to cast the owner's ballot at the special election as if the owner were present in person. The proxy may be mailed or transmitted electronically to the individual being granted the proxy; and

(3) A copy of a ballot described in subsection (e) of this section. The ballot may be used to vote for continuance or dissolution of the resort area district at the special election.

(d) The proxy form required to be included with the notice of special election mailed to real property owners, as provided in subsection (c) of this section, shall contain the following information:

(1) That the proxy is for the special election to consider the continuance or dissolution of the resort area district as covered by the notice required by subsection (b) of this section;

(2) The name of the owner having the voting right for a parcel of real property;

(3) The location of the real property;

(4) The name of the individual being given the proxy to vote for the owner unable to attend the special election;

(5) The date and signature of real property owner authorizing the proxy; and

(6) A statement that the named individual being extended the voting proxy is restricted to placing a vote for the named owner as indicated by the owner's check mark in one of the following two voting choices:

// For Continuance of the _____ (name of district) resort area district.

// For Dissolution of the _____ (name of district) resort area district.

(e) At the special election, the board shall submit the question of continuing or dissolving the resort area district to owners of qualified real property within the resort area district. For purposes of this section, the term "qualified real property" includes the following classes of real property: Unimproved/developable; commercial business; resort operator; and residential improved. Each owner of qualified real property is entitled to one undivided vote in the special election for each parcel of qualified real property owned. The special election ballots shall have written or printed on them the following:

// For Continuance of the _____ (name of district) resort area district.

// For Dissolution of the _____ (name of district) resort area district.

If a simple majority of the votes is cast for dissolution, then the board shall request that the governing body dissolve the resort area district. Following the receipt of a request, the resort area district shall be dissolved by the governing body by operation of law. However, all debts or other obligations outstanding against the resort area district must be settled in full prior to the dissolution. If a simple majority of the votes is cast for continuance, the resort area

district shall continue in existence until dissolved at some later date under this section. However, another election may not be held within two years of the last election.

(f) An election under this section shall be held, and conducted and the result determined, certified, returned and canvassed in the same manner and by the same persons as an election for resort area district board members pursuant to section eleven of this article.

§7-25-11. Election procedure for initial members of resort area board; subsequent elections; elections and procedures to fill board vacancies.

(a) Within ninety days of the adoption of the order creating the resort area district, a public meeting shall be held at which elections for the initial members of the board shall be held. ~~Such~~ The meeting shall be held at a location within the district not less than twenty days after the publication of the notice required by subsection (b) of this section.

(b) Prior to the meeting required by this section, the petitioners for the creation of the resort area district shall, using reasonable efforts, cause notice of the initial election meeting to be given to all owners of real property, including owners of commercial business property, located within the district. ~~Such~~ The notice shall be mailed to each owner of real property included in the resort area district as provided in subsection (h) of this section, posted in multiple, conspicuous public locations within ~~such~~ the district and published at least thirty days prior to the date of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for ~~such~~ the publication ~~shall be~~ is the resort area district. The notice shall provide, at a minimum, the following information:

- (1) The purpose of the meeting;
- (2) Descriptions of the board positions;

(3) A statement that only owners of real property, including owners of commercial business property, located within the district are eligible to make nominations for board positions or vote in such the election;

(4) The location of the meeting; ~~and~~

(5) Electronic and physical addresses where nominations for board positions will be received by petitioners for the creation of the resort area district; and

~~(5)~~ (6) The date and time of the meeting.

(c) ~~At the meeting required by this section nominations~~ Nominations shall be made for each board position by persons eligible to vote for each board position. Nominations may be made at the meeting required by this section, by mail or by electronic means. Nominations made by mail or by electronic means must be received by the petitioners prior to the meeting to be valid. Persons nominated for board positions shall meet the criteria provided for each board position as set forth in subsection (b), section ten of this article. Nominations shall be made for each board position in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may nominate persons for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Only representatives of the resort operator or resort operators may nominate persons for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may nominate persons for the board position

provided for an owner of or a representative of owners of commercial business property located within the resort area district; and

(4) Only owners of unimproved, developable real property located within the resort area district may nominate persons for the board position provided for an owner of or a representative of owners of unimproved, developable real property located within the resort area district.

(d) Following board member nominations, a vote shall be taken by written ballot for board members to be elected, but owners of any class of property may grant proxies to any person to cast the owner's ballot as if the owner were present in person. Voting shall occur in the following manner:

(1) Only owners of residential, improved real property located within the resort area district may vote for the three board positions provided for owners of or representatives of owners of residential, improved real property located within the resort area district. Each owner is entitled to one vote per unit or parcel of residential, improved real property he or she owns;

(2) Only a representative of each resort operator may vote for the two board positions provided for representatives of the resort operator or resort operators located within the resort area district;

(3) Only owners of commercial business property located within the resort area district may vote for the board position provided for an owner of or a representative of owners of commercial business property located within the resort area district. Each owner is entitled to one vote per unit of commercial business property he or she owns; and

(4) Only owners of unimproved, developable real property located within the resort area may vote for the board position provided for an owner of or a representative of owners of

unimproved, developable real property located within the resort area district. Each owner is entitled to one vote per parcel of unimproved, developable real property that he or she owns.

(e) For purposes of voting in the initial election and in all subsequent elections for board members:

(1) The owners of each parcel or unit of real property are entitled one vote, irrespective of the number of owners of ~~such~~ the parcel or unity;

(2) Fractional voting shall not be permitted; and

(3) The vote pertaining to a parcel or unit shall be cast in accordance with the direction of the person or persons holding the majority interest in ~~such~~ the parcel or unit, and in the event there is no majority, ~~such~~ the vote shall be forfeited.

(f) Each board member shall be elected by a ~~majority~~ plurality of the votes cast for such board position.

(g) The petitioners for the creation of the resort area district shall be responsible for the costs of the initial election and meeting required by this section.

(h) For purposes of the mailing of notice to owners of real property required by this section, reasonable efforts shall be made to mail such notice to all owners of real property included within such resort area district using the real property tax records and land books of the county in which such district is located and any lists maintained by a resort operator or homeowners association within such district. Such notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive such information. Immaterial defects in the mailing of such notices shall not affect the validity of such notice.

§7-25-15. Authorization to implement assessments for projects; procedures for implementing assessments; by-laws to provide additional procedures for implementation of assessments; notice to property owners before implementation of assessments for projects; voting on assessments; affidavit of publication.

(a) An assessment for a project within a resort area district shall be authorized by the adoption of a resolution by the board. The aggregate limit of assessments that may be levied against a parcel of real property within the district is five percent of the appraised value of the real property, including improvements, as shown in the property tax records and land books of the county in which the property is located. A resolution authorizing an assessment shall only be adopted after following the procedures set forth in this section.

(b) The bylaws of a district ~~(1) Shall~~ shall provide the procedures not addressed in this section for the implementation of an assessment to pay the costs of a project: *Provided*, That ~~such~~ the procedures must be consistent with constitutional standards and all other laws and ~~regulations~~ rules of this state.

~~(2) May provide for the maximum amount of assessments which may be levied against a parcel of real property within the district.~~

(c) Fifty-one percent or more of the owners of real property to be benefitted by a project may petition the board to implement an assessment to pay the costs of ~~such~~ the project. A board may on its own initiative propose an assessment to pay the costs of a project upon approval by six sevenths of the board.

(d) Upon following the procedures provided in this section and a resort area district's bylaws for the implementation of an assessment to pay the costs of a project, the board may, after giving notice to all real property owners, ~~and~~ holding a public meeting as and a vote on the project if required by this section, adopt a

resolution authorizing ~~such~~ the assessment to pay the costs of a project upon approval by six sevenths of the board.

(e) Before the adoption of a resolution authorizing an assessment to pay the costs of a project, the board shall cause notice to be given to the owners of real property located within the resort area district that ~~such~~ the resolution will be considered for adoption at a public meeting of the board at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the resolution. If, as provided in subsection (f) of this section, a favorable vote of the property owners is required before the board authorizes the assessment, the notice of meeting shall also contain information required to enable the owners of real property within the district that will be subject to the assessment to vote on the assessment by mail or electronic means.

(f) An assessment ~~shall~~ may not be authorized by the board if at the public meeting required by this section written protest is filed by at least twenty-five percent of the owners of the real property within the district to be benefitted by the proposed project and subject to the assessment. However, before an assessment proposed by the board on its own initiative as provided in subsection (c) of this section is authorized by the board, the proposal must also receive the favorable vote of a majority of the votes cast at the meeting for the proposal by the owners of real property in the district that will be subject to the assessment. Voting at the meeting shall be in person or by proxy at the meeting or by mailed ballot or electronic means received prior to the meeting. The voting rules set forth in subsection (e), section eleven of this article apply to all voting on assessments. In the event of such protest, the proposed assessment in the same form may not be reconsidered by a board for a period of at least one year from the date of the public meeting.

(g) At least thirty days prior to the date of the public meeting, the notice required by this section shall, using reasonable efforts, be mailed to the owners of real property to be assessed for a proposed

project as provided in subsection (k) of this section, posted in multiple, conspicuous public locations within ~~such~~ the district and published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for ~~such~~ the publication ~~shall be~~ is the resort area district.

(h) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of ~~such~~ the publisher, and a copy of the notice shall be made part of the minutes of the board and spread on its records of the meeting described in the notice. The service of ~~said~~ the notice upon all persons owning any interest in any real property located within the resort area district shall conclusively be ~~deemed~~ determined to have been given upon completion of mailing as provided in subsection (k) of this section and ~~such~~ the newspaper publication.

(i) After the public meeting and before the board may adopt a resolution authorizing implementation of assessments, the board shall, using reasonable efforts, mail a true copy of the proposed resolution authorizing implementation of an assessment to the owners of real property in the resort area district as provided in subsection (k) of this section.

(j) A board shall make available to the owners of real property within the district a list of all owners of real property within the district for the purposes of enabling ~~such~~ the owners of real property to solicit support for a petition proposing or a protest against an assessment.

(k) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail ~~such~~ the notice to all owners of real property required to receive notice under this section using the real property tax records and land books of the county in which ~~such~~ the district is located and any lists maintained by a resort operator or homeowners association

within ~~such~~ the district. ~~Such~~ The notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive ~~such~~ the information. Immaterial defects in the mailing of ~~such~~ the notices shall not affect the validity of ~~such~~ the notices.

§7-25-27. Effect of the 2015 amendments.

It is the intent of the Legislature that the amendments to this article passed during the 2015 regular session of the Legislature does not cause any petition for the creation of a resort area district that is currently before the governing body of the county in which the proposed resort area district is located to be voided and that those petitions may be modified to meet the current requirements of this article, put to a public meeting, and incorporated into the petition.

The bill (Eng. H. B. No. 2914), as amended, was then ordered to third reading.

At the request of Senator Kessler, and by unanimous consent, Senator Kessler addressed the Senate regarding a mining accident in Marshall County.

Thereafter, at the request of Senator Carmichael, and by unanimous consent, the remarks by Senator Kessler were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate recessed until 5 p.m. today.

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

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 9, 2015, he had approved **Enr. Committee Substitute for Senate Bill No. 335**.

The Senate again proceeded to the fourth order of business.

Senator Maynard, 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 9th day of March, 2015, 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:

(Second Enrollment S. B. No. 389), Relating to Board of Registration for Professional Engineers license renewals and reinstatements.

(Com. Sub. for S. B. No. 435), Creating WV Sheriffs' Bureau of Professional Standards.

(S. B. No. 466), Making supplementary appropriation of federal funds to Department of Commerce.

(S. B. No. 467), Making supplementary appropriation of federal funds to Department of Agriculture, State Conservation Committee.

(S. B. No. 469), Making supplementary appropriation of federal funds to DEP, Division of Environmental Protection.

(S. B. No. 471), Making supplementary appropriation of federal funds to DHHR, Human Rights Commission, and DHHR, DHS.

(S. B. No. 473), Making supplementary appropriation of federal funds to DMAPS, WV State Police.

(S. B. No. 476), Making supplementary appropriation to Department of Administration, Division of Purchasing, Purchasing Improvement Fund.

(S. B. No. 477), Supplementing, amending, decreasing and increasing appropriation from State Road Fund to DOH.

(Com. Sub. for H. B. No. 2099), Extending the time of meetings of local levying bodies when meetings are delayed.

(Com. Sub. for H. B. No. 2157), Relating to absentee ballot fraud.

(Second Enrollment H. B. No. 2201), Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards.

(Com. Sub. for H. B. No. 2457), Prohibiting the use of the name or likeness of elected or appointed officials on publicly-owned vehicles.

(H. B. No. 2523), Creating a special revenue account to offset costs for the West Virginia State Police 100th Anniversary in 2019.

(H. B. No. 2760), Making a supplementary appropriation to the Bureau of Senior Services - Lottery Senior Citizens Fund.

(H. B. No. 2764), Making a supplementary appropriation to the State Department of Education - School Building Authority.

(H. B. No. 2770), Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.

(H. B. No. 2879), Relating to certain limitations on amount of state funds on deposit in any depository.

And,

(H. B. No. 2933), Making a supplementary appropriation to the Department of Administration, Public Defender Services.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
John B. McCuskey,
Chair, House Committee.

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

Your Committee on Finance has had under consideration

Senate Concurrent Resolution No. 13, Urging Congress propose balanced budget amendment.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2283, Authorizing the Department of Environmental Protection to promulgate legislative rules.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2283) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2381, Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2381) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Karnes, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

Eng. Com. Sub. for House Bill No. 2515, Relating to elk restoration.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Robert Karnes,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2515) contained in the preceding report from the Committee on Natural Resources was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Natural Resources pending.

Senator Nohe, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Eng. Com. Sub. for House Bill No. 2557, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle.

And has amended same.

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

Respectfully submitted,

David Nohe,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2557) contained in the preceding report from the Committee on Banking and Insurance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2606, Clarifying the potential sentence for disorderly conduct.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2606) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2627, Providing protection against property crimes committed against coal mines, utilities and other industrial facilities.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2627) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2628, Changing the date of filing announcements of candidacies.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2628) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2652, Reducing the assessment paid by hospitals to the Health Care Authority.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2652) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator D. Hall, from the Committee on Agriculture and Rural Development, submitted the following report, which was received:

Your Committee on Agriculture and Rural Development has had under consideration

Eng. House Bill No. 2658, Relating to the inspection and slaughter of nontraditional agriculture.

And has amended same.

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

Respectfully submitted,

Daniel J. Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2658) contained in the preceding report from the Committee on Agriculture and Rural Development was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2790, Relating to minimum responsibility limits of car insurance.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2790) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Karnes, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

Eng. House Bill No. 2888, Allowing the use of rotary drum composters to destroy or dispose of the carcass of any animal to prevent the spread of disease.

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

Respectfully submitted,

Robert Karnes,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2888) contained in the preceding report from the Committee on Natural Resources was taken up for

immediate consideration, read a first time and ordered to second reading.

Senator Nohe, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Eng. Com. Sub. for House Bill No. 2902, West Virginia ABLE Act.

Now on second reading, having been read a first time and referred to the Committee on Banking and Insurance on March 6, 2015;

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

Respectfully submitted,

David Nohe,
Chair.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2968, Exempting from property tax certain properties in this state owned by nonprofit youth organizations.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2968) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Leonhardt, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

House Concurrent Resolution No. 91, Designating days for the display of the Honor and Remember Flag.

And has amended same.

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

Respectfully submitted,

Kent Leonhardt,
Chair.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Walters, unanimous consent being granted, it was ordered that the Journal show had Senator Walters been present in the chamber on Friday, March 6, 2015, he would have voted “yea” on the passage of Enrolled Committee Substitute for Senate Bill No. 6, Enrolled Committee Substitute for House Bill No. 2568, Engrossed House Bill No. 2760, Engrossed House Bill

No. 2764, Engrossed House Bill No. 2770 and Engrossed House Bill No. 2933.

On motion of Senator Carmichael, a leave of absence for the day was granted Senator Miller.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, March 10, 2015, at 10:30 a.m.

TUESDAY, MARCH 10, 2015

The Senate met at 10:30 a.m.

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

Prayer was offered by the Reverend John Hagan, St. Matthew's Episcopal Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mark R. Maynard, a senator from the sixth district.

Pending the reading of the Journal of Monday, March 9, 2015,

On motion of Senator Romano, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the reconsideration, amendment and passage as amended, with further amendment, to take effect from passage, by a vote of a majority of all the members elected to the House of Delegates, as a result of the objections of the Governor, and requested the concurrence of the Senate in the House of Delegates title amendment, of

Enr. Com. Sub. for Senate Bill No. 6, Relating to medical professional liability.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

Enr. Com. Sub. for Senate Bill No. 6—An Act to amend and reenact §55-7B-1, §55-7B-2, §55-7B-7, §55-7B-8, §55-7B-9, §55-7B-9a, §55-7B-9c, §55-7B-10 and §55-7B-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §55-7B-7a and §55-7B-9d, all relating to medical professional liability generally; providing additional legislative findings and purposes related to medical professional liability; amending existing definitions of “collateral source”, “health care”, “health care facility”, “health care provider” and “medical professional liability” and creating a new definition for “related entity” all of which expand the scope of the Medical Professional Liability Act; modifying the qualifications for the competency of experts who testify in medical professional liability actions; providing rebuttable presumptions and evidentiary requirements relating to state and federal reports, disciplinary actions, accreditation reports, assessments and staffing; modifying the maximum amount of recovery for, and availability of, noneconomic damages; clarifying amounts of medical professional liability insurance coverage that must exist to receive noneconomic damages limitations; clarifying that a health care provider is not vicariously liable unless the alleged agent does not maintain certain

insurance; clarifying eligibility for, and application of, emergency medical services caps; providing a methodology for determining the amount of trauma care caps to account for inflation; providing certain limitations of verdicts for past medical expenses of the plaintiff; establishing effective date; and providing for severability.

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

Enrolled Committee Substitute for Senate Bill No. 6, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Romano and Snyder—2.

Absent: Miller—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for S. B. No. 6) passed with its House of Delegates amended title, as amended, as a result of the objections of the Governor.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Romano and Snyder—2.

Absent: Miller—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for S. B. No. 6) takes effect from passage.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 277, Requiring issuance of certificate of birth resulting in stillbirth.

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

Eng. Com. Sub. for Senate Bill No. 421, Relating to punitive damages in civil actions.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-27, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.**§55-7-27. Limitations on punitive damages.**

(a) An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others.

(b) Any civil action tried before a jury involving punitive damages may, upon request of any defendant, be conducted in a bifurcated trial in accordance with the following guidelines:

(1) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory damages, if any.

(2) If the jury finds during the first stage of a bifurcated trial that a defendant is liable for compensatory damages, then the court shall determine whether sufficient evidence exists to proceed with a consideration of punitive damages.

(3) If the court finds that sufficient evidence exists to proceed with a consideration of punitive damages, the same jury shall determine if a defendant is liable for punitive damages in the second stage of a bifurcated trial and may award such damages.

(4) If the jury returns an award for punitive damages that exceeds the amounts allowed under subsection (c) of this section, the court shall reduce any such award to comply with the limitations set forth therein.

(c) The amount of punitive damages that may be awarded in a civil action may not exceed the greater of four times the amount of compensatory damages or \$500,000, whichever is greater.

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

Engrossed Committee Substitute for Senate Bill No. 421, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—27.

The nays were: Facemire, Kessler, Laird, Romano, Snyder and Yost—6.

Absent: Miller—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 421) passed with its title.

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

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

Eng. Senate Bill No. 532, Relating to civil liability immunity for clinical practice plans and medical and dental school personnel.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

**ARTICLE 7E. IMMUNITY FROM CIVIL LIABILITY FOR
CLINICAL PRACTICE PLANS AND
PERSONNEL ASSOCIATED WITH MEDICAL
AND DENTAL SCHOOLS.**

§55-7E-1. Findings and declaration of public purpose.

The Legislature finds and declares:

That the citizens of this state have been and should continue to be well served by physicians and dentists educated and trained at the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry;

That the state's medical and dental schools play a vital role in ensuring an adequate supply of qualified and trained physicians throughout the state;

That the education, training and research provided at the state's medical and dental schools and state medical schools are an essential governmental function in which the state has a substantial and compelling interest;

That the provision of clinical services to patients by faculty members, residents, fellows and students of the state's medical and dental schools and state medical school, is an inseparable component of the aforementioned education, training and research;

That the provision of the clinical services significantly contributes to the ongoing quality, effectiveness and scope of the state's health care delivery system;

That the provision of the clinical services also raises the public profile and reputation of the respective institutions both regionally and nationally, thereby facilitating the recruitment of talented faculty, residents, fellows and students to their programs of study;

That the provision of the clinical services generates additional revenues needed to fund faculty salaries and other costs associated with the overall operation of the state medical school and state's medical and dental schools;

That the continued availability of the revenues to the state medical school and state's medical and dental schools is necessary to their ongoing operation and delivery of the benefits described above;

That the continued availability of the revenues is compromised by the cost of medical professional liability insurance, the cost of defending medical professional liability claims, and the cost of compensating patients who suffer medical injury or death;

That the state concurrently has an interest in providing a system that makes available adequate and fair compensation to those individual patients who suffer medical injury or death;

That it is the duty and responsibility of the Legislature to balance the rights of individual patients to obtain adequate and fair compensation, with the substantial and compelling state interests set forth herein supporting the need for a financially viable system of medical and dental schools;

That, in balancing these important state interests, the Legislature acknowledges the sovereign immunity set forth in the West Virginia Constitution under Article VI, Section 35, to prevent the diversion of state moneys from legislatively appropriated purposes;

That, in conjunction with the provision of clinical services to patients by faculty members, residents, fellows and students of the

state's medical and dental schools, or state medical school, it is a common practice both here and in other states to create one or more clinical practice plans as nonprofit corporations;

That the clinical practice plans, among other things, administratively support clinical activities by holding real and personal property, offering personnel and financial management, providing billing and collection for services rendered, and disbursing excess revenues back to the respective medical and dental schools;

That the clinical practice plans become integrated with their respective state medical school and state's medical and dental schools and exclusively serve the interests of these schools and their faculty;

That any moneys the clinical practice plans expend for the defense, settlement, and satisfaction of medical professional liability claims inevitably result in a shortfall of funds available to the medical and dental schools for faculty compensation and other operational purposes, thereby undermining the sovereign immunity otherwise granted to state institutions by the West Virginia Constitution;

That it is therefore reasonable and appropriate for the Legislature to provide immunity from civil liability to clinical practice plans and their respective directors, officers, employees and agents given the substantial and compelling state interests being served; and

That it is further reasonable and appropriate to require the state's medical and dental schools to maintain a level of medical professional liability insurance to adequately and fairly compensate patients who suffer medical injuries or death.

§55-7E-2. Definitions.

For purposes of this article:

(1) “Clinical practice plan” means any of the nonprofit corporations that are operated to assist the state medical school and state’s medical and dental schools in providing clinical services to patients and which are controlled by governing boards all the voting members of which are faculty members or university officials. Clinical practice plans as defined herein shall be considered agents of the state.

(2) “Contractor” means an independent contractor, whether compensated or not, who is licensed as a health care professional under chapter thirty of this code, who is acting within the scope of his or her authority for a state medical school, state’s medical and dental schools or a clinical practice plan, and is a member of the faculty of a state’s medical and dental schools or state medical school.

(3) “Employee” means a director, officer, employee, agent or servant, whether compensated or not, who is licensed as a health care professional under chapter thirty of this code and who is acting within the scope of his or her authority or employment for a state’s medical and dental schools, a state medical school or a clinical practice plan.

(4) “Health care” means any act or treatment performed or furnished, or which should have been performed or furnished, by any director, officer, employee, agent or contractor of a state medical school, state’s medical and dental schools or a clinical practice plan for, to or on behalf of a patient during the patient’s medical care, treatment or confinement.

(5) “Medical injury” means injury or death to a patient arising or resulting from the rendering or failure to render health care.

(6) “Medical professional liability insurance” means a contract of insurance, or any self-insurance retention program established under the provisions of section ten, article five, chapter eighteen-b of this code, that pays for the legal liability arising from a medical injury.

(7) “Patient” means a natural person who receives or should have received health care from a director, officer, employee, agent or contractor of a state medical school, state’s medical and dental schools or a clinical practice plan under a contract, express or implied.

(8) “Scope of authority or employment” means performance by a director, officer, employee, agent or contractor acting in good faith within the duties of his or her office, employment or contract with a state medical school, state’s medical and dental schools or a clinical practice plan, but does not include corruption or fraud.

(9) “State’s medical and dental schools” or “state medical school” means the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry.

§55-7E-3. Immunity for clinical practice plans and their directors, officers, employees, agents and contractors.

Notwithstanding any other provision of this code, all clinical practice plans, and all employees and contractors of a state’s medical and dental schools, state medical school or a clinical practice plan, are only liable up to the limits of insurance coverage procured through the State Board of Risk and Insurance Management in accordance with section four, article seven-e, chapter fifty-five of the code, arising from a medical injury to a patient, including death resulting, in whole or in part, from the medical injury, either through act or omission, or whether actual or imputed, while acting within the scope of their authority or employment for a state’s medical and dental schools, state medical school or a clinical practice plan. The provisions of this article apply to the acts and omissions of all full-time, part-time, visiting and volunteer directors, officers, faculty members, resident physicians residents, fellows, students, employees, agents and contractors of a state’s medical and dental schools, state medical school or a clinical practice plan, regardless of whether the persons are engaged in teaching, research, clinical,

administrative or other duties giving rise to the medical injury, regardless of whether the activities were being performed on behalf of a state's medical and dental schools, state medical school or on behalf of a clinical practice plan and regardless of where the duties were being carried out at the time of the medical injury.

§55-7E-4. Medical professional liability insurance for state's medical and dental schools and state medical schools.

The State Board of Risk and Insurance Management shall provide medical professional liability insurance to all of the state's medical and dental schools, state medical school, all of their clinical practice plans and all of their directors, officers, employees, agents and contractors in an amount to be determined by the State Board of Risk and Insurance Management, but in no event less than \$1.5 million for each occurrence, to increase to account for inflation by an amount equal to the consumer price index published by the United States department of labor, up to \$2 million for each occurrence. The clinical practice plans shall pay for this insurance. The provision of professional liability insurance is not a waiver of immunity that any of the foregoing entities or persons may have pursuant to this article or under any other law. Any judgment obtained for a medical injury to a patient as a result of health care performed or furnished, or which should have been performed or furnished, by any employee or contractor of a state's medical and dental school, state medical school or clinical practice plan shall not exceed the limits of medical professional liability insurance coverage provided by the State Board of Risk and Insurance Management pursuant to this section.

§55-7E-5. Applicability of provisions.

The provisions of this article are applicable prospectively to all civil actions commenced on or after July 1, 2015.

§55-7E-6. Construction.

The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in article seven-b of this chapter.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendment to the bill (Eng. S. B. No. 532) was reported by the Clerk and adopted:

On page six, section four, after the words “\$1.5 million for each occurrence” by inserting the words “after July 1, 2015” ;

And,

On page seven, section five, by striking out the words “civil actions” and inserting in lieu thereof the words “claims that occur and are”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Senate Bill No. 532, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 532) passed with its title.

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

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

Eng. House Bill No. 2272, Relating to the authority of the Board of Pharmacy.

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

Eng. Com. Sub. for House Bill No. 2766—A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of \$5,650,000 from the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, appropriation 64200, and in the amount of \$1,850,000 from the Joint Expenses, fund 0175, fiscal year 2009, organization 2300, appropriation 64200, and in the amount of \$75,365.64 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 11400, and in the amount of \$67,553.27 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2002, organization 0100, appropriation 23800, and in the amount of \$122,113 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 23800, and in the amount of \$212,500 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2003, organization 0100, appropriation 61400, and in the amount of \$635,179.58 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 23800, and in the amount of \$346,521.90 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 26300, and in the amount of \$1,207,149.67 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2004, organization 0100, appropriation 61400,

and in the amount of \$34,378.53 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 11400, and in the amount of \$397,276.39 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 23800, and in the amount of \$1,272,323.47 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2006, organization 0100, appropriation 61400, and in the amount of \$2,227,821.66 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, and in the amount of \$901,816.89 from the Governor's Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, appropriation 11400, and in the amount of \$7,500,000 from the Treasurer's Office - Special Income Tax Refund Reserve Fund, fund 1313, fiscal year 2015, organization 1300.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2769—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015 in the amount of \$1,500,000 from the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 59200, and in the amount of \$400,103.30 from the Department of Transportation, Division of Public Transit, fund 0510, fiscal year 2013, organization 0805, appropriation 25800, and in the amount of \$3,861,297 from the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2015, organization 0218, and in the amount of \$1,329.28 from the

Department of Health and Human Resources, Division of Health, Uniform Health Professional Data Collection Systems Fund, fund 5109, fiscal year 2015, organization 0506, and in the amount of \$478.81 from the Department of Health and Human Resources, Division of Health, Commonly Based Fetal and Infant Mortality Review Fund, fund 5131, fiscal year 2015, organization 0506, and in the amount of \$18,609.27 from the Department of Health and Human Resources, Division of Health, Claude Worthington Benedum Foundation Fund, fund 5132, fiscal year 2015, organization 0506, and in the amount of \$2,500 from the Department of Health and Human Resources, Division of Health, Behavioral Health Clearing Fund, fund 5151, fiscal year 2015, organization 0506, and in the amount of \$13,193.90 from the Department of Health and Human Resources, Division of Health, Special Education Title I Fund, fund 5161, fiscal year 2015, organization 0506, and in the amount of \$45 from the Department of Health and Human Resources, Division of Health, Rural Health Networking Project Fund, fund 5184, fiscal year 2015, organization 0506, and in the amount of \$1,400,000 from the Department of Health and Human Resources, Division of Health, Vital Statistics Improvement Fund, fund 5225, fiscal year 2015, organization 0506, and in the amount of \$6,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Fund, fund 5375, fiscal year 2015, organization 0507, and in the amount of \$4,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Information Network Account, fund 5380, fiscal year 2015, organization 0507, and in the amount of \$2,000,000 from the Department of Health and Human Resources, West Virginia Health Care Authority - West Virginia Health Care Authority Revolving Loan Fund, fund 5382, fiscal year 2015, organization 0507, and in the amount of \$4,976.37 from the Department of Health and Human Resources, Division of Human Services, Special County General Relief Fund, fund 5054, fiscal year 2015, organization 0511, and in the amount of \$18,118.01 from the Department of Health and Human Resources, Division of Human Services, Individual and Family Grant Program, fund 5055, fiscal

year 2015, organization 0511, and in the amount of \$251,657.05 from the Department of Health and Human Resources, Division of Human Services, TRIP Fund, fund 5070, fiscal year 2015, organization 0511, and in the amount of \$4,000,000 from the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2015, organization 0511, and in the amount of \$223,310.69 from the Department of Health and Human Resources, Division of Human Services - Marriage Education Fund, fund 5490, fiscal year 2015, organization 0511, and in the amount of \$16,700,000 from the Department of Revenue, Insurance Commissioner, fund 7152, fiscal year 2015, organization 0704.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2772—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2015, in the amount of \$339,000 from the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, appropriation 11900, and in the amount of \$411,000 from the Department of Agriculture, fund 0131, fiscal year 2013, organization 1400, appropriation 11900, and in the amount of \$315,496.80 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 72500, and in the amount of \$210,268 from the Attorney General, fund 0150, fiscal year 2013, organization 1500, appropriation 77900, and in the amount of \$774,644.65 from the Attorney General, fund 0150, fiscal year 2014, organization 1500, appropriation 26000, and in the amount of \$1,000,000 from the Auditor's Office - Purchasing Card Administration Fund, fund 1234, fiscal year 2015, organization

1200, and in the amount of \$3,410,629 from the Treasurer's Office - Flood Insurance Tax Fund, fund 1343, fiscal year 2015, organization 1300, and in the amount of \$700,000 from the Attorney General - Antitrust Enforcement Fund, fund 1507, fiscal year 2015, organization 1500, and in the amount of \$750,000 from the Secretary of State - General Administrative Fees Account, fund 1617, fiscal year 2015, organization 1600.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

Eng. House Bill No. 2776, Relating to prescribing hydrocodone combination drugs for a duration of no more than three days.

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

Eng. Com. Sub. for House Bill No. 2999, Relating to neonatal abstinence centers.

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

Eng. House Bill No. 3020—A Bill 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 Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2015, organization 0608, by supplementing and

amending the appropriations for the fiscal year ending June 30, 2015.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

Eng. House Bill No. 3021—A Bill 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 Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2015, organization 0506, and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2015, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

Eng. House Bill No. 3022—A Bill 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 Treasurer's Office, fund 0126, fiscal year 2015, organization 1300, to the State Board of Education

- State FFA-FHA Camp and Conference Center, fund 0306, fiscal year 2015, organization 0402, to the State Board of Education - West Virginia Schools for the Deaf and the Blind, fund 0320, fiscal year 2015, organization 0403, to Mountwest Community and Technical College, fund 0599, fiscal year 2015, organization 0444, to the West Virginia School of Osteopathic Medicine, fund 0336, fiscal year 2015, organization 0476, and to West Virginia State University, fund 0373, fiscal year 2015, organization 0490, by supplementing and amending the appropriations for the fiscal year ending June 30, 2015.

At the request of Senator Carmichael, and by unanimous consent, the message was taken up for immediate consideration, the bill was read a first time, ordered to second reading, and then referred to the Committee on Finance.

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

The Senate again proceeded to the third order of business.

Executive Communications

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 6, 2015

The Honorable Tim Armstead
Speaker, West Virginia House of Delegates
State Capitol
Charleston, West Virginia

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 2010 on technical grounds.

First, §3-1-17(b) appears to be missing the words, “There shall be elected” at the beginning of the subsection. Without this phrase, this subsection is incomplete. Likewise, §3-4A-11a(b)(3) is ambiguous and appears to be missing language. As a result, the provisions of this section are unclear, leaving the reader to make assumptions about the instructions provided in this section.

Next, §3-10-3(c) addressing appointment of a magistrate when a vacancy occurs, contains an incorrect reference to section one, article six, chapter fifty, related to enforcement of judgments.

Moreover, the bill’s title may be inadequate. The title does not provide notice of the changes to the West Virginia Supreme Court of Appeals Public Campaign Financing Program in article twelve, chapter three. Specifically, the title simply provides for the “continuing applicability” of the program; however, the title does not give notice of the revision in the amount of financing available to a candidate running in a contested election or the removal of funding available to a candidate running in an uncontested election. Additionally, the title contains the following duplicative provisions, “providing for the commencement of terms of office” and “providing the timing of commencement of terms of office for justices of the Supreme Court of Appeals, circuit judge, family court judge and magistrate”.

Further, §3-5-13a, page 19, line 11, contains an extra comma after “Attorney General” and line 12 contains an extra comma after “House of Delegates”. Likewise, §6-5-1, page 36, line 11, contains an extra comma after “clerks of the circuit”.

Additionally, §3-5-13(5) contains references to the Board of Education that are inconsistently and incorrectly capitalized. Page

18, lines 131-132, state “board of Education” and line 136 states “board of education”; these references should be capitalized. Similarly, §6-5-1 contains inconsistent capitalization on page 36, lines 3-5, referring to the state superintendent of free schools, treasurer, and commissioner of agriculture; all these titles should be capitalized. Finally, §3-12-14(a)(6), page 33, line 26, contains reference to the auditor; Auditor should be capitalized. These titles are correctly capitalized throughout the remainder of the bill, consistent with established legislative bill drafting guidelines.

Lastly, §6-5-1, page 36, line 9, states “judges of the Supreme Court of Appeals”; this should state “justices” instead of “judges”.

Sincerely,

Earl Ray Tomblin,
Governor.

cc: The Honorable William P. Cole III
The Honorable Natalie E. Tennant

A message from The Clerk of the House of Delegates announced the reconsideration, amendment and passage as amended, of a bill disapproved and returned by the Governor with his objections, and requested the concurrence of the Senate in the passage, of

Enr. Com. Sub. for House Bill No. 2010, Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division.

On motion of Senator Carmichael, the message was taken up for immediate consideration.

Senator Carmichael then moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate reconsider the bill (Enr. Com. Sub. for H. B. No. 2010),

heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Committee Substitute for House Bill No. 2010, the same was put and prevailed.

On motion of Senator Carmichael, the Senate concurred in the following House of Delegates amendments to the bill:

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

That §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4A-11a of said code be amended and reenacted; that §3-5-4 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; that §3-5-7, §3-5-13 and §3-5-13a of said code be amended and reenacted; that §3-10-3 of said code be amended and reenacted; that §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code be amended and reenacted; that §6-5-1 of said code be amended and reenacted; that §50-1-1 and §50-1-6 of said code be amended and reenacted; that §51-1-1 of said code be amended and reenacted; and that §51-2A-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for

each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every twelfth year thereafter, two justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

(a) There shall be elected, at the time of the primary election to be held in 2016, and every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the time of the primary election to be held in 2016, and in every fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with the election held in the year 2016, an election for the purpose of electing judges of the circuit court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot printed for the purpose.

(b) There shall be elected, at the general election to be held in 1992, and every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors prescribed by law for the county; and at the general election to be held in 1990, and every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

(c) Effective with the primary election of 2016, all elections for judge of the circuit courts in the respective circuits and magistrates in each county will be elected on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, the straight ticket positions, the instructions to straight ticket voters, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to section two, article six of this chapter, except as otherwise provided in this article.

(3) Effective with the primary election held in 2016, and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

- (i) Justice of the Supreme Court of Appeals;
 - (ii) Judge of the circuit court;
 - (iii) Family court judge; and
 - (iv) Magistrate;
- (B) Nonpartisan elections for Board of Education; and
- (C) Any question to be voted upon;

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink.

For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

(a) At each primary election, the candidate or candidates of each political party for all offices to be filled at the ensuing general election by the voters of the entire state, of each congressional district, of each state senatorial district, of each delegate district, and of each county in the state shall be nominated by the voters of the different political parties, except that no presidential elector shall be nominated at a primary election.

(b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of candidates for office. Where only one candidate of a political party for any office in a political division, including party committeemen and delegates to national conventions, is to be chosen the candidate receiving the highest number of votes therefor in the primary election shall be declared the party nominee for such office. Where two or more such candidates are to be chosen in the primary election, the candidates

constituting the proper number to be so chosen who shall receive the highest number of votes cast in the political division in which they are candidates shall be declared the party nominees and choices for such offices, except that:

(1) Candidates for the office of commissioner of the county commission shall be nominated and elected in accordance with the provisions of section ten, article nine of the Constitution of the State of West Virginia and the requirements of section one-b, article one, chapter seven of this code;

(2) Members of county boards of education shall be elected at primary elections in accordance with the provisions of sections five and six of this article;

(3) Candidates for the House of Delegates shall be nominated and elected in accordance with the residence restrictions provided in section two, article two, chapter one of this code.

(c) In case of tie votes between candidates for party nominations or elections in primary elections, the choice of the political party shall be determined by the executive committee of the party for the political division in which such persons are candidates.

§3-5-6a. Election of justices of the Supreme Court of Appeals.

(a) An election for the purpose of electing a justice or justices of the Supreme Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose. For election purposes, in each election at which shall be elected more than one justice of the Supreme Court of Appeals, the election shall be by numbered division corresponding to the number of justices being elected. Each justice shall be elected at large from the entire state.

(b) In each nonpartisan election by division for a justice of the Supreme Court of Appeals, the candidates for election in each numbered division shall be tallied separately, and the board of

canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

§3-5-6b. Election of circuit judges.

(a) An election for the purpose of electing a circuit court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a circuit court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

§3-5-6c. Election of family court judges.

(a) An election for the purpose of electing a family court judge or judges shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a family court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

§3-5-6d. Election of magistrates.

(a) An election for the purpose of electing a magistrate or magistrates by division shall be held on the same date as the primary election in their respective circuits, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In each nonpartisan election by division for a magistrate, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, section twelve, article six of this chapter controls in breaking the tie vote.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or

family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of justice of the Supreme Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(6) For partisan elections, the name of the candidate's political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate may not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with section three, article nine of this chapter.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

§3-5-13. Form and contents of ballots.

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots is to contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officer shall commence with the words "Nonpartisan Ballot of Election of Judicial Officers" and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the

respective circuits shall contain the words “Nonpartisan Ballot of Election of Family Court Judge(s)”. The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Magistrate(s)”. The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words “Nonpartisan Ballot of Election of Members of the _____ County Board of Education”. The districts for which less than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: “National Ticket”, “State Ticket”, “County Ticket” and, in a presidential election year, “National Convention” or, in a nonpresidential election year, “District Ticket”. The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in section thirteen-a of this article.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same

sequence as prescribed in section thirteen-a of this article and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for _____" with the number to be nominated or elected or "Vote For Not More Than _____" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office: *Provided*, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital

letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in section thirteen-a of this article.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line shall separate each candidate from

every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words “No Candidate Filed” may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the Secretary of State” is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words “Official Ballot” with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words “Poll Clerks”.

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word “sample” is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the sample.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives.

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee.

COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts.

NATIONAL CONVENTION: Delegate to the national convention – at-large, delegate to the national convention – congressional district.

DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a. m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: *Provided*, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.

ARTICLE 10. FILLING VACANCIES.

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

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article.

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

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty of this code, and subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

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

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

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before

the general election, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

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

**ARTICLE 12. WEST VIRGINIA SUPREME COURT OF APPEALS
PUBLIC CAMPAIGN FINANCING PILOT
PROGRAM.**

§3-12-3. Definitions.

As used in this article, the following terms and phrases have the following meanings:

(1) “Candidate’s committee” means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(2) “Certified candidate” means an individual seeking election to the West Virginia Supreme Court of Appeals who has been certified in accordance with section ten of this article as having met all of the requirements for receiving public campaign financing from the fund.

(3) “Contribution” means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(4) “Exploratory contribution” means a contribution of no more than \$1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period but prior to filing the declaration of intent. Exploratory contributions may not exceed \$20,000 in the aggregate.

(5) “Exploratory period” means the period during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing under this article. The exploratory period begins on January 1 the year before the election in which the candidate may run for Justice of the Supreme Court of Appeals and ends on the last Saturday in January of the election year.

(6) “Financial agent” means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(7) “Fund” means the Supreme Court of Appeals Public Campaign Financing Fund created by section five of this article.

(8) “Immediate family” or “immediate family members” means the spouse, parents, step-parents, siblings and children of the participating candidate.

(9) “Nonparticipating candidate” means a candidate who is:

(A) Seeking election to the Supreme Court of Appeals;

(B) Is neither certified nor attempting to be certified to receive public campaign financing from the fund; and

(C) Has an opponent who is a participating or certified candidate.

(10) “Nonpartisan judicial election campaign period” means the period beginning on the first day of the primary election filing period, as determined under section seven, article five of this chapter, and ending on the day of the nonpartisan judicial election.

(11) “Participating candidate” means a candidate who is seeking election to the Supreme Court of Appeals and is attempting to be certified in accordance with section ten of this article to receive public campaign financing from the fund.

(12) “Person” means an individual, partnership, committee, association and any other organization or group of individuals.

(13) “Qualifying contribution” means a contribution received from a West Virginia registered voter of not less than \$1 nor more than \$100 in the form of cash, check or money order, made payable to a participating candidate or the candidate’s committee, or in the form of an electronic payment or debit or credit card payment, received during the qualifying period.

(14) “Qualifying period” means the period during which participating candidates may raise and spend qualifying contributions in order to qualify to receive public campaign financing.

For candidates seeking to be placed on the nonpartisan judicial election ballot, the qualifying period begins on September 1 preceding the election year and ends on the last Saturday in January of the election year.

§3-12-6. Sources of revenue for the fund.

Revenue from the following sources shall be deposited in the fund:

(1) All exploratory and qualifying contributions in excess of the established maximums;

(2) Money returned by participating or certified candidates who fail to comply with this article;

(3) Unspent or unobligated moneys allotted to certified candidates and remaining unspent or unobligated on the date of the nonpartisan judicial election for which the money was distributed;

(4) If a certified candidate loses, all remaining unspent or unobligated moneys;

(5) Civil penalties levied by the State Election Commission against candidates for violations of this article;

(6) Civil penalties levied by the Secretary of State pursuant to section seven, article eight of this chapter;

(7) Voluntary donations made directly to the fund;

(8) Any interest income or other return earned on the money's investment;

(9) On or before July 1, 2010, and for two successive years thereafter, the State Auditor shall authorize the transfer of the amount of \$1 million from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article;

(10) On or before July 1, 2015, the state Auditor shall authorize the transfer of the amount of \$400,000 from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article; and

(11) Money appropriated to the fund.

§3-12-10. Certification of candidates.

(a) To be certified, a participating candidate shall apply to the State Election Commission for public campaign financing from the fund and file a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign.

(b) Upon receipt of a notice from the Secretary of State that a participating candidate has received the required number and amount of qualifying contributions, the State Election Commission shall determine whether the candidate or candidate's committee:

(1) Has signed and filed a declaration of intent as required by section seven of this article;

(2) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;

(3) Has complied with the contribution restrictions of this article;

(4) Is eligible, as provided in section nine, article five of this chapter, to appear on the nonpartisan judicial election ballot; and

(5) Has met all other requirements of this article.

(c) The State Election Commission shall process applications in the order they are received and shall verify a participating candidate's compliance with the requirements of subsection (b) of this section by using the verification and sampling techniques approved by the State Election Commission.

(d) The State Election Commission shall determine whether to certify a participating candidate as eligible to receive public campaign financing no later than three business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions or, if a challenge is filed under subsection (g) of this section, no later than six business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions. A certified candidate shall comply with this article through the nonpartisan judicial election campaign period.

(e) No later than two business days after the State Election Commission certifies that a participating candidate is eligible to receive public campaign financing under this section, the State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall cause a check to be issued to the candidate's campaign depository account an amount equal to the public campaign financing benefit for which the candidate qualifies under section eleven of this article, minus the candidate's qualifying contributions, and shall notify all other candidates for the same office of its determination.

(f) If the candidate desires to receive public financing benefits by electronic transfer, the candidate shall include in his or her application sufficient information and authorization for the State Treasurer to transfer payments to his or her campaign depository account.

(g) Any person may challenge the validity of any contribution listed by a participating candidate by filing a written challenge with the State Election Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution. If a contribution is challenged under this subsection, the State Election Commission shall decide the validity of the challenge no later than the end of the next business day after the day that the challenge is filed, unless the State Election Commission determines that the candidate whose contribution is challenged has both a sufficient

qualifying number and amount of qualifying contributions to be certified as a candidate under this section without considering the challenge. Within five business days of a challenge, the candidate or candidate's committee who listed any contribution that is the subject of a challenge may file a report with the State Election Commission of an additional contribution collected pursuant to section nine of this article for consideration as a qualifying contribution.

(h) A candidate's certification and receipt of public campaign financing may be revoked by the State Election Commission, if the candidate violates this article. A certified candidate who violates this article shall repay all moneys received from the fund to the State Election Commission.

(i) The determination of any issue before the State Election Commission is the final administrative determination. Any meetings conducted by the State Elections Commission to certify a candidate's eligibility to receive funds under this article shall not be subject the public notice and open meeting requirements of article nine-a, chapter six of this code, but the commission shall concurrently provide public notice of any decision and determination it makes which impacts the candidate's eligibility to receive funds pursuant to this article. Any person adversely affected by a decision of the State Election Commission under this article may appeal that decision to the circuit court of Kanawha County.

(j) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at any time with the approval of the State Election Commission. Any candidate seeking to withdraw shall file a written request with the State Election Commission, which shall consider requests on a case-by-case basis. No certified candidate may withdraw until he or she has repaid all moneys received from the fund: *Provided*, That the State Election Commission may, in exceptional circumstances, waive the repayment requirement. The State Election Commission may assess a penalty not to exceed \$10,000 against any candidate who withdraws without approval.

§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments.

(a) The State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall have a check issued within two business days after the date on which the candidate is certified, to make payments from the fund for the nonpartisan judicial election campaign period available to a certified candidate.

In a contested nonpartisan judicial election, a certified candidate shall receive \$525,000 in campaign financing from the fund, minus the certified candidate's qualifying contributions.

(b) The State Election Commission shall authorize the distribution of campaign financing moneys to certified candidates in equal amounts. The commission shall propose a legislative rule on distribution of funds.

(c) The State Election Commission may not authorize or direct the distribution of moneys to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article. If the commission determines that the money in the fund is insufficient to totally fund all certified candidates, the commission shall authorize the distribution of the remaining money proportionally, according to each candidate's eligibility for funding. Each candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

§3-12-12. Restrictions on contributions and expenditures.

(a) A certified candidate or his or her committee may not accept loans or contributions from any private source, including the personal funds of the candidate and the candidate's immediate family, during the nonpartisan judicial election campaign period except as permitted by this article.

(b) After filing the declaration of intent and during the qualifying period, a participating candidate may not spend or obligate more than he or she has collected in exploratory and qualifying contributions. After the qualifying period and through the nonpartisan judicial election campaign period, a certified candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys he or she receives from the fund under the provisions of section eleven of this article.

(c) A participating or certified candidate may expend exploratory and qualifying contributions and funds received from the fund only for lawful election expenses as provided in section nine, article eight of this chapter. Moneys distributed to a certified candidate from the fund may be expended only during the nonpartisan judicial election campaign period for which funds were dispersed. Money from the fund may not be used:

(1) In violation of the law;

(2) To repay any personal, family or business loans, expenditures or debts; or

(3) To help any other candidate.

(d) A certified candidate or his or her committee shall return to the fund any unspent and unobligated exploratory contributions, qualifying contributions or moneys received from the fund within forty-eight hours after the date on which the candidate ceases to be certified.

(e) A certified candidate or his or her committee shall return to the fund any unspent or unobligated public campaign financing funds no later than five business days after the nonpartisan judicial election.

(f) A contribution from one person may not be made in the name of another person.

(g) A participating or certified candidate or his or her committee receiving qualifying contributions or exploratory contributions from a person not listed on the receipt required by sections eight and nine of this article is liable to the State Election Commission for the entire amount of that contribution and any applicable penalties.

(h) A certified candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the nonpartisan judicial election campaign period.

(i) A participating or certified candidate or his or her financial agent shall provide the Secretary of State with all requested campaign records, including all records of exploratory and qualifying contributions received and campaign expenditures and obligations, and shall fully cooperate with any audit of campaign finances requested or authorized by the State Election Commission.

§3-12-14. Duties of the State Election Commission; Secretary of State.

(a) In addition to its other duties, the State Election Commission shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Make an annual report to the Legislature accounting for moneys in the fund, describing the State Election Commission's activities and listing any recommendations for changes of law, administration or funding amounts;

(3) Propose emergency and legislative rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as may be necessary for the proper administration of this article;

(4) Enforce this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(5) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(6) Cause an audit of the fund to be conducted by independent certified public accountants ninety days after a nonpartisan judicial election. The State Election Commission shall cooperate with the audit, provide all necessary documentation and financial records to those persons conducting the audit and shall maintain a record of all information supplied by the audit;

(7) In consultation with the State Treasurer and the State Auditor, develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the commission shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability and safeguards the integrity of the fund;

(8) Regularly monitor the receipts, disbursements, obligations and balance in the fund to determine whether the fund will have sufficient moneys to meet its obligations and sufficient moneys available for disbursement during the nonpartisan judicial election campaign period; and

(9) Transfer a portion of moneys maintained in the fund to the West Virginia Investment Management Board for their supervised investment, after consultation with the State Treasurer, the State Auditor and the West Virginia Investment Management Board.

(b) In addition to his or her other duties, the Secretary of State shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Prepare and publish information about this article and provide it to potential candidates and citizens of this state;

(3) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and to explain the duties of candidates and others participating in elections under this article;

(4) Propose emergency and legislative rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code as may be necessary for the proper administration of this article;

(5) Enforce this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(6) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(7) Ensure public access to the campaign finance reports required pursuant to this article, and whenever possible, use electronic means for the reporting, storing and display of the information; and

(8) Prepare a voters' guide for the general public listing the names of each candidate seeking election to the Supreme Court of Appeals. Both certified and nonparticipating candidates shall be invited by the State Election Commission to submit a statement, not to exceed five hundred words in length, for inclusion in the guide. The guide shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. Copies of the guide shall be posted on the website of the Secretary of State, as soon as may be practical.

(c) To fulfill their responsibilities under this article, the State Election Commission and the Secretary of State may subpoena

witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of any books, papers, records or other items material to the performance of their duties or the exercise of their powers.

(d) The State Election Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the State Election Commission as it relates to the requirements of this article.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-1. When terms of office to begin.

The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of Governor, Secretary of State, State Superintendent of Free Schools, Treasurer, Auditor, Attorney General and Commissioner of Agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the Legislature, on December 1, next after his or her election; and that of the justices of the Supreme Court of Appeals, the judges of the several circuit courts, the judges of the family and other inferior courts, the county commissioners, prosecuting attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior courts, clerks of the county commissions, magistrates, on January 1, next after their election.

Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as prescribed by chapter three of this code.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-1. Magistrate court created.

There is hereby created in each county of this state a magistrate court with such numbers of magistrates for each court as are hereafter provided. There shall be elected by the voters of each county, at the general election to be held in 1976, and in every fourth year thereafter, such number of magistrates as is provided in section two of this article. The filing fee for the office of magistrate shall be one percent of the annual salary. The term of magistrates shall be for four years and shall begin on January 1, of the year following the year of election.

Effective with the primary election of 2016, all elections for magistrates will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for magistrates and all elections for magistrates are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for magistrate shall be omitted.

§50-1-6. Vacancy in office of magistrate.

Subject to the provisions of section one, article ten, chapter three of this code, when a vacancy occurs in the office of magistrate, the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall fill the same by appointment.

At a nonpartisan judicial election in which a magistrate is elected for an unexpired term, the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall cause a notice of such election to be published prior to such 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 shall be the county involved.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-1. Justices.

The Supreme Court of Appeals shall consist of five justices, elected and qualified according to the Constitution and the laws of this state, any three of whom shall constitute a quorum. Effective with the primary election of 2016, all elections for justices will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for the office of justice and all elections for justice are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for that office shall be omitted.

ARTICLE 2A. FAMILY COURTS.**§51-2A-5. Term of office of family court judge; initial appointment; elections.**

(a) Beginning with the election to be conducted in the year 2016, family court judges shall be elected. In family court circuits having two or more family court judges there shall be, for election purposes, numbered divisions corresponding to the number of family court judges in each area. Each family court judge shall be elected at large by the entire family court circuit. In each numbered division of a family court circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the family court circuit. The candidate or candidates receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be. Effective with the primary election of 2016, all elections for family court judges in the respective circuits will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for family court judges and all elections for family court judges are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for family court judge shall be omitted.

(b) The term of office for all family court judges elected in 2002 shall be for six years, commencing on January 1, 2003, and ending on December 31, 2008. Subsequent terms of office for family court judges elected thereafter shall be for eight years.;

And,

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

Enr. Com. Sub. for House Bill No. 2010—An Act to amend and reenact §3-1-16 and §3-1-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend and reenact §3-5-4 of said code; to amend said code by adding thereto four new sections, designated §3-5-6a, §3-5-6b, §3-5-6c and §3-5-6d; to amend and reenact §3-5-7, §3-5-13 and §3-5-13a of said code; to amend and reenact §3-10-3 of said code; to amend and reenact §3-12-3, §3-12-6, §3-12-10, §3-12-11, §3-12-12 and §3-12-14 of said code; to amend and reenact §6-5-1 of said code; to amend and reenact §50-1-1 and §50-1-6 of said code; to amend and reenact §51-1-1 of said code; and to amend and reenact §51-2A-5 of said code, all relating to electoral reforms of the West Virginia judiciary generally; requiring the election of justices of the Supreme Court of Appeals, circuit court judges, family court judges and magistrates be on a nonpartisan basis; requiring that elections to certain offices be on a division basis when more than one justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate is to be elected; providing for the timing and frequency of election; providing for the commencement of terms of office; establishing ballot design and printing; providing that elections for justice of the Supreme Court of Appeals, circuit judge, family court judge or magistrate are to be held on the same date as the primary election; requiring nonpartisan ballots be used; establishing filing announcement of candidacies, including the timing, location and information necessary thereto; providing for the order of appearance of offices on the ballot; establishing ballot content; providing the procedures for the filling of vacancies in the offices of justices of the

Supreme Court of Appeals, circuit judge, family court judge or magistrate; providing occasions for special elections to be held to fill vacancies; providing that unsuccessful nonpartisan candidates can be selected to fill ballot vacancies in a general election; providing for the continuing applicability of the West Virginia Supreme Court of Appeals Public Campaign Financing Program; modifying the amount of public campaign financing available to qualifying candidates in a contested election; and removing public campaign financing from qualifying candidates in an uncontested election.

The question now being on the passage of the bill, disapproved by the Governor and amended by the House of Delegates.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for H. B. No. 2010) passed with its title, as amended, as a result of the objections of the Governor.

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

The Senate proceeded to the fourth order of business.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2160, WV Schools for the Deaf and Blind eligible for School Building Authority funding.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2160) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2224, Providing that historical reenactors are not violating the provision prohibiting unlawful military organizations.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2224) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Kirkendoll and Stollings offered the following resolution:

Senate Concurrent Resolution No. 60—Requesting the Division of Highways name bridge number 10368 (37.780331, -81.940756), which is currently under construction in Logan County and will carry West Virginia Route 10 over Madison Branch and County Route 10/17, the “U. S. Army SGT Bernard C. Maynard Memorial Bridge”.

Whereas, Bernard C. Maynard was born on May 18, 1918, and was raised by his grandmother. He died on June 27, 2010; and

Whereas, Bernard C. Maynard served in the United States Army from June 15, 1942, until November 29, 1944, and was a Tech 4 Grade with the 185th Chemical Company; and

Whereas, Bernard C. Maynard was awarded the World War II Victory Medal, Philippine Liberation Ribbon, two Bronze Stars, American Theater Ribbon, Asiatic Pacific Theater Ribbon and a Good Conduct Medal; and

Whereas, Bernard C. Maynard married Maggie Hatfield in 1946. They had seven children, adopted two other children and also took

in three other children in need of a home. All of the children are surviving except for one. There are twenty-three grandchildren and thirty-four great grandchildren; and

Whereas, Bernard C. Maynard worked in the coal mines, had black lung and retired from the board of education after ten years as a custodian. He helped with the recovery after the Buffalo Creek flood, attended Madison Creek Church until it flooded and then attended Neibert Missionary Baptist. He was also a member of a ham radio club; and

Whereas, It is only fitting that we so honor Bernard C. Maynard for his dedicated and selfless service to his country and for his contributions to Logan County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 10368 (37.780331, -81.940756), which is currently under construction in Logan County and will carry West Virginia Route 10 over Madison Branch and County Route 10/17, the "U. S. Army SGT Bernard C. Maynard 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. Army SGT Bernard C. Maynard 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 children and relatives of Bernard C. Maynard.

Which, under the rules, lies over one day.

Senators D. Hall, Miller, Plymale, Stollings and Yost offered the following resolution:

Senate Resolution No. 52—Recognizing May 4, 2015, as National FPIES Awareness Day.

Whereas, Food Protein Induced Enterocolitis Syndrome, also known as FPIES, is a clinically documented medical condition known to occur in infants and young children, with potentially life-threatening consequences if not properly diagnosed and managed; and

Whereas, FPIES has been diagnosed in a small, but statistically significant, portion of infants and, because this condition is frequently misdiagnosed, it is likely to occur in greater numbers than currently known; and

Whereas, FPIES and other gastrointestinal hypersensitivity disorders are easily misdiagnosed because they do not present the same symptoms as more commonly understood allergic reactions and there are, as yet, no diagnostic tests that are specific for FPIES and similar disorders; and

Whereas, FPIES is a disease that can only be managed, as there is no cure and no treatment for its symptoms; and

Whereas, The management of FPIES and the care of an afflicted patient often requires strict adherence to a diet of chemically modified formula in infants and specially manufactured, elemental foods for older children that may cost thousands of dollars per month; and

Whereas, Knowledge of the nature of FPIES and other gastrointestinal hypersensitivity disorders has been slow to spread and these disorders are little known outside a small community of specialists; and

Whereas, This lack of knowledge and understanding has adversely affected patients in emergency departments and urgent

care centers and has resulted in inconsistent and long-delayed responses from many insurance providers; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes May 4, 2015, as National FPIES Awareness Day; and, be it

Further Resolved, That greater awareness of Food Protein Induced Enterocolitis Syndrome and other gastrointestinal hypersensitivity disorders be fostered through appropriate research, public hearings and public information initiatives; and, be it

Further Resolved, That the Senate encourages our medical community, insurance industry, dietitians, nutritionists, educators and child care workers to learn the symptoms and characteristics of gastrointestinal hypersensitivity disorders and to develop greater understanding of the accommodations needed to care for those with these disorders; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to appropriate representatives from National FPIES Awareness Day.

At the request of Senator D. Hall, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Prezioso, Stollings, Palumbo, Williams, Leonhardt and Yost offered the following resolution:

Senate Resolution No. 53—Recognizing Major General James A. Hoyer for winning the 2015 Spirit of the Mountains - Lewis N. McManus Youth Leadership Association Service Award.

Whereas, The Youth Leadership Association’s Youth in Government program, created in 1958 by the late Governor Cecil Underwood, will celebrate its 58th Anniversary with the Youth in Government Student Legislature and Supreme Court at the Capitol in these chambers on April 24 - 26, 2015; and

Whereas, The student officers of the Youth Leadership Association’s Youth in Government program represents hundreds of young West Virginians preparing for lifelong citizenship and taking volunteer actions today to build better futures all across the Mountain State; and

Whereas, The Youth Leadership Association’s Youth in Government program has established the Spirit of the Mountains - Lewis N. McManus Youth Leadership Association Service Award to annually recognize a person whose life reflects the values of the Youth Leadership Association and the life of former House Speaker McManus; and

Whereas, The winner of the Spirit of the Mountains - Lewis N. McManus Youth Leadership Association Service Award demonstrates a lifelong commitment to helping others, hard work, education, responsible citizenship and building futures for all, especially youth; and

Whereas, Former winners of the Spirit of the Mountains - Lewis N. McManus Youth Leadership Association Service Award include: Jessica Lynch (2004), Cecil Underwood (2005), Ed Maier (2006), David and Susan Hardesty (2007), John D. Rockefeller IV (2008), Bill Raney (2009), Gayle Manchin (2010), James “Buck” Harless (2011), David King (2012), Gaston Caperton (2013) and Sylvia Mathews Burwell (2014); and

Whereas, The winner of the 2015 Spirit of the Mountains - Lewis N. McManus Youth Leadership Association Service Award is Major General James A. Hoyer, Adjutant General of the West Virginia Joint Forces Headquarters; and

Whereas, Major General Hoyer is a former senior staff member to the Speaker of the House of Delegates; and

Whereas, Major General Hoyer received his undergraduate degree from the University of Charleston and was commissioned through a joint Reserve Officer Training Corps program with West Virginia State University; and

Whereas, Major General Hoyer began his military career in the West Virginia National Guard as a Calvary Officer, attended the Special Forces Officer Qualification course, and spent more than 14 years with the 2nd Battalion, 19th Special Forces group; and

Whereas, Major General Hoyer led the development of the West Virginia National Guard Counterdrug Task Force and the Joint Interagency Training and Education Center and its Center for National Response; and

Whereas, Major General Hoyer is an extraordinary leader of his agency's Mountaineer Challenge Academy, which focuses on training and mentoring at-risk youth in a tough environment, and has given 3,000 cadets the opportunity to become contributing members of society through a 22-week residential and one-year post-residential follow-up quasi military program of lifestyle changes, respect, teamwork, peer counseling, education and just plain hard work; and

Whereas, Major General Hoyer currently provides command guidance and vision to the West Virginia Army and Air National Guard of more than 6,000 Citizen Soldiers and Airmen, and supervises the day-to-day operation and management of the readiness, fiscal, personnel, equipment and real property resources; and

Whereas, The Senate appreciates the outstanding contributions of Major General Hoyer to the State of West Virginia as an advocate for helping others, hard work, education, responsible citizenship and building futures for all, especially youth; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes Major General James A. Hoyer for winning the 2015 Spirit of the Mountains - Lewis N. McManus Youth Leadership Association Service Award; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials of the Youth Leadership Association and to Major General James A. Hoyer.

At the request of Senator Prezioso, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senator Prezioso regarding the adoption of Senate Resolution No. 53 were ordered printed in the Appendix to the Journal.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators D. Hall, Stollings, Palumbo, Prezioso, Yost and Williams offered the following resolution:

Senate Resolution No. 54—Designating the month of March, 2015, as American Red Cross Month.

Whereas, Founded in 1881 and chartered by Congress in 1905, the American Red Cross acts in times of need in West Virginia, this country and around the world; and

Whereas, The American Red Cross is one of the most recognized humanitarian organizations and provides compassionate care to those who suffer disasters and life-altering emergencies; and

Whereas, When an injured service member ends up in a hospital far from home, the Red Cross offers comfort. When a hospital patient needs blood, American Red Cross blood donors help them. When a lifeguard jumps in to save a drowning child or someone steps up to help a heart attack victim, the American Red Cross is there; and

Whereas, American Red Cross volunteers have provided food, clothing, shelter and mental health support to victims of disasters every year including 1,252 West Virginia families last year who experienced a disaster; and

Whereas, The generous contributions of time and money by the people of West Virginia help the American Red Cross alleviate human suffering and restore vital services to families in our state in times of need; therefore, be it

Resolved by the Senate:

That the Senate hereby designates the month of March, 2015, as American Red Cross Month; and, be it

Further Resolved, That the Senate hereby recognizes the American Red Cross for its contributions to the State of West Virginia, the United States and the world; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia chapter of the American Red Cross.

At the request of Senator D. Hall, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

Senate Concurrent Resolution No. 13, Urging Congress propose balanced budget amendment.

On unfinished business, coming up in regular order, was reported by the Clerk.

Senator Snyder moved that the resolution be referred to the Committee on the Judiciary.

Following discussion,

The question being on the adoption of Senator Snyder's aforesaid motion, the same was put and prevailed.

The resolution (S. C. R. No. 13) was then referred to the Committee on the Judiciary.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Woelfel regarding the adoption of the motion to refer Senate Concurrent Resolution No. 13 to the Committee on the Judiciary were ordered printed in the Appendix to the Journal.

House Concurrent Resolution No. 91, Designating days for the display of the Honor and Remember Flag.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

On page one, in the second Whereas clause, by striking out the word “passed” and inserting in lieu thereof the word “introduced”.

The question being on the adoption of the resolution (H. C. R. No. 91), as amended, the same was put and prevailed.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill No. 2368, Relating to child welfare.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on March 8, 2015, for further amendments to be received on third reading, was reported by the Clerk.

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

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

ARTICLE 7. GENERAL PROVISIONS.

§49-7-37. Annual report to Legislature.

The Commissioner of the Bureau for Children and Families shall make a child fatality and new fatality report to the Legislative Oversight Commission on Health and Human Resources Accountability. The first report shall be due by July 1, 2015, and is

due on July 1 annually thereafter. The report shall be based upon public proceedings, records, reports, case histories and other documents of the Division of Child Protective Services.

On motion of Senator Plymale, the following amendment to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. No. 2368) was reported by the Clerk and adopted:

On page one, after the enacting section, by inserting the following:

**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 30. EARLY CHILDHOOD ADVISORY COUNCIL.

§5-30-1. Legislative findings.

The Legislature hereby finds that:

(1) Early childhood development is of critical importance to children, families, communities, the education system, employers and the economy; and

(2) The first three years of life are the peak time for development of the brain's architecture for vision, hearing, language and other cognitive functions. This is what sets the stage for all later learning and why nurturing relationships and environments are crucial in early childhood; and

(3) Thirty percent of West Virginia boys and girls under age six live in poverty. Research in brain development shows that social, emotional and cognitive development is shaped in early childhood

and has a lifelong effect. Children who live in poverty are five times more likely to have children outside marriage, twice as likely to be arrested, and nearly three times as likely to have severe health problems. Children who live in poverty also end up earning incomes less than half those of their counterparts; and

(4) The West Virginia prison population has tripled in the last twenty years, and our state spends more than \$23,000 on each inmate, which is roughly the cost of providing full-time quality child care to five young children. Taking care of our most vulnerable children is not only the right thing to do; it is the best way to help our state's health, welfare, and economy in the long run; and

(5) Returns on investments in human development are the highest during the first three years of life, according to Nobel-winning economist James Heckman and other researchers. Children who participate in high-quality early care and education are more likely to succeed in school and adult life. Better child outcomes lead to a host of societal benefits, including fewer costs for remedial programs, higher college-going rates and a stronger workforce; and

(6) In West Virginia, the long-term economic benefit of high-quality early childhood programs is estimated at \$5.20 for each dollar invested, according to a 2005 study by the Center for Business and Economic Research at Marshall University. The study identified four major benefits to West Virginia's families and economy: (A) Increasing the capacity of children to become more productive workers and citizens; (B) providing quality child care so that parents can work; (C) providing a major industry with a significant number of jobs; and (D) producing returns on investment to public and private money in excess of returns to other economic development programs; and

(7) The highest quality home visiting programs, over time, yield returns of up to \$5.70 per taxpayer dollar spent in reduced mental health and criminal justice costs, decreased dependence on public

assistance programs, and increased employment, L. A. Karoly, M. R. Kilburn and J. S. Cannon. (2005). "Early Childhood Interventions: Proven Results, Future Promise." Santa Monica, CA: The RAND Corporation; and

(8) John Pepper, former Chief Executive Officer of Procter & Gamble, has stated that business leaders "are powerful allies in the effort to invest scarce public dollars in high-quality home visiting programs. We have seen compelling evidence that home visitation provides dramatic and cost-effective improvements in helping children enter kindergarten ready to learn. There is no better investment for our future than this."; and

(9) Despite extensive efforts to improve childhood well-being, West Virginia was ranked thirty-seventh in the nation in the "2014 Kids County Data Book," published by the Annie E. Casey foundation, based in part on risk factors related to the high rate of poverty in the state; and

(10) West Virginia is committed to evidence-based early childhood programs that promote prenatal and child health, early learning, social and emotional abilities, and family engagement and well-being; and

(11) Early childhood programs must be of sufficiently high quality to achieve positive outcomes, with qualified staff, a healthy learning environment, evidence-based services, strong parent involvement and effective collaboration among the various programs serving pregnant women, young children and their families. Quality also depends on state-level support for professional development, data for planning and evaluation, quality improvement systems and sufficient program funding; and

(12) Research has shown that prevention, early identification, effective interventions and appropriate support can help avoid or reduce adverse experiences and promote healthy development. The Strengthening Families framework, used in West Virginia and

nationally, focuses on building five protective factors: Parental resilience, social connections, knowledge of parenting and child development, concrete support in times of need and social and emotional competence of children; and

(13) Improvements in wages, benefits and opportunities for advancement in the early childhood field are needed in order to recruit and retain qualified workers and provide the positive, stable relationships that help children thrive. Reimbursement rates for West Virginia child care providers serving subsidized children have not been raised since 2009 and are significantly below seventy-five percent of market rate, the minimum recommended by the federal child care and development block grant; and

(14) Health care providers play a pivotal role in early development. Beyond the health services they provide, many serve as the gateway to other child development services and are instrumental in statewide efforts to prevent and reduce substance abuse during pregnancy; and

(15) Effective governance is needed for the overall early childhood system that ensures coordination, alignment, efficiency and accountability; and

(16) West Virginia's current early childhood data systems are insufficient to provide for effective system planning, evaluation and accountability, and the creation of a system that links program-specific data systems is needed; and

(17) Recognizing the importance of the earliest years of a child's life, Governor Tomblin created the West Virginia Early Childhood Planning Task Force in May 2013 (2013 W.V. Executive Order No. 5); and

(18) The task force conducted extensive research and released a development plan for the state's early childhood system. The task force's findings confirm that West Virginia will benefit from the

development and implementation of a comprehensive plan for early childhood development that clearly defines the services and programs most likely to advance the health, development and school readiness of young children. The purpose of this article is to implement recommendations from the task force report “Building a System for Early Success: A Development Plan for Early Childhood in West Virginia” and to fully invest in the health, development and well-being of the state’s young children.

§5-30-2. Definitions.

(a) “Early Childhood Advisory Council” or “Council” means the council created by the Governor by 2010 W.V. Executive Order No. 9-10 and codified in section three of this article.

(b) “Early childhood system” includes, but is not limited to, West Virginia Birth to Three, West Virginia Home Visitation Program, West Virginia PreK, Head Start and Early Head Start federal grantees in West Virginia, child care programs, Family Resource and Starting Points Centers, Family Resource Networks and County Collaborative Early Childhood Teams.

§5-30-3. Continuation of West Virginia Early Childhood Advisory Council.

(a) The Legislature hereby continues the West Virginia Early Childhood Advisory Council, created by 2010 W.V. Executive Order No. 9-10, and amended thereafter, consisting of the following current members:

(1) The Director of the Division of Early Care and Education, Bureau for Children and Families, Department of Health and Human Resources;

(2) A representative of the department of education;

(3) A representative of local educational agencies;

(4) A representative of institutions of higher education in the state;

(5) A representative of local child care providers of early childhood education and development services;

(6) A representative from Head Start agencies located in the state;

(7) The State Director of Head Start Collaboration;

(8) A representative of Early Head Start Programming;

(9) A representative of the West Virginia Department of Education Office of Special Programs, as established under Section 629 of the IDEA;

(10) The Director of West Virginia Birth to Three, Office of Maternal Child and Family Health, Bureau for Public Health, Department of Health and Human Resources, as established under Part C of the Individuals with Disabilities Education Act (IDEA);

(11) A representative of in-home family education;

(12) A representative of the early childhood advocate community;

(13) A representative of the business community;

(14) A representative of the Office of Maternal Child and Family Health, Bureau for Public Health, Department of Health and Human Resources;

(15) A representative of the Governor's Office;

(16) A representative of labor;

(17) The Director of WV Home Visitation Program, Office of Maternal Child and Family Health, Department of Health and Human Services;

(18) A representative of the pediatric community;

(19) A representative of the child welfare community;

(20) A representative of the family child care community; and

(21) The Secretary of the Department of Education and the Arts, who is the chairperson.

(b) All current representatives on the council shall remain on the council until the expiration of their terms, unless they otherwise resign or are removed.

(c) Any vacancy on the council shall be filled by appointment by the Governor and that new appointee shall serve for three years from the date of appointment. Any representative on the council may be reappointed by the Governor for additional three year terms of service.

(d) The council shall continue to have the duties and responsibilities set forth in 2010 W.V. Executive Order No. 9-10 and its bylaws.

(e) As necessary to fulfill the priorities of this article, the council may submit reports to the Governor and the Legislative Joint Committee on Government and Finance. The Joint Committee on Government and Finance shall distribute any such reports to the West Virginia Legislative Oversight Commission on Education Accountability and the West Virginia Legislative Oversight Commission on Health and Human Resources Accountability.

(f) Members of the council receive no compensation. Each state employee member of the council is entitled to be reimbursed by their

employing agency for reasonable actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

§5-30-4. Priorities of the Early Childhood Advisory Council.

In order to provide greater guidance and focus, the Legislature concludes that the council will be guided by the following priorities:

(1) Create an integrated data system across all early childhood programs;

(2) Statewide expansion of West Virginia home visitation program;

(3) Expanded eligibility definition for West Virginia birth to three;

(4) Implementation of quality rating and improvement system, including incentive payments;

(5) Raising family income limits for child care subsidies and increasing provider reimbursement rates for subsidized children;

(6) Implementing a statewide full-day, high-quality early learning and child care program for three-year-olds;

(7) Improving system planning, evaluation, development and governance;

(8) Expanding perinatal drug abuse prevention and treatment; and

(9) Providing quality tax credits for early childhood programs, staff and families.

CHAPTER 49. CHILD WELFARE.

The question now being on the adoption of the Health and Human Resources committee amendment to the bill, as amended, the same was put and prevailed.

On motion of Senator Plymale, the following amendment to the bill (Eng. Com. Sub. for H. B. No. 2368) was next reported by the Clerk and adopted:

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3 and §5-30-4; and that said code be amended by adding thereto a new section, designated §49-7-37, all to read as follows:

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. No. 2368), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2368) passed.

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

Eng. Com. Sub. for House Bill No. 2368—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3 and §5-30-4; and to amend said code by adding thereto a new section, designated §49-7-37, all relating to child welfare; declaring legislative findings relating to child welfare and development; defining terms; continuing the West Virginia Early Childhood Advisory Council; establishing priorities for the West Virginia Early Childhood Advisory Council; permitting certain reports by the West Virginia Early Childhood Advisory Council; and requiring certain annual reports by the Commissioner of the Bureau for Children and Families.

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

Eng. Com. Sub. for House Bill No. 2562, Relating to sales tax increment financing.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2562) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2562) takes effect from passage.

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

Eng. Com. Sub. for House Bill No. 2586, Allowing for an alternative form of service of process in actions against nonresident persons by petitioners seeking domestic violence or personal safety relief.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder,

Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2586) passed with its title.

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

Eng. House Bill No. 2914, Providing for voluntary dissolution of resort area district.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2914) passed.

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

Eng. House Bill No. 2914—A Bill to amend and reenact §7-25-6, §7-25-11 and §7-25-15 the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary dissolution of a resort area district; establishing a procedure for a dissolution; permitting nominations for resort area board members be made by mail or electronic means; permitting property owners to make nominations; providing for election of board members by plurality vote instead of by a majority vote; limiting the amount of assessments that may be levied against a parcel of real property; establishing a procedure for assessments proposed by a board on its own initiative; and providing for the effect of 2015 amendments.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill No. 2011, Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer.

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

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

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.

(a) Notwithstanding anything contained in this chapter, no employee or dependent of any employee is entitled to receive any sum under the provisions of this chapter on account of any personal injury to or death to any employee caused by a self-inflicted injury or the intoxication of the employee. Upon the occurrence of an injury which the employee asserts, or which reasonably appears to have, occurred in the course of and resulting from the employee's employment, the employer may require the employee to undergo a blood test for the purpose of determining the existence or nonexistence of evidence of intoxication: *Provided*, That the employer must have a reasonable and good faith objective suspicion of the employee's intoxication and may only test for the purpose of determining whether the person is intoxicated. If any blood test for intoxication is given following an accident, at the request of the employer or otherwise, and if any of the following are true, the employee is deemed intoxicated and the intoxication is the proximate cause of the injury:

(1) If a blood test is administered within two hours of the accident and evidence that there was, at that time, more than five hundredths of one percent, by weight, of alcohol in the employee's blood; or

(2) If there was, at the time of the blood test, evidence of either on or off the job use of a nonprescribed controlled substance as defined in the West Virginia Uniform Controlled Substances Act, West Virginia Code §60A-2-201, *et seq.*, Schedules I, II, III, IV and V.

(b) For the purpose of this chapter, the commission may cooperate with the Office of Miners' Health, Safety and Training and the State Division of Labor in promoting general safety programs and in formulating rules to govern hazardous employments.

(c) If injury results to any employee from the deliberate intention of his or her employer to produce the injury or death, the employee, or, if the employee has been found to be incompetent, his or her conservator or guardian, may recover under this chapter and bring

a cause of action against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter. If death results to any employee from the deliberate intention of his or her employer to produce the injury or death, the representative of the estate may recover under this chapter and bring a cause of action, pursuant to section six, article seven of chapter fifty-five of this code, against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter. To recover under this section, the employee, the employee's representative or dependent, as defined under this chapter, must, unless good cause is shown, have filed a claim for benefits under this chapter.

(d) (1) It is declared that enactment of this chapter and the establishment of the workers' compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as expressly provided in this chapter and to establish a system which compensates even though the injury or death of an employee may be caused by his or her own fault or the fault of a co-employee; that the immunity established in sections six and six-a, article two of this chapter is an essential aspect of this workers' compensation system; that the intent of the Legislature in providing immunity from common lawsuit was and is to protect those immunized from litigation outside the workers' compensation system except as expressly provided in this chapter; that, in enacting the immunity provisions of this chapter, the Legislature intended to create a legislative standard for loss of that immunity of more narrow application and containing more specific mandatory elements than the common law tort system concept and standard of willful, wanton and reckless misconduct; and that it was and is the legislative intent to promote prompt judicial resolution of the question of whether a suit prosecuted under the asserted authority of this section is or is not prohibited by the immunity granted under this chapter.

(2) The immunity from suit provided under this section and under sections six and six-a, article two of this chapter may be lost only if the employer or person against whom liability is asserted acted with “deliberate intention”. This requirement may be satisfied only if:

(A) It is proved that the employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing of an actual, specific intent and may not be satisfied by allegation or proof of: (i) Conduct which produces a result that was not specifically intended; (ii) conduct which constitutes negligence, no matter how gross or aggravated; or (iii) willful, wanton or reckless misconduct; or

(B) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(i) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(ii) That the employer, prior to the injury, had actual knowledge of the existence of the specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working condition.

(I) In every case actual knowledge must specifically be proven by the employee or other person(s) seeking to recover under this section, and shall not be deemed or presumed: *Provided*, That actual knowledge may be shown by evidence of intentional and deliberate failure to conduct an inspection, audit or assessment required by state or federal statute or regulation and such inspection, audit or assessment is specifically intended to identify each alleged specific unsafe working condition.

(II) Actual knowledge is not established by proof of what an employee's immediate supervisor or management personnel should have known had they exercised reasonable care or been more diligent.

(III) Any proof of the immediate supervisor or management personnel's knowledge of prior accidents, near misses, safety complaints or citations from regulatory agencies must be proven by documentary or other credible evidence.

(iii) That the specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of the employer.

(I) If the specific unsafe working condition relates to a violation of a commonly accepted and well-known safety standard within the industry or business of the employer, that safety standard must be a consensus written rule or standard promulgated by the industry or business of the employer, such as an organization comprised of industry members: *Provided*, That the National Fire Protection Association Codes and Standards or any other industry standards for Volunteer Fire Departments shall not be cited as an industry standard for Volunteer Fire Departments, Municipal Fire Departments and Emergency Medical Response Personnel as an unsafe working condition as long as the Volunteer Fire Departments, Municipal Fire Departments and the Emergency Medical Response Personnel have followed the Rules that have been promulgated by the Fire Commission.

(II) If the specific unsafe working condition relates to a violation of a state or federal safety statute, rule or regulation that statute, rule or regulation:

(a) Must be specifically applicable to the work and working condition involved as contrasted with a statute, rule, regulation or

standard generally requiring safe workplaces, equipment or working conditions;

(b) Must be intended to address the specific hazard(s) presented by the alleged specific unsafe working condition; and,

(c) The applicability of any such state or federal safety statute, rule or regulation is a matter of law for judicial determination.

(iv) That notwithstanding the existence of the facts set forth in subparagraphs (i) through (iii), inclusive, of this paragraph, the person or persons alleged to have actual knowledge under subparagraph (ii) nevertheless intentionally thereafter exposed an employee to the specific unsafe working condition; and

(v) That the employee exposed suffered serious compensable injury or compensable death as defined in section one, article four, chapter twenty-three as a direct and proximate result of the specific unsafe working condition. For the purposes of this section, serious compensable injury may only be established by one of the following four methods:

(I) It is shown that the injury, independent of any preexisting impairment:

(a) Results in a permanent physical or combination of physical and psychological injury rated at a total whole person impairment level of at least thirteen percent (13%) as a final award in the employees workers' compensation claim; and

(b) Is a personal injury which causes permanent serious disfigurement, causes permanent loss or significant impairment of function of any bodily organ or system, or results in objectively verifiable bilateral or multi-level dermatomal radiculopathy; and is not a physical injury that has no objective medical evidence to support a diagnosis; or

(II) Written certification by a licensed physician that the employee is suffering from an injury or condition that is caused by the alleged unsafe working condition and is likely to result in death within eighteen (18) months or less from the date of the filing of the complaint. The certifying physician must be engaged or qualified in a medical field in which the employee has been treated, or have training and/or experience in diagnosing or treating injuries or conditions similar to those of the employee and must disclose all evidence upon which the written certification is based, including, but not limited to, all radiographic, pathologic or other diagnostic test results that were reviewed.

(III) If the employee suffers from an injury for which no impairment rating may be determined pursuant to the rule or regulation then in effect which governs impairment evaluations pursuant to this chapter, serious compensable injury may be established if the injury meets the definition in subclause (I)(b).

(IV) If the employee suffers from an occupational pneumoconiosis, the employee must submit written certification by a board certified pulmonologist that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis and that the occupational pneumoconiosis has resulted in pulmonary impairment as measured by the standards or methods utilized by the West Virginia Occupational Pneumoconiosis Board of at least fifteen percent (15%) as confirmed by valid and reproducible ventilatory testing. The certifying pulmonologist must disclose all evidence upon which the written certification is based, including, but not limited to, all radiographic, pathologic or other diagnostic test results that were reviewed: *Provided*, That any cause of action based upon this subdivision must be filed within one year of the date the employee meets the requirements of the same.

(C) In cases alleging liability under the provisions of paragraph (B) of this subdivision:

(i) The employee, the employee's guardian or conservator, or the representative of the employee's estate shall serve with the complaint a verified statement from a person with knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards specifically applicable to the industry and workplace involved in the employee's injury, setting forth opinions and information on:

(I) The person's knowledge and expertise of the applicable workplace safety statutes, rules, regulations and/or written consensus industry safety standards;

(II) The specific unsafe working condition(s) that were the cause of the injury that is the basis of the complaint; and

(III) The specific statutes, rules, regulations or written consensus industry safety standards violated by the employer that are directly related to the specific unsafe working conditions: *Provided, however,* That this verified statement shall not be admissible at the trial of the action and the Court, pursuant to the Rules of Evidence, common law and subclause two-c, subparagraph (iii), paragraph (B), subdivision (2), subsection (d), section two, article four, chapter twenty-three of this code, retains responsibility to determine and interpret the applicable law and admissibility of expert opinions.

(ii) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

(iii) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the employer may request and the court shall give due consideration to the bifurcation of discovery in any action brought under the provisions of subparagraphs (i) through (v), of paragraph (B) such that the discovery related to liability issues be completed before discovery related to damage issues. The court shall

dismiss the action upon motion for summary judgment if it finds pursuant to rule 56 of the rules of civil procedure that one or more of the facts required to be proved by the provisions of subparagraphs (i) through (v), inclusive, paragraph (B) of this subdivision do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (i) through (v), inclusive, paragraph (B) of this subdivision; and

(iv) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(e) Any cause of action brought pursuant to this section shall be brought either in the circuit court of the county in which the alleged injury occurred or the circuit court of the county of the employer's principal place of business. With respect to causes of action arising under this chapter, the venue provisions of this section shall be exclusive of and shall supersede the venue provisions of any other West Virginia statute or rule.

(f) The reenactment of this section in the regular session of the Legislature during the year 2015 does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of the reenactment.

(g) The amendments to this section enacted during the 2015 session of the Legislature shall apply to all injuries occurring on or after July 1, 2015.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. No. 2011) was reported by the Clerk and adopted:

On page seven, section two, subsection (d), subdivision (2), paragraph (B), subparagraph (v), clause (IV), by striking out the word “subdivision” and inserting in lieu thereof the word “clause”.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. No. 2011), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2128, Permitting those individuals who have been issued concealed weapons permits to keep loaded firearms in their motor vehicles on the State Capitol Complex grounds.

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

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

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

(a) If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency or branch of state government or of its political subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or ~~imprisoned in the county or regional~~ confined in

jail not more than six months, or both fined and ~~imprisoned~~ confined: *Provided*, That any assembly in a peaceable, lawful and orderly manner for a redress of grievances shall not be a violation of this section.

(b) It is unlawful for any person to bring upon the State Capitol Complex any weapon as defined ~~by the provisions of~~ in section two, article seven of this chapter: *Provided*, That a person who holds a valid, current concealed weapons permit issued by a sheriff of this state or the appropriate authority of another jurisdiction may keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle is locked and the weapon is out of normal view. It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork or adornment in the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair or elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: *Provided*, That, in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: *Provided, however*, That this subsection ~~shall~~ does not apply to a law-enforcement officer acting in his or her official capacity.

Any person who violates ~~any provision of~~ this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 or confined in ~~the county or regional~~ jail not more than six months, or both.

The bill (Eng. Com. Sub. for H. B. No. 2128), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2283, Authorizing the Department of Environmental Protection to promulgate legislative rules.

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

Eng. Com. Sub. for House Bill No. 2381, Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools.

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

Eng. Com. Sub. for House Bill No. 2478, Relating to public school finance.

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

At the request of Senator Carmichael, and by unanimous consent, the bill was advanced to third reading with the unreported committee amendments pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill No. 2502, Possessing deadly weapons on school buses or on the premises of educational facilities.

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

Eng. Com. Sub. for House Bill No. 2536, Relating to travel insurance limited lines producers.

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

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

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

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32b. Travel Insurance Entity Producer Limited License Act.

(a) *Definitions.* – For purposes of this section:

(1) A “group policy” means a policy issued to:

(A) A railroad company, steamship company, carrier by air, public bus carrier or other common carrier of passengers, which is considered the policyholder, where the policy insures its passengers; or

(B) Any other group if the commissioner has determined by rule that the members are engaged in a common enterprise or have an economic or social affinity or relationship, and that issuance of the policy would not be contrary to the best interests of the public.

(2) “Offer and disseminate” means providing general information, including descriptions of coverage and price, processing applications, collecting premiums and performing other activities permitted in this state without a license issued by the commissioner.

(3) “Travel insurance” means:

(A) An individual or group policy of insurance that provides coverage for personal risks incident to planned travel, including, but not limited to:

(i) Interruption or cancellation of a trip or event;

(ii) Loss of baggage or personal effects;

(iii) Damages to accommodations or rental vehicles; or

(iv) Sickness, accident, disability or death occurring during travel.

(B) “Travel insurance” does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including, but not limited to, those working overseas as expatriates or military personnel deployed overseas.

(4) “Travel insurance entity producer” means an entity which is licensed under this section, is appointed by an insurer, and has the duties set forth in subsection (d) of this section.

(5) “Travel retailer” means an entity that makes, arranges or offers travel services, which may offer and disseminate travel insurance on behalf of and under the direction of a travel insurance entity producer.

(b) *License requirements.* – Notwithstanding any other provision of law:

(1) The commissioner may issue a travel insurance entity producer license, which authorizes the sale, solicitation or negotiation of travel insurance issued by a licensed insurer, to a person meeting the requirements of this section.

(2) An entity seeking a license under this section shall apply on a form and in a manner prescribed by the commissioner.

(3) The annual fee for a travel insurance entity producer license is \$200.

(c) *Conditions for travel retailers.* – A travel retailer may offer and disseminate travel insurance policies under a license issued to a travel insurance entity producer only if all of the following conditions are met:

(1) The travel retailer agrees that it is bound by all applicable provisions of this section and that no employee or authorized representative, who is not licensed as an individual insurance producer, may:

(A) Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

(B) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(C) Hold himself or herself out as a licensed insurer, licensed producer, or insurance expert.

(2) The travel retailer makes available to prospective purchasers brochures or other written materials that:

(A) State the identity and contact information of the insurer and the travel insurance entity producer;

(B) Describe the material terms, or contain the actual material terms, of the travel insurance coverage;

(C) Describe the process for filing a claim under the travel insurance policy;

(D) Describe the review and cancellation processes for the travel insurance policy;

(E) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(F) Explain that a travel retailer not licensed by the commissioner may provide general information about the travel insurance offered, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the travel

insurance or to evaluate the adequacy of a prospective purchaser's existing insurance coverage.

(3) The travel retailer ensures that each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance successfully completed the training required by this section.

(d) *Conditions for travel insurance entity producers.* – A travel insurance entity producer may offer and disseminate travel insurance policies through a travel retailer only if all of the following conditions are met:

(1) On a form prescribed by the commissioner, the travel insurance entity producer establishes, maintains and updates annually a register of all travel retailers that offer travel insurance on behalf of the travel insurance entity producer:

(A) The register shall include the name, address, and contact information of each travel retailer and of the person who directs or controls the travel retailer's operations, and the travel retailer's federal tax identification number;

(B) The travel insurance entity producer shall certify that the register complies with 18 U. S. C. §1033; and

(C) The travel insurance entity producer shall submit the register to the commissioner within thirty days upon request.

(2) The travel insurance entity producer designates one of its employees who is a licensed individual producer as the responsible producer for the travel insurance entity producer's compliance with this section and any rules promulgated under this section.

(3) The designated responsible producer, and the president, secretary, treasurer and any other person who directs or controls the travel insurance entity producer's insurance operations, comply with

the fingerprinting requirements applicable to insurance producers in the resident state of the travel insurance entity producer.

(4) The travel insurance entity producer pays all applicable insurance producer licensing fees set forth in this chapter or rules promulgated under this chapter.

(5) The travel insurance entity producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which the commissioner may review and approve or disapprove. The training program shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices and required disclosures to prospective customers.

(e) A licensee under this section, and those registered under its license pursuant to subdivision one, subsection (d) of this section, are exempt from examination under section five of this article and from continuing education requirements under section eight of this article.

(f) A licensee under this section is subject to the provisions of section six-b of this article as if it were an insurance agency.

(g) *License renewal.* – The commissioner shall annually renew, on the expiration date as provided in this subsection, the license of a licensee who qualifies and applies for renewal on a form prescribed by the commissioner and pays the fee set forth in subdivision three, subsection (b) of this section: *Provided*, That the commissioner may fix the dates of expiration of travel insurance entity producer licenses as he or she considers advisable for efficient distribution of the workload of his or her office:

(1) If the fixed expiration date would upon first occurrence shorten the period for which a license fee has been paid, no refund of unearned fee shall be made;

(2) If the fixed expiration date would upon first occurrence lengthen the period for which a license fee has been paid, the commissioner shall charge no additional fee for the lengthened period;

(3) If a date is not fixed by the commissioner, each license shall, unless continued as provided in this subsection, expire at midnight on June 30 following issuance; and

(4) A licensee that fails to timely renew its license may reinstate its license, retroactive to the expiration date, upon submission of the renewal application within twelve months after the expiration date and payment of a penalty in the amount of \$50.

(h) *Appointment.* – A travel insurance entity producer may not act as an agent of an insurer unless the insurer appoints the travel insurance entity producer as its agent, as follows:

(1) The insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed and shall pay a nonrefundable appointment processing fee in the amount of \$25: *Provided*, That an insurer may elect to appoint a travel insurance entity producer to all or some insurers within the insurer's holding company system or group by filing a single notice of appointment;

(2) Upon receipt of a notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the travel insurance entity producer is eligible for appointment: *Provided*, That the commissioner shall notify the insurer within five days of a determination that the travel insurance entity producer is ineligible for appointment; and

(3) The insurer shall remit, no later than midnight on May 31 annually and in a manner prescribed by the commissioner, a renewal appointment fee for each appointed travel insurance entity producer in the amount of \$25; and

(4) The insurer shall maintain a current list of travel insurance entity producers appointed to accept applications on behalf of the insurer, and shall make the list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

(i) *Effect of registration.* – Notwithstanding any other provision of law, if a travel retailer’s insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a licensed travel insurance entity producer, the travel retailer may perform those activities and receive related compensation, upon registration by the travel insurance entity producer pursuant to subdivision one, subsection (d) of this section.

(j) *Liability.* – As the insurer’s appointed agent, the travel insurance entity producer is liable for the acts or omissions of the travel retailer in offering and disseminating travel insurance under the travel insurance entity producer’s license and shall use reasonable means to ensure compliance by the travel retailer with this section.

(k) *Enforcement.* – In enforcing the provisions of this section, the commissioner may use any enforcement mechanisms in this chapter.

(1) If the commissioner determines that a travel retailer or its employee has violated this section, the commissioner may after notice and hearing:

(A) Impose fines not to exceed \$500 per violation or \$5,000 in the aggregate for the conduct; and

(B) Impose other or additional penalties that the commissioner considers necessary and reasonable to carry out the purpose of this section, including but not limited to:

(i) Suspending or revoking the privilege of offering and disseminating travel insurance pursuant to this section by specific

business retailers or at specific business retail locations where violations have occurred;

(ii) Suspending or revoking the privilege of individual employees of a travel retailer to act under this section; and

(iii) Placing the travel retailer or its employees on probation under terms and conditions prescribed by the commissioner.

(2) If the commissioner determines that a travel insurance entity producer has failed to perform its duties under this section or has otherwise violated this section, the travel insurance entity producer is subject to the provisions of section twenty-four of this article.

(1) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement this section.

The bill (Eng. Com. Sub. for H. B. No. 2536), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2557, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle.

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

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

On page four, section twenty-nine, line fifty-two, after the word "vehicle" by changing the period to a colon and adding the following proviso: *Provided*, That any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance.

The bill (Eng. Com. Sub. for H. B. No. 2557), as amended, was then ordered to third reading.

Eng. House Bill No. 2606, Clarifying the potential sentence for disorderly conduct.

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

Eng. House Bill No. 2627, Providing protection against property crimes committed against coal mines, utilities and other industrial facilities.

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

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

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

(a) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, ~~or~~ public utility company, solid waste facility or collection equipment as defined in section two, article fifteen, chapter twenty-two of this code or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or

cable service, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$2,000, or confined in jail not more than one year, or both. ~~fined and confined.~~

(b) Any person who knowingly and willfully: ~~(1) Damages~~ damages or destroys any commercial or industrial real or personal property owned by a railroad company, ~~or~~ public utility company, solid waste facility or collection equipment as defined in section two, article fifteen, chapter twenty-two of this code or any real or personal property used for producing, generating, transmitting, distributing, treating, storing, or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service; and ~~(2) thereby~~ creates a substantial risk of serious bodily injury to another or results in the interruption of service to the public is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or confined in a state correctional facility not less than one nor more than three years, or both. ~~fined and imprisoned.~~

(c) Any person who knowingly and willfully: ~~(1) Damages~~ damages or destroys any commercial or industrial real or personal property owned by a railroad company, ~~or~~ public utility company, solid waste facility or collection equipment as defined in section two, article fifteen, chapter twenty-two of this code, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service; and (2) causes serious bodily injury to another is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$50,000, or confined in a state correctional facility not less than one nor more than five years, or both. ~~fined and imprisoned.~~

(d) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, public utility company, solid waste facility or collection equipment as defined in section two, article fifteen, chapter

twenty-two of this code or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service; and thereby hinders, impairs or disrupts, directly or indirectly the normal operation of any equipment, device, system or service put in place, in whole or in part, to protect, promote or facilitate the health or safety of any person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000.

(e) Any person convicted of subsection (a), (b), (c) or (d) of this section shall be subject to the provisions of article eleven-a of this chapter.

~~(d)~~ (f) Nothing in this section may be construed to limit or restrict limits or restricts the ability of an entity referred to in subsection (a), (b), or (c) or (d) of this section or a property owner or other person who has been damaged or injured as a result of a violation of this section from seeking recovery for damages arising from violation of this section.

The bill (Eng. H. B. No. 2627), as amended, was then ordered to third reading.

Eng. House Bill No. 2628, Changing the date of filing announcements of candidacies.

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

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

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

That §3-5-7 and §3-5-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, ~~or~~ the State Senate, circuit judge, family court judge and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, ~~or~~ State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the ~~second~~ first Monday ~~in~~ after January 1 next preceding the primary election day, and not later than the last Saturday in January next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal

Service before that hour. This includes the offices of justice of the Supreme Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;

(6) For partisan elections, the name of the candidate's political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain “uncommitted”;

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words “subscribed and sworn to before me this _____ day of _____, 20____” and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter’s registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter’s registration record of the candidate are filed with the officer receiving that candidate’s certificate of announcement no later than ten days following the close of the filing period, the candidate may not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with section three, article nine of this chapter.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential

candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention; *Provided, however, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.*

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

~~(j) The provisions of this section enacted during the regular session of the Legislature in the year 1991 shall apply to the primary election held in the year 1992 and every primary election held thereafter. The provisions of this section enacted during the regular session of the Legislature in the year 2009 shall apply to the primary election held in the year 2010 and every primary election held thereafter.~~

§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under

the provisions of section eleven of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: *Provided*, That if the executive committee holds a duly called meeting in accordance with section nine, article one of this chapter but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of nomination is regularly filed for that office.

(3) If a vacancy in nomination is caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than ~~thirty days after the last day to file a certificate of announcement pursuant to section seven of this article~~ the Thursday preceding the primary election.

(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the

executive committee and certified to the proper filing officer not later than seventy-eight days before the general election. A candidate may be determined ineligible if a written request is made by an individual with information to show a candidate's ineligibility to the State Election Commission no later than eighty-four days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission may authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the withdrawal of the candidate no later than eighty-four days before the general election due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected and if the candidate or the chairperson of the executive committee for the political division applies in writing to the State Election Commission no later than eighty-four days before the general election for permission to remove the candidate's name from the general election ballot, the State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the withdrawal of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(7) If a vacancy in nomination is caused by the death of the candidate occurring no later than twenty-five days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than twenty-one days following the date of death or no later than twenty-two days before the general election, whichever date occurs first.

(b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than seventy-seven days before the general election.

The bill (Eng. H. B. No. 2628), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2652, Reducing the assessment paid by hospitals to the Health Care Authority.

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

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

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

That §16-29B-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-8. Powers generally; budget expenses of the board.

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines and rules in accordance with article three, chapter twenty-nine-a of this code: *Provided*, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not exempt from the provisions of article three, chapter twenty-nine-a of this code may be implemented by emergency rule;

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of health care services subject to the provisions of this article and may subpoena witnesses, papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the state of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of studies, plans,

demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;

(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: *Provided*, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commissioner and subject to the approval of the Legislature;

(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and

(6) Exercise, subject to limitations or restrictions herein imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.

(b) The board shall annually prepare a budget for the next fiscal year for submission to the governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff.

(c) Each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the ~~gross revenues~~ net patient revenue, as defined under generally accepted accounting principles, of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital's obligation. The amount of such fee shall be determined by the board except that in no case shall the hospital's obligation exceed one tenth of one percent of its gross net patient revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the state treasury and kept as a special revolving fund designated "health

care cost review fund”, with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.

(d) Each hospital’s assessment shall be treated as an allowable expense by the board.

(e) The board is empowered to withhold rate approvals, certificates of need and rural health system loans and grants if any such fees remain unpaid, unless exempted under subsection (g), section four, article two-d of this chapter.

The bill (Eng. Com. Sub. for H. B. No. 2652), as amended, was then ordered to third reading.

Eng. House Bill No. 2658, Relating to the inspection and slaughter of nontraditional agriculture.

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

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

On page two, section four, line five, after the word “outlets.” by inserting the following: Except for rabbits and game birds, nontraditional agriculture shall be slaughtered in an inspected meat processing facility.

The bill (Eng. H. B. No. 2658), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2790, Relating to minimum responsibility limits of car insurance.

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

Eng. House Bill No. 2888, Allowing the use of rotary drum composters to destroy or dispose of the carcass of any animal to prevent the spread of disease.

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

Eng. Com. Sub. for House Bill No. 2902, West Virginia ABLE Act.

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

Eng. Com. Sub. for House Bill No. 2968, Exempting from property tax certain properties in this state owned by nonprofit youth organizations.

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

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

On page fifteen, section nine, line two hundred fifty-four, by striking out the word "One" and inserting in lieu thereof the word "Twenty-five";

On page fifteen, section nine, line two hundred fifty-eight, by striking out the word "One" and inserting in lieu thereof the word "Twenty-five";

On page sixteen, section nine, line two hundred seventy-one, by striking out the word “Two” and inserting in lieu thereof the word “Fifty”;

And,

On page eighteen, section nine, line three hundred seventeen, by striking out the word “or” and inserting in lieu thereof the word “of”.

The bill (Eng. Com. Sub. for H. B. No. 2968), as amended, was then ordered to third reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate recessed until 5 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fourth order of business.

Senator Maynard, 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 10th day of March, 2015, 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:

(S. B. No. 294), Eliminating certain unnecessary, inactive or redundant councils, committees and boards.

(Com. Sub. for S. B. No. 351), Relating to charitable organization contribution levels requiring independent audit reports.

(**Com. Sub. for S. B. No. 374**), Permitting in absentia parole hearings in certain instances.

(**Com. Sub. for S. B. No. 375**), Specifying who receives parole hearing notices via regular or certified mail.

(**S. B. No. 463**), Making supplementary appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund.

(**S. B. No. 472**), Making supplementary appropriation to DOT, DMV, Motor Vehicle Fees Fund.

(**S. B. No. 475**), Making supplementary appropriation to DMAPS, Division of Corrections, Parolee Supervision Fees, and WV State Police, Motor Vehicle Inspection Fund.

(**S. B. No. 507**), Relating to monitoring inmates' electronic communications.

And,

(**S. B. No. 508**), Reorganizing Hatfield-McCoy Regional Recreation Authority.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
John B. McCuskey,
Chair, House Committee.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 51, Requesting DOH name bridge in Boone County “U. S. Army PFC Samuel C. Ball Memorial Bridge”.

Senate Concurrent Resolution No. 53, Requesting DOH name bridge in Randolph County “U. S. Army PFC Samuel Reed Summerfield Memorial Bridge”.

Senate Concurrent Resolution No. 54, Requesting DOH name stretch of road in Logan County “USMC LCpl Larry G. Williamson Memorial Highway”.

Senate Concurrent Resolution No. 55, Requesting DOH name section of road in Logan County “U. S. Army SP4 Terry Robert Albright Memorial Road”.

And,

Senate Concurrent Resolution No. 56, Requesting DOH name section of road in Logan County “U. S. Army Colonel Anna M. Butcher Road”.

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

Respectfully submitted,

Chris Walters,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Senate Concurrent Resolution No. 52, Requesting Board of Education study teacher preparation programs.

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

Respectfully submitted,

Dave Sypolt,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill No. 2015, Requiring the Legislative Auditor to conduct performance reviews and audits for every government spending unit, including all members of the Board of Public Works and the Legislature.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2015) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Government Organization pending.

Senator Ferns, from 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

Eng. Com. Sub. for House Bill No. 2098, Authorizing those health care professionals to provide services to patients or residents of state-run veterans' facilities without obtaining an authorization to practice.

And has amended same.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2098) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2139, Relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2139) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Transportation and Infrastructure has had under consideration

Eng. Com. Sub. for House Bill No. 2148, Conforming the motor vehicle law of this state to the requirements of section 1405(a) of the federal Transportation Equity Act for the Twenty-first Century.

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

Respectfully submitted,

Chris Walters,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2148) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2161, Adopting the Uniform Act on Prevention of and Remedies for Human Trafficking.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2161) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill No. 2187, Encouraging public officials to display the national motto on all public property and public buildings.

And,

Eng. House Bill No. 2625, Continuing the current hazardous waste management fee.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. No. 2187 and Eng. H. B. No. 2625) contained in the preceding report from the Committee on Government Organization were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2366, Relating generally to the solicitation of minors.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2366) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2370, Increasing the powers of regional councils for governance of regional education service agencies.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2370) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2377, Authorizing State Board of Education to approve certain alternatives with respect to instructional time.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2377) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2461, Relating to delinquency proceedings of insurers.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2461) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from 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

Eng. Com. Sub. for House Bill No. 2493, Relating to requirements for insurance policies and contracts providing accident and sickness insurance or direct health care services that cover anti-cancer medications.

Eng. Com. Sub. for House Bill No. 2496, Adopting the Interstate Medical Licensure Compact.

Eng. Com. Sub. for House Bill No. 2662, Eye Care Consumer Protection Law.

Eng. House Bill No. 2733, Removing certain combinations of drugs containing hydrocodone from Schedule III of the controlled substances law.

Eng. House Bill No. 2797, Changing the term “mentally retarded” to “intellectually disabled”; and changing the term “handicapped” to “disabled”.

And,

Eng. House Bill No. 2931, Adding drugs to the classification of schedule I drugs.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. Nos. 2493, 2496 and 2662 and Eng. H. B. Nos. 2733, 2797 and 2931) contained in the preceding report from the Committee on Health and Human Resources were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from 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

Eng. House Bill No. 2595, Relating to certificates of need for the development of health facilities in this state.

Now on second reading, having been read a first time and referred to the Committee on Health and Human Resources on March 6, 2015;

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2608, Cleaning up redundant language in the statute relating to misdemeanor offenses for violation of protective orders.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2608) contained in the preceding

report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2646, Legalizing and regulating the sale and use of fireworks.

And reports the same back without recommendation as to passage; but with the recommendation that it first be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2646) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Trump, the bill was rereferred to the Committee on the Judiciary.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2780, Enhancing the ability of campus police officers at public colleges to perform their duties.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2780) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2793, Relating to exemptions from mandatory school attendance.

And has amended same.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2793) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2867, Requiring recommendations for higher education course credit transfer.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Education on March 6, 2015;

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

Respectfully submitted,

Dave Sypolt,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2884, Modifying training and development requirement for certain members of certain higher education boards.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2884) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2892, Authorizing certain legislative rules regarding higher education.

Now on second reading, having been read a first time and referred to the Committee on Education on March 9, 2015;

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

Respectfully submitted,

Dave Sypolt,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2976, Expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2976) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Transportation and Infrastructure has had under consideration

Com. Sub. for House Concurrent Resolution No. 4, The US Army PFC Clarence Allen Mooney Memorial Bridge.

Com. Sub. for House Concurrent Resolution No. 9, The U. S. Air Force Lt. Col. John Richard “Toots” Wilcox Memorial Bridge.

Com. Sub. for House Concurrent Resolution No. 19, The U. S. Army SGT Bobby Ray Adkins Memorial Highway.

Com. Sub. for House Concurrent Resolution No. 28, The USMC Cpl Marple W. Landes and US Army PV2 Margel S. Landes Memorial Bridge.

And,

Com. Sub. for House Concurrent Resolution No. 35, The Historic Blue-Gray Highway.

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

Respectfully submitted,

Chris Walters,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2939, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Carmichael requested unanimous consent that the bill (Eng. Com. Sub. for H. B. No. 2939) contained in the preceding report from the Committee on the Judiciary be taken up for immediate consideration.

Which consent was not granted, Senator Unger objecting.

At the request of Senator Carmichael, and by unanimous consent, Senator Carmichael addressed the Senate regarding the Senate Chamber Automation System committee reports list.

Thereafter, on motion of Senator Carmichael, the bill (Eng. Com. Sub. for H. B. No. 2939) was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Miller and D. Hall.

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senator Miller were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Takubo, the name of Senator Takubo was removed as a sponsor of **Senate Concurrent Resolution No. 21** (*Urging Congress call convention for proposal of constitutional amendments imposing fiscal restraints, limiting jurisdiction and setting term limits*).

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules and a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Wednesday, March 11, 2015, at 11 a.m.

WEDNESDAY, MARCH 11, 2015

The Senate met at 11 a.m.

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

Prayer was offered by Pastor LaDeana Teets, Elkins Church of the Brethren, Elkins, West Virginia.

Mountaineer ChalleNGe Academy Cadets from Kingwood, West Virginia, proceeded in the posting of the Colors. The Senate was

then led in recitation of the Pledge of Allegiance by the Honorable David Nohe, a senator from the third district.

Pending the reading of the Journal of Tuesday, March 10, 2015,

On motion of Senator Kirkendoll, the Journal was approved and the further reading thereof dispensed with.

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

At the request of Senator Plymale, and by unanimous consent, the provisions of rule number fifty-four of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant the family of the late Honorable Mack Clarkson Jarrell privileges of the floor for the day.

The Senate proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill No. 411, Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §55-7E-1, §55-7E-2, §55-7E-3, §55-7E-4, §55-7E-5, §55-7E-6, §55-7E-7, §55-7E-8, §55-7E-9, §55-7E-10 and §55-7E-11; and that said code be amended by adding thereto a new article, designated §55-7F-1, §55-7F-2, §55-7F-3, §55-7F-4, §55-7F-5, §55-7F-6, §55-7F-7, §55-7F-8, §55-7F-9 and §55-7F-10, all to read as follows:

**ARTICLE 7E. ASBESTOS BANKRUPTCY TRUST CLAIMS
TRANSPARENCY ACT.**

§55-7E-1. Short title.

This article shall be known and may be cited as the Asbestos Bankruptcy Trust Claims Transparency Act.

§55-7E-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) The United States Supreme Court in *Amchem Prods., Inc. v. Windsor*, 521 U. S. 591, 598 (1997) described the asbestos litigation as a crisis;

(2) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(3) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(4) Scores of trusts have been established in asbestos-related bankruptcy proceedings to form a multi-billion dollar asbestos bankruptcy trust compensation system outside of the tort system, and new asbestos trusts continue to be formed;

(5) Asbestos claimants often seek compensation for alleged asbestos-related conditions from solvent defendants in civil actions and from trusts or claims facilities formed in asbestos bankruptcy proceedings;

(6) There is limited coordination and transparency between these two paths to recovery;

(7) An absence of transparency between the asbestos bankruptcy trust claim system and the civil court systems has resulted in the suppression of evidence in asbestos actions and potential fraud;

(8) West Virginia's Mass Litigation Panel has previously entered cases management orders that apply substantive transparency provisions requiring plaintiffs to disclose, among other things, any claims that may exist against asbestos bankruptcy trusts; and

(9) It is in the interest of justice that there be transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation.

(b) It is the purpose of this article to:

(1) Provide transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation; and

(2) Reduce the opportunity for fraud or suppression of evidence in asbestos actions.

§55-7E-3. Definitions.

For the purpose of this article:

(1) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss

of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law or for veterans' benefits as defined by article seven-f of this chapter.

(2) "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U. S. C. §524(g) or 11 U. S. C. §1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on or related to the health effects of exposure to asbestos.

(3) "Plaintiff" means a person asserting an asbestos action, a decedent if the action is brought through or on behalf of an estate, or a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(4) "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the asbestos trust claim has settled, all documents relating to the settlement of the asbestos trust claim.

(5) "Trust governance documents" means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for an asbestos trust.

§55-7E-4. Required disclosures by plaintiff.

(a) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust. The sworn statement shall be provided no later than one hundred twenty days prior to the date set for trial for the asbestos action. For each asbestos trust claim or potential asbestos trust claim identified in the sworn statement, the statement shall include the name, address and contact information for the asbestos trust, the amount claimed or to be claimed by the plaintiff, the date the plaintiff filed the claim, the disposition of the claim and whether there has been a request to defer, delay, suspend, or toll the claim. The sworn statement shall include an attestation from the plaintiff, under penalties of perjury, that the sworn statement is complete and is based on a good faith investigation of all potential claims against asbestos trusts.

(b) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an asbestos trust, including any asbestos-related disease.

(c) The plaintiff shall supplement the information and materials provided pursuant to this section within ninety days after the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim or receives additional information or materials related to any claim or potential claim against an asbestos trust.

(d) Failure by the plaintiff to make available to all parties all trust claims materials as required by this article shall constitute grounds for the court to extend the trial date in an asbestos action.

§55-7E-5. Discovery; use of materials.

(a) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in

evidence. No claims of privilege apply to any trust claims materials or trust governance documents.

(b) A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

§55-7E-6. Scheduling trial; stay of action.

(a) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required under section four of this article within one hundred twenty days prior to the trial date.

(b) If, in the disclosures required by section four of this article, a plaintiff identifies a potential asbestos trust claim, the judge shall have the discretion to stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend, or toll the claim against the asbestos trust.

§55-7E-7. Identification of additional or alternative asbestos trusts by defendant.

(a) Not less than ninety days before trial, if a defendant identifies an asbestos trust claim not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can file, the defendant shall meet and confer with plaintiff to discuss why defendant believes plaintiff has an additional asbestos trust claim, and thereafter the defendant may move the court for an order to require the plaintiff to file the asbestos trust claim. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion.

(b) Within ten days of receiving the defendant's motion under subsection (a) of this section, the plaintiff shall, for each asbestos trust claim identified by the defendant, make one of the following responses:

(1) File the asbestos trust claim;

(2) File a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or

(3) File a written response with the court requesting a determination that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.

(c) (1) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by a defendant, the court shall order the plaintiff to file the asbestos trust claim and shall stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than thirty days before trial.

(2) If the court determines that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage, or other connection to asbestos covered by the asbestos trust.

(d) Not less than thirty days prior to trial in an asbestos action, the court shall enter into the record a trust claims document that identifies each claim the plaintiff has made against an asbestos trust.

§55-7E-8. Valuation of asbestos trust claims; judicial notice.

(a) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, the filing of the asbestos trust claim may be considered as relevant and admissible evidence.

(b) Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the asbestos trust was established to provide compensation and that such exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the asbestos action.

§55-7E-9. Setoff; credit.

In any asbestos action in which damages are awarded, a defendant is entitled to a setoff or credit in the amount of the valuation established under the applicable trust governance documents, including payment percentages for asbestos trust claims pending at trial and any amount the plaintiff has been awarded from an asbestos trust claim that has been identified at the time of trial. If multiple defendants are found liable for damages, the court shall distribute the amount of setoff or credit proportionally between the defendants, according to the liability of each defendant.

§55-7E-10. Failure to provide information; sanctions.

A plaintiff who fails to provide all of the information required under this article is subject to sanctions as provided in the West Virginia Rules of Civil Procedure and any other relief for the defendants that the court considers just and proper.

§55-7E-11. Application.

The provisions of this article apply to all asbestos actions filed on or after the effective date of this article.

ARTICLE 7F. ASBESTOS AND SILICA CLAIMS PRIORITIES ACT.**§55-7F-1. Short title.**

This article shall be known and may be cited as the Asbestos and Silica Claims Priorities Act.

§55-7F-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) Asbestos is a mineral that was widely used prior to the 1980s for insulation, fireproofing and other purposes;

(2) Millions of American workers and others were exposed to asbestos, especially during and after World War II and prior to the promulgation of regulations by the Occupational Safety and Health Administration in the early 1970s;

(3) Exposure to asbestos has been associated with various types of cancer, including mesothelioma and lung cancer, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening;

(4) Diseases caused by asbestos often have long latency periods;

(5) Although the use of asbestos has dramatically declined since the 1970s and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, past exposures will continue to result in significant claims of death and disability as a result of such exposure;

(6) Over the years, West Virginia courts have been deluged with asbestos lawsuits;

(7) The United States Supreme Court in *Amchem Prods., Inc. v. Windsor*, 521 U. S. 591, 598 (1997), described the asbestos litigation as a crisis;

(8) Lawyer-sponsored x-ray screenings have been used to amass large numbers of claims by unimpaired plaintiffs;

(9) One of the country's most prolific B-readers was a doctor from West Virginia;

(10) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(11) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants nationally and many in West Virginia, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(12) Silica is a naturally occurring mineral as the earth's crust is over ninety percent silica, and crystalline silica dust is the basic component of sand, quartz and granite;

(13) Silica-related illness, including silicosis, can develop from the prolonged inhalation of respirable silica particles;

(14) Silica claims, like asbestos claims, have involved individuals with no demonstrable physical impairment, and plaintiffs have been identified through the use of for-profit, screening companies;

(15) Silica screening processes have been found subject to substantial abuse and potential fraud;

(16) The cost of compensating plaintiffs who have no present asbestos-related or silica-related physical impairment, and the cost of litigating their claims, jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases and adversely affects defendant companies;

(17) Concerns about statutes of limitations and available funds can prompt unimpaired asbestos and silica claimants to bring

lawsuits in order to protect against losing their rights to future compensation should they become impaired;

(18) Trial consolidations, joinders and similar trial procedures used by some courts to handle asbestos and silica cases can undermine the appropriate functioning of the courts, deny due process to plaintiffs and defendants and encourage the filing of cases by unimpaired asbestos and silica plaintiffs; and

(19) The public interest requires giving priority to the claims of exposed individuals who are sick in order to help preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related diseases, as well as silica-related injuries, and to safeguard the jobs, benefits and savings of workers in West Virginia and the well-being of the West Virginia economy.

(b) It is the purpose of this article to:

(1) Give priority to asbestos and silica claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;

(2) Toll the running of the statutes of limitations for persons who have been exposed to asbestos or to silica but who have no present physical impairment caused by such exposure;

(3) Enhance the ability of the courts to supervise and manage asbestos and silica cases;

(4) Reduce the opportunity for fraud in asbestos and silica litigation; and

(5) Conserve the defendants' resources to allow compensation to present and future claimants with physical impairment caused by exposure to asbestos or silica.

§55-7F-3. Definitions.

For the purpose of this article:

(1) “AMA Guides to the Evaluation of Permanent Impairment” means the American Medical Association’s Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this article.

(2) “Asbestos” means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C F R §1910 at the time an asbestos action is filed.

(3) “Asbestos action” means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers’ compensation law or for veterans’ benefits.

(4) “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(5) “Board-certified in internal medicine” means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(6) “Board-certified in occupational medicine” means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(7) “Board-certified in pathology” means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology, whose certification was current at the time of the performance of any examination and rendition of any report required by this Act, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

(8) “Board-certified in pulmonary medicine” means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(9) “Certified B-reader” means an individual who has qualified as a National Institute for Occupational Safety and Health (NIOSH) “final” or “B-reader” of x-rays under 42 CFR §37.51(b), whose certification was current at the time of any readings required under this article, and whose B-reads comply with the NIOSH B-Reader’s Code of Ethics, Issues in Classification of Chest Radiographs and Classification of Chest Radiographs in Contested Proceedings.

(10) “Chest x-ray” means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view.

(11) “DLCO” means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(12) “Exposed person” means a person whose exposure to asbestos or silica or to asbestos-containing or silica-containing products is the basis for an asbestos or silica action.

(13) “FEV1” means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(14) “FEV1/FVC” means the ratio between the actual values for FEV1 over FVC.

(15) “FVC” means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) “ILO” system and “ILO scale” mean the radiological ratings and system for the classification of chest x-rays of the International Labor Office provided in Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect on the day any x-rays of the exposed person were reviewed by a certified B-reader.

(17) “Nonmalignant condition” means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

(18) “Official Statements of the American Thoracic Society” means lung function testing standards set forth in statements from the American Thoracic Society including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person.

(19) “Pathological evidence of asbestosis” means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies graded 1(B) or higher under the criteria published in *Asbestos-Associated Diseases*, 106 *Archive of Pathology and Laboratory Medicine* 11, Appendix 3 (October 8, 1982), or grade one or higher in *Pathology of Asbestosis*, 134 *Archive of Pathology and Laboratory Medicine* 462-80 (March 2010) (Tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.

(20) “Pathological evidence of silicosis” means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells) in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(21) “Plaintiff” means a person asserting an asbestos or silica action, a decedent if the action is brought through or on behalf of an estate, and a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(22) “Plethysmography or body (BOX) plethysmography” means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow or volume change.

(23) “Predicted lower limit of normal” means any test value is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on

age, height and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended.

(24) “Pulmonary function test” means spirometry, lung volume testing and diffusion capacity testing, including appropriate measurements, quality control data and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the Official Statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted.

(25) “Qualified physician” means a board-certified internist, pathologist, pulmonary specialist or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, that meets all of the following requirements:

(A) The physician has conducted a physical examination of the exposed person and has taken or has directed to be taken under his or her supervision, direction and control, a detailed occupational, exposure, medical, smoking and social history from the exposed person, or the physician has reviewed the pathology material and has taken or has directed to be taken under his or her supervision, direction and control, a detailed history from the person most knowledgeable about the information forming the basis of the asbestos or silica action;

(B) The physician has treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified pathologist, examined tissue samples or pathological slides of the exposed person;

(C) The physician prepared or directly supervised the preparation and final review of any medical report under this article; and

(D) The physician has not relied on any examinations, tests, radiographs, reports or opinions of any doctor, clinic, laboratory or testing company that performed an examination, test, radiograph or screening of the exposed person in violation of any law, regulation, licensing requirement or medical code of practice of the state in which the examination, test or screening.

(26) “Radiological evidence of asbestosis” means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral small, irregular opacities (s, t, or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/0 on the ILO scale.

(27) “Radiological evidence of diffuse bilateral pleural thickening” means a quality 1 or 2 chest x-ray under the ILO system, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.

(28) “Radiological evidence of silicosis” means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral predominantly nodular or rounded opacities (p, q or r) occurring in the lung fields graded by a certified B-reader as at least 1/0 on the ILO scale or A, B or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(29) “Silica” means a respirable crystalline form of silicon dioxide, including quartz, cristobalite and tridymite.

(30) “Silica action” means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent, child

or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law, veterans' benefits or claims brought by a person as a subrogee by virtue of the payment of benefits under a workers' compensation law. The term does not include any administrative claim or civil action related to coal workers' pneumoconiosis.

(31) "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis or chronic silicosis caused by the inhalation of respirable silica. "Silicosis" does not mean coal workers' pneumoconiosis.

(32) "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired.

(33) "Supporting test results" means copies of the following documents and images:

(A) Pulmonary function tests, including printouts of the flow volume loops, volume time curves, DLCO graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein;

(B) B-reading and B-reader reports;

(C) Reports of x-ray examinations;

(D) Diagnostic imaging of the chest;

(E) Pathology reports; and

(F) All other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions.

(34) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer

containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.

(35) “Total lung capacity” means the volume of gas contained in the lungs at the end of a maximal inspiration.

(36) “Veterans’ benefits” means a program for benefits in connection with military service administered by the Veterans’ Administration under Title 38 of the United States Code.

(37) “Workers’ compensation law” means a law relating to a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. The term includes the Longshore and Harbor Workers’ Compensation Act, 33 U. S. C. §§901 *et seq.*, and the Federal Employees’ Compensation Act, Chapter 81 of Title 5 of the United States Code, but does not include the Federal Employers’ Liability Act of April 22, 1908, 45 U. S. C. §§51 *et seq.*

§55-7F-4. Filing claims, establishment of a prima facie case, additional required information for new nonmalignant claims, individual actions to be filed.

(a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file within ninety days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this article. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos or silica action shall be afforded a reasonable opportunity before trial to challenge the adequacy of

the prima facie evidence that the exposed person meets the requirements of this article. An asbestos or silica action shall be dismissed without prejudice upon a finding that the exposed person has failed to make the prima facie showing required by this article.

(c) A plaintiff in an asbestos or silica action filed on or after the effective date of this article shall also include an information form with the complaint for nonmalignant conditions containing all of the following:

(1) The name, address, date of birth, social security number, marital status, occupation and employer of the exposed person and any person through which the exposed person alleges exposure;

(2) The plaintiff's relationship to the exposed person or the person through which the exposure is alleged;

(3) To the best of the plaintiff's ability, the location and manner of each alleged exposure, including the specific location and manner of exposure for any person through which the exposed person alleges exposure, the beginning and ending dates of each alleged exposure and the identity of the manufacturer of the specific asbestos or silica product for each exposure when this information is reasonably available;

(4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

(5) The specific asbestos-related or silica-related disease claimed to exist; and

(6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this subsection.

(d) Asbestos and silica actions must be individually filed. No asbestos or silica action filed on or after the effective date of this article shall be permitted on behalf of a group or class of plaintiffs.

§55-7F-5. Elements of proof for asbestos actions alleging a nonmalignant asbestos-related condition.

(a) No asbestos action related to an alleged nonmalignant asbestos-related condition may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

(4) Evidence verifying that at least fifteen years have elapsed between the exposed person's date of first exposure to asbestos and the date of diagnosis;

(5) Evidence from a personal medical examination and pulmonary function testing of the exposed person or, if the exposed

person is deceased, from the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated;

(6) Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed person's physical impairment, based on a determination the exposed person has:

(A) Forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal;

(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or

(C) A chest x-ray showing bilateral small, irregular opacities (s, t or u) graded by a certified B-reader as at least 2/1 on the ILO scale; and

(7) The specific conclusion of the qualified physician signing the report that exposure to asbestos was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, do not satisfy the requirements of this subdivision.

(b) If the alleged nonmalignant asbestos-related condition is a result of an exposed person living with or having extended contact with another exposed person who, if the asbestos action had been filed by the other exposed person would have met the requirements

of subdivision (2), subsection (a) of this section, and the exposed person alleges extended contact with the other exposed person during the relevant time period, the detailed narrative medical report and diagnosis shall include all of the information required by subsection (a) of this section, except that the exposure history required under subdivision (2), subsection (a) of this section shall describe the exposed person's history of exposure to the other exposed person.

§55-7F-6. Elements of proof for silica actions alleging silicosis.

No silica action related to alleged silicosis may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment as a result of silicosis. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems and their most probable cause;

(4) Evidence that a sufficient latency period has elapsed between the exposed person's date of first exposure to silica and the day of diagnosis;

(5) Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, demonstrating that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated; and

(6) The specific conclusion of the qualified physician signing the report that exposure to silica was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion stating that the medical findings and impairment are consistent with or compatible with exposure to silica, or words to that effect, do not satisfy the requirements of this subdivision.

§55-7F-7. Evidence of physical impairment.

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in any action governed by this article or article seven-e of this chapter, shall:

(1) Comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent Impairment and all standards set forth in the Official Statements of the American Thoracic Society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by this article;

(2) Not be obtained and may not be based on testing or examinations that violate any law, regulation, licensing requirement or medical code of practice of the state in which the examination, test or screening was conducted, or of this state; and

(3) Not be obtained under the condition that the plaintiff or exposed person retains the legal services of the attorney or law firm sponsoring the examination, test or screening.

§55-7F-8. Procedures.

(a) Evidence relating to the prima facie showings required under this article shall not create any presumption that the exposed person has an asbestos-related or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant.

(b) No evidence shall be offered at trial, and the jury shall not be informed of:

(1) The grant or denial of a motion to dismiss an asbestos or silica action under the provisions of this article; or

(2) The provisions of this article with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, no asbestos or silica action shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one of the parties and for good cause shown.

(d) *Consolidation of cases.* –

(1) A court may consolidate for trial any number and type of nonmalignant asbestos or silica actions with the consent of all the parties. In the absence of such consent, the court may consolidate

for trial only asbestos or silica actions relating to the exposed person and members of that person's household.

(2) No class action or any other form of mass aggregation relating to more than one exposed person and members of that person's household shall be permitted.

(3) The provisions of this subsection do not preclude consolidation of cases by court order for pretrial or discovery purposes.

§55-7F-9. Statute of limitations; two-disease rule.

(a) With respect to an asbestos or silica action not barred by limitations as of this article's effective date, an exposed person's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date:

(1) The exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(2) The exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(3) The date of death of the exposed person having an asbestos-related or silica-related impairment.

(b) Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred on the effective date of this article.

(c) Nothing in this section shall be construed so as to adversely affect, impair, limit, modify or nullify any settlement or other agreements with respect to an asbestos or silica action entered into prior to the effective date of this article.

(d) An asbestos or silica action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related or silica-related cancer. Where otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future disease in an asbestos or silica action.

§55-7F-10. Application.

This article shall apply to all asbestos actions and silica actions filed on or after the effective date of this article.

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

Engrossed Committee Substitute for Senate Bill No. 411, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 411) passed with its title.

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

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

concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill No. 249, Prohibiting straight party voting.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

That §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;

(2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots;

~~(9) It permits each voter at any election, other than a primary election, to vote a straight party ticket, as provided in section five, article six of this chapter by one mark or punch;~~

~~(10)~~ (9) It permits a voter in a primary election to: (A) Vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

~~(11)~~ (10) It, where applicable, is provided with means for sealing or electronically securing the vote-recording device to prevent its use and to prevent tampering with the device, both before the polls are open or before the operation of the vote-recording device for an election is begun and immediately after the polls are closed or after the operation of the vote-recording device for an election is completed;

~~(12)~~ (11) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

~~(13)~~ (12) (A) Direct recording electronic voting machines must generate a paper copy of each voter's vote that will be automatically kept within a storage container that is locked, closely attached to the direct-recording electronic voting machine and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article;

(B) The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the direct-recording electronic voting machine;

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy;

(D) The voter may not touch, handle or manipulate the printed copy manually in any way;

(E) Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct-recording electronic voting machine;

(F) Direct-recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code;

~~(14)~~ (13) Where vote-recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Bear a number that will identify it or distinguish it from any other machine;

(C) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question; and

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows and questions;

~~(15)~~ (14) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, they shall:

(A) Be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll clerks or both to designate, mark or otherwise record provisional ballots;

(F) Consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;

(G) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(I) Be constructed to record all preelection, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(K) Be constructed to prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this chapter.

(2) For the general election, the heading of the ballot, ~~the straight ticket positions, the instructions to straight ticket voters,~~ the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to

conform as nearly as possible to section two, article six of this chapter, except as otherwise provided in this article.

(3) Effective with the primary election held in 2016, and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the circuit court;

(iii) Family court judge; and

(iv) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon;

(4) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(5) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided

below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in section thirteen, article five of this chapter, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on

the ballots being counted or, if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: *Provided*, That no person except those authorized for the purpose may touch any ballot or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the Secretary of State, subject to the following requirements:

(1) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the ballot boxes and stacked for the tabulator which separates ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes are to be tallied. No write-in vote may be counted for an office unless the voter has entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;

(2) In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the ballots are to be tabulated according to the processes of the system. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;

(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, the voter shall mark the location appropriate for the voting system in the write-in location for that office. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(4) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded; and

~~(5) When a voter casts a straight ticket vote and also marks the location for a write-in vote for an office, the straight ticket vote for that office is to be rejected, whether or not a vote can be counted for a write-in candidate, and~~

~~(6)~~ (5) Official write-in candidates are those who have filed a write-in candidate's certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot in the presence of representatives of each political party on the ballot and substituted for the damaged ballot. All duplicate ballots are to be clearly labeled "duplicate" and are to bear a serial number which is recorded on the damaged or defective ballot and on the replacement ballot.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk of the county commission, to constitute the unofficial preliminary returns of the county. Upon completion of the count, the returns are to be open to the public by posting a summary of the returns as have been tabulated at the central counting center. Upon completion of the canvass, the returns are to be posted as tabulated precinct by precinct.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote-recording devices properly boxed or securely covered and removed to a proper and secure place of storage.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

(a) All ballots prepared under the provisions of this section are to contain:

(1) The name and ticket of each party which is a political party under the provisions of section eight, article one of this chapter;

(2) The name chosen as the party name by each group of citizens which has secured nomination for two or more candidates by petition under the provisions of section twenty-three, ~~of this article~~ five of this chapter; and

(3) The names of every candidate for any office to be voted for at the election whose nomination in the primary election, nomination by petition or nomination by appointment to fill a vacancy on the ballot has been certified and filed according to law and no others.

(b) The provisions of paragraphs (C) and (D), subdivision (2), section thirteen, article five of this chapter; subdivision (3) of said section; paragraphs (A) and (B), subdivision (4) of said section; and subdivisions (6), (7), (8) and (9) of said section pertaining to the preparation and form of primary election ballots shall likewise apply to general election ballots.

(c) (1) For all ballot systems, the ballot heading is to be in display type and contain the words "Official Ballot, General Election" and the name of the county and the month, day and year of the election.

(2) After the heading, each ballot is to contain, laid out in parallel columns, rows or pages as required by the particular voting system, the party emblem ~~the position for straight party voting for each party~~ and the name of each party as prescribed in subsection (a) of this section. ~~On paper ballots, the position for straight party voting is to be a heavy circle, three-fourths inch in diameter, surrounded by the words "For a straight ticket mark within this circle" printed in bold six-point type. On all other ballots or ballot labels, the positions for straight party voting is to be marked "Straight Party Ticket".~~

(3) The party whose candidate for president received the highest number of votes at the last preceding presidential election is to be placed in the left, or first column, row or page, as is appropriate to the voting system. The party which received the second highest vote is to be next and so on. Any groups or third parties which did not have a candidate for president on the ballot in the previous presidential election are to be placed in the sequence in which the final certificates of nomination by petition were filed.

~~(4) (A) The following general instructions for straight party voters are to be printed in no smaller than eight point bold type: "IF YOU MARKED A STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR~~

~~THAT OFFICE because your straight ticket vote will not be counted for that office". The last sentence of the instructions may not be included on any ballot which does not contain any office or division where more than one candidate will be elected.~~

~~On paper ballots, the general instructions are to be placed below the party name and across the top of all columns, followed by a heavy line separating them from the rest of the ballot. *Provided*, That the instructions may be centered among the columns running the full width of the ballot. On ballots marked with electronically sensible ink, the general instructions are to be placed after the position for straight voting and before any office.~~

~~(B) The following specific instructions are to be printed on the ballot for any partisan election for an office or division to which more than one candidate is to be elected: "If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office".~~

~~On paper ballots, the specific instructions are to be placed below the office name of any partisan office where more than one is to be elected and across the top of all columns for that office or centered among the columns before the names of any candidates. On all other ballots and ballot labels, the specific instructions are to be placed above or to the side of the names of the candidates as the voting system requires.~~

~~(5) (4) For all ballots, any columns, rows or sections in which the ticket of one party appears are to be clearly separated from the other columns, rows or sections by a heavy line or other clear division. For each party, the offices are to be arranged in the order prescribed in section thirteen-a, article five of this chapter under the appropriate tickets, which are to be headed "National Ticket", "State Ticket" and "County Ticket". The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements, subject to approval by the Secretary of State.~~

(d) The arrangement of names within each office for all ballot systems is to be as follows:

(1) In elections for presidential electors, the names of the candidates for president and vice president of each party are to be placed beside a brace with a single voting position, so that a vote for any presidential candidate is a vote for the electors of the party for which the candidates were named.

(2) The order of names of candidates for any office or division for which more than one is to be elected is determined as prescribed in section thirteen-a, article five of this chapter: *Provided*, That the drawing by lot is to be conducted on the seventieth day next preceding the date of the general election, beginning at 9:00 a.m.

(3) In any office where more than one person is to be elected, the names of the candidates for the office are to be staggered so that no two candidates for that office appear directly opposite any other candidate, as shown in the example below: *Provided*, That if the voting system cannot accurately tabulate any ballot due to this requirement, the ballot may be adjusted so that it is accurately tabulated. However, each candidate shall be separated by a thin line to distinguish between each candidate.

For House of Delegates	For House of Delegates
First Delegate District	First Delegate District
(Vote For Not More Than Two)	(Vote For Not More Than Two)
SUSAN B. ANTHONY	
City (County)	
	JOHN ADAMS
	City (County)
ABRAHAM LINCOLN	
City (County)	
	JAMES MONROE
	City (County)

(4) Each voting system is to provide a means for voters to vote for any person whose name does not appear on the ticket by writing it with pen or pencil or by using stamps, stickers, tapes, labels or other means of writing in the name of a candidate which does not interfere with the tabulation of the ballot.

(A) In paper ballot systems which allow for write-ins to be made directly on the ballot, a blank square and a blank line equal to the space which would be occupied by the name of the candidate is to be placed under the proper office for each vacancy in nomination and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. If no write-in lines are included on the ballot, specific instructions are to be added to the top of the ballot notifying the voter that a write-in vote may be cast by writing the name and office on any location on the front of the ballot.

(B) In machine and electronically tabulated ballot systems in which write-in votes must be made in a place other than on the ballot, if there is a vacancy in nomination leaving fewer candidates in any party than can be elected to that office, the words "No Candidate Nominated" is are to be printed in the space that would be occupied by the name of the candidate and for an office for which more than one is to be elected, any vacancy is to appear after any other candidates for the office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(5) In a general election in any county in which unexpired terms of the board of education are to be filled by election, a separate

section or page of the ballot is to be set off by means clearly separating the nonpartisan ballot from the ballot for the political party candidates and is to be headed "Nonpartisan Board of Education".

(e) Any constitutional amendment is to be placed following all offices, followed by any other issue upon which the voters are to cast a vote. The heading for each amendment or issue is to be printed in large, bold type according to the requirements of the resolution authorizing the election.

(f) The board of ballot commissioners may not place any issue on the ballot for election which is not specifically authorized under the West Virginia Constitution or statutes or which has not been properly ordered by the appropriate governmental body charged with calling the election.

(g) A ballot may not offer a voter the option of voting a straight party ticket by one mark or punch.

§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or ~~independent~~ nominees with no party affiliation unless those persons have actually been nominated by an independent party, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of ~~this article and articles four and four-a of this chapter, as appropriate to the voting system~~, and for any ballot issue, according to the provisions of law authorizing the election.

(b) The facsimile sample general election ballot shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, not more than twenty-six nor less than twenty days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than twenty-six nor less than twenty days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages and shall be printed in a size no less than sixty-five percent of the actual size of the ballot, at the discretion of the ballot commissioners: *Provided*, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the Secretary of State, an official list of offices and nominees for each office which will appear on the general election ballot for each political party or as ~~independent~~ nominees with no party affiliation unless those persons have actually been nominated by an independent party and, as the case may be, for the nonpartisan candidates to be voted for at the general election:

(1) All information which appears on the ballot, including ~~the names of parties for which a straight ticket may be cast, instructions relating to straight ticket voting,~~ instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as his or her residence and magisterial district or presidential preference. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the ~~straight ticket positions,~~ offices and candidates for each office and the manner of designating the parties shall be as follows:

~~(A) The straight ticket positions shall be designated "straight (party name) ticket", with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be;~~

~~(B)~~ (A) The offices shall be listed in the same order in which they appear on the ballot;

~~(C)~~ (B) The candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate's political party affiliation or independent status shall be

indicated by the one- or two-letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and

~~(D)~~ (C) The candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate's affiliation shall be indicated as provided in paragraph ~~(C)~~ (B) of this subdivision.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows:

(A) The words "official list of nominees and issues", the name of the county, the words "General Election" and the date of the election shall be printed in all capital letters and in bold type no smaller than fourteen point;

~~(B) The designation of the straight ticket party positions shall be printed in all capital letters in bold type no smaller than twelve point and the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and~~

~~(C)~~ (B) The names of the candidates and the initial within parenthesis designating the candidate's affiliation shall be printed in all capital letters in bold type no smaller than ten point and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than twelve point. The text of the ballot issue shall appear in no smaller than eight point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, ~~beginning with the general election to be held in the year two thousand;~~ the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.

§3-6-5. Rules and procedures in election other than primaries.

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote ~~a straight ticket or in other words, for each and every candidate for one party for whatever office nominated;~~ for an official write-in candidate, the voter shall ~~either:~~

~~(1) Mark the position designated for a straight ticket in the manner appropriate to the voting system; or~~

~~(2) Mark the voting position for each and every candidate of the chosen party in the manner appropriate to the voting system.~~

~~(b) If the voter desires to vote a mixed ticket, or in other words, for candidates of different parties, the voter shall either:~~

~~(1) Omit marking any straight ticket voting position and mark, in the manner appropriate to the voting system, the name of each candidate for whom he or she desires to vote on whatever ticket the name may be; or~~

~~(2) Mark the position designated for a straight ticket for the party for some of whose candidates he or she desires to vote and then mark the name of any candidate of any other party for whom he or she may desire to vote, in which case the cross mark in the circular space above the name of the party straight ticket mark will cast his or her vote for every candidate on the ticket of the party except for offices for which candidates are marked on other party tickets and the marks for the candidates will cast a vote for them; or~~

~~(3) Write write with ink or other means or affix a sticker or label or place an ink-stamped impression of the name of an official write-in candidate for an office for whom he or she desires to vote in the space designated for write-in votes for the particular voting system or for paper ballot systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.~~

~~(c) If in marking either a straight or mixed ticket as above defined, a straight ticket voting position is marked, and also one or more marks are made for candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, the marks before the name of candidate on the ticket so marked shall be treated as surplusage and ignored.~~

~~(d) When a voter casts a straight ticket vote and also writes in any name for an office, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate.~~

(e) The Secretary of State may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the Secretary of State shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.

(f) (b) If the voter marks more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the voter's choice for an office to be filled, the ballot shall not be counted for the office. The intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; and if no two official write-in candidates for that office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter.

(g) (c) Except as otherwise specifically provided in this chapter, no ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the

result of the election provided for in this article. They ~~shall~~ may not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall proceed to ascertain the result of the election in the following manner:

(a) In counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent voters are registered, the receiving board must first process the absentee ballots and deposit the ballots to be counted in the ballot box. The receiving board shall then proceed as provided in subsections (b) and (c) of this section. In counties in which the absentee ballots are counted at the central counting center, the receiving board shall proceed as provided in subsections (b) and (c) of this section.

(b) The receiving board shall ascertain from the pollbooks and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total and the result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(c) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the

ballot shall be placed in an envelope for the purpose, without unfolding it. Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any person other than an official write-in candidate shall be disregarded. ~~When a voter casts a straight ticket vote and also casts a write-in vote for an office, the straight ticket vote for that office shall be rejected whether or not a vote can be counted for a write-in candidate;~~

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed and whenever the number shall equal the number of voters entered on the pollbook minus the number of provisional ballots, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and

(5) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.

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

Engrossed Committee Substitute for Senate Bill No. 249, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Snyder, Sypolt, Takubo, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—28.

The nays were: Kirkendoll, Laird, Miller, Romano, Stollings and Woelfel—6.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 249) passed with its title.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 30, Permitting shared animal ownership agreement to consume raw milk.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-7. Shared animal ownership agreement to consume raw milk.

(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

(1) Acquires a percentage ownership interest in a milk-producing animal;

(2) Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;

(3) Is entitled to receive a fair share of the animal's raw milk production as a condition of the contractual agreement;

(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella and E. Coli, that has not been pasturized to remove bacteria and that is particularly dangerous to children, pregnant women and those with compromised immunity. The responsible party then agrees to release of the herd seller of liability for the inherent dangers of consuming raw milk; and

(5) Agrees not to distribute raw milk. Sale or resale of raw milk obtained from a share is strictly prohibited.

(b) The agreement provided in subsection (a) of this section is required to be reported by the herd seller to the Commissioner of Agriculture, or his or her designee, as set forth in this article.

(c) The agreement provided in subsection (a) of this section shall contain the following:

(1) The name of the farmer, farm or dairy;

(2) A valid, current address of the farmer, farm or dairy; and

(3) A statement that raw milk is being produced at the farm or dairy.

(d) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian, in accordance with state and national standards, including the following:

(1) Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous twelve months for brucellosis, tuberculosis and other diseases as required by the state veterinarian. Additions to the herd shall test negative for the diseases within the previous thirty days before introduction into the herd; and

(2) Milk-producing animals producing bloody, stringy or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.

(e) Any physician licensed by either the provisions of article three, chapter thirty of this code or article fourteen of said chapter who makes a diagnosis that can be directly attributed to the consumption of raw milk is required to report nonidentifying information related to the diagnosis or treatment to the local health officer of the county in which the individual lives. The Commissioner of the Department of Agriculture shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the contents of the report required pursuant to this subsection and impose an administrative penalty not to exceed \$100 for a person who violates the provisions of this section.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 30, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Trump, Walters, Williams and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Unger, Woelfel and Yost—16.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 30) passed with its title.

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

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

Eng. Senate Bill No. 89, Providing Prosecuting Attorneys Institute's council establish Executive Director's salary.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

On page four, section two-a, line seven, after “\$95,000” by changing the semicolon to a colon and inserting the following proviso: “*Provided*, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed \$175,000;”;

On page five, section two-a, line fourteen, by striking out “\$70,000” and inserting in lieu thereof “\$80,000”;

On page eight, after line three, by striking out all of section six;

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

That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows::

And,

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

Eng. Senate Bill No. 89—A Bill to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to compensation for public officials generally; increasing the annual salary of the salary of the Executive Director of the West Virginia Prosecuting Attorneys Institute; and clarifying and restoring language accurately stating the compensation range for the Secretary of the Department of Health and Human Resources that was omitted by inadvertent clerical error in previous legislation.

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

Engrossed Senate Bill No. 89, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 89) passed with its House of Delegates amended title.

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

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

Eng. Senate Bill No. 283, Relating to branch banking.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

Eng. Senate Bill No. 283—A Bill to amend and reenact §31A-4-40 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8-12d of said code, all relating to state banking institutions; removing restrictions on closure of banks on weekdays; removing requirement of a board resolution and legal advertisement for any change in days or hours a bank office is open

for business; establishing certain requirements to be met prior to changing the days or hours a bank office is open for business; and reducing time for consideration of expedited branch applications from thirty-five days to twenty-one days.

Senator Trump moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motion prevailed.

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

Engrossed Senate Bill No. 283, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: None.

Excused from voting: Trump—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 283) passed with its House of Delegates amended title.

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

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

Eng. Senate Bill No. 292, Relating to licenses for business of currency exchange, transportation or transmission.

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

Eng. Senate Bill No. 322, Eliminating mandatory electronic recount of ballots in recounts.

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

Eng. Senate Bill No. 332, Relating to administrative fees for Tax Division, Department of Revenue.

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

Eng. Com. Sub. for Senate Bill No. 344, Relating to limitations on back and front pay and punitive damages.

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

Eng. Com. Sub. for Senate Bill No. 366, Creating Patient Protection and Transparency Act.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

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

Eng. Com. Sub. for Senate Bill No. 366—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,

designated §33-50-1, §33-50-2 and §33-50-3, all relating to the West Virginia Health Benefit Exchange; defining terms; requiring certain information be published on a website; providing online information to assist consumers in making informed decisions concerning the purchase of a qualified health plan; and authorizing rulemaking.

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

Engrossed Committee Substitute for Senate Bill No. 366, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 366) passed with its House of Delegates amended title.

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

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

Eng. Senate Bill No. 445, Relating to investment of RJCFA excess funds.

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

Eng. Senate Bill No. 454, Criminalizing trademark counterfeiting.

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

Eng. Senate Bill No. 489, Imposing statute of limitations on civil actions derived from surveying of real property.

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

Eng. Senate Bill No. 545, Removing certain prior bank overdraft approval by director or executive officer.

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

Eng. Senate Bill No. 576, Prohibiting PSC jurisdiction of internet protocol-enabled service or voice over internet protocol-enabled service and certain telephone company transactions.

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

Eng. Senate Bill No. 578, Relating to occupational disease claims.

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

Com. Sub. for Senate Concurrent Resolution No. 18, Requesting DOH name bridge in Wetzel County “U. S. Army COL William L. Glover Memorial Bridge”.

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

Com. Sub. for Senate Concurrent Resolution No. 19, Requesting DOH name stretch of road in Wayne County “Darrell W. Sanders Memorial Highway”.

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

Senate Concurrent Resolution No. 31, Authorizing meeting of Joint Select Committee on Tax Reform.

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

Senate Concurrent Resolution No. 47, Amending Joint Rules of Senate and House relating to printing enrolled bills.

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

Eng. Com. Sub. for House Bill No. 2053, Relating to the form of trust deeds.

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

Eng. House Bill No. 2100, Caregiver Advise, Record and Enable Act.

A message from The Clerk of the House of Delegates announced the adoption by that body of the committee of conference report, passage as amended by the conference report, to take effect from

passage, and requested the concurrence of the Senate in the adoption thereof, as to

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

Whereupon, Senator M. Hall, from the committee of conference on matters of disagreement between the two houses, as to

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendment of the Senate to Engrossed House Bill No. 2213 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House of Delegates agree to the Senate amendment.

Respectfully submitted,

Eric Nelson, *Chair*, Everette W. Anderson, Jr., Brent Boggs,
Conferees on the part of the House of Delegates.

Mike Hall, *Chair*, Chris Walters, Roman W. Prezioso, Jr.,
Conferees on the part of the Senate.

On motions of Senator M. Hall, severally made, the report of the committee of conference was taken up for immediate consideration and adopted.

Engrossed House Bill No. 2213, as amended by the conference report, was then put upon its passage.

On the passage of the bill, as amended, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel and Cole (Mr. President)—28.

The nays were: Kessler, Miller, Snyder, Unger, Williams and Yost—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2213) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel and Cole (Mr. President)—28.

The nays were: Kessler, Miller, Snyder, Unger, Williams and Yost—6.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2213) takes effect from passage.

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

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

Eng. House Bill No. 2535, Relating generally to suicide prevention training, “Jamie’s Law”.

A message from The Clerk of the House of Delegates announced the adoption by that body of the committee of conference report, passage as amended by the conference report, and requested the concurrence of the Senate in the adoption thereof, as to

Eng. House Bill No. 2576, Creating new code sections which separate the executive departments.

Whereupon, Senator Blair, from the committee of conference on matters of disagreement between the two houses, as to

Eng. House Bill No. 2576, Creating new code sections which separate the executive departments.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed House Bill No. 2576 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to amendment of the Senate, striking out everything after the enacting section, and agree to the same as follows:

**ARTICLE 2. ORGANIZATION OF STATE AGENCIES, BOARDS
AND COMMISSIONS WITHIN DEPARTMENTS
OF STATE GOVERNMENT.**

§5F-2-1. General provisions.

~~(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:~~

~~(1) Building Commission provided in article six, chapter five of this code;~~

~~(2) Public Employees Insurance Agency provided in article sixteen, chapter five of this code;~~

~~(3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code;~~

~~(4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;~~

~~(5) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;~~

~~(6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;~~

~~(7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;~~

~~(8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;~~

~~(9) Division of Personnel provided in article six, chapter twenty-nine of this code;~~

~~(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;~~

~~(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and~~

~~(12) Real Estate Division provided in article ten, chapter five-a of this code:~~

~~(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:~~

~~(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:~~

~~(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and~~

~~(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code:~~

~~(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:~~

~~(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;~~

~~(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and~~

~~(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code:~~

~~(3) The West Virginia Development Office provided in article two, chapter five-b of this code;~~

~~(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;~~

~~(5) Division of Forestry provided in article one-a, chapter nineteen of this code;~~

~~(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and~~

~~(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:~~

~~(A) Division of Unemployment Compensation;~~

~~(B) Division of Employment Service;~~

~~(C) Division of Workforce Development; and~~

~~(D) Division of Research, Information and Analysis.~~

~~(8) Division of Energy provided in article two-f, chapter five-b of this code:~~

~~(9) Division of Tourism Commission provided in article two-h, chapter five-b of this code.~~

~~(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.~~

~~(d) The Water Development Authority and the Water Development Authority Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.~~

~~(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of~~

Environmental Protection for purposes of administrative support and liaison with the office of the Governor:

~~(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;~~

~~(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;~~

~~(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;~~

~~(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;~~

~~(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;~~

~~(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and~~

~~(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.~~

~~(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:~~

~~(1) Library Commission provided in article one, chapter ten of this code;~~

~~(2) Division of Culture and History provided in article one, chapter twenty-nine of this code; and~~

~~(3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this code.~~

~~(g) The Educational Broadcasting Authority provided in article five, chapter ten of this code is part of the Department of Education and the Arts for the purposes of administrative support and liaison with the office of the Governor.~~

~~(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:~~

~~(1) Human Rights Commission provided in article eleven, chapter five of this code;~~

~~(2) Division of Human Services provided in article two, chapter nine of this code;~~

~~(3) Bureau for Public Health provided in article one, chapter sixteen of this code;~~

~~(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in article four-c, chapter sixteen of this code;~~

~~(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;~~

~~(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;~~

~~(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and~~

~~(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.~~

~~(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:~~

~~(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;~~

~~(2) Armory Board provided in article six, chapter fifteen of this code;~~

~~(3) Military Awards Board provided in article one-g, chapter fifteen of this code;~~

~~(4) West Virginia State Police provided in article two, chapter fifteen of this code;~~

~~(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;~~

~~(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;~~

~~(7) Division of Justice and Community Services provided in article nine-a, chapter fifteen of this code;~~

~~(8) Division of Corrections provided in chapter twenty-five of this code;~~

~~(9) Fire Commission provided in article three, chapter twenty-nine of this code;~~

~~(10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code; and~~

~~(11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code.~~

~~(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:~~

~~(1) Tax Division provided in chapter eleven of this code;~~

~~(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;~~

~~(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;~~

~~(4) Insurance Commissioner provided in article two, chapter thirty-three of this code;~~

~~(5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;~~

~~(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;~~

~~(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;~~

~~(8) Division of Banking provided in article two, chapter thirty-one-a of this code;~~

~~(9) The State Budget Office provided in article two of this chapter;~~

~~(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;~~

~~(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and~~

~~(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.~~

~~(k) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:~~

~~(1) Division of Highways provided in article two-a, chapter seventeen of this code;~~

~~(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;~~

~~(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;~~

~~(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;~~

~~(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;~~

~~(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and~~

~~(7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code.~~

~~(1) Effective July 1, 2011, the Veterans' Council provided in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.~~

(a) The Legislature finds that in 1989, this chapter was enacted to provide for the reorganization of the executive branch of state government pursuant to the findings set forth under section one, article one of this chapter. This section was enacted as part of that legislation to effect the transfer of agencies and board and related entities into the various departments created within the executive branch of government. Since its initial enactment, the Legislature has amended and reenacted this section on a number of occasions, in most instances to modify the initial reorganization within the executive branch of government. The Legislature further finds that the structure of this section by which it provides an extensive list of executive agencies in a single section of the Code of West Virginia renders this section unnecessarily lengthy and complicated. The designation of a separate statute for each of the agencies and entities as they are organized in subsections (a) through (l) of this section as provided pursuant to the amendment and reenactment of this section in 2015 would reduce the unnecessary length and complexity of the statute without altering the Legislature's intent in providing for the organization of the executive branch of state government pursuant to the original findings set forth under section one, article one of this chapter and the Legislature's subsequent amendments and reenactments of various sections of this chapter. The Legislature therefore finds and declares that the amendment and reenactment of this section and the further amendment of the Code of West Virginia by adding thereto twelve new sections, designated sections one-a, one-b, one-c, one-d, one-e, one-f, one-g, one-h, one-i, one-j, one-k, and one-l of this article, are solely for the purpose of designating a separate statute for each of the agencies and entities as they are organized in subsections (a) through (l) of this section as provided pursuant to the amendment and reenactment of this section in 2015 and for the purpose of providing corrective descriptions of an agency and corrective code references and deleting references to agencies, boards or commissions that have been repealed. The Legislature further finds and declares that except as otherwise provided in this section, the amendment and reenactment of this section and the enactment of the new sections may not be construed to have altered or modified the application of any other provision of this code to the agencies and entities described in

those sections, and that all other provisions of this code, to the extent applicable to those sections, as well as the remaining subsections of this section, shall apply in like manner to the agencies and entities described in those new sections.

~~(m)~~ (b) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

~~(n)~~ (c) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

~~(o)~~ (d) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

~~(p)~~ (e) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits

or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

§5F-2-1a. Department of Administration.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Finance Division provided in article two, chapter five-a of this code;

(2) General Services Division provided in article four, chapter five-a of this code;

(3) Information Services and Communications Division and the Office of Technology provided in chapter five-a of this code;

(4) Purchasing Division, Surplus Property and Travel Management provided in article three, chapter five-a of this code;

(5) Division of Personnel provided in article six, chapter twenty-nine of this code;

(6) Real Estate Division provided in article ten, chapter five-a of this code;

(7) Public Land Corporation provided in article eleven, chapter five-a of this code;

(8) Fleet Management Office provided in article one, chapter five-a of this code;

(9) Building Commission provided in article six, chapter five of this code;

(10) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;

(11) West Virginia Public Employees Grievance Board provided in article three, chapter six-c of this code;

(12) Board of Risk and Insurance Management provided in article twelve, chapter twenty-nine of this code;

(13) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;

(14) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

(15) Public Employees Insurance Agency provided in article sixteen, chapter five of this code;

(16) Prosecuting Attorneys Institute provided in article four, chapter seven of this code;

(17) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(18) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(19) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this code; and

(20) Committee for the Purchase of Commodities and Services from the Handicapped provided in article three-a, chapter five-a of this code; and

(21) Records Management and Preservation Advisory Committee provided in article eight, chapter five-a of this code; and

(22) Design-Build Board provided in article twenty-two-a, chapter five of this code.

§5F-2-1b. Department of Commerce.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code;

(B) Board of Manufactured Housing Construction and Safety Standards provided in article nine, chapter twenty-one of this code; and

(C) Board of West Virginia Contractor Licensing provided in article eleven, chapter twenty-one of this code.

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code, which includes:

(A) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code; and

(B) Coal Mine Safety Board of Appeals provided in article five, chapter twenty-two-a of this code.

(3) Board of Coal Mine Health and Safety provided in article six, chapter twenty-two-a of this code, which includes:

(A) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code;

(B) Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(C) West Virginia Diesel Equipment Commission provided in article two-a, chapter twenty-two-a of this Code; and

(D) Coal Mine Safety and Technology Task Force provided in article eleven, chapter twenty-two-a of this code.

(4) The West Virginia Development Office provided in article two, chapter five-b of this code;

(5) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code, which includes:

(A) Whitewater Commission provided in article two, chapter twenty of this code; and

(B) Wildlife Endowment Fund Board of Trustees provided in article twenty-six, chapter twenty of this code.

(6) Division of Forestry provided in article one, chapter nineteen of this code;

(7) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(8) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Unemployment Compensation Board of Review;

(8) Division of Energy provided in article two-f, chapter five-b of this code; and

(9) Division of Tourism and Tourism Commission provided in article two, chapter five-b of this code.

§5F-2-1c. Economic Development Authority.

The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

§5F-2-1d. Water Development Authority.

The Water Development Authority and the Water Development Authority Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

§5F-2-1e. Department of Environmental Protection.

The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Office of Oil and Gas provided in article six, chapter twenty-two of this code; and

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code;

§5F-2-1f. Department of Education and the Arts.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

(1) Library Commission provided in article one, chapter ten of this code;

(2) Division of Culture and History provided in article one, chapter twenty-nine of this code; and

(3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this code.

§5F-2-1g. Educational Broadcasting Authority.

The Educational Broadcasting Authority provided in article five, chapter ten of this code is part of the Department of Education and the Arts for the purposes of administrative support and liaison with the Office of the Governor.

§5F-2-1h. Department of Health and Human Resources.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) State Commission on Intellectual Disability provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

§5F-2-1i. Department of Military Affairs and Public Safety.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen

of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Division of Justice and Community Services provided in article nine-a, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Division of Juvenile Services provided in article five-e, chapter forty-nine of this code;

(10) Division of Protective Services provided in article two-d, chapter fifteen of this code;

(11) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code; and

(12) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code.

§5F-2-1j. Department of Revenue.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) The State Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Financial Institutions provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two, chapter eleven-b of this code;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

§5F-2-1k. Department of Transportation.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code;

(7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code; and

(8) Division of Public Transit provided in article sixteen-c, chapter seventeen of this code.

§5F-2-11. Department of Veterans' Assistance.

The Veterans' Council provided in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

Respectfully submitted,

Lynne Arvon, *Chair*, Jordan Hill, Rupert Phillips, Jr., *Conferees on the part of the House of Delegates*.

Craig Blair, *Chair*, Gregory L. Boso, Ronald F. Miller, *Conferees on the part of the Senate*.

Senator Blair, Senate cochair of the committee of conference, was recognized to explain the report.

Thereafter, on motion of Senator Blair, the report was taken up for immediate consideration and adopted.

Engrossed House Bill No. 2576, as amended by the conference report, was then put upon its passage.

On the passage of the bill, as amended, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2576) passed with its title.

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

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

Eng. House Bill No. 2880, Creating an addiction treatment pilot program.

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

House Concurrent Resolution No. 7—Requesting the Division of Highways to name bridge number 41-1-24.51 (41A009) on Maple Fork Road where it connects with Cirtsville Road in Raleigh County, the “Kenneth A. Chapman, Sr. Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution No. 24—Requesting the Division of Highways to name the bridge carrying County Route 43 (Frame Road) over Interstate 79 in Kanawha County, bridge number 20-43-1.31 (20A327), latitude 38.45607, longitude -81.49513, locally known as the Elkview I-79 Interchange Bridge, as the “U.S. Army SP5 Johnnie Marvin Ayers Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

House Concurrent Resolution No. 31—Declaring the Northern Red Salamander to be the official state amphibian.

Referred to the Committee on Government Organization.

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

Com. Sub. for House Concurrent Resolution No. 42—Requesting the Division of Highways to identify bridge number 20-77-95.81 (20A643), locally known as the interstate bridge over

Campbells Creek, carrying Interstate 77 northbound and southbound lanes over U.S. Route 60 westbound lane and the Norfolk and Southern Railroad, in Kanawha County, as being located at the “Boyhood Home of Booker T. Washington”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution No. 45—Requesting the Division of Highways to name the bridge on State Route 20 over Fishing Creek, South Fork in Wetzel County, locally known as the Pine Grove Bridge, bridge number 52-20-16.04, as the “U.S. Army COL William L. Glover Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution No. 55—Requesting the Division of Highways to name the Section of U.S. Route 60, from the Guyan Golf and Country Club to the Huntington City Limits in Cabell County, the “William C. Campbell Memorial Highway”.

Referred to the Committee on Transportation and Infrastructure.

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

House Concurrent Resolution No. 58—Requesting the Division of Highways to name the bridge on County Route 4/1, Gibbons Run Road, over North River in Hampshire County, bridge number 14-4/1-2.29, (14A011), latitude 39.33852, longitude -78.50974, as the “U.S. Army PV2 William Frederick Kump Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution No. 60—Requesting the Division of Highways to name the bridge on U.S. Route 52 in Wayne County, bridge number 50-52-54.27 (50A115), locally known as the Marrowbone Creek Bridge, as the “U.S. Army SFC Jesse Muncy Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution No. 65—Requesting that bridge number 22-119-0.04 NB & SB (22A102 & 22A103), latitude 38.18215, longitude -81.84941, on U.S. Route 119, otherwise known as the North Pinnacle Rock Creek Bridge, in Lincoln County, be named the “U.S. Army PFC Willie Paul Wilson Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution No. 68—Requesting the Division of Highways to name Bridge number 17-9-5.09 (17A350) (39.3443, -80.4013) locally known as Gregory Run Bridge carrying County Route 9 over Ten Mile Creek, in Harrison County, the “U.S. Army Air Force SSG Harold ‘Dean’ Baker Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution No. 98—Requesting the Division of Highways to rename the road from the entrance of the Summit Bechtel Family National Scout Reserve to West Virginia Route 61, known as Mill Road or Garden Ground Mountain Road, as “Jack Furst Drive” to match the name of the road through the Summit Bechtel Family National Scout Reserve.

Referred to the Committee on Transportation and Infrastructure.

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

House Concurrent Resolution No. 113—Requesting the Division of Highways place signs on United States Route 220 at the Mineral/Hampshire County border, United States Route 50 at the Mineral/Grant County border, State Route 28 at the Mineral/Hampshire County border and also the Maryland/West Virginia state line, State Route 42 at the Mineral/Grant County border, State Route 46 at the Maryland/West Virginia state line, State Route 93 at the Mineral/Grant County border, and State Route 956 at the Maryland/West Virginia state line stating: “Mineral County, Celebrating the Sesquicentennial, 1866 - 2016”.

Referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

Senate Bill No. 233, Budget Bill.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 233 (originating in the Committee on Finance)—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.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 233) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Cole (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Concurrent Resolution No. 33, Requesting Joint Committee on Government and Finance study undeveloped land preservation and conservation tax credit program.

Senate Concurrent Resolution No. 48, Requesting Joint Committee on Government and Finance study agreements between county commissions and municipalities regarding demolition of buildings unfit for human habitation.

And,

Senate Concurrent Resolution No. 59, Requesting Joint Committee on Government and Finance study expansion of outcomes of MU Luke Lee Listening, Language and Learning Lab.

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

Respectfully submitted,

William P. Cole III,
Chairman, ex officio.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2140, Building governance and leadership capacity of county board during period of state intervention.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2140) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2240, Providing that an act of domestic violence or sexual offense by strangling is an aggravated felony offense.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2240) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2466, Exempting valid nonprofit organizations from licensing requirements of the West

Virginia Alcoholic Beverage Control Authority during certain events.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2466) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2479, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2479) contained in the preceding

report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill No. 2492, Repealing the requirement that an entity charging admission to view certain closed circuit telecast or subscription television events needs to obtain a permit from the State Athletic Commission.

And has amended same.

Eng. Com. Sub. for House Bill No. 2549, Relating to the preparation and publication of county financial statements.

And has amended same.

And,

Eng. Com. Sub. for House Bill No. 2878, Creating a one-stop electronic business portal in West Virginia.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. H. B. No. 2492, Eng. Com. Sub. for H. B.

No. 2549 and Eng. Com. Sub. for H. B. No. 2878) contained in the preceding report from the Committee on Government Organization were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill No. 3019, Requiring official business and records of the state and its political subdivisions be conducted in English.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Government Organization on March 6, 2015;

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Craig Blair,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on Government Organization pending.

The Senate proceeded to the sixth order of business.

Senators Romano, Facemire and Stollings offered the following resolution:

Senate Concurrent Resolution No. 61—Requesting the Division of Highways to name bridge number 17-79-117.174 on Interstate 79 in Anmoore, Harrison County, the “U. S. Army PFC Nick A. Cavallaro Memorial Bridge”.

Whereas, U. S. Army Private First Class Nick A. Cavallaro was born in Coulonia, Reggio Calabria, Italy, on October 28, 1920, and came to the United States in August, 1922, with his brother Celestino (Charley) and mother Maria Rosa Strangio Cavallaro and settled in Anmoore, West Virginia; and

Whereas, When World War II broke out, Nick Cavallaro enlisted in the United States Army; and

Whereas, Nick Cavallaro participated in battles in North Africa and Sicily, Italy, and was one of the thousands of paratroopers dropped behind German lines the night before the invasion of Normandy, France; and

Whereas, Nick Cavallaro was scheduled to come home on leave when the Battle of the Bulge occurred and his leave was canceled; and

Whereas, Sadly, Nick Cavallaro lost his life in the battle at Fosse, Belgium, on January 3, 1945, leaving behind his mother, brother, sister Louise and a host of other family and friends; and

Whereas, Nick Cavallaro was awarded two Purple Heart Medals, the Bronze Star Medal and the Combat Infantryman Badge, as well as various medals by the French and Belgian governments; and

Whereas, Nick Cavallaro was an Italian immigrant and citizen of Anmoore, West Virginia, and fought for his adopted country, the United States of America; and

Whereas, It is only fitting that we name this bridge to honor U. S. Army Private First Class Nick A. Cavallaro having made the ultimate sacrifice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Division of Highways to name bridge number 17-79-117.174 on Interstate 79 in Anmoore, Harrison County, the “U. S. Army PFC Nick A. Cavallaro 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. Army PFC Nick A. Cavallaro 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 U. S. Army Private First Class Nick A. Cavallaro’s family.

Which, under the rules, lies over one day.

Senators M. Hall, Snyder, Prezioso, D. Hall and Stollings offered the following resolution:

Senate Concurrent Resolution No. 62—Requesting the Joint Committee on Government and Finance establish a select committee consisting of ten members, five being from the House of Delegates and five being from the Senate, with no more than three members from each house from a single political party, to be responsible for a comprehensive study of West Virginia’s racing and gaming industries as provided herein, including making recommendations

and coordinating professional services procured in furtherance of the objectives herein described.

Whereas, West Virginia's racing industry has a long and storied history, beginning in 1787 when George Washington's youngest brother Charles raced horses through the streets of what would become Charles Town, West Virginia; and

Whereas, Formal horse racing tracks were established in West Virginia some years later, with the racetrack at Charles Town opening in 1933 and the precursor to Mountaineer Racetrack being founded in 1937. West Virginia greyhound racing followed with the opening of Wheeling Downs, a facility which found its racing origin in 1937 and in 1985, Tri-State Greyhound Park, now Mardi Gras Casino and Racetrack, opened; and

Whereas, In an effort to protect and preserve West Virginia's celebrated racing industry, the West Virginia Legislature voted to allow slot-machine style video lottery in 1994 and casino-style table games in 2007 at our state's four racetracks, pending approval by the local electorate, in accord with the provisions of article twenty-two-c, chapter twenty-nine of the Code of West Virginia; and

Whereas, Each of the four counties in West Virginia where a racetrack is located ultimately exercised their referendum rights under section seven, article twenty-two-c, chapter twenty-nine of the Code of West Virginia and voted to approve racetrack video lottery and table games at their respective racetrack facilities based on the promise that a portion of the revenues generated would be used to preserve and protect live racing, as well as promote the industry of breeding thoroughbred horses and greyhounds, while creating green space; and

Whereas, Invariably, after five years, section seven, article twenty-two-c, chapter twenty-nine of the Code of West Virginia also provides for a subsequent local county referendum to revisit the

decision by local voters to approve casino style gaming at racetrack venues; and

Whereas, The “racinos” in West Virginia not only employ thousands of West Virginians and generate hundreds of millions of dollars of revenue for state government, the statutory structure by which they are licensed and operate has fostered the development of an industry of live racing and breeding of thoroughbreds and greyhounds, as provided for in the statute; and

Whereas, Many individuals, companies, partnerships and entities have made and continue to make substantial investments in West Virginia, based on the statutory framework designed to preserve and protect live racing and promote the industry of breeding of thoroughbred horses and greyhound racing stock; and

Whereas, In addition to supplementing racing and local governments, moneys generated by gaming at our state’s racetracks have been used to bolster our state’s general revenue fund as well as the state’s Development Office Promotion Fund, debt reduction funds, State Capitol improvements, the Division of Tourism, finance public school construction through the West Virginia School Building Authority, fund the Promise Scholarship Program, contribute to racetrack employee pensions and capital improvements for racetrack facilities; and

Whereas, West Virginia’s racino model proved most successful, becoming a reliable source of income for the state, but now the model is confronted with declining levels of performance for West Virginia; and

Whereas, Until recent years, West Virginia’s four racinos benefitted from modest market competition in neighboring states, thereby claiming a large portion of the gaming market east of the Mississippi River; and

Whereas, Our surrounding states have learned from our successful gaming regulations and have implemented similar

models, allowing for new casino properties to open near to West Virginia's borders in Ohio, Pennsylvania and Maryland; and

Whereas, Though West Virginia's four "racinos" once enjoyed little competition for regional gaming dollars, there are now approximately 20 new casinos in neighboring states with which West Virginia's "racinos" must compete for revenues and others under yet to become active which increases the competition for regional gaming dollars; and

Whereas, Due to this competition, racing and gaming revenues upon which our state has become so dependent are decreasing at a rapid pace which creates a diminishing amount of money for all of the distributees of money generated by "racinos" and allocated in accordance with current law; and

Whereas, In addition to the loss of revenues for the state, the jobs of thousands of West Virginia families who rely on the live racing and gaming industries for their livelihood are also at risk; and

Whereas, The time has come to revisit our racing and gaming industry structure to determine a course of action that is in the best interest of West Virginia and its people; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to establish a select committee consisting of ten members, five being from the House of Delegates and five being from the Senate, with no more than three members from each house from a single political party, to be responsible for a comprehensive study of West Virginia's racing and gaming industries as provided herein, including making recommendations and coordinating professional services procured in furtherance of the objectives herein described; and, be it

Further Resolved, That the Select Committee to be established by the Joint Committee on Government and Finance is hereby requested to perform a comprehensive study of West Virginia's racing and gaming industries, which shall include, but not be limited to: (1) A review of all related laws, rules and regulations associated with all facets of live racing of greyhounds and thoroughbred horses, with recommendations for the modernization and streamlining of the same; (2) a review of all laws, rules and regulations associated with the business of both greyhound breeding and thoroughbred breeding, with recommendations for modernization and streamlining of the same; (3) a comprehensive review of the flow of revenues generated from racetrack video lottery, table games and any other sources contributing to money administered by the West Virginia Lottery in the form of excess lottery proceeds as a means of information for state policymakers; (4) a comprehensive investigation of appropriate governing structures for live racing and gaming activities from neighboring jurisdictions and beyond, with a recommendation of revisions and/or statutory overhaul of the governance of all forms of gaming in West Virginia, including general lottery, adult video lottery, racetrack video lottery and table games; (5) a comparative analysis of the job functions of the West Virginia Racing Commissions with comparable agencies in jurisdictions with a similar racing presence to determine the appropriateness of staff and funding levels with recommendations as to appropriate levels of each; (6) an analysis of the staff and funding levels associated with administration of all facets of the West Virginia Lottery, recognizing its unique configuration of administering conventional lottery operations, adult video lottery, racetrack video lottery and table games, and recommendations for economizing the operations of the West Virginia Lottery consistent with best industry practices; (7) an analysis of innovative and creative additions to West Virginia's gaming mix, including: innovative and creative ways to more efficiently and profitably administer West Virginia's gaming activities, ways to provide for convenient consumer access to products offered within the array of gaming products offered by West Virginia, ways to provide policymakers with the status of internet gaming in West Virginia, and ways to identify any and all

prospects which may enhance revenue generation by the entirety of West Virginia's gaming activities of all descriptions through new and additional games or manner of delivery of products to the lottery and gaming consuming public; and (8) the continuing legal effects, if any, of referendums on gaming heretofore undertaken to approve such in Jefferson, Hancock, Ohio and Kanawha counties, as well as the legal effects, if any, to reexercise those rights as provided by statute; and to provide any and all suggestions for the improvement, modernization, efficiency and economization of West Virginia's entire complement of gaming activities, including live racing; and, be it

Further Resolved, That stakeholder representatives in all facets of West Virginia's gaming industry of lottery, "racinos", live racing, greyhound breeding and thoroughbred breeding be actively engaged as part of any study process; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Which, under the rules, lies over one day.

Senators Sypolt, Williams, Prezioso, Stollings and Plymale offered the following resolution:

Senate Resolution No. 55—Designating March 11, 2015, as Preston County Day at the Legislature.

Whereas, Preston County was formed from Monongalia County on January 18, 1818, and was named after then-governor of Virginia James Patton Preston; and

Whereas, Preston County was developed by a small group of settlers in the mid-1700s and has grown to a present-day population of approximately 34,000 people and continues to grow; and

Whereas, Preston County has a rich cultural heritage and, in the town of Terra Alta, hosts the oldest Independence Day celebration in West Virginia; and

Whereas, First Lady Eleanor Roosevelt served as the force behind Preston County's Arthurdale, the nation's first New Deal Homestead Community, which became known as Eleanor's Little Village; and

Whereas, Numerous Preston County natives and residents have answered the call for service in World Wars I and II, the Korean War, the Vietnam Conflict, Desert Storm, the Iraq War and other duty posts; and

Whereas, During the Great Depression, Preston County farmers grew buckwheat as an "insurance crop" because of its short growing season and good quality; and

Whereas, Preston County buckwheat provided sustenance for many citizens throughout the harsh winter months and this harvest has been celebrated since 1938 at the annual Preston County Buckwheat Festival, one of West Virginia's oldest and most beloved state festivals; and

Whereas, Preston County offers a dedicated work force and one of the lowest unemployment rates in West Virginia; and

Whereas, Preston County hosts a great diversity of agricultural, mineral and timber wealth and attracted new business developments in these industries throughout 2014; and

Whereas, Preston County makes vital contributions to the economy of West Virginia, particularly in agriculture, timber, health care, technology, tourism and historic preservation; and

Whereas, Preston County businesses and citizens, both past and present, contribute to the heritage and economic success of Preston County; and

Whereas, The citizens of Preston County travel to the State Capitol on an annual basis during the legislative session to participate in the democratic process, in which they share their accomplishments, aspirations and concerns with lawmakers; and

Whereas, It is fitting to recognize Preston County for its history, culture, economy and future development in the State of West Virginia; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 11, 2015, as Preston County Day at the Legislature; and, be it

Further Resolved, That the Senate acknowledges the many important contributions the citizens and businesses of Preston County make in the State of West Virginia and encourages those citizens to continue to participate in the democratic process; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives from Preston County.

At the request of Senator Sypolt, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Plymale, Woelfel, Beach, Blair, Boley, Boso, Carmichael, Cole (Mr. President), Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams and Yost offered the following resolution:

Senate Resolution No. 56—Memorializing the life of the Honorable Mack Clarkson Jarrell, former member of the West Virginia Senate, veteran, teacher, doctor and dedicated public servant.

Whereas, Mack Clarkson Jarrell was born on April 11, 1926, in Ceredo, Wayne County, West Virginia; and

Whereas, Mack Clarkson Jarrell attended Ceredo-Kenova High School in Wayne County and graduated early to join the United States Navy as a cadet at the University of Virginia - Richmond; and

Whereas, Mack Clarkson Jarrell served in the Navy in the Pacific Theater in World War II and also served during the Korean Conflict; and

Whereas, Mack Clarkson Jarrell furthered his education at Marshall University, the Chicago College of Podiatric Medicine and at Ohio State University, and earned the degree of Doctor of Podiatric Medicine; and

Whereas, While practicing podiatry, Mack Clarkson Jarrell also taught at South Point High School; and

Whereas, Mack Clarkson Jarrell, known as “Doc” to his friends, also served his community as a member of the Ceredo City Council and as an active member of many benevolent organizations; and

Whereas, Mack Clarkson Jarrell was elected to the West Virginia Senate from the fifth senatorial district in 1984 and served as Democratic Majority Whip before he retired in 1988; and

Whereas, Sadly, the Honorable Mack Clarkson Jarrell passed away in August, 2014, at the age of eighty-eight in Huntington, West Virginia, leaving behind a host of family and friends to cherish his memory; and

Whereas, It is most fitting that the West Virginia Senate pay tribute to the life of the Honorable Mack Clarkson “Doc” Jarrell and honor his legacy of public service to his community, state and country; therefore, be it

Resolved by the Senate:

That the Senate hereby memorializes the life of the Honorable Mack Clarkson Jarrell, former member of the West Virginia Senate, veteran, teacher, doctor and dedicated public servant; and, be it

Further Resolved, That the Senate extends its deepest sympathies to the family and friends of the Honorable Mack Clarkson Jarrell on his passing; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the family of the Honorable Mack Clarkson Jarrell.

At the request of Senator Plymale, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened.

On motion of Senator Carmichael, the Senate recessed until 12:45 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

Senate Concurrent Resolution No. 51, Requesting DOH name bridge in Boone County “U. S. Army PFC Samuel C. Ball Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 52, Requesting Board of Education study teacher preparation programs.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 53, Requesting DOH name bridge in Randolph County “U. S. Army PFC Samuel Reed Summerfield Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 54, Requesting DOH name stretch of road in Logan County “USMC LCpl Larry G. Williamson Memorial Highway”.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 55, Requesting DOH name section of road in Logan County “U. S. Army SP4 Terry Robert Albright Memorial Road”.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 56, Requesting DOH name section of road in Logan County “U. S. Army Colonel Anna M. Butcher Road”.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 60, Requesting DOH name bridge in Logan County “U. S. Army SGT Bernard C. Maynard Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

Com. Sub. for House Concurrent Resolution No. 4, The US Army PFC Clarence Allen Mooney Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Com. Sub. for House Concurrent Resolution No. 9, The U. S. Air Force Lt. Col. John Richard “Toots” Wilcox Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Com. Sub. for House Concurrent Resolution No. 19, The U. S. Army SGT Bobby Ray Adkins Memorial Highway.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Com. Sub. for House Concurrent Resolution No. 28, The USMC Cpl Marple W. Landes and US Army PV2 Margel S. Landes Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Com. Sub. for House Concurrent Resolution No. 35, The Historic Blue-Gray Highway.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill No. 2011, Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Romano and Snyder—2.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2011) passed.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the title of the bill was withdrawn.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2011—A Bill to amend and reenact §23-4-2 of the Code of West Virginia, 1931, as amended, relating generally to a workplace employee injury caused by the deliberate intention of the employer required for the employer to lose immunity from a lawsuit; defining actual knowledge; eliminating obsolete language referring to the West Virginia Workers' Compensation Fund and board of managers; establishing standards related to blood tests administered after accident;

providing that intoxication shown by a positive blood test for alcohol or drugs that meet certain thresholds is the proximate cause of any injury; clarifying provisions outlining who may assert claims on behalf of an employee under this section; requiring that a claim for worker's compensation benefits be filed prior to bringing a cause of action under this section unless good cause is shown; providing that actual knowledge must be specifically proven by the employee or other person seeking to recover under this section and shall not be deemed or presumed; providing an employee may prove actual knowledge by evidence of an employer's intentional or deliberate failure to conduct a legally required inspection, audit or assessment; establishing actual knowledge is not established by what an employee's immediate supervisor or management personnel should have known had they exercised reasonable care or been more diligent; establishing that proof of actual knowledge of prior accidents, near misses, safety complaints or citations must be proven by documentary or other credible evidence; defining a commonly accepted and well-known safety standard within the industry or business of the employer; exempting certain codes or standards from applying to volunteer fire departments, municipal fire departments and emergency medical response personnel if those entities have followed rules promulgated by the Fire Commission; requiring that if the unsafe working condition relates to a violation of a state or federal safety provision that safety provision must address the specific work, working conditions and hazards involved; establishing that the applicability of state or federal safety provisions is a matter for judicial determination; defining generally serious compensable injury; establishing four categories of serious compensable injury including an injury rated at a whole person impairment of at least thirteen percent (13%) and other threshold requirements, an injury or condition likely to result in death within eighteen (18) months from the date of the filing of the complaint, an injury not capable of whole person impairment if it causes permanent serious disfigurement, causes permanent loss or significant impairment of function of any bodily organ or system, or results in objectively verifiable bilateral or multi-level dermatomal radiculopathy and is not a physical injury that has no objective

medical evidence to support a diagnosis, or if an employee suffers from complicated pneumoconiosis or pulmonary massive fibrosis and that condition has resulted in an impairment rating of at least fifteen percent (15%); establishing certification requirements for the categories of serious compensable injury; requiring that a verified statement submitted from a person with knowledge and expertise of the workplace safety, statutes, rules, regulations and consensus industry standards specifically applicable to the industry and workplace involved in an injury be served with any complaint asserting certain causes of action brought under this section; providing for the minimum contents of the required verified statement; limiting the use of the required verified statement during litigation; providing for consideration of bifurcation of discovery in certain circumstances; and establishing the venue in which claims under this section may be brought.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2128, Permitting those individuals who have been issued concealed weapons permits to keep loaded firearms in their motor vehicles on the State Capitol Complex grounds.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2128) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2128—A Bill to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended, relating to permitting those individuals who hold a valid current concealed weapons permit to keep firearms in their motor vehicles on the State Capitol Complex grounds if the vehicle is locked and the weapon is out of normal view.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2283, Authorizing the Department of Environmental Protection to promulgate legislative rules.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2283) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2283—A Bill to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; 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 the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the awarding of WV Stream Partners Program Grants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the hazardous waste management system; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rule for coal mining facilities; and authorizing the Department of

Environmental Protection to promulgate a legislative rule relating to waste management.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2283) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2381, Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2381) passed with its title.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)-33.

The nays were: None.

Absent: Miller-1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2381) takes effect July 1, 2015.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2478, Relating to public school finance.

On third reading, coming up in regular order, with the unreported committee amendments pending, and with the right having been granted on yesterday, Tuesday, March 10, 2015, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §18-9A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7. Foundation allowance for transportation cost.

(a) The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional ten percent: *Provided*, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: *Provided, however*, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board: *Provided*, That the amount for the school year beginning July 1, 2015 will be \$17,815,268. The amount shall only be used for the replacement of buses. Buses purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of year model, will be subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided*, That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the

budget request submitted by the state board for the upcoming fiscal year; and

(4) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose ~~shall be~~ is the sum of the county shares: *Provided*, That no county shall receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

On motion of Senator Kessler, the following amendments to the Finance committee amendment to the bill (Eng. Com. Sub. for H. B. No. 2478) were reported by the Clerk and considered simultaneously:

On page one, before the article heading, by inserting the following:

CHAPTER 18. EDUCATION.;

On page three, after section seven, by adding the following:

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**§18A-4-1b. Salary increase for teachers in 2015.**

The Legislature hereby finds that in order to provide a quality free education to the children of West Virginia, we must pay teachers a competitive salary. Paying teachers a competitive salary will ensure that we are able to keep the best and brightest teachers here in West Virginia, rather than leaving for additional pay in another state. Paying teachers a competitive salary will also provide an incentive for students choosing a career to give further consideration to teaching. Paying teachers a competitive salary will create an additional reason that a strong teacher from another area of the country may choose to move to West Virginia and teach in our school system. Accordingly, the Legislature further finds that it is imperative to the well-being of the state that we increase teacher salaries in order to provide our students with the best possible education. Therefore, the beginning July 1, 2015, the state minimum salaries for teachers shall be in accordance with section two of this article, plus an additional \$2,000. The Legislature shall continue to strive to increase salaries for teachers so that we are competitive with our surrounding states and able to recruit and retain the best educators for the students of West Virginia.;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §18-9A-7 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 §18A-4-1b, all to read as follows:.

Following discussion,

The question being on the adoption of Senator Kessler's amendments to the Finance committee amendment to the bill, and on this question, Senator Kessler demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Kessler, Kirkendoll, Laird, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—15.

The nays were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

Absent: Miller—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Kessler's amendments to the Finance committee amendment to the bill rejected.

The question now being on the adoption of the Finance committee amendment to the bill, the same was put and prevailed.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. No. 2478), as just amended by the Committee on Finance, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Romano, Snyder, Sypolt and Unger—5.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2478) passed.

At the request of Senator Sypolt, as chair of the Committee on Education, and by unanimous consent, the unreported Education committee amendment to the title of the bill was withdrawn.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2478—A Bill to amend and reenact §18-9A-7 of the Code of West Virginia, 1931, as amended, relating to the foundation allowance for public education transportation cost; including propane as an eligible fuel for the ten percent additional percentage allowance for school bus systems using alternative fuels; and fixing the amount to be used for the replacement of buses for the school year beginning July 1, 2015.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Romano, Snyder, Sypolt and Unger—5.

Absent: Miller—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2478) takes effect July 1, 2015.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2502, Possessing deadly weapons on school buses or on the premises of educational facilities.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2502) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2536, Relating to travel insurance limited lines producers.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2536) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2557, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2557) passed.

The following amendment to the title of the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2557—A Bill to amend and reenact §33-6-29 of the Code of West Virginia, 1931, as amended, relating generally to security and insurance coverage provided for rented or leased motor vehicles; providing that security maintained on any motor vehicle owned by any person, firm or corporation engaged in the business of renting or leasing the motor vehicle is secondary to coverage under certain motor vehicle liability insurance or other form of security that is available and in effect for

an individual with respect to the renting, leasing, operation, maintenance or use of the motor vehicle; and providing that any liability insurance purchased for additional consideration from the rental or leasing company shall be primary to other available insurance.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2606, Clarifying the potential sentence for disorderly conduct.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2606) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2627, Providing protection against property crimes committed against coal mines, utilities and other industrial facilities.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Karnes—1.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2627) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. House Bill No. 2627—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 storage and distribution facilities; adding waste management facilities, storage facilities and timber operations to the protected parties; prohibiting destruction, damage or removal of property resulting in impairment to the normal, safe operation of those facilities; providing criminal penalties; and clarifying persons convicted of section are subject to restitution.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2628, Changing the date of filing announcements of candidacies.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2628) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. House Bill No. 2628—A Bill to amend and reenact §3-5-7 and §3-5-19 of the Code of West Virginia, 1931, as amended, all relating to filling vacancies in nominations; changing the first date to file certificates of announcement to the first Monday after January 1; and changing the date by which party executive committees may fill vacancies in nomination caused by the failure of a candidate to file for an office.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2652, Reducing the assessment paid by hospitals to the Health Care Authority.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2652) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2652—A Bill to amend and reenact §16-29B-8 of the Code of West Virginia, 1931, as amended, relating to annual assessments on hospitals by the West Virginia Health Care Authority; and changing the basis for the annual assessment.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2652) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2658, Relating to the inspection and slaughter of nontraditional agriculture.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2658) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2790, Relating to minimum responsibility limits of car insurance.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Laird, Leonhardt, Maynard, Mullins, Nohe, Plymale, Prezioso, Sypolt, Takubo, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—25.

The nays were: Facemire, Kessler, Kirkendoll, Palumbo, Romano, Snyder, Stollings and Woelfel—8.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2790) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2888, Allowing the use of rotary drum composters to destroy or dispose of the carcass of any animal to prevent the spread of disease.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2888) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2902, West Virginia ABLE Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sybolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2902) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2968, Exempting from property tax certain properties in this state owned by nonprofit youth organizations.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Miller—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2968) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill No. 2098, Authorizing those health care professionals to provide services to patients or residents of state-run veterans' facilities without obtaining an authorization to practice.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Health and Human Resources, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section eleven-b, line one, by striking out the word "shall" and inserting in lieu thereof the words "is authorized and encouraged to the best of its ability to";

And,

On page three, section twelve-c, line one, by striking out the word “shall” and inserting in lieu thereof the words “is authorized and encouraged to the best of its ability to”.

The bill (Eng. Com. Sub. for H. B. No. 2098), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2139, Relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2148, Conforming the motor vehicle law of this state to the requirements of section 1405 of the federal Transportation Equity Act for the Twenty-first Century.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2187, Encouraging public officials to display the national motto on all public property and public buildings.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2224, Providing that historical reenactors are not violating the provision prohibiting unlawful military organizations.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2366, Relating generally to the solicitation of minors.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Trump, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and with the right for further amendments to be considered on that reading.

Eng. House Bill No. 2370, Increasing the powers of regional councils for governance of regional education service agencies.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2377, Authorizing State Board of Education to approve certain alternatives with respect to instructional time.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2461, Relating to delinquency proceedings of insurers.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2493, Relating to requirements for insurance policies and contracts providing accident and sickness insurance or direct health care services that cover anti-cancer medications.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2496, Adopting the Interstate Medical Licensure Compact.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2595, Relating to certificates of need for the development of health facilities in this state.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2608, Cleaning up redundant language in the statute relating to misdemeanor offenses for violation of protective orders.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2625, Continuing the current hazardous waste management fee.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2662, Eye Care Consumer Protection Law.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2733, Removing certain combinations of drugs containing hydrocodone from Schedule III of the controlled substances law.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2780, Enhancing the ability of campus police officers at public colleges to perform their duties.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2793, Relating to exemptions from mandatory school attendance.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Prezioso, and by unanimous consent, the bill was advanced to third reading with the unreported Education committee amendments pending and with the right for further amendments to be considered on that reading.

Eng. House Bill No. 2797, Changing the term “mentally retarded” to “intellectually disabled”; and changing the term “handicapped” to “disabled”.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2867, Requiring recommendations for higher education course credit transfer.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section two, line twelve, after the word “state.” by inserting the following: When developing policy regarding transfer affecting private institutions, the commission and council shall consult with at least two representatives from the private higher education institutions.;

On page two, section two, line thirteen, after the word “recommendations” by inserting the words “on public higher education institutions”;

And,

On page three, section two, line fifteen, after “2015.” by inserting the following: The commission and council shall report the recommendations on private higher education institutions to the Legislative Oversight Commission on Education Accountability by December 1, 2017.

The bill (Eng. Com. Sub. for H. B. No. 2867), as amended, was then ordered to third reading.

Eng. House Bill No. 2884, Modifying training and development requirement for certain members of certain higher education boards.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2892, Authorizing certain legislative rules regarding higher education.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2931, Adding drugs to the classification of schedule I drugs.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2939, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

PART II. DEFINITIONS.

§49-1-201. Definitions related, but not limited, to child abuse and neglect.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, child abuse and neglect, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Abandonment” means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

“Abused child” means a child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

“Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

“Battered parent,” for the purposes of part ~~seven~~ six, article ~~two~~ four of this chapter, means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

“Child abuse and neglect services” means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

“Condition requiring emergency medical treatment” means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

“Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian;

(H) The parent, guardian or custodian's abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

(I) Any other condition that threatens the health, life, or safety of any child in the home.

“Neglected child” means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(C) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

“Petitioner or co-petitioner” means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

“Permanency plan” means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

“Respondent” means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or co-petitioners.

“Sexual abuse” means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact that for a child who is less than sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct; or

(B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; ~~or~~

(C) Any of the offenses proscribed in sections seven, eight or nine of article eight-b, chapter sixty-one of this code.

“Sexual assault” means any of the offenses proscribed in section three, four or five, article eight-b, chapter sixty-one of this code.

“Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual exploitation” means an act where:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows that the display is likely to be observed by others who would be affronted or alarmed.

“Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

PART VIII. REPORTS OF CHILDREN SUSPECTED OF ABUSE.

§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.

(a) Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides

organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the circumstances or cause a report to be made to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made.

(b) Any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report. In the event that the individual receiving the disclosure or observing the sexual abuse or sexual assault has a good faith belief that the reporting of the event to the police would expose either the reporter, the subject child, the reporter's children or other children in the subject child's household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes measures to remove themselves or the affected children from the perceived threat of additional harm and the individual makes the report as soon as practicable after the threat of harm has been reduced. The law-enforcement agency that

receives a report under this subsection shall report the allegations to the Department of Health and Human Resources and coordinate with any other law-enforcement agency, as necessary to investigate the report.

(c) Notwithstanding any provision of this section to the contrary any school employee who has reported or disclosed to them that a child has been sexually abused or sexually assaulted shall forthwith report same to the State Police or other law-enforcement agency having jurisdiction to investigate the alleged offense. County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirement contained in this subsection and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement. As used in this subsection “forthwith” means without delay.

(d) The reporting requirements contained in subsection (c) of this section specifically include reported or disclosed observed conduct involving or between students enrolled in a public or private institution of education, or involving a student and school teacher or personnel.

~~(c)~~ (e) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect on their own behalf. In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if that person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

§49-2-812. Failure to report; penalty.

Any person, official or institution required by section eight hundred three of this article to report a case involving a child known or suspected to be abused or neglected, or required by section eight hundred nine of this article to forward a copy of a report of serious

injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than thirty days or fined not more than ~~\$1,000~~ \$5,000, or both fined and confined.

The bill (Eng. Com. Sub. for H. B. No. 2939), as amended, was then ordered to third reading.

Eng. House Bill No. 2976, Expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate recessed until 6 p.m. today.

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect July 1, 2015, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 37, Creating Revised Uniform Arbitration Act.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page five, section two, line five, by striking out the words “and emphatic”;

On page five, section two, lines seventeen through twenty, by striking out all of subsection (b);

On page twenty-eight, section twenty-one, after line sixteen, by inserting a new subsection, designated subsection (c), to read as follows:

(c) This section does not apply to an arbitration conducted or administered by a self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U. S. C. §78C), the Commodity Exchange Act (7 U. S. C. §1, *et seq.*) or regulations adopted under those acts.;

And,

On page thirty-seven, section thirty, line two, after the word “order” by inserting the words “granting or”.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. No. 37) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 11, 2015, he had approved **Enr. Committee Substitute for Senate Bill No. 175, Enr. Senate**

Bill No. 294, Enr. Committee Substitute for Senate Bill No. 351, Enr. Senate Bill No. 463, Enr. Senate Bill No. 466, Enr. Senate Bill No. 467, Enr. Senate Bill No. 469, Enr. Senate Bill No. 471, Enr. Senate Bill No. 473, Enr. Senate Bill No. 476, Enr. Senate Bill No. 477, Enr. Committee Substitute for House Bill No. 2099, Enr. Committee Substitute for House Bill No. 2157, Enr. House Bill No. 2523, Enr. House Bill No. 2760, Enr. House Bill No. 2764, Enr. House Bill No. 2770 and Enr. House Bill No. 2933.

The Senate again proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Concurrent Resolution No. 13, Urging Congress propose balanced budget amendment.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2005, Relating to alternative programs for the education of teachers.

With amendments from the Committee on Education pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 9, 2015;

And reports the same back with the recommendation that it do pass as amended by the Committee on Education to which the bill was first referred.

Respectfully submitted,

Mike Hall,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2607, Relating to the violation of interfering with emergency services communications and clarifying penalties.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2607) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2646, Legalizing and regulating the sale and use of fireworks.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 10, 2015;

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. House Bill No. 2663, Creating the Rehabilitation Services Vending Program Fund.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2663) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2674, Making home schooled students eligible for a PROMISE scholarship without taking the GED test.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2674) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Nohe, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Eng. Com. Sub. for House Bill No. 2811, Deleting obsolete provisions regarding the Physicians' Mutual Insurance Company.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

David Nohe,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2811) contained in the preceding report from the Committee on Banking and Insurance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

House Concurrent Resolution No. 31, Declaring the Northern Red Salamander to be the official state amphibian.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Craig Blair,
Chair.

The Senate again proceeded to the sixth order of business, which agenda includes the making of main motions.

On motion of Senator Carmichael, the Senate reconsidered the vote as to the passage of

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 30, Permitting shared animal ownership agreement to consume raw milk.

Having been received as a message from the House of Delegates in earlier proceedings today, and the Senate having concurred in the House of Delegates amendment to the bill.

The vote thereon having been reconsidered,

On motion of Senator Carmichael, the Senate reconsidered its action by which it adopted Senator Carmichael's motion that the Senate concur in the House of Delegates amendment to the bill (*shown in the Senate Journal of today, pages 1997 to 2000, inclusive*).

The vote thereon having been reconsidered,

The question again being on the adoption of Senator Carmichael's motion that the Senate concur in the House of Delegates amendment to the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 30).

Thereafter, at the request of Senator Carmichael, and by unanimous consent, his foregoing motion was withdrawn.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendment to the bill was reported by the Clerk and adopted:

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 30—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-7, relating to shared animal ownership agreements to consume raw milk; acquiring percentage ownership interest in a milk-producing animal's raw milk; providing for payment for a percentage ownership for care and boarding of a milk-producing animal; providing for receipt of a share of raw milk pursuant to an agreement; requiring written document acknowledging the inherent dangers of consuming raw milk; providing immunity to herd seller; agreeing not to distribute raw milk; prohibiting sale or resale of raw milk; requiring herd-sharing agreements be reported; requiring physicians to report any disease related to consumption of raw milk to local health department; setting forth required provisions for a herd sharing agreement; requiring a herd seller meet animal health requirements set by state veterinarian for milk-producing animals; setting forth required health standards for milk-producing animals; requiring a physician to report to local health department any diagnosis attributed to consumption of raw milk; providing rule-making authority; and providing administrative penalties.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 30, as amended, was then put upon its passage.

Pending discussion,

Senator Sypolt moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 30.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Trump, Walters, Williams and Cole (Mr. President)—18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Unger, Woelfel and Yost—15.

Absent: Miller—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 30) passed with its Senate amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the eleventh order of business and the introduction of guests.

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senator Palumbo.

Thereafter, at the request of Senator Stollings, and by unanimous consent, the remarks by Senator Palumbo were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate, including majority and minority party caucuses,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Thursday, March 12, 2015, at 11 a.m.

THURSDAY, MARCH 12, 2015

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Pastor Larry Cale, Belle Church of the Nazarene, Belle, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable C. Edward Gaunch, a senator from the eighth district.

Pending the reading of the Journal of Wednesday, March 11, 2015,

On motion of Senator Prezioso, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The following communication was reported by the Clerk:

WEST VIRGINIA COURT OF CLAIMS
CHARLESTON

January 20, 2015

The Honorable Clark S. Barnes
Clerk, West Virginia Senate
State Capitol
Charleston, West Virginia

Dear Mr. Clerk:

This is to advise you that the President of the Senate and the Speaker of the House recently reappointed J. David Cecil as a Judge of the Court of Claims to a second full six year term commencing on July 1, 2015. Enclosed is a copy of the letter of appointment.

It will be necessary for Judge Cecil to be confirmed by the Senate during this Legislative Session. If you have any further questions or need any further information, please feel free to contact me.

Very truly yours,

Cheryle M. Hall,
Clerk.

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Boley, consideration of the nomination immediately hereinbefore reported was made a special order of business for Friday, March 13, 2015, at 11 a.m.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 336, Eliminating Health Care Authority's power to apply certain penalties to future rate applications.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 436, Relating to State Athletic Commission.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §29-5A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8, §29-5A-17, §29-5A-19, §29-5A-20 and §29-5A-24 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all to read as follows:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

The State Boxing Commission, heretofore created, is hereby continued and renamed the State Athletic Commission. The commission shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner or physicians assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay. ~~The present members and terms of the~~

~~members of the State Boxing Commission shall continue as the State Athletic Commission.~~ At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. ~~In the event of~~ If there is a vacancy in ~~said the~~ said the board, ~~said the~~ vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure. Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may ~~deem~~ consider expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least three commissioners ~~shall be~~ is necessary to render a choice or decision of the commission.

§29-5A-1a. Commission office; administrative support provided by Lottery Commission.

The office of the commission shall be located on the same premises as the office of the Lottery Commission and the Lottery Commission shall provide the commission with any necessary administrative support or management, including, but not limited to:

- (1) Administrative recordkeeping;
- (2) Maintaining an accurate and published registry of names, addresses and relevant information of all licensees; and
- (3) Management of finances and budgetary oversight.

§29-5A-2. Powers and duties of secretary; penalty for false swearing, etc.; biennial reports of commission.

~~The office of the commission may be changed at pleasure by the said commission. The commission may designate as its official~~

~~headquarters the residence or place of business of any one of its members.~~ It shall be the duty of the secretary to keep a full and true record of all proceedings of said commission, to preserve all its books, documents and papers, to prepare for service such notices and other papers as may be required of him or her by the commission, and to perform such other duties as the commission may prescribe; and he or she may at the direction of the commission issue subpoenas for the attendance of witnesses before the commission with the same effect as if they were issued in an action in any circuit court of the state, and may administer oaths in all matters pertaining to the duties of his or her office or connected with the administration of the affairs of the commission. The subpoenas shall be on forms prescribed by the commission and served by the sheriff's department of the county in which the individual being subpoenaed resides. Such subpoenas shall be signed by at least two members. Disobedience of such subpoena and false swearing before such secretary shall be attended by the same consequences and be subject to the same penalties as if such disobedience or false swearing occurred in an action in any circuit court of the state. The commission shall make to the Legislature biennial reports of their proceedings for the two years ending with the last day of the preceding December and may submit with such report such recommendations pertaining to its affairs, as to it shall seem advisable.

§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.

(a) The commission has sole direction, management and control of the jurisdiction over all amateur, professional and semiprofessional boxing, sparring matches and exhibitions, or any form thereof, to be conducted, held or given within the state by any club, individual, corporation or association. As used in this article, the term "boxing" includes any fighting event that includes or permits the striking of an opponent with a closed fist, even if wrestling moves, elements of martial arts, or striking an opponent with the feet are also permitted. No boxing, sparring or exhibition may be conducted, held or given within the state except pursuant to the commission's authority and held in accordance with this article.

The commission may, ~~in its discretion,~~ issue and, ~~at its pleasure,~~ revoke the license to conduct, hold or give boxing or sparring matches or exhibitions to any club, corporation, association or individual. Every license is subject to rules the commission may prescribe. Every application for a license shall be on a blank form provided by the commission. No promoter's license may be granted to any club, corporation, association or individual, unless the signer of the application is a bona fide resident of the state of West Virginia. Upon application of the promoter's license, the promoter shall pay a state license fee of \$125 for one year. The fee is nonrefundable and shall be paid in the form of a certified check or money order ~~and shall be~~ issued to the Treasurer of the state of West Virginia to be deposited in the general fund set forth in section three-b of this article. ~~If the license is not granted, the treasurer shall refund the full amount.~~ Nonprofit chartered and charitable organizations are exempt from this license fee for all amateur events. No municipal corporation may impose any license tax on boxing, sparring or exhibition clubs, notwithstanding the provisions of any section of the code respecting municipal taxes and licenses. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from canceling or revoking the license to conduct an event, as provided in this section.

(b) In exercising its jurisdiction over professional; and semiprofessional ~~and amateur~~ boxing, sparring matches and exhibitions, the commission shall follow the current ~~United States boxing authority rules~~ unified rules of boxing adopted by the Association of Boxing Commissions and requirements to enable the proper sanctioning of all participants, referees, judges and matches or exhibitions conducted under the rules described in subdivision (1), subsection (c), section twenty-four of this article and shall cooperate fully with the ~~boxing authority~~ Association of Boxing Commissions in order that the sanctioning be extended to state boxers. The commission shall supervise all amateur boxing conducted in this state and any such contest shall follow the amateur rules for boxing as adopted by the United States Amateur Boxing

Authority. For full contact boxing events and other boxing events that follow nontraditional rules, the commission may impose any limitations or restrictions reasonably necessary to guarantee the safety of the participants and the fair and honest conducting of the matches or exhibitions and may refuse to license any event that poses an unreasonable degree of risk to the participants.

§29-5A-3a. Power to regulate mixed martial arts.

(a) The commission has sole power, direction, management and control over all professional and amateur mixed martial arts contests, matches and exhibitions, or any form thereof, to be promoted, conducted, held or given within the state.

(b) As used in this article, the term “mixed martial arts” means a combative sporting contest, the rules of which allow two competitors to attempt to achieve dominance over one another by utilizing a variety of techniques including, but not limited to, striking, grappling and the application of submission holds.

(c) A mixed martial arts contest, match or exhibition promoted, conducted, held or given within the state shall be under the commission’s authority and be in accordance with the provision of this section. The provisions of this article that apply to boxing shall also apply to mixed martial arts as appropriate.

(d) In exercising its jurisdiction over professional and amateur mixed martial arts contests matches and exhibitions, the commission shall follow the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions, to enable the proper equipment, fighting area and weight classes to ensure the safety of contestants and ensure the licensing of all participants, referees and judges, and the approval of contests, matches or exhibitions conducted under the provisions of this section.

(e) The commission may issue and revoke a license to promote, conduct, hold or give mixed martial arts contests, matches or exhibitions and may issue and revoke a license to be a contestant.

Each license is subject to the provisions of this section and this article, and the rules of the commission.

(f) The commission 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 section, including:

(1) Procedures and requirements for the issuance and renewal of licenses: *Provided*, That the procedures and requirements ~~shall~~ may not:

(A) Limit or prohibit mixed martial arts contests, matches or exhibitions; nor

(B) Include a provision that a licensee be a West Virginia resident;

(2) Exemptions from licensure;

(3) Procedures for revoking licenses;

(4) Adopting the unified rules of mixed martial arts;

(5) A fee schedule;

(6) Limitations or restrictions necessary to guarantee the safety of the participants;

(7) The requirements for fair and honest conducting of the contests, matches or exhibitions; and

(8) Any other rules necessary to effectuate the provisions of this section.

(g) Notwithstanding the provisions of this code to the contrary, a municipality may not impose a municipal license tax under section

four, article thirteen, chapter eight of this code on mixed martial arts clubs. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from revoking the license to conduct an event, as provided in this section: *Provided*, That nothing in this subsection limits the authority of a municipality to impose any other taxes or fees on mixed martial arts contests, matches or exhibitions pursuant to article thirteen, chapter eight of this code.

§29-5A-3b. State Athletic Commission Fund.

(a) All moneys collected shall be deposited in a special account in the State Treasury to be known as the State Athletic Commission Fund. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2016, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(b) A supplemental appropriation may be authorized by the Legislature for administrative expenditures that exceed collections in the fiscal years ending June 30, 2016, June 30, 2017, and June 30, 2018, or until such time as the commission collections are sufficient to fully fund its operations.

(c) All money collected and deposited in the State Athletic Commission Fund that remains after the commission satisfies its administrative operating obligations shall be surplus revenue funds available for appropriation: *Provided*, That the commission may retain surplus revenue funds as long as it allocates the surplus for a specific purpose and approves such funds be carried-forward for use in the following fiscal year prior to the end of the fiscal year in which the revenues were collected.

§29-5A-5. Expense of commission.

On or before December 31 of each year, the secretary of the commission shall present to the Governor projected expenses for the following year. Such projections shall include all expenses of the commission and its official headquarters. Necessary expenses incurred by the commission shall be submitted on a standard expense form to the Treasurer of the State of West Virginia to be paid from the State Athletic Commission Fund except in such circumstances referred to in subsection (b), section three-b of this article designating such expenses be paid from the general fund. Such expenses shall not exceed five thousand five hundred dollars per year.

§29-5A-6. Payment of official in charge.

The deputy, inspector or other officials designated by the commission to be in charge of a boxing or mixed martial arts event shall be paid by the promoter at a minimum rate of ~~seventy-five dollars for each weigh-in ceremony and seventy-five dollars for each day of bouts~~ \$75 per day for services performed prior to any event at a weigh-in and each day of an event: *Provided*, That not more than one official designated by the commission to be in charge of a boxing or mixed martial arts event may receive compensation for services performed. If a weigh-in occurs within three hours before the boxing bouts are scheduled to begin, the deputy, inspector or other officials will be paid only ~~seventy-five dollars once~~ \$75 for that particular night or day's events. Judges, timekeepers and inspectors shall be paid by the promoter at a minimum rate of ~~fifty dollars~~ \$50 per day for services performed prior to any event and each day of an event. Referees shall be paid by the promoter at a minimum rate of ~~seventy-five dollars~~ \$75 per day of bouts. Payments to the officials in charge, judges, timekeepers, inspectors or referees exceeding the amounts under this section are prohibited without prior written consent of the promoter: *Provided, however*, That the commission may revise any fees paid to officials through legislative rule-making process beginning June 30, 2018, and every three years thereafter. The commission may not revoke an event permit or license for refusal to pay a fee greater than the fees in this section: *Provided further*, That approved officials are available,

willing and able to work the event for the proscribed fees. Deputies, inspectors, judges, referees, timekeepers or any other officials designated by the commission to be in charge of an event shall not accept, other than the fees proscribed herein, any gift, pass or other thing of value in connection with any event.

§29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.

The commission ~~at its discretion,~~ may issue a license to promote, conduct or hold professional boxing, professional or amateur mixed martial arts sparring matches and exhibitions to any person, corporation, association, club or organization eligible for a license under this chapter.

Before being granted a license, or the renewal of ~~such the~~ license, the applicant must establish to the satisfaction of the commission that he or she:

(a) Is skilled, or has knowledge, in the profession of boxing or mixed martial arts;

(b) Is of good moral character;

(c) Is physically fit and mentally sound;

(d) Will conduct his or her business in the best interest and welfare of the public, preserving the safety and health of participants and the best interests of professional boxing or professional or amateur mixed martial arts generally;

(e) Will adhere to and comply with all the rules and regulations of the commission pertaining to ~~such the~~ license.

In the case of a corporate applicant, these factors shall pertain to its officers, directors, principal stockholders and employees.

Every license and licensee ~~shall be~~ is subject to such rules ~~and regulations~~, and amendments thereof, as the commission may prescribe.

§29-5A-17. Referee and judges; appointment by commission; powers, payment.

(a) The chief official of the boxing match or exhibition shall be the referee. The referee and judges shall be appointed by the commission and shall receive from the commission a card authorizing them to act as such, and no club ~~shall~~ may employ or permit anyone to act as referee except one holding ~~such a~~ a card of authorization from the commission. The referee ~~shall have~~ has general supervision and control over the match or exhibition and shall be paid by the promoter a minimum of \$25 for each day or night's services. The referee ~~shall be~~ is limited to refereeing a maximum of thirty rounds per day or night unless special consent is given by the commission.

(b) Once appointed by the commission, the promoter bears the responsibility for ensuring the attendance of referee and judges at events. The commission shall provide promoters with advance notice of the person(s) appointed as referee and judges. A promoter, at his or her own expense, may request alternate referee(s) and judge(s) be appointed by the commission to serve in the event a first appointed referee or judge is unable to satisfy the role. Under no circumstances may a member of the commission or any employee of the commission serve as a referee or judge for a boxing or mixed martial arts contest conducted in this state.

§29-5A-19. Weight of boxers.

No boxer shall be permitted to contest against an opponent ten pounds heavier than himself or herself when the weight of either contestant is less than one hundred fifty pounds. Weight classes as adopted by the Association of Boxing Commissions shall be utilized for all boxing and mixed martial arts contests conducted in this state.

§29-5A-20. Licenses for contestants, referees and managers.

No professional contestant, trainer, inspector, referee or professional manager ~~is permitted to~~ may take part in any boxing contest or exhibition unless holding a license from the state ~~said license to be~~ that is issued by the commission upon payment of ~~\$10 a year of the following annual license fee schedule:~~ Professional contestant \$25; trainer \$20; inspector \$30; referee \$30 and professional manager \$50. Semiprofessional contestants shall pay a license fee of \$10 for each event. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the Treasurer of the state of West Virginia to be deposited in the ~~General Fund~~ State Athletic Commission Fund. ~~Should such~~ If a license is not be granted, the Treasurer shall refund the full amount.

§29-5A-24. Rules governing contestants and matches.

(a) The commission shall ~~promulgate its rules in compliance~~ propose rules for legislative approval in accordance with the provisions of article three of chapter twenty-nine-a of this code.

(b) The commission shall ~~promulgate~~ propose such rules ~~as it determines to be necessary~~ to regulate professional and semiprofessional boxers, ~~and~~ professional or amateur mixed martial artists, professional and semiprofessional boxing matches and exhibitions and professional or amateur mixed martial arts matches and exhibitions: *Provided,* That for professional boxers and boxing matches and exhibitions, the commission rules shall comply with the current unified rules of boxing as adopted by the Association of Boxing Commissions; for professional mixed martial artists and mixed martial arts matches and exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions; for amateur boxers and boxing matches or exhibitions, the commission rules shall comply with the amateur rules for boxing as adopted by the United States Amateur Boxing Authority; and for amateur mixed martial artists and mixed martial arts matches or exhibitions, the

commission rules shall follow the current rules for the International Sport Karate Association, the World Kickboxing Association, or the International Sport Combat Federation at any given match or exhibition. For full contact boxing and other boxing events that follow nontraditional rules, rules guaranteeing the safety of the participants and the fair and honest conducting of the matches or exhibitions are authorized.

(c) The commission shall ~~promulgate~~ propose separate rules for amateur boxers and amateur boxing, sparring matches and exhibitions as follows:

(1) Rules which comply with the requirements of the rules of the current United States Amateur Boxing Authority to the extent that any boxer complying with them will be eligible to participate in any state, national or international boxing match sanctioned by the current United States Amateur Boxing Authority or the International Amateur Boxing Association.

~~(2) Rules which may differ from the rules of the current United States Amateur Boxing Authority but which adequately guarantee the safety of the participants and the fair and honest conducting of the matches or exhibitions. As a part of these rules, the commission shall include a requirement that all boxers participating in matches or exhibitions conducted under these rules be informed prior to such participation that such participation will disqualify them from participating in state, national or international matches and exhibitions sanctioned by the current United States Amateur Boxing Authority or the International Amateur Boxing Association;~~

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill No. 436—A Bill to repeal §29-5A-12 of the Code of West Virginia, 1931, as amended; to amend

and reenact §29-5A-1, §29-5A-2, §29-5A-3, §29-5A-3a, §29-5A-5, §29-5A-6, §29-5A-8, §29-5A-17, §29-5A-19, §29-5A-20 and §29-5A-24 of said code; and to amend said code by adding thereto two new sections, designated §29-5A-1a and §29-5A-3b, all relating to the State Athletic Commission; changing composition of commission; requiring that office of commission be located on the premises of Lottery Commission office; requiring the Lottery Commission to provide administrative support; creating a State Athletic Commission Fund; authorizing expenditures; paying expenses of the commission; setting payment schedule; requiring promoter to ensure attendance of appointed officials; requiring the commission to give advance notice of appointed officials; permitting alternates; prohibiting the commission from performing certain functions at events; requiring the commission to follow weight classes as adopted by the Association of Boxing Commissions; increasing certain fees; providing rule-making authority; requiring the commission to follow certain unified rules for professional boxing events; requiring the commission to follow certain unified rules for mixed martial arts events; requiring the commission to follow certain rules for amateur boxing events; and requiring the commission to follow certain rules for amateur mixed martial arts events.

On motion of Senator Carmichael, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. No. 436) were reported by the Clerk, considered simultaneously, and adopted:

On page eight, section five, after the words “include all expenses” by inserting the words “and revenues”;

On pages eight and nine, section six, after the words “officials will be paid only” by inserting the words “one rate at a minimum of”;

On page ten, section seventeen, subsection (a), by striking out “\$25” and inserting in lieu thereof “\$75”;

And,

On page eleven, section nineteen, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

§29-5A-19. Weight of contestants.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill No. 436, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 436) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill No. 502, Relating to eligibility for certain reclamation or remediation tax credit.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with

this section: *Provided, however*, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) (1) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the State Treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after August 3, 1977, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this

chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in both funds of such magnitude that the solvency of either is jeopardized. The secretary may use both funds for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in both funds to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

(2) (A) A tax credit shall be granted against the tax imposed by subsection (i) of this section to any mine operator who performs reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive and may be claimed for reclamation or remediation performed on or after January 1, 2012: *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may be granted unless a written application for the tax credit was submitted to the Tax Commissioner prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

(B) The amount of a reclamation tax credit granted under this subsection shall be equal to the amount that the Tax Commissioner determines, based on the project costs, as shown in the records of the secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by the mine operator, including expenditures for water treatment.

(C) To claim the credit, the mine operator shall from time to time file with the Tax Commissioner a written application seeking the amount of the credit earned. Within thirty days of receipt of the

application, the Tax Commissioner shall issue a certification of the amount of tax credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the difference. Should no certification be issued within the thirty-day period, the application will be deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of the code. Applications for certification of the proposed tax credit shall contain the information and be in the detail and form as required by the Tax Commissioner.

(h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this subdivision two, subsection (g) of this section.

(i) (1) *Rate, deposits and review.*

(A) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, fifteen cents

per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.

(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: *Provided*, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the Special Reclamation Program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

(j) This special reclamation tax shall be collected by the Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: *Provided*, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(k) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(n) At the beginning of each quarter, the secretary shall advise the Tax Commissioner and the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

(o) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 502—A Bill to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to surface mining and reclamation; bonding; special reclamation tax and funds; prohibited acts; bond liability; specifying retrospective eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund; and specifying limitations.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill No. 502, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 502) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments to the Senate amendments, as to

Eng. Com. Sub. for House Bill No. 2550, Increasing the number of unexcused absences of a student before action may be taken against the parent.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the Senate amendments to the bill were reported by the Clerk:

On page two, section four, subsection (a), subdivision (2), paragraph (ix), by striking out the word “and”;

On page two, section four, subsection (a), subdivision (2), after paragraph (ix) by inserting a new paragraph, designated paragraph (x), to read as follows:

“(x) Personal or academic circumstances approved by the principal; and”;

And relettering the remaining paragraphs;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for House Bill No. 2550—A Bill to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to truancy intervention; defining excused and unexcused absences; providing that notice of student’s three unexcused absences be given to parent, guardian or custodian; providing that a parent, guardian or custodian have a mandatory conference with the principal or other designated representative of the school when the student has five unexcused absences; and increasing number of unexcused absences by a student before a complaint must be made against the parent, guardian or custodian of the student.

On motion of Senator Carmichael, the Senate concurred in the foregoing House of Delegates amendments to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill No. 2550, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Williams—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2550) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

Eng. Com. Sub. for House Bill No. 2586, Allowing for an alternative form of service of process in actions against nonresident persons by petitioners seeking domestic violence or personal safety relief.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, to take effect from passage, with its Senate amended title, of

Eng. House Bill No. 2632, Exempting the procurement of certain instructional materials for use in and in support of public schools from the division of purchasing requirements.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

Eng. Com. Sub. for House Bill No. 2648, Allowing authorized entities to maintain a stock of epinephrine auto-injectors to be used for emergency.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

Eng. House Bill No. 2914, Providing for voluntary dissolution of resort area district.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the adoption as amended, of

House Concurrent Resolution No. 91, Designating days for the display of the Honor and Remember Flag.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution No. 130—Requesting the Joint Committee on Government and Finance to study and review current law, procedure and public services intended to protect against senior citizen financial abuse and exploitation and to study the feasibility of developing and providing additional effective tools, resources and best practices to help protect senior citizens from financial abuse and exploitation.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution No. 131—Requesting the Joint Committee on Government and Finance to study the issues, needs and challenges facing senior citizens in this state and to study the feasibility of developing and providing additional effective tools, resources and best practices to address the health, safety, welfare and other concerns of our senior citizens.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution No. 132—Requesting the Joint Committee on Government and Finance study the economic impact of making all hunting and fishing licenses valid for a period of one year from the date of issue, and the effect of federal laws and regulations as the same relate to the requirement that the social security number, if any, of any applicant for a recreational license be recorded on the application for such license.

Referred to the Committee on Rules.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution No. 133—Requesting the Joint Committee on Government and Finance study the economic impact of reducing or eliminating the necessity for certain hunting, fishing and trapping licenses.

Referred to the Committee on Rules.

Executive Communications

Senator Cole (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the eighteenth day of March, two thousand fifteen, which was received and read by the Clerk:

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 sets forth 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 regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of January, two thousand fifteen; and

WHEREAS, Pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand fifteen regular session of the Legislature shall conclude on the fourteenth day of March, two thousand fifteen; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations 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 extending 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; and

WHEREAS, The Budget Bill has not been finally acted upon by the Legislature as of this eleventh day of March, two thousand fifteen.

NOW, THEREFORE, I, EARL RAY TOMBLIN, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand fifteen regular session of the Legislature for consideration of the Budget

Bill for an additional period not to exceed four days, through and including the eighteenth day of March, two thousand fifteen; 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, on this the eleventh day of March, in the year of our Lord, Two Thousand Fifteen, and in the One Hundred Fifty-Second year of the State.

EARL RAY TOMBLIN,
Governor.

By the Governor:

NATALIE E. TENNANT,
Secretary of State.

Senator Cole (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 2, 2015

Senate Executive Message No. 2

TO: The Honorable Members of the
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Member, Parole Board, Carol Greene, Huntington, Cabell County, for the term ending June 30, 2019.

2. For Member, Board of Examiners in Counseling, Guy Gage III, Bridgeport, Harrison County, for the term ending June 30, 2014.

3. For Member, Motor Vehicle Dealers Advisory Board, Kelly Smith, Charleston, Kanawha County, for the term ending June 30, 2016.

4. For Member, Motor Vehicle Dealers Advisory Board, Margaret Wills, Shinnston, Harrison County, for the term ending June 30, 2016.

5. For Member, Motor Vehicle Dealers Advisory Board, Michael Keener, Hurricane, Putnam County, for the term ending June 30, 2016.

6. For Member, Driver's License Advisory Board, J. Keith Wade, Fairmont, Marion County, for the term ending June 30, 2016.

7. For Member, Driver's License Advisory Board, Joe LoCascio, Huntington, Cabell County, for the term ending June 30, 2016.

8. For Member, Driver's License Advisory Board, John Brick, Morgantown, Monongalia County, for the term ending June 30, 2016.

9. For Member, Motorcycle Safety Awareness Board, Mike Adkins, Delbarton, Mingo County, for the term ending June 30, 2016.

10. For Member, Motorcycle Safety Awareness Board, William Cooper, Scott Depot, Putnam County, for the term ending June 30, 2015.

11. For Member, Board of Dentistry, Charles L. Smith, Charleston, Kanawha County, for the term ending June 30, 2017.

12. For Member, Board of Hearing Aid Dealers, Jenny Cross, Elkins, Randolph County, for the term ending July 13, 2017.

13. For Member, Board of Hearing Aid Dealers, Deborah Barnes Chewning, Elkins, Randolph County, for the term ending July 13, 2015.

14. For Member, Board of Hearing Aid Dealers, Marsha Mattingly, Huntington, Cabell County, for the term ending July 13, 2017.

15. For Member, Board of Hearing Aid Dealers, Jason Kaposy, Petersburg, Grant County, for the term ending July 13, 2016.

16. For Director, Division of Juvenile Services, Stephanie Bond, Terra Alta, Preston County, to serve at the will and pleasure of the Governor.

17. For Member, Housing Development Fund, Sam Kapourales, Williamson, Mingo County, for the term ending October 30, 2015.

18. For Member, Housing Development Fund, Everette Sullivan, Dunbar, Kanawha County, for the term ending October 30, 2016.

19. For Member, Housing Development Fund, Jeff Borman, Charleston, Kanawha County, for the term ending October 30, 2016.

20. For Member, Workforce Investment Council, Ray Burke, Hurricane, Putnam County, for the term ending June 30, 2015.

21. For Member, Workforce Investment Council, Nancy Kissinger, Beckley, Raleigh County, for the term ending June 30, 2015.

22. For Member, Workforce Investment Council, Jim O'Connor, Belle, Kanawha County, for the term ending June 30, 2015.

23. For Member, Workforce Investment Council, Tom Provost, Belle, Kanawha County, for the term ending June 30, 2015.

24. For Member, Workforce Investment Council, John Sorrenti, Weirton, Hancock County, for the term ending June 30, 2015.

25. For Member, Workforce Investment Council, Steve Stalnaker, Williamstown, Wood County, for the term ending June 30, 2015.

26. For Member, Workforce Investment Council, Diane Strong-Treister, Charleston, Kanawha County, for the term ending June 30, 2015.

27. For Member, Workforce Investment Council, Homer Sweeney, St. Albans, Kanawha County, for the term ending June 30, 2014.

28. For Member, Workforce Investment Council, Frank Ellis, Wheeling, Ohio County, for the term ending June 30, 2015.

29. For Member, Workforce Investment Council, Kenny Perdue, Charleston, Kanawha County, for the term ending June 30, 2015.

30. For Member, Workforce Investment Council, Roy Smith, Beckley, Raleigh County, for the term ending June 30, 2015.
31. For Member, Workforce Investment Council, Clarence Pennington, Martinsburg, Berkeley County, for the term ending June 30, 2015.
32. For Member, Workforce Investment Council, Joanne Jaeger Tomblin, Mount Gay, Logan County, for the term ending June 30, 2015.
33. For Member, Workforce Investment Council, Kim Tieman, Pittsburgh, Pennsylvania, for the term ending June 30, 2015.
34. For Member, Workforce Investment Council, Rev. Matthew Watts, Charleston, Kanawha County, for the term ending June 30, 2015.
35. For Member, Workforce Investment Council, Logan Williams, Hurricane, Putnam County, for the term ending June 30, 2015.
36. For Member, Workforce Investment Council, Robert Pasley, Wayne, Wayne County, for the term ending June 30, 2015.
37. For Member, Workforce Investment Council, Penny Brown, Philippi, Barbour County, for the term ending June 30, 2015.
38. For Member, Workforce Investment Council, Steve Whited, Grantsville, Calhoun County, for the term ending June 30, 2015.
39. For Member, Workforce Investment Council, Nancy Paxton, South Charleston, Kanawha County, for the term ending June 30, 2015.

40. For Member, Workforce Investment Council, Patrick Martin, Hurricane, Putnam County, for the term ending June 30, 2015.

41. For Member, Workforce Investment Council, Michael Bombard, Morgantown, Monongalia County, for the term ending June 30, 2015.

42. For Member, Workforce Investment Council, Will Turani, Wheeling, Ohio County, for the term ending June 30, 2015.

43. For Executive Director, School Building Authority, David Sneed, Cross Lanes, Kanawha County, to serve at the will and pleasure of the Governor.

44. For Member, School Building Authority, Tom Lange, Kearneysville, Jefferson County, for the term ending July 31, 2016.

45. For Member, School Building Authority, Eric J. Lewis, Charles Town, Jefferson County, for the term ending July 31, 2016.

46. For Member, School Building Authority, Victor L. Gabriel, Bridgeport, Harrison County, for the term ending July 31, 2015.

47. For Member, School Building Authority, Robert E. Holroyd, Princeton, Mercer County, for the term ending July 31, 2015.

48. For Member, School Building Authority, Chris Morris, Charleston, Kanawha County, for the term ending July 31, 2015.

49. For Member, Ethics Commission, The Honorable Jack Buckalew, Charleston, Kanawha County, for the term ending June 30, 2015.

50. For Member, Ethics Commission, The Honorable Betty Ireland, Charleston, Kanawha County, for the term ending June 30, 2017.

51. For Member, Ethics Commission, Monte Williams, Morgantown, Monongalia County, for the term ending June 30, 2015.

52. For Member, Ethics Commission, Robert Wolfe, Man, Logan County, for the term ending June 30, 2019.

53. For Member, Ethics Commission, Michael Greer, Bridgeport, Harrison County, for the term ending June 30, 2019.

54. For Member, Ethics Commission, Suzan Singleton, Moundsville, Marshall County, for the term ending June 30, 2017.

55. For Member, Ethics Commission, Terry Walker, Kearneysville, Jefferson County, for the term ending June 30, 2019.

56. For Member, Ethics Commission, Lawrence J. Tweel, Huntington, Cabell County, for the term ending June 30, 2015.

57. For Member, Ethics Commission, Karen Disibbio, Bluefield, Mercer County, for the term ending June 30, 2017.

58. For Member, Fire Commission, Dave Camp, Parkersburg, Wood County, for the term ending June 30, 2019.

59. For Member, Fire Commission, Robert Miller, Glenwood, Mason County, for the term ending June 30, 2018.

60. For Member, Fire Commission, Ted Shriver, Charleston, Kanawha County, for the term ending June 30, 2017.

61. For Member, Capitol Building Commission, Greg Barton, Ellenboro, Ritchie County, for the term ending June 30, 2018.

62. For Member, Capitol Building Commission, Michael Price, Wheeling, Ohio County, for the term ending June 30, 2018.

63. For Member, Board of the College Prepaid Tuition and Savings Program, Jamie Dickenson, Charleston, Kanawha County, for the term ending June 30, 2017.

64. For Member, Board of the College Prepaid Tuition and Savings Program, The Honorable Chuck Smith, Charleston, Kanawha County, for the term ending June 30, 2018.

65. For Member, Board of the College Prepaid Tuition and Savings Program, Terri Underhill, Charleston, Kanawha County, for the term ending June 30, 2015.

66. For Member, Board of Coal Mine Health and Safety, Brian Keaton, Julian, Boone County, for the term ending June 30, 2015.

67. For Member, Board of Risk and Insurance Management, Bobby Mitts, Lavalette, Wayne County, for the term ending June 30, 2017.

68. For Member, Board of Risk and Insurance Management, James Wilson, Grafton, Taylor County, for the term ending June 30, 2016.

69. For Member, Statewide Independent Living Council, Donald Carson, Beckley, Raleigh County, for the term ending June 30, 2017.

70. For Member, Statewide Independent Living Council, Michelle Norweck, Barboursville, Cabell County, for the term ending June 30, 2017.

71. For Member, Statewide Independent Living Council, Vanessa Vangilder, Charleston, Kanawha County, for the term ending June 30, 2017.

72. For Member, Statewide Independent Living Council, David George, Wheeling, Ohio County, for the term ending June 30, 2017.

73. For Member, Statewide Independent Living Council, Nancy Tyler, Charleston, Kanawha County, for the term ending June 30, 2017.

74. For Member, Statewide Independent Living Council, Aaron Morris, Cannelton, Fayette County, for the term ending June 30, 2017.

75. For Member, Statewide Independent Living Council, Greg Bilonick, Morgantown, Monongalia County, for the term ending June 30, 2017.

76. For Member, Statewide Independent Living Council, Todd Rundle, Fairmont, Marion County, for the term ending June 30, 2017.

77. For Member, Statewide Independent Living Council, Bob Waybright, Webster Springs, Webster County, for the term ending June 30, 2017.

78. For Member, Motor Vehicle Dealers Advisory Board, James Williams, Martinsburg, Berkeley County, for the term ending June 30, 2017.

79. For Member, Motor Vehicle Dealers Advisory Board, Michael Ratz, Logan, Logan County, for the term ending June 30, 2017.

80. For Member, Motorcycle Safety Awareness Board, Ray Carey, Charleston, Kanawha County, for the term ending June 30, 2017.

81. For Member, Motorcycle Safety Awareness Board, Kimberly Oldaker, Ashton, Mason County, for the term ending June 30, 2017.

82. For Member, Workforce Investment Council, Todd Shell, Huntington, Cabell County, for the term ending June 30, 2017.

83. For Member, Fire Commission, Victor Stallard, Williamstown, Wood County, for the term ending June 30, 2017.

84. For Member, Mine Safety Technology Task Force, Charles Russell III, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

85. For Member, Board of Control for Southern Regional Education, The Honorable Robert H. Plymale, Huntington, Wayne County, for the term ending June 30, 2018.

86. For Member, Board of Architects, Jan L. Fox, Charleston, Kanawha County, for the term ending June 30, 2017.

87. For Member, Board of Architects, Edward W. Tucker, Huntington, Cabell County, for the term ending June 30, 2016.

88. For Member, Board of Architects, Richard Forren, Bridgeport, Harrison County, for the term ending June 30, 2018.

89. For Member, Board of Architects, Todd Boggess, Princeton, Mercer County, for the term ending June 30, 2020.

90. For Member, Consolidated Public Retirement Board, Donald Murray, Chester, Hancock County, for the term ending June 30, 2018.

91. For Member, Consolidated Public Retirement Board, Joseph Bunn, Charleston, Kanawha County, for the term ending June 30, 2017.

92. For Member, Consolidated Public Retirement Board, David Wyant, Wheeling, Ohio County, for the term ending June 30, 2018.

93. For Member, Consolidated Public Retirement Board, Joe Lynch, Charleston, Kanawha County, for the term ending June 30, 2017.

94. For Member, Consolidated Public Retirement Board, Andy Bird, Hurricane, Putnam County, for the term ending June 30, 2017.

95. For Member, Consolidated Public Retirement Board, David Stover, Maben, Wyoming County, for the term ending June 30, 2015.

96. For Member, Consolidated Public Retirement Board, Angela Crank, Evans, Jackson County, for the term ending June 30, 2018.

97. For Member, Outdoor Heritage Conservation Fund, Rodney Bartgis, Elkins, Randolph County, for the term ending June 30, 2016.

98. For Member, Outdoor Heritage Conservation Fund, Calvert Armbrecht, Charleston, Kanawha County, for the term ending June 30, 2016.

99. For Member, Outdoor Heritage Conservation Fund, Terrell Ellis, Charleston, Kanawha County, for the term ending June 30, 2015.

100. For Member, Outdoor Heritage Conservation Fund, Lavonne Paden, Martinsburg, Berkeley County, for the term ending June 30, 2015.

101. For Member, Outdoor Heritage Conservation Fund, David Lilly, Buckhannon, Upshur County, for the term ending June 30, 2016.

102. For Member, Outdoor Heritage Conservation Fund, James Anderson, Morgantown, Monongalia County, for the term ending June 30, 2015.

103. For Member, Outdoor Heritage Conservation Fund, Amy Hessel, Morgantown, Monongalia County, for the term ending June 30, 2018.

104. For Member, Outdoor Heritage Conservation Fund, Doug Wood, Hurricane, Putnam County, for the term ending June 30, 2018.

105. For Member, Outdoor Heritage Conservation Fund, Edward F. Maguire II, Charleston, Kanawha County, for the term ending June 30, 2018.

106. For Member, Board of Sanitarians, The Honorable Delores Cook, Ridgeview, Boone County, for the term ending June 30, 2018.

107. For Member, Board of Sanitarians, Phyllis L. Lowe, Chapmanville, Logan County, for the term ending June 30, 2019.

108. For Member, Fairmont State University Board of Governors, Aaron Hawkins, Fairmont, Marion County, for the term ending June 30, 2018.

109. For Member, West Virginia State University Board of Governors, Leon Vincent Williams, Nashville, Tennessee, for the term ending June 30, 2018.

110. For Member, West Virginia State University Board of Governors, Gary Swingle, Charleston, Kanawha County, for the term ending June 30, 2018.

111. For Member, Concord University Board of Governors, Brace Mullett, Charleston, Kanawha County, for the term ending June 30, 2018.

112. For Member, Concord University Board of Governors, David Barnette, Charleston, Kanawha County, for the term ending June 30, 2018.

113. For Member, Shepherd University Board of Governors, Chad Robinson, Charleston, Kanawha County, for the term ending June 30, 2018.

114. For Member, Shepherd University Board of Governors, Marcia Brand, Martinsburg, Berkeley County, for the term ending June 30, 2018.

115. For Member, Shepherd University Board of Governors, Bridget M. Cohee, Martinsburg, Berkeley County, for the term ending June 30, 2018.

116. For Member, West Liberty University Board of Governors, Brian Joseph, Triadelphia, Ohio County, for the term ending June 30, 2018.

117. For Member, West Liberty University Board of Governors, Leslie DeFelice, Dillonvale, Ohio, for the term ending June 30, 2016.

118. For Member, Bluefield State College Board of Governors, Rev. Garry Moore, Sr., Bluefield, Mercer County, for the term ending June 30, 2018.

119. For Member, Bluefield State College Board of Governors, Lois Ann Manns, Beckley, Raleigh County, for the term ending June 30, 2018.

120. For Member, Bluefield State College Board of Governors, Robert Perkinson, Jr., Bluefield, Mercer County, for the term ending June 30, 2018.

121. For Member, Bluefield State College Board of Governors, Norris Kantor, Bluefield, Mercer County, for the term ending June 30, 2018.

122. For Member, Unemployment Compensation Board of Review, The Honorable Martha Walker, Charleston, Kanawha County, for the term ending January 1, 2017.

123. For Member, Blue Ridge Community and Technical College Board of Governors, Albert T. Britton, Charles Town, Jefferson County, for the term ending June 30, 2018.

124. For Member, Blue Ridge Community and Technical College Board of Governors, Teresa E. McCabe, Martinsburg, Berkeley County, for the term ending June 30, 2018.

125. For Member, Blue Ridge Community and Technical College Board of Governors, Rebecca Linton, Martinsburg, Berkeley County, for the term ending June 30, 2017.

126. For Member, Blue Ridge Community and Technical College Board of Governors, Keith Unger, Berkeley Springs, Morgan County, for the term ending June 30, 2016.

127. For Member, Blue Ridge Community and Technical College Board of Governors, William L. Stubblefield, Martinsburg, Berkeley County, for the term ending June 30, 2017.

128. For Member, Blue Ridge Community and Technical College Board of Governors, Stephanie L. Harvey, Martinsburg, Berkeley County, for the term ending June 30, 2016.

129. For Member, Blue Ridge Community and Technical College Board of Governors, Chuck Basa, Winchester, Virginia, for the term ending June 30, 2015.

130. For Member, Blue Ridge Community and Technical College Board of Governors, Heather McIntyre, Charles Town, Jefferson County, for the term ending June 30, 2015.

131. For Member, Eastern West Virginia Community and Technical College Board of Governors, Junior Helmick, Parsons, Tucker County, for the term ending June 30, 2016.

132. For Member, Eastern West Virginia Community and Technical College Board of Governors, Greg Greenwalt, Moorefield, Hardy County, for the term ending June 30, 2016.

133. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Kim Nuckles, Charleston, Kanawha County, for the term ending January 31, 2015.

134. For Member, Board of Dentistry, Byron Black, Ripley, Jackson County, for the term ending June 30, 2019.

135. For Member, Board of Registration for Professional Engineers, Edward Robinson, Charleston, Kanawha County, for the term ending June 30, 2019.

136. For Member, Board of Medicine, Ahmed Faheem, Daniels, Raleigh County, for the term ending September 30, 2019.

137. For Member, Board of Medicine, Cathy Funk, Martinsburg, Berkeley County, for the term ending September 30, 2019.

138. For Member, Board of Medicine, Mustafa Rahim, Beckley, Raleigh County, for the term ending September 30, 2019.

139. For Member, Board of Directors of the West Virginia United Health System, William Stone, Danville, Boone County, for the term ending October 15, 2020.

140. For Member, Board of Directors of the West Virginia United Health System, Jose Sartarelli, Morgantown, Monongalia County, for the term ending October 15, 2020.

141. For Director, Division of Protective Services, Kevin J. Foreman, Elkview, Kanawha County, to serve at the will and pleasure of the Governor.

142. For Member, Children's Health Insurance Plan Board, Kellie Wooten-Willis, Logan, Logan County, for the term ending June 30, 2016.

143. For Member, West Liberty University Board of Governors, Patrick Ford, Weirton, Hancock County, for the term ending June 30, 2017.

144. For Member, Northern Community College Board of Governors, H. Brann Altmeyer, Wheeling, Ohio County, for the term ending June 30, 2018.

145. For Member, Northern Community College Board of Governors, Christin Byrum, Wheeling, Ohio County, for the term ending June 30, 2018.

146. For Member, Northern Community College Board of Governors, Jonathon H. Greer, Wheeling, Ohio County, for the term ending June 30, 2016.

147. For Member, New River Community and Technical College Board of Governors, Albert A. Martine III, Daniels, Raleigh County, for the term ending June 30, 2018.

148. For Member, New River Community and Technical College Board of Governors, Tom Lemke, Daniels, Raleigh County, for the term ending June 30, 2016.

149. For Member, Public Service Commission, The Honorable Brooks F. McCabe, Jr., Charleston, Kanawha County, for the term ending June 30, 2015.

150. For Member, Board of Risk and Insurance Management, Bruce Martin, Fairmont, Marion County, for the term ending June 30, 2018.

151. For Member, West Virginia University – Parkersburg Board of Governors, John Denbigh, Spencer, Roane County, for the term ending June 30, 2018.

152. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Eva Hallis, Charleston, Kanawha County, for the term ending June 30, 2016.

153. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Tuanya Layton, Charleston, Kanawha County, for the term ending June 30, 2016.

154. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Jamie S. Browning, West Logan, Logan County, for the term ending June 30, 2017.

155. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Howard W. Lafferty, Charleston, Kanawha County, for the term ending June 30, 2015.

156. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Tonya Painter, Fairlea, Greenbrier County, for the term ending June 30, 2015.

157. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Kristi Justice, St. Albans, Kanawha County, for the term ending June 30, 2017.

158. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Paul H. Blom, Barboursville, Cabell County, for the term ending June 30, 2017.

159. For Director, Division of Natural Resources, Robert A. Fala, Chapmanville, Logan County, for the term ending December 31, 2018.

160. For Commissioner, Division of Motor Vehicles, Patricia S. Reed, Beckley, Raleigh County, to serve at the will and pleasure of the Governor.

161. For Member, State Personnel Board, Erica Mani, Charleston, Kanawha County, for the term ending June 30, 2018.

162. For Member, Ohio River Valley Water Sanitation Commission, David Flannery, Charleston, Kanawha County, for the term ending June 30, 2020.

163. For Member, Property Valuation and Training Procedures Commission, Jason Nettles, Grantsville, Calhoun County, for the term ending June 30, 2018.

164. For Member, Property Valuation and Training Procedures Commission, Kurt A. Donaldson, Morgantown, Monongalia County, for the term ending June 30, 2018.

165. For Member, Property Valuation and Training Procedures Commission, Mickey Brown, Madison, Boone County, for the term ending June 30, 2018.

166. For Member, Property Valuation and Training Procedures Commission, Calvin A. Kent, Huntington, Cabell County, for the term ending June 30, 2018.

167. For Member, Property Valuation and Training Procedures Commission, Janice LaRue, Piedmont, Mineral County, for the term ending June 30, 2018.

168. For Member, Archives and History Commission, Robert Conte, Union, Monroe County, for the term ending June 30, 2017.

169. For Member, Archives and History Commission, Joan Walker, Hedgesville, Berkeley County, for the term ending June 30, 2017.

170. For Member, Archives and History Commission, Rebecca Frye, Martinsburg, Berkeley County, for the term ending June 30, 2017.

171. For Member, Archives and History Commission, Bill Richardson, Williamson, Mingo County, for the term ending June 30, 2017.

172. For Member, Archives and History Commission, Harold M. Forbes, Morgantown, Monongalia County, for the term ending June 30, 2016.

173. For Member, Archives and History Commission, Keven Walker, Martinsburg, Berkeley County, for the term ending June 30, 2016.

174. For Member, Archives and History Commission, Melissa Bingmann, Morgantown, Monongalia County, for the term ending June 30, 2015.

175. For Member, Archives and History Commission, Nathan J. Randolph, Huntington, Cabell County, for the term ending June 30, 2017.

176. For Member, Board of Education, Beverly E. Kingery, South Charleston, Kanawha County, for the term ending November 4, 2022.

177. For Member, Board of Education, James S. Wilson, Glen Dale, Marshall County, for the term ending November 4, 2023.

178. For Member, Archives and History Commission, Victor Greco, Wheeling, Ohio County, for the term ending June 30, 2015.

179. For Member, Archives and History Commission, Charles Ledbetter, Scott Depot, Putnam County, for the term ending June 30, 2015.

180. For Member, Municipal Pensions Oversight Board, Jason M. Matthews, Parkersburg, Wood County, for the term ending January 1, 2018.

181. For Member, Motor Vehicle Dealers Advisory Board, John Jenkins, Buckhannon, Upshur County, for the term ending June 30, 2017.

182. For Member, Motor Vehicle Dealers Advisory Board, Wally Thornhill, Pecks Mill, Logan County, for the term ending June 30, 2015.

183. For Member, Marshall University Board of Governors, Michael Sellards, Huntington, Cabell County, for the term ending June 30, 2018.

184. For Member, Marshall University Board of Governors, The Honorable Oshel B. Craigo, Winfield, Putnam County, for the term ending June 30, 2018.

185. For Member, Marshall University Board of Governors, Joseph McDonie, Milton, Cabell County, for the term ending June 30, 2018.

186. For Member, Regional Jail and Correctional Facility Authority, Steve Deweese, Winfield, Putnam County, for the term ending June 30, 2015.

187. For Member, Regional Jail and Correctional Facility Authority, Marshall Long, Princeton, Mercer County, for the term ending June 30, 2017.

188. For Member, Mountwest Community and Technical College Board of Governors, Thomas Gibson, Kenova, Wayne County, for the term ending June 30, 2018.

189. For Member, Mountwest Community and Technical College Board of Governors, Jeffrey D. Goad, Barboursville, Cabell County, for the term ending June 30, 2018.

190. For Member, Mountwest Community and Technical College Board of Governors, Matthew W. Deerfield, Prichard, Wayne County, for the term ending June 30, 2018.

191. For Member, Board of Hearing Aid Dealers, George Evans, Parkersburg, Wood County, for the term ending July 13, 2017.

192. For Member, School of Osteopathic Medicine Board of Governors, Greg A. Burton, Charleston, Kanawha County, for the term ending June 30, 2018.

193. For Member, School of Osteopathic Medicine Board of Governors, J. Fred Earley II, Parkersburg, Wood County, for the term ending June 30, 2017.

194. For Member, State Conservation Committee, Eli McCoy, Charleston, Kanawha County, for the term ending September 6, 2017.

195. For Member, State Conservation Committee, Angela Rosser, Charleston, Kanawha County, for the term ending September 6, 2015.

196. For Member, State Conservation Committee, Boyd Meadows, Milton, Cabell County, for the term ending September 6, 2018.

197. For Member, State Conservation Committee, Tom Warner, Beverly, Randolph County, for the term ending September 6, 2018.

198. For Member, Fire Commission, Carl Sizemore, Mineral Wells, Wood County, for the term ending June 30, 2018.

199. For Member, Fire Commission, Virgil White, Charleston, Kanawha County, for the term ending June 30, 2017.

200. For Member, Fire Commission, Grant Gunnoe, Winfield, Putnam County, for the term ending June 30, 2019.

201. For Member, Natural Resources Commission, Gregory K. Burnette, Elkview, Kanawha County, for the term ending June 30, 2021.

202. For Member, Board of Barbers and Cosmetologists, Khuong Nguyen, Charles Town, Jefferson County, for the term ending June 30, 2018.

203. For Member, Board of Barbers and Cosmetologists, Sean Stevens, Beckley, Raleigh County, for the term ending June 30, 2019.

204. For Member, West Virginia University – Parkersburg Board of Governors, Cheryl Donohoe, Ripley, Jackson County, for the term ending June 30, 2018.

205. For Member, West Virginia University – Parkersburg Board of Governors, Sam Winans, Vienna, Wood County, for the term ending June 30, 2018.

206. For Member, West Virginia University – Parkersburg Board of Governors, Steve Hardman, Parkersburg, Wood County, for the term ending June 30, 2018.

207. For Member, West Virginia University – Parkersburg Board of Governors, Donna M. Smith, Vienna, Wood County, for the term ending June 30, 2016.

208. For Member, Housing Development Fund, Julia Elbon, Elkins, Randolph County, for the term ending October 30, 2018.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,

Earl Ray Tomblin,
Governor.

Which communication was received and referred to the Committee on Confirmations and incorporated with the legislative nomination received earlier; all to be considered as a special order of business for Friday, March 13, 2015, at 11 a.m.

Senator Cole (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 11, 2015

The Honorable William P. Cole III
President, West Virginia Senate
State Capitol
Charleston, West Virginia

Dear President Cole:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I again disapprove and return Enrolled Senate Bill No. 389 for technical reasons.

The bill's title is deficient. The title states that the bill is amending and reenacting W. Va. Code §30-13-18, but does not provide that it is also amending and reenacting §30-13-13a and §30-13-17. For this reason, I disapprove and return the bill. I urge the Legislature to correct this technical issue, and to return the bill to my desk for signature.

Sincerely,

Earl Ray Tomblin,
Governor.

cc: The Honorable Tim Armstead
The Honorable Natalie E. Tennant

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

Enr. Senate Bill No. 389, Relating to Board of Registration for Professional Engineers license renewals and reinstatements.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Senate Bill No. 389, the same was put and prevailed.

On motion of Senator Blair, the following amendment to the title of the bill was reported by the Clerk and adopted:

Enr. Senate Bill No. 389—A Bill to amend and reenact §30-13-13a, §30-13-17 and §30-13-18 of the Code of West Virginia, 1931, as amended, all relating to the Board of Registration for Professional Engineers; changing time period for renewal from fiscal year to calendar year; authorizing renewal notification by mail or electronically; providing for reinstatement of nonrenewed licenses; authorizing annual or biennial renewal periods; providing a late fee; and requiring emergency rules related to renewal and reinstatement.

The question now being on the passage of the bill, disapproved by the Governor and amended by the Senate.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. S. B. No. 389) passed with its title, as amended, as a result of the objections of the Governor.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. S. B. No. 389) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2233, Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2233) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2263, Providing guidance for prosecuting attorneys in cases involving abused and neglected children.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2263) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2395, Storm Scammer Consumer Protection Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2395) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2585, Requiring leaseholders of mineral interests to notify the owners of the minerals when there is an assignment of the lease to another party.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2585) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2636, Exempting information contained in a concealed weapon permit application from the Freedom of Information Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Camichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2636) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2766, Expiring funds to the unappropriated balance in the State Fund, General Revenue from the Joint Expenses, and from the Department of Health and Human Resources.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

Eng. House Bill No. 3021, Making a supplementary appropriation to the Department of Health and Human Resources.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

And,

Eng. House Bill No. 3022, Making a supplementary appropriation to the Treasurer's Office, to the State Board of Education, to Mountwest Community and Technical College, to the West Virginia School of Osteopathic Medicine, and to West Virginia State University.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Mike Hall,
Chair.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2769, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue from various agencies.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

Eng. Com. Sub. for House Bill No. 2772, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, from the Auditor's Office - Purchasing Card Administration Fund.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

And,

Eng. House Bill No. 3020, Making a supplementary appropriation to the Department of Military Affairs and Public Safety, Division of Corrections.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mike Hall,
Chair.

The Senate proceeded to the sixth order of business.

Petitions

Senator Boso presented a petition from Dinah Mitchell and numerous West Virginia residents, supporting Senate Bill No. 35 (*Permitting carrying of concealed weapons without license*).

Referred to the Committee on Government Organization.

Senator Nohe presented a petition from Ebby Stier and numerous West Virginia residents, opposing Senate Bill No. 337 (*Creating workplace freedom act*).

Referred to the Committee on the Judiciary.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution No. 13, Urging Congress propose balanced budget amendment.

On unfinished business, coming up in regular order, was reported by the Clerk.

On motions of Senators Woelfel and Beach, the following amendments to the resolution were reported by the Clerk and considered simultaneously:

On page one, in the first Whereas clause, after the words “balanced budget amendment” by inserting the words “and an amendment ensuring that corporate entities are not people”;

On page one, in the first Whereas clause, by striking out the words “proposing an amendment” and inserting in lieu thereof the words “proposing amendments”;

On page one, in the first Whereas clause, after the words “appropriate fiscal restraints” by inserting the words “and ensure that corporate entities are not people and do not have the same First Amendment free speech rights as natural persons”;

On page one, in the second Whereas clause, after the words “do not pertain to” by inserting the word “either”;

On page one, in the second Whereas clause, after the word “restraints” by inserting the words “or an amendment ensuring that corporate entities are not people and do not have the same First Amendment free speech rights as natural persons”;

On page two, in the third Whereas clause, after the word “subject” by inserting the words “not set forth in this resolution”;

On page two, after the third Whereas clause, by inserting the following:

“Whereas, This application is to be considered as covering the corporate entity personhood amendment language of the presently outstanding applications following *Citizens United* from other states, including previously adopted applications from Vermont, California, Illinois and New Jersey. This application shall be aggregated with those other applications for the purpose of attaining the two thirds of states necessary to require the calling of a convention for proposing an amendment ensuring that corporate entities are not people and do not have First Amendment free speech rights, but shall not be aggregated with any applications on any other subject not set forth in this resolution; and”;

On page two, in the Resolved clause, after the words “proposing a balanced budget amendment” by inserting the words “and an amendment to ensure that corporate entities are not people and do not have First Amendment free speech rights, thereby reversing a portion of the *Citizens United v. Federal Election Commission*, 558 U. S. 310 (2010), holding”;

On page two, in the first Further Resolved clause, after the words “balanced budget amendment” by inserting the words “and to ensure that corporate entities are not people and do not have First Amendment free speech rights as natural persons”;

On page three, in the first Further Resolved clause, after the word “restraints” by inserting the words “and to ensure that corporate entities are not people and do not have the same First Amendment free speech rights as natural persons”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Senate Concurrent Resolution No. 13—Urging the Congress of the United States to propose a balanced budget amendment to the United States Constitution and applying to the Congress, pursuant to Article

V of the United States Constitution, to call a convention for proposing a balanced budget amendment and an amendment to ensure that corporate entities are not people and do not have First Amendment free speech rights, thereby reversing a portion of the *Citizens United v. Federal Election Commission*, 558 U. S. 310 (2010), holding.

Following discussion,

The question being on the adoption of the amendments offered by Senators Woelfel and Beach to the resolution, and on this question, Senator Trump demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Kessler, Kirkendoll, Laird, Palumbo, Plymale, Romano, Snyder, Stollings, Unger, Woelfel and Yost—13.

The nays were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Miller, Mullins, Nohe, Prezioso, Sypolt, Takubo, Trump, Walters, Williams and Cole (Mr. President)—21.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendments offered by Senators Woelfel and Beach to the resolution (S.C.R. No. 13) rejected.

The question now being on the adoption of the resolution.

Following extended discussion,

On motion of Senator Carmichael, the Senate recessed for thirty minutes.

Upon expiration of the recess, the Senate reconvened and resumed consideration of

Senate Concurrent Resolution No. 13, Urging Congress propose balanced budget amendment.

The question being on the adoption of the resolution.

Following discussion,

Senator Plymale moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the adoption of Senate Concurrent Resolution No. 13, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 33, Requesting Joint Committee on Government and Finance study undeveloped land preservation and conservation tax credit program.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 48, Requesting Joint Committee on Government and Finance study agreements between county commissions and municipalities regarding demolition of buildings unfit for human habitation.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 59, Requesting Joint Committee on Government and Finance study expansion of outcomes of MU Luke Lee Listening, Language and Learning Lab.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senate Concurrent Resolution No. 61, Requesting DOH name bridge in Harrison County “U. S. Army PFC Nick A. Cavallaro Memorial Bridge”.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

Senate Concurrent Resolution No. 62, Requesting Joint Committee on Government and Finance study racing and gaming industries.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

House Concurrent Resolution No. 31, Declaring the Northern Red Salamander to be the official state amphibian.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill No. 2098, Authorizing those health care professionals to provide services to patients or residents of state-run veterans' facilities without obtaining an authorization to practice.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2098) passed.

The following amendment to the title of the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2098—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-11b; and to amend said code by adding thereto a new section, designated §30-14-12c, all relating to services provided by allopathic and osteopathic physicians in federal veterans' affairs facilities in this state; authorizing allopathic and osteopathic physicians to provide services to patients or residents of state-run veterans' facilities by allowing them to obtain license without the required examination from the appropriate licensing agency of this state; limiting scope of the license to practice only in the state-run veterans' facilities; providing rule-making authority to the appropriate licensing agencies of allopathic and osteopathic physicians; and requiring report to the Legislature.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2139, Relating to employment of retired teachers as substitutes in areas of critical need and shortage for substitutes.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2139) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2139) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2148, Conforming the motor vehicle law of this state to the requirements of section 1405 of the federal Transportation Equity Act for the Twenty-first Century.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2148) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2187, Encouraging public officials to display the national motto on all public property and public buildings.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2187) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2224, Providing that historical reenactors are not violating the provision prohibiting unlawful military organizations.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2224) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. House Bill No. 2224—A Bill to amend and reenact §15-1F-7 of the Code of West Virginia, 1931, as amended, relating to unlawful military organizations; providing that historical reenactors are not violating the provision prohibiting unlawful military organizations; and providing that individuals or groups of individuals who drill, perform or parade at public ceremonies, including funerals, are not violating the provision prohibiting unlawful military organizations.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2224) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2366, Relating generally to the solicitation of minors.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 11, 2015, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the bill was withdrawn.

On motion of Senator Trump, the following amendment to the bill was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; penalties.

(a) Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor ~~known or believed to be~~ who is at

least four years younger than the person using the computer or a person he or she believes to be such a minor, ~~to commit in order to engage in~~ any illegal act proscribed by the provisions of article eight, eight-b, eight-c or eight-d of this chapter, ~~or any felony offense under section four hundred one, article four, chapter sixty-a of this code,~~ is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both.

(b) Any person eighteen years of age or older who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor's or the person believed to be a minor's physical presence with the intent to engage in any sexual activity or conduct with such a minor that is prohibited by law, is guilty of a felony and shall be fined not more than \$25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than thirty years, or both: *Provided*, That subsection (a) of this section shall be deemed a lesser included offense to that created by this subsection.

ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.

§61-8A-4. Use of obscene matter with intent to seduce minor.

Any adult, having knowledge of the character of the matter, who knows or believes that a person is a minor and distributes, offers to distribute or displays by any means any obscene matter to the person who is known or believed to be a minor, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$25,000, or ~~confined~~ imprisoned in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than \$50,000 or ~~confined~~ imprisoned in a state correctional facility for not more than ten years, or both.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. No. 2366), as just amended, was then read a third time.

Pending discussion,

At the request of Senator Kessler, unanimous consent being granted, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar.

Eng. House Bill No. 2370, Increasing the powers of regional councils for governance of regional education service agencies.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2370) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2377, Authorizing State Board of Education to approve certain alternatives with respect to instructional time.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2377) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2461, Relating to delinquency proceedings of insurers.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2461) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2493, Relating to requirements for insurance policies and contracts providing accident and sickness insurance or direct health care services that cover anti-cancer medications.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2493) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2496, Adopting the Interstate Medical Licensure Compact.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2496) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2595, Relating to certificates of need for the development of health facilities in this state.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2595) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2608, Cleaning up redundant language in the statute relating to misdemeanor offenses for violation of protective orders.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2608) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2625, Continuing the current hazardous waste management fee.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2625) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2662, Eye Care Consumer Protection Law.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2662) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2733, Removing certain combinations of drugs containing hydrocodone from Schedule III of the controlled substances law.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2733) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2780, Enhancing the ability of campus police officers at public colleges to perform their duties.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe,

Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2780) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2793, Relating to exemptions from mandatory school attendance.

On third reading, coming up in regular order, with the unreported Education committee amendments pending, and with the right having been granted on yesterday, Wednesday, March 11, 2015, for further amendments to be received on third reading, was reported by the Clerk.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk and considered simultaneously:

On page six, section one, after line seventy-five, by inserting a new paragraph, to read as follows:

“(B) The person or persons providing home instruction shall submit satisfactory evidence of a high school diploma or equivalent;”;

And,

By relettering the remaining paragraphs.

On motion of Senator Takubo, the following amendment to the Education committee amendments to the bill (Eng. Com. Sub. for H. B. No. 2793) was reported by the Clerk and adopted:

By striking out all of paragraph (B) and inserting in lieu thereof a new paragraph, designated paragraph (B), to read as follows:

“(B) With the notice required in paragraph (A) of this subdivision, the person or persons providing home instruction shall submit satisfactory evidence of a high school diploma from a public school, private school or homeschool or the equivalent;”.

The question now being on the adoption of the Education committee amendments to the bill, as amended, the same was put and prevailed.

The following amendment to the bill (Eng. Com. Sub. for H. B. No. 2793), from the Committee on Education, was next reported by the Clerk:

On page six, section one, line eighty-three, after the word “year” by inserting the words “and submit the results to the county superintendent”.

On motion of Senator Takubo, the following amendment to the Education committee amendment to the bill was next reported by the Clerk:

By striking out the words “and submit the results to the county superintendent” and inserting in lieu thereof the words “pursuant to this paragraph. The academic assessment shall be satisfied”.

Following extended discussion,

Senator Snyder moved that Senator Takubo's amendment to the Education committee amendment to the bill be tabled.

Following a point of inquiry to the President, with resultant response thereto,

The question being on the adoption of Senator Snyder's aforestated motion, and on this question, Senator Plymale demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—15.

The nays were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

Absent: Facemire—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Snyder's motion to table had not prevailed.

The question now being on the adoption of Senator Takubo's amendment to the Education committee amendment to the bill, and on this question, Senator Plymale demanded the yeas and nays.

To which demand, Senator D. Hall objected.

Thereafter, Senator Plymale's demand for a roll call was sustained.

The roll being taken, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

The nays were: Beach, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost-15.

Absent: Facemire-1.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Takubo's amendment to the Education committee amendment to the bill adopted.

The question now being on the adoption of the Education committee amendment to the bill, as amended, the same was put and prevailed.

The following amendments to the bill (Eng. Com. Sub. for H. B. No. 2793), from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page nine, section one, line one hundred twenty-nine, by striking out "(B)" and inserting in lieu thereof "(C)";

And,

On page nine, section one, line one hundred forty-one, by striking out "(B)" and inserting in lieu thereof "(C)".

Having been engrossed, the bill (Eng. Com. Sub. for H. B. No. 2793), as just amended, was then read a third time.

Pending extended discussion,

At the request of Senator Sypolt, unanimous consent being granted, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Engrossed Committee Substitute for House Bill No. 2366, already placed in that position.

Eng. House Bill No. 2797, Changing the term “mentally retarded” to “intellectually disabled”; and changing the term “handicapped” to “disabled”.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2797) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2867, Requiring recommendations for higher education course credit transfer.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2867) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2884, Modifying training and development requirement for certain members of certain higher education boards.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)-33.

The nays were: None.

Absent: Facemire-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2884) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2892, Authorizing certain legislative rules regarding higher education.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2892) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2892) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill No. 2931, Adding drugs to the classification of schedule I drugs.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2931) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2939, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire-1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2939) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2939—A Bill to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-803 and §49-2-812 of said code, all relating to requirements for mandatory forthwith reporting by school personnel of certain sexual offenses against children; defining terms such as forthwith; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; modifying criminal penalties for failure to report; and requiring school administrators to provide written notice of reporting requirement to employees and to obtain and preserve signed acknowledgments thereof.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2976, Expanding the eligible master's and doctoral level programs for which a Nursing Scholarship may be awarded.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt,

Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2976) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Facemire—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2976) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill No. 233, Budget Bill.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Eng. Com. Sub. for House Bill No. 2005, Relating to alternative programs for the education of teachers.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page nineteen, section one-a, lines ten through twelve, by striking out the following: Under the State Board's supervision, county boards may offer these programs without a partner pursuant to subsection (d), section one-b of this article.;

On page twenty, section one-a, after line thirty-six, by inserting a new subdivision, designated subdivision (3), to read as follows:

“(3) ‘Area of critical need and shortage’ means an opening in an established, existing or newly created position which has been posted at least two times in accordance with section seven-a, article four of this chapter and for which no fully qualified applicant has been employed;”;

And by renumbering the remaining subdivisions;

On page thirty-eight, section one-c, lines one through three, by striking out all of subsection (a) and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) *Alternative program instruction.* – An alternative program for classroom teachers shall provide, at a minimum, either six credit hours or six staff development hours of instruction in one or more of the following subjects;

On page forty-six, section one-f, lines twenty-four through twenty-six, by striking out all of subdivision (7) and inserting in lieu

thereof a new subdivision, designated subdivision (7), to read as follows:

“(7) Receive from a county superintendent a formal offer of employment in an area of critical need and shortage and by a school or school district that is a member of an approved educational provider;”;

On page forty-six, section one-f, line twenty-nine, after the word “employed” by changing the semicolon to a period and inserting the following: “For the purposes of this section, ‘reasonably indicate’ means an academic major or occupational area the same as or similar to the subject matter to which the alternative program teacher is being hired to teach;”;

On page forty-seven, section one-f, line fifty-five, by striking out the word “including” and inserting in lieu thereof the word “except”;

On page forty-seven, section one-f, line fifty-five, after the word “seniority.” by adding the following: In no event will an alternative program teacher displace a professional educator as defined in section one, article one of this chapter.;

On page fifty-eight, section two-a, lines one hundred twenty-eight and one hundred twenty-nine, by striking out all of subparagraph (B);

And,

By relettering the remaining subparagraph.

The bill (Eng. Com. Sub. for H. B. No. 2005), as amended, was then ordered to third reading.

Eng. House Bill No. 2140, Building governance and leadership capacity of county board during period of state intervention.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2240, Providing that an act of domestic violence or sexual offense by strangling is an aggravated felony offense.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new section, designated §61-2-9d, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9d. Strangulation; definitions; penalties.

(a) As used in this section:

(1) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition;

(2) “Strangle” means knowingly and willfully restricting another person’s air intake or blood flow by the application of pressure on the neck or throat;

(b) Any person who strangles another and thereby causes them bodily injury or thereby to lose consciousness is guilty of a felony and upon conviction thereof shall be confined in a state correctional facility for not less than one year or more than five years fined not more than \$2,500.00, or both.

The bill (Eng. Com. Sub. for H. B. No. 2240), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2466, Exempting valid nonprofit organizations from licensing requirements of the West Virginia Alcoholic Beverage Control Authority during certain events.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-11b. Special license for one-day charitable events; license fee and application; license subject to provisions of article; exceptions.

(a) The commissioner may issue a special one-day license to be designated a Class S1 license for the retail sale of nonintoxicating beer to a duly organized nonprofit corporation, limited liability entity or an association having received federal tax exempt status allowing the sale and serving of nonintoxicating beer when raising money for artistic, athletic, charitable, educational or religious purposes. The special license may be issued for a term no longer than one day. The nonrefundable fee is \$25 for the one-day license. The license application shall contain information the commissioner requires and shall be submitted to the commissioner at least fifteen days prior to the event. Nonintoxicating beer or liquor used during the event may be donated by or purchased from a licensed retailer, distributor, mini-distillery or resident brewer.

(b) A license issued under the provisions of this section 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 allow waivers or exceptions with respect to those provisions, rules or orders as the circumstances of each event requires, 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-four of this article: *Provided, however*, That under no circumstances may the provisions of subdivision (1), (2) or (3), subsection (a), section eighteen of this article be waived or an exception granted with respect thereto.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

A person ~~shall~~ may not:

- (1) Manufacture or sell in this state without a license any alcoholic liquor except as permitted by this article;
- (2) Aid or abet in the manufacture or sale of alcoholic liquor without a license except as permitted by this article;
- (3) Sell without a license any alcoholic liquor other than permitted by this article;
- (4) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or other foreign or deleterious substance or liquid;

(5) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this state;

(6) Advertise any alcoholic liquor in this state except in accordance with the rules and regulations of the commissioner; or

(7) Distribute, deal in, process or use crowns, stamps or seals required under the authority of this chapter, except in accordance with the rules and regulations prescribed by the commissioner.

A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction shall be fined not less than \$50 nor more than \$500, or confined in jail not less than thirty days nor more than one year or both such fine and imprisonment, for the first offense. Upon conviction of a second or subsequent offense, the court may in its discretion impose a penalty of confinement in ~~the penitentiary~~ a state correctional facility for a period not to exceed three years.

An indictment for any first violation of subdivisions (1), (2) and (3) of this section, or any of them, shall be sufficient if in form or effect as follows:

State of West Virginia

County of, to wit:

The Grand Jurors of the State of West Virginia, in and for the body of the County of, upon their oaths present that, on the day of, 1920...., in the said County of, did unlawfully, without a state license and without authorization under the Alcohol Beverage Control Act, manufacture and sell, and aid and abet in the manufacture and sale of a quantity of alcoholic liquor, against the peace and dignity of the state.

Any indictment under this section shall otherwise be in conformity with section one, article nine, chapter sixty-two of the code.

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 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 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 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 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 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 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 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 the retailer to serve complimentary samples of wine in moderate quantities for tasting. ~~Such~~ The 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~~ The 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~~ The special license shall may be issued for ~~a term of~~ no longer than ten consecutive days and the fee therefor ~~shall be~~ is \$250 regardless of the term of the license unless the applicant is the manufacturer of ~~said~~ the 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~~ is \$50 if the event is held on the premises of the winery or farm winery. The application for the license shall contain 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 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 samples for consumption on the premises during the operation of a 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. 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 the premises or area. A wine club licensee under the provisions of this subsection ~~shall be~~ is 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 the license ~~shall be~~ 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 ~~regulation~~ or order provide for certain waivers or exceptions with respect to the provisions, rules ~~regulations~~ or orders as the circumstances of each 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~~ may the provisions of subsection (c) or (d), section twenty of this article be waived ~~nor shall~~ or any exception ~~be~~ granted with respect thereto.

A license issued under the provisions of this subsection and the licensee holding the license 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 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~~ or an 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 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~~ rules promulgated by the commissioner for the purpose of consumption of ~~said the~~ 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~~ The licensees are authorized to keep and maintain on their premises a supply of wine in quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made ~~shall be~~ is 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~~ propose 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 other legislative rules deemed necessary to carry the provisions of the subsections into effect.

(l) The commissioner shall ~~promulgate~~ propose 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 having received federal tax exempt status allowing the sale and serving of wine when raising money for artistic, athletic, charitable, educational or religious purposes. The nonrefundable fee is \$25 for the one-day

license. The license application shall contain information as the commissioner may reasonably require and shall be submitted to the commissioner at least ~~thirty~~ fifteen 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~~ or may ~~any~~ an 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.

(r) (1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, "college stadium" means a facility constructed primarily for the use of a Division I college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer or other Division I sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its 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. The special license may be issued in the name of the National Collegiate

Athletic Association Division I college or university or the name of the primary food and beverage vendor under contract with that college or university. These sales must take place within the confines of the college 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 college or university's express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements 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 the college 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 subsection (c) or (d), section twenty of this article may not be waived, nor ~~shall any~~ may an exception be granted concerning those subsections.

(3) The commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement this subsection.

The bill (Eng. Com. Sub. for H. B. No. 2466), as amended, was then ordered to third reading.

Eng. House Bill No. 2479, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2492, Repealing the requirement that an entity charging admission to view certain closed circuit telecast or subscription television events needs to obtain a permit from the State Athletic Commission.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Blair, as chair of the Committee on Government Organization, and by unanimous consent, the unreported Government Organization committee amendment to the bill was withdrawn.

The bill (Eng. H. B. No. 2492) was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2549, Relating to the preparation and publication of county financial statements.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

On page four, section sixteen, lines forty-five through fifty-one, by striking out all of subsection (e) and inserting in lieu thereof a new subsection, designated subsection (e), to read as follows:

(e) By October 15 of each fiscal year, each county commission shall publish the financial statement as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

The bill (Eng. Com. Sub. for H. B. No. 2549), as amended, was then ordered to third reading.

Eng. House Bill No. 2607, Relating to the violation of interfering with emergency services communications and clarifying penalties.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill No. 2646, Legalizing and regulating the sale and use of fireworks.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §11-12-86 of the Code of West Virginia, 1931, as amended, be repealed; that §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said code be repealed; that said code be amended by adding thereto a new section, designated §9A-1-11b; that §11-17-3 of said code be amended and reenacted; that §16-2-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §16-2-13a; that said code be amended by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13; and that §61-3E-1 and §61-3E-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DEPARTMENT OF VETERANS' AFFAIRS.

§9A-1-11b. Establishment of West Virginia Veterans Program Fund.

There is hereby created in the State Treasury a special revenue fund to be designated and known as the West Virginia Veterans

Program Fund, which shall consist of revenues derived from the assessment of the fireworks safety fee, as provided in section seven, article three-e, chapter twenty-nine of this code, to be administered by the Department of Veterans' Affairs and used for funding veterans' programs. Funds may also be derived from any gift, grant, bequest, endowed fund or donation which may be received by any veterans' program created by statute or from any governmental entity or unit or any person, firm, foundation or corporation.

Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2016, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance remaining in the fund at the end of any fiscal year shall be reappropriated to the next fiscal year.

CHAPTER 11. TAXATION.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

(a) *Tax on cigarettes.* – For the purpose of providing revenue for the General Revenue Fund of the state, an excise tax is hereby levied and imposed on sales of cigarettes at the rate of 55¢ on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article shall be used in computing the amount of tax due under this subsection: *Provided*, That effective July 1, 2015, the excise tax imposed by this subsection shall be at the rate of \$1.05 on each twenty cigarettes or in like ratio on any part thereof: *Provided, however*, That effective July 1, 2016, the excise tax imposed by this subsection shall be at the rate of \$1.55 on each twenty cigarettes or in like ratio on any part thereof: *Provided further*, That during the period of July 1, 2015 to June 30, 2016, notwithstanding any provision of this code to the

contrary, the sum of \$20 million collected shall be dedicated to and paid into the West Virginia Veterans Program Fund created by the provisions of section eleven-b, article one, chapter nine of this code: And provided further, That during the period from July 1, 2016 to June 30, 2017, notwithstanding any provision of this code to the contrary, the sum of \$20 million collected shall be dedicated to and paid into the Consolidated Medical Services Fund, Continuum of Care, for the exclusive purposes of funding controlled substance abuse treatment and facilities: And provided further, That beginning July 1, 2015, and annually thereafter, the sum of \$2 million dollars collected shall be dedicated to and paid into the Fire Protection Fund created in section thirty-three, article three, chapter thirty-three of this code to be distributed annually in equal amounts to all volunteer fire departments to be used in conformity with the provisions of said section.

(b) *Tax on tobacco products other than cigarettes.* – Effective January 1, 2002, an excise tax is hereby levied and imposed on the sale or use of, other than cigarettes, tobacco products at a rate equal to seven percent of the wholesale price of each article or item of tobacco product other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of tax due under this subsection. Revenues received from this tax shall be deposited into the General Revenue Fund.

~~(c) *Effective date.* – The changes set forth herein to this section and section four [§11-17-14] of this article shall become effective the first day of May, two thousand three.~~

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-11. Local board of health; powers and duties.

(a) Each local board of health created, established and operated pursuant to the provisions of this article shall:

(1) Provide the following basic public health services and programs in accordance with state public health performance-based standards:

(i) Community health promotion including assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities and monitoring the progress of community health education services;

(ii) Environmental health protection including the promoting and maintaining of clean and safe air, water, food and facilities and the administering of public health laws as specified by the commissioner as to general sanitation, the sanitation of public drinking water, sewage and wastewater, food and milk, and the sanitation of housing, institutions, and recreation; and

(iii) Communicable or reportable disease prevention and control including disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable diseases;

(2) Appoint a local health officer to serve at the will and pleasure of the local board of health with approval of the commissioner;

(3) Submit a general plan of operation to the commissioner for approval, if it receives any state or federal money for health purposes. This program plan shall be submitted annually and comply with provisions of the local board of health standards administrative rule;

(4) Provide equipment and facilities for the local health department that are in compliance with federal and state law;

(5) Permit the commissioner to act by and through it, as needed. The commissioner may enforce all public health laws of this state,

the rules and orders of the secretary, any county commission orders or municipal ordinances of the board's service area relating to public health, and the rules and orders of the local board within the service area of a local board. The commissioner may enforce these laws, rules and orders when, in the opinion of the commissioner, a public health emergency exists or when the local board fails or refuses to enforce public health laws and rules necessary to prevent and control the spread of a communicable or reportable disease dangerous to the public health. The expenses incurred shall be charged against the counties or municipalities concerned;

(6) Deposit all moneys and collected fees into an account designated for local board of health purposes. The moneys for a municipal board of health shall be deposited with the municipal treasury in the service area. The moneys for a county board of health shall be deposited with the county treasury in the service area. The moneys for a combined local board of health shall be deposited in an account as designated in the plan of combination: *Provided*, That nothing contained in this subsection is intended to conflict with the provisions of article one, chapter sixteen of this code;

(7) Submit vouchers or other instruments approved by the board and signed by the local health officer or designated representative to the county or municipal treasurer for payment of necessary and reasonable expenditures from the county or municipal public health funds: *Provided*, That a combined local board of health shall draw upon its public health funds account in the manner designated in the plan of combination;

(8) Participate in audits, be in compliance with tax procedures required by the state and annually develop a budget for the next fiscal year;

(9) Perform public health duties assigned by order of a county commission or by municipal ordinance consistent with state public health laws; and

(10) Enforce the public health laws of this state and any other laws of this state applicable to the local board.

(b) Each local board of health created, established and operated pursuant to the provisions of this article may:

(1) Provide primary care services, clinical and categorical programs, and enhanced public health services;

(2) Employ or contract with any technical, administrative, clerical or other persons, to serve as needed and at the will and pleasure of the local board of health. Staff and any contractors providing services to the board shall comply with applicable West Virginia certification and licensure requirements. Eligible staff employed by the board shall be covered by the rules of the Division of Personnel under section six, article ten, chapter twenty-nine of this code. However, any local board of health may, in the alternative and with the consent and approval of the appointing authority, establish and adopt a merit system for its eligible employees. The merit system may be similar to the state merit system and may be established by the local board by its order, subject to the approval of the appointing authority, adopting and making applicable to the local health department all, or any portion of any order, rule, standard, or compensation rate in effect in the state merit system as may be desired and as is properly applicable;

(3) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia state Department of Health and Human Resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation and spread of disease. All rules shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate book as public records;

(4) Accept, receive and receipt for money or property from any federal, state or local governmental agency, from any other public source or from any private source, to be used for public health purposes or for the establishment or construction of public health facilities;

(5) Assess, charge and collect fees for permits and licenses for the provision of public health services: *Provided*, That permits and licenses required for agricultural activities may not be assessed, charged or collected: *Provided, however*, That a local board of health may assess, charge and collect all of the expenses of inspection of the physical plant and facilities of any distributor, producer or pasteurizer of milk whose milk distribution, production or pasteurization facilities are located outside this state but who sells or distributes in the state, or transports, causes or permits to be transported into this state, milk or milk products for resale, use or consumption in the state and in the service area of the local board of health. A local board of health may not assess, charge and collect the expenses of inspection if the physical plant and facilities are regularly inspected by another agency of this state or its governmental subdivisions or by an agency of another state or its governmental subdivisions certified as an approved inspection agency by the commissioner. No more than one local board of health may act as the regular inspection agency of the physical plant and facilities; when two or more include an inspection of the physical plant and facilities in a regular schedule, the commissioner shall designate one as the regular inspection agency;

(6) Assess, charge and collect fees for services provided by the local health department: *Provided*, That fees for services shall be submitted to and approved by the commissioner;

(7) Contract for payment with any municipality, county or Board of Education for the provision of local health services or for the use of public health facilities. Any contract shall be in writing and permit provision of services or use of facilities for a period not to

exceed one fiscal year. The written contract may include provisions for annual renewal by agreement of the parties; and

(8) Retain and make available child safety car seats, collect rental and security deposit fees for the expenses of retaining and making available child safety car seats, and conduct public education activities concerning the use and preventing the misuse of child safety car seats: *Provided*, That this subsection is not intended to conflict with the provisions of section forty-six, article fifteen, chapter seventeen-c of this code: *Provided, however*, That any local board of health offering a child safety car seat program or employee or agent of a local board of health is immune from civil or criminal liability in any action relating to the improper use, malfunction or inadequate maintenance of the child safety car seat and in any action relating to the improper placement, maintenance or securing of a child in a child safety car seat.

(9) In consultation with the State Fire Marshal, develop for distribution to the general public a consumer fireworks safety program in the light of the changes made to the types of fireworks available for sale in this state enacted during the 2015 regular session of the Legislature.

(c) The local boards of health are charged with protecting the health and safety, as well as promoting the interests of the citizens of West Virginia. All state funds appropriated by the Legislature for the benefit of local boards of health shall be used for provision of basic public health services.

§16-2-13a. Requiring certain facilities to provide for smoking and nonsmoking sections.

(a) Notwithstanding any provision of law to the contrary, any operational veteran's organization exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code or any facility holding a valid racetrack video lottery license granted by the

West Virginia Lottery Commission pursuant to article twenty-two-a, chapter twenty-nine of the code may allow smoking in such facility, but shall provide a smoking and nonsmoking section if smoking is allowed.

(b) A facility holding a valid racetrack video lottery license granted by the West Virginia Lottery Commission pursuant to article twenty-two-a, chapter twenty-nine of this code must have:

(1) A permanent ventilation system that ensures a minimum air exchange of six times per hour throughout the indoor space and a minimum air exchange of twelve times per hour in the indoor space that serves food, unless the food space is designated nonsmoking;

(2) A smoking area restricted to persons twenty-one years of age or older; and

(3) At least ten percent of the indoor space of the area designated a nonsmoking area.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-1. Unlawful acts.

It is unlawful for a person to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

§29-3E-2. Definitions.

As used in this article:

(1) “Agricultural and wildlife fireworks” means fireworks devices distributed to farmers, ranchers and growers through a wildlife

management program administered by the United States Department of the Interior or the Department of Natural Resources of this state;

(2) “APA Standard 87-1” means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;

(3) “Articles pyrotechnic” means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R. §172.101 (2014);

(4) “Consumer fireworks” means small fireworks devices that are designed to produce visible effects by combustion and that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties and toy caps;

(5) “Consumer fireworks certificate” means a certificate issued under section five of this article;

(6) “Display fireworks” means large fireworks to be used solely by professional pyrotechnicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333, UN0334 or UN0335 under 49 C.F.R. §172.101 (2014);

(7) “Distributor” means a person who sells fireworks to wholesalers and retailers for resale;

(8) “Division 1.3 explosive” means that term as defined in 49 C.F.R. §173.50 (2014);

(9) “Division 1.4 explosive” means that term as defined in 49 C.F.R. §173.50 (2014);

(10) “Explosive composition” means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited;

(11) “Fire marshal” means the State Fire Marshal;

(12) “Firework” or “fireworks” means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties and toy caps and model rockets;

(13) “Interstate wholesaler” means a person who is engaged in interstate commerce selling fireworks;

(14) “Model rocket” means that term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry”;

(15) “New explosive” means that term as defined in 49 C.F.R. §173.56 (2014);

(16) “NFPA 1123” means that term as defined in National Fire Protection Association Standard 1123, “Code for Fireworks Display”.

(17) “NFPA 1124” means that term as defined in National Fire Protection Association Standard 1124, “Code for the Manufacture,

Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles”, 2006 Edition.

(18) “NFPA 1126” means that term as defined in National Fire Protection Association Standard 1126, “Standard for the Use of Pyrotechnics Before a Proximate Audience”.

(19) “Novelties” means that term as defined under APA Standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices;

(20) “Person” means an individual, or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation, or any other group or combination acting as a unit;

(21) “Pyrotechnic composition” means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. A pyrotechnic composition will not explode upon ignition unless severely confined;

(22) “Retailer” means a person who purchases consumer fireworks for resale to consumers;

(23) “Sparkling devices” means “ground or handheld sparkling devices” as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;

(24) “Special effects” means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production or live entertainment;

(25) “Temporary facility” means that term as defined in NFPA 1124;

(26) “Toy caps” means that term as defined under APA 87-1, section 3.3; and

(27) “Wholesaler” means any person who sells consumer fireworks to a retailer or any other person for resale and any person who sells articles of pyrotechnics, display fireworks and special effects to a person licensed to possess and use those devices.

§29-3E-3. Production or transportation of fireworks.

A person may produce or transport a firework that is a new explosive and that is either a division 1.3 explosive or division 1.4 explosive if the person first meets the requirements of 49 C.F.R. §173.56(2)(j) (2014).

§29-3E-4. Sparkling devices and novelties registration required.

(a) A person may not sell sparkling devices, novelties or toy caps without being registered with the State Fire Marshal.

(b) To be registered with the Fire Marshal, the retailer shall:

(1) Submit an application to the Fire Marshal;

(2) Provide a copy of his or her current business registration certificate or his or her certificate to sell sparklers and novelties issued by the State Tax Commission;

(3) Pay the required fee; and

(4) Provide other information as the Fire Marshal may require by legislative rule.

(c) A registration is valid for the calendar year or any fraction thereof and expires on December 31 of each year.

(d) A registration is not transferable.

(e) A person shall post the registration in a conspicuous place at the location of the business.

(f) A separate registration is required for each location.

(g) The fee required in subdivision (3), subsection (b) of this section shall be \$100 per retail location.

(h) The fee assessed by this section shall be retained by the Fire Marshal and expended to offset costs incurred in performing the duties imposed by the provisions of this code.

(i) The requirements of NFPA 1124 do not apply to a person only selling sparkling devices, novelties or toy caps.

§29-3E-5. Consumer fireworks certificate required.

(a) A retailer may not sell consumer fireworks unless the retailer is certified under this article.

(b) To be certified to sell consumer fireworks a retailer shall:

(1) Submit an application to the Fire Marshal;

(2) Provide a copy of his or her current business registration certificate;

(3) Pay the required fee;

(4) Provide proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage

limits of \$1 million to cover losses, damages or injuries that might result of the license selling consumer fireworks.

(5) Provide other information as the Fire Marshal may require by legislative rule.

(c) A consumer fireworks certificate is valid through December 31 of each year or any fraction thereof.

(d) A consumer fireworks certificate is not transferable.

(e) A retailer shall post the certificate in a conspicuous place at the location of the business.

(f) A separate certificate is required for each location of the business.

(g) A certificate holder may also sell sparkling devices and novelties at the same location without additionally obtaining a sparkling devices and novelties registration.

(h) A retailer who sells consumer fireworks shall comply with the regulations provided in NFPA 1124. The State Fire Marshal may, by legislative rule, add to the regulations established in NFPA 1124.

(i) The fees required in subdivision (3), subsection (b) of this section shall be assessed as follows:

(1) Temporary facility sales - \$500

(2) Retail stores and consumer fireworks retail sales facilities - \$1,000

(j) The fees assessed by this section shall be retained by the Fire Marshal and expended to offset the costs incurred by the duties imposed by the provisions of this code.

(k) Consumer fireworks may only be offered for sale at the following locations:

(1) In temporary facilities located on parking lots of operational veterans organizations exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code;

(2) In temporary facilities located on parking lots of licensed retail stores which offer general merchandise for sale and said stores are occupied;

(3) In temporary facilities located on parking lots of facilities holding a valid racetrack video lottery license granted by the West Virginia Lottery Commission pursuant to article twenty-two-a, chapter twenty-nine of this code; and

(4) In permanent structures occupied and operated as licensed retail stores or as a consumer fireworks retail sales facility: *Provided*, That facilities referenced in this subdivision meet the requirements for such structures set forth in NFPA 1124.

§29-3E-6. Required permit for public fireworks display.

(a) A municipality, county, fair association, amusement park and other organizations shall have a permit to present a supervised display of fireworks from the Fire Marshal.

(b) To receive a permit, a municipality, fair association, amusement park and other organizations shall:

(1) Submit an application to the Fire Marshal;

(2) Pay the required fee;

(3) Furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the person or an employee thereof, in the

amount, character and form as the Fire Marshal determines to be necessary for the protection of the public; and

(4) Provide any other information as the Fire Marshal may require by legislative rule.

(c) The Fire Marshal may require approval of the local police and fire authorities of the community where the display is proposed to be held.

(d) A permit is not transferable.

(e) The display shall be handled by a competent operator licensed or certified as to competency by the Fire Marshal and shall be of such composition, character, and so located, discharged or fired so as to be safe in the opinion of the chief of the fire department serving the community or area where such display is to be held.

(f) The permittee shall require a bond from the licensee in a sum not less than \$1,000 conditioned on compliance with the provisions of this article and the rules of the Fire Marshal except where the licensee is an insured government entity.

§29-3E-7. Fireworks safety fee; administration, tax crimes, collections, remittances, deposits, distributions, rules.

(a) In addition to the sales tax, a fireworks safety fee of ten percent of all sales is levied on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the provisions of this section. The fee computation under this section shall be carried to the third decimal place, and the fee rounded up to the next whole cent whenever the third decimal place is greater than four, and rounded down to the lower whole cent whenever the third decimal place is four or less.

(b) A person who purchases consumer fireworks in a retail transaction shall pay to the retailer the amount of the fee levied by this section, which fee is added to and constitutes a part of the sale

price, and is collectible by the retailer who shall account to the state for all fees paid by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees paid by a purchaser, then the retailer is personally liable for the payment of the fee to the state.

(c) A retailer shall remit the to the State Tax Commissioner no later than twenty days after the end of each preceding month all moneys collected for such preceding month, pursuant to the requirements of this section, and shall report such collections on forms and in the manner prescribed by the State Tax Commissioner.

(d) All moneys so remitted, net of refunds and adjustments, shall be paid by the Tax Commissioner into the State General Fund, and the amount thereof shall be distributed and paid quarterly, by the Treasurer, into the funds and to the distributees specified in this subsection.

One hundred percent of fireworks safety fee moneys, net of refunds and adjustments shall be deposited in the West Virginia Veterans Program Fund, established in section eleven-b, article one, chapter nine-a of this code, for expenditure pursuant to the provisions of that section.

(e) Each and every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code, applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

(f) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

(g) The State Tax Commissioner may make all necessary rules and regulations for the fees to which this article applies as provided

in the State Administrative Procedures Act in chapter twenty-nine-a of this code.

(h) Notwithstanding any other provision of this code to the contrary, the State Tax Commissioner may deduct and retain one percent from each payment into the General Fund, as provided in this section, for the benefit of his or her office for general tax administration, from which expenditures are permitted from collections without appropriation by the Legislature.

§29-3E-8. Rule-making authority.

(a) The Fire Marshal may propose emergency rules and shall promulgate legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Adopting by reference the 2006 edition of APA Standard 87-1;

(2) Adopting by reference the most recent edition of NFPA 1123, code for fireworks display;

(3) Adopting by reference the most recent edition of NFPA 1124, code for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnic articles;

(4) Adopting by reference the most recent edition of NFPA 1126, standard for the use of pyrotechnics before a proximate audience, as promulgated by the State Fire Commission;

(5) Procedures for the issuance and renewal of a registration, certificate and permit;

(6) A fee schedule;

(7) Establishing insurance or bond requirements;

(8) Establishing additional criteria for the granting of a registration, certificate or permit under this article; and

(9) Registration of manufacturers, wholesalers and distributors.

§29-3E-9. Exemptions from article.

This article does not prohibit any of the following:

(1) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination;

(2) The use of agricultural and wildlife fireworks;

(3) The sale or use of blank cartridges for a theatrical performance, use by military organizations or signal or ceremonial purposes in athletics or sports; or

(4) The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau of Alcohol, Tobacco, Firearms and Explosives of the United States Department of Justice and the Fire Marshal.

§29-3E-10. Local municipalities' regulation of consumer fireworks.

This article does not affect the right of the governing body of a municipality to prohibit the use of consumer fireworks within its boundaries.

§29-3E-11. Violations of this article.

(a) A person may not intentionally ignite, discharge or use consumer fireworks or sparkling devices on public property or private property without the express permission of the owner to do so.

(b) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.

(c) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.

(d) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices while the person:

(1) Is under the influence of alcohol;

(2) Is under the influence of any controlled substance;

(3) Is under the influence of any other drug;

(4) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(5) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more by weight.

(e) A person who is less than eighteen years of age may not purchase, nor offer for sale, consumer fireworks: *Provided*, That a person sixteen years of age or older may purchase, offer for sale and possess sparkling devices and novelties.

§29-3E-12. Criminal penalties.

Any person who violates this article or any rules promulgated pursuant to section eight of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500.

§29-3E-13. Seizures by the Fire Marshal; enforcement of law.

(a) The Fire Marshal shall seize, take, remove and dispose of at public auction or destroy, or cause to be seized, taken or removed

and disposed of at public auction, or destroyed at the expense of the owner, all stocks of fireworks or combustibles offered or exposed for sale, stored or held in violation of this article or legislative rule.

(b) The West Virginia State Police, sheriffs, municipal police officers and other law-enforcement officers shall assist in the enforcement of this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.

As used in this article, unless the context otherwise requires:

(a) “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

“Destructive device” does not include a firearm as such is defined in section two, article seven of this chapter, sparkling devices, novelties or model rockets and their components as defined in this section twenty-three, article three, chapter twenty-nine of this code or fireworks as defined in section two, article three-e, chapter twenty-nine of this code, or high power rockets and their components, as defined in this section.

(b) “Explosive material” means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packaging that an ignition by fire, by

friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detonators, blasting caps and other detonating agents and black or smokeless powders not manufactured or used for lawful sporting purposes. ~~or fireworks defined in section twenty-three, article three, chapter twenty-nine of this code which are not used in violation of this article.~~ Also included are all explosive materials listed annually by the office of the State Fire Marshal and published in the State Register, said publication being hereby mandated.

(c) “High power rocket” means the term as defined in National Fire Protection Association Standard 1127, “Code for High Power Rocketry”.

~~(c)~~ (d) “Hoax bomb” means any device or object that by its design, construction, content or characteristics appears to be, or is represented to be or to contain a destructive device, explosive material or incendiary device as defined in this section, but is, in fact, an inoperative facsimile or imitation of such a destructive device, explosive material or incendiary device.

~~(d)~~ (e) “Incendiary device” means a container containing gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material, having a wick or other substance or device which, if set or ignited, is capable of igniting such gasoline, kerosene, fuel oil, or derivative thereof, or other flammable or combustible material: *Provided*, That no similar device commercially manufactured and used solely for the purpose of illumination shall be deemed to be an incendiary device.

~~(e)~~ (f) “Legal authority” means that right as expressly stated by statute or law.

(g) “Model rocket” means the term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry”.

(f) (h) “Person” shall mean means an individual, corporation, company, association, firm, partnership, society or joint stock company.

(g) (i) “Storage magazine” is defined to mean any building or structure, other than an explosives manufacturing building, approved by the legal authority for the storage of explosive materials.

§61-3E-11. Exemptions.

(a) Unless specifically prohibited by any provision of this code or the laws of the United States, nothing in this article ~~shall prohibit~~ prohibits the authorized manufacture, sale, transportation, distribution, use or possession of any explosive material by any person holding a permit for such issued by the office of the State Fire Marshal. Any person performing a lawful activity pursuant to or regulated by the terms of a permit issued by the Division of Environmental Protection, or any office thereof, ~~shall be~~ is exempt from the provisions of this article.

(b) Unless specifically prohibited by any other provision of this code or the laws of the United States, nothing in this section ~~shall prohibit~~ prohibits the authorized manufacture, transportation, distribution, use or possession of any explosive, destructive device or incendiary device by a member of the Armed Forces or law-enforcement officers whenever such persons are acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation, distribution, use or possession of any explosive material, destructive device or incendiary device to be used solely for lawful scientific research or lawful educational purposes. Any person engaged in otherwise lawful blasting activities failing to obtain a permit or in possession of an expired permit issued by the office of the State Fire Marshal ~~shall not be construed to be~~ is not in violation of the article.

(c) Nothing contained in this article applies to sparkling devices or novelties or to the sale, purchase, possession, use, transportation or storage of fireworks as regulated in article three-e, chapter twenty-nine of this code.

On motion of Senator Stollings, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. No. 2646) was reported by the Clerk and adopted:

On page nine, section thirteen-a, subsection (a), after the word “allowed” by changing the period to a colon and inserting the following proviso: *Provided*, That if the facility allows smoking then each entrance to the facility shall have posted a sign of no less than eighteen inches by twenty-four inches, which says “DANGER: THIS PREMISES CONTAINS TOBACCO SMOKE.”

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. No. 2646), as amended, was then ordered to third reading.

Eng. House Bill No. 2663, Creating the Rehabilitation Services Vending Program Fund.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2674, Making home schooled students eligible for a PROMISE scholarship without taking the GED test.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

On page three, section six, lines thirty-two through thirty-seven, by striking out all of paragraph (A) and inserting in lieu thereof a new paragraph, designated paragraph (A), to read as follows:

“(A) Within two years of ~~graduating from a high school~~ completing a secondary education program in a public, private or home school or within two years of acquiring a general equivalency degree if provided instruction in the home or other approved place pursuant to obtaining a high school equivalency certificate as approved by the commission in compliance with subsection (c), section one, article eight, chapter eighteen of this code; or”.

The bill (Eng. Com. Sub. for H. B. No. 2674), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2811, Deleting obsolete provisions regarding the Physicians’ Mutual Insurance Company.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2878, Creating a one-stop electronic business portal in West Virginia.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 1. GENERAL PROVISIONS.**§31D-1-131. One-stop electronic state business portal.**

(a) The Secretary of State shall establish a web-based business portal to facilitate interaction among businesses and governmental agencies in West Virginia. The web-based business portal shall provide a single point-of-entry to state government for businesses based in the state and for businesses looking to establish a presence in the state. The web-based business portal shall:

(1) Provide guidance to users who want to start, operate or expand a business in the state;

(2) Permit e-payments and provide businesses information about transaction statuses in a paperless environment;

(3) Provide business owners with the option to electronically:

(A) Make application, including the payment of fees, for permits and licenses;

(B) Make application, including the payment of fees, for the renewal of permits and licenses;

(C) File annual reports;

(D) Pay unemployment taxes;

(E) Pay sales and use taxes through a link to the web-based portal maintained by the Tax Division of the Department of Revenue for electronic payment; and

(F) Pay any other fees or remittances that the business owners are subject to under state law;

(4) Provide businesses with downloadable access to all editable forms that are necessary for compliance with all reporting and filing requirements with the following agencies:

(A) West Virginia State Tax Department;

(B) Workforce West Virginia;

(C) West Virginia Division of Labor; and

(D) West Virginia Secretary of State;

(5) Provide for the electronic filing of documents by city, county and local governments: *Provided*, That nothing in this section shall be construed to permit the Secretary of State to receive tax returns, or any other documents required to be filed with the State Tax Commissioner, or to require any taxpayer to file tax returns, or any other documents required to be filed with the State Tax Commissioner, with the Secretary of State. Nor shall the Secretary of State be permitted to receive payments for taxes, including interest, penalties or additions to tax, that are required to be collected by the Tax Commissioner. Notwithstanding the foregoing, the Secretary of State and the Tax Commissioner may develop policies and procedures allowing the Secretary of State to accept applications and renewals, and to collect the appropriate fee, for Business Registration Certificates. *Provided*, further, That nothing in this section shall be construed as requiring the State Tax Commissioner or the Tax Division of the Department of Revenue to disclose confidential taxpayer information to the Secretary of State.

(b) The Secretary of State shall establish a consolidated call center to be staffed by trained and knowledgeable persons who are able to assist businesses obtain information and services relating to compliance with state law.

(c) The Secretary of State shall:

(1) Develop the requirements of the web-based business portal by August 31, 2015, including but not limited to:

(A) Establishing, through cooperative efforts, the standards and requirements necessary to design, build, implement and maintain the business portal; and

(B) Establishing the standards and requirements necessary for a state or local agency to participate in the business portal;

(2) Coordinate and cooperate with the appropriate entities to facilitate the payment by businesses of any payments or remittances made pursuant to this section, via the web-based business portal; and

(3) 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.

The bill (Eng. Com. Sub. for H. B. No. 2878), as amended, was then ordered to third reading.

Pending announcement of meetings of standing committees of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate recessed until 7 p.m. tonight.

Night Session

Upon expiration of the recess, the Senate reconvened.

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill No. 2366, Relating generally to the solicitation of minors.

Having been amended and read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

The question being “Shall Engrossed Committee Substitute for House Bill No. 2366 pass?”

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Acton as to Engrossed Committee Substitute for House Bill No. 2366 having been concluded, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill No. 2793, Relating to exemptions from mandatory school attendance.

Having been amended and read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

The question being “Shall Engrossed Committee Substitute for House Bill No. 2793 pass?”

On motion of Senator Sypolt, the Senate reconsidered its vote by which in earlier proceedings today it adopted the amendment on page six, section one, line eighty-three, by inserting the words “pursuant to this paragraph. The academic assessment shall be satisfied”.

The vote thereon having been reconsidered,

On motion of Senator Sypolt, the Senate reconsidered its vote by which in earlier proceedings today it adopted Senator Takubo’s amendment to the Education committee amendment on page six, section one, line eighty-three.

The vote thereon having been reconsidered,

The question again being on the adoption of Senator Takubo's amendment to the Education committee amendment to the bill (Eng. Com. Sub. for H. B. No. 2793).

Thereafter, at the request of Senator Takubo, and by unanimous consent, Senator Takubo's amendment to the Education committee amendment to the bill was withdrawn.

The question now being on the adoption of the Education committee amendment on page six, section one, line eighty-three, after the word "year" by inserting the words "and submit the results to the county superintendent", the same was put and prevailed.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. No. 2793), as amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Laird—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2793) passed.

At the request of Senator Sypolt, as chair of the Committee on Education, and by unanimous consent, the unreported Education committee amendment to the title of the bill was withdrawn.

On motion of Senator Sypolt, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2793—A Bill to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to exemptions from mandatory school attendance; restoring historical exemption nomenclature; clarifying that parents and guardians of exempt children may not be prosecuted under §18-8-2; clarifying that exempt children are not status offenders; requiring leave of court and probable cause before petition may be filed to deny homeschooling; providing for one-time notice of intent to homeschool and revising notice contents; removing waiting period; providing for notice of termination; providing for notice when children move between counties; modifying provision pertaining to satisfactory evidence of home instructor's diploma; removing requirement to outline a plan of instruction; revising requirements and standards for annual assessments and acceptable progress; removing requirement that parents pay costs of assessments not conducted in public schools; requiring parents to retain copies of assessments; and requiring evaluations for learning disabilities when children fail to make acceptable progress.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Laird—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2793) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Without objection, the Senate returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill No. 574, Relating to liquor sales by distilleries and mini-distilleries.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

Eng. Senate Bill No. 574—A Bill to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-3 and §60-4-3a of said code, all relating to sales of liquor by distilleries and mini-distilleries; providing for fees; reducing percentage of price to be submitted to the alcohol beverage control commissioner; setting a maximum for market zone payments; and raising the production level allowable for mini-distilleries.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Senate Bill No. 574—A Bill to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-3 and §60-4-3a of said code, all relating to sales of liquor by distilleries and mini-distilleries generally; setting fees;

reducing buyback price; setting fees to be paid to the Alcohol Beverage Control Commissioner on sales of liquor to customers from a distillery or a mini-distillery for off-premises consumption; providing that no liquor sold by a distillery or mini-distillery shall be priced less than the price set by the commissioner; setting a maximum for market zone payments; and raising the production level allowable for mini-distilleries.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill, as amended.

Engrossed Senate Bill No. 574, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Laird—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 574) passed with its Senate amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 12, 2015, he had approved **Enr. Committee Substitute for Senate Bill No. 357, Enr.**

Committee Substitute for Senate Bill No. 361 and Enr. House Bill No. 2201.

At the request of Senator Maynard, and by unanimous consent, Senator Maynard addressed the Senate regarding the illnesses of several Senate doorkeepers.

Pending announcement of a meeting of the Committee on Rules at the rostrum,

On motion of Senator Carmichael, the Senate recessed until 8 p.m. tonight.

Upon expiration of the recess, the Senate reconvened and proceeded to the fourth order of business.

Senator Cole (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Concurrent Resolution No. 63 (originating in the Committee on Rules)—Urging the Board of Coal Mine Health and Safety to review and assess the provisions of 36 CSR 4 and to develop a series of comprehensive safety regulations governing the movement of mining equipment underground.

Whereas, The Legislature has enacted Enrolled Committee Substitute for Senate Bill No. 357, titled the Coal Jobs and Safety Act of 2015, during the 2015 Regular Session of the Legislature; and

Whereas, The Legislature has created the Board of Coal Mine Health and Safety; and

Whereas, The Legislature has authorized the Board of Coal Mine Health and Safety to promulgate rules and regulations governing coal mining activities, including rules and regulations governing safety for all mining operations in the State of West Virginia; and

Whereas, The State of West Virginia has the nation's strongest mine safety laws; and

Whereas, These mine safety laws, forged through collaboration among all interested parties, are the model nationwide; and

Whereas, Enrolled Committee Substitute for Senate Bill No. 357 may abrogate certain provisions of 36 CSR 4 governing the movement of mining equipment underground; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of West Virginia hereby urges the Board of Coal Mine Health and Safety to review and assess the provisions of 36 CSR 4 and to develop a series of comprehensive safety regulations governing the movement of mining equipment underground; and, be it

Further Resolved, That the Board of Coal Mine Health and Safety, in consultation with the Director of the Office of Miners' Health, Safety and Training, shall develop and enact these new safety rules and regulations on or before June 2, 2015; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to each member of the Board of Coal Mine Health and Safety and the Director of the Office of Miners' Health, Safety and Training.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

William P. Cole III,
Chairman, ex officio.

At the request of Senator Carmichael, unanimous consent being granted, the resolution (S. C. R. No. 63) contained in the preceding report from the Committee on Rules was taken up for immediate consideration.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Cole (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Resolution No. 57 (originating in the Committee on Rules)—Authorizing the Senate Committee on Confirmations to meet and be paid during interims between regular sessions of the Eighty-Second Legislature.

Whereas, Section one, article one, chapter four of the Code of West Virginia, 1931, as amended, provides that either house of the Legislature may, by resolution, direct any select committee unique to that house or any standing committee of that house and created by it by rule, motion or resolution to meet between regular sessions of the Legislature; and

Whereas, The West Virginia Senate is vested with the authority, under sections eight and nine, article VII of the Constitution of West Virginia, to advise and consent to certain gubernatorial nominations and certain other nominations as determined by law; and

Whereas, The Committee on Confirmations is a standing committee of the Senate with authority to make recommendations and report to the Senate with respect to such nominations; therefore, be it

Resolved by the Senate:

That the Senate hereby authorizes the Senate Committee on Confirmations to meet and be paid during interims between regular sessions of the Eighty-Second Legislature; and, be it

Further Resolved, That the Committee on Confirmations is hereby authorized to meet at times subject to the approval of the presiding officer of the Senate; and, be it

Further Resolved, That the purpose of any such meetings would relate to gathering of information regarding prospective matters involving duties of the Senate related to advice and consent as to nominations; and, be it

Further Resolved, That members of such committee are hereby authorized by the Senate Committee on Rules to receive payment of travel and interim expenses and other compensation as provided by law.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

William P. Cole III,
Chairman, ex officio.

At the request of Senator Carmichael, unanimous consent being granted, the resolution (S. R. No. 57) contained in the preceding report from the Committee on Rules was taken up for immediate consideration.

The question being on the adoption of the resolution, the same was put and prevailed.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2266, Relating to the publication requirements of the administration of estates.

With an amendment from the Committee on the Judiciary pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2266) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2571, Creating a fund for pothole repair contributed to by private businesses or entities.

Eng. House Bill No. 2877, Relating to electronic filing of tax returns and electronic funds transfers in payment of taxes.

And,

Eng. Com. Sub. for House Bill No. 3006, Relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. No. 2571, Eng. H. B. No. 2877 and Eng. Com. Sub. for H. B. No. 3006) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. House Bill No. 2598, Ensuring that teachers of students with disabilities receive complete information about the school's plan for accommodating the child's disabilities.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2598) contained in the preceding

report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill No. 2664, Creating “Andrea and Willy’s Law”; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. No. 2664) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill No. 2688, Providing for the unitization of interests in drilling units in connection with all horizontal oil or gas wells.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2688) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2810, Implementing the West Virginia Property Rescue Initiative to reduce the number of properties posing a threat to public health and safety.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 6, 2015;

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,
Chair.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2840, Providing an alternative plan to make up lost days of instruction.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2840) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2934, Repealing the common core standards.

With an amendment from the Committee on Education pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 9, 2015;

And reports the same back with the recommendation that it do pass as amended by the Committee on Education to which the bill was first referred.

Respectfully submitted,

Mike Hall,
Chair.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator M. Hall.

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senator M. Hall were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules and a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Friday, March 13, 2015, at 11 a.m.

FRIDAY, MARCH 13, 2015

The Senate met at 11 a.m.

(Senator Cole, Mr. President, in the Chair.)

Prayer was offered by Pastor Bob Alderman, First Baptist Church of Rio Grande City, Rio Grande City, Texas.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Jeff Mullins, a senator from the ninth district.

Pending the reading of the Journal of Thursday, March 12, 2015,

On motion of Senator Stollings, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

On motion of Senator Carmichael, the Senate recessed for five minutes to permit Tori Badawey to address the Senate on behalf of the Judith A. Herndon Fellowship Program.

Upon expiration of the recess, the Senate reconvened and proceeded to the fourth order of business.

Senator Boley, from the Committee on Confirmations, submitted the following report, which was received:

Your Committee on Confirmations has had under consideration

Senate Executive Message No. 2, dated March 2, 2015, requesting confirmation by the Senate of the nominations mentioned therein. The following list of names from Executive Message No. 2 is submitted:

1. For Member, Parole Board, Carol Greene, Huntington, Cabell County, for the term ending June 30, 2019.
2. For Member, Board of Examiners in Counseling, Guy Gage III, Bridgeport, Harrison County, for the term ending June 30, 2014.
3. For Member, Motor Vehicle Dealers Advisory Board, Kelly Smith, Charleston, Kanawha County, for the term ending June 30, 2016.
4. For Member, Motor Vehicle Dealers Advisory Board, Margaret Wills, Shinnston, Harrison County, for the term ending June 30, 2016.
5. For Member, Motor Vehicle Dealers Advisory Board, Michael Keener, Hurricane, Putnam County, for the term ending June 30, 2016.

6. For Member, Driver's License Advisory Board, J. Keith Wade, Fairmont, Marion County, for the term ending June 30, 2016.

7. For Member, Driver's License Advisory Board, Joe LoCascio, Huntington, Cabell County, for the term ending June 30, 2016.

8. For Member, Driver's License Advisory Board, John Brick, Morgantown, Monongalia County, for the term ending June 30, 2016.

9. For Member, Motorcycle Safety Awareness Board, Mike Adkins, Delbarton, Mingo County, for the term ending June 30, 2016.

10. For Member, Motorcycle Safety Awareness Board, William Cooper, Scott Depot, Putnam County, for the term ending June 30, 2015.

11. For Member, Board of Dentistry, Charles L. Smith, Charleston, Kanawha County, for the term ending June 30, 2017.

12. For Member, Board of Hearing Aid Dealers, Jenny Cross, Elkins, Randolph County, for the term ending July 13, 2017.

13. For Member, Board of Hearing Aid Dealers, Deborah Barnes Chewning, Elkins, Randolph County, for the term ending July 13, 2015.

14. For Member, Board of Hearing Aid Dealers, Marsha Mattingly, Huntington, Cabell County, for the term ending July 13, 2017.

15. For Member, Board of Hearing Aid Dealers, Jason Kaposy, Petersburg, Grant County, for the term ending July 13, 2016.

16. For Director, Division of Juvenile Services, Stephanie Bond, Terra Alta, Preston County, to serve at the will and pleasure of the Governor.

17. For Member, Housing Development Fund, Sam Kapourales, Williamson, Mingo County, for the term ending October 30, 2015.

18. For Member, Housing Development Fund, Everett Sullivan, Dunbar, Kanawha County, for the term ending October 30, 2016.

19. For Member, Housing Development Fund, Jeff Borman, Charleston, Kanawha County, for the term ending October 30, 2016.

20. For Member, Workforce Investment Council, Ray Burke, Hurricane, Putnam County, for the term ending June 30, 2015.

21. For Member, Workforce Investment Council, Nancy Kissinger, Beckley, Raleigh County, for the term ending June 30, 2015.

22. For Member, Workforce Investment Council, Jim O'Connor, Belle, Kanawha County, for the term ending June 30, 2015.

23. For Member, Workforce Investment Council, Tom Provost, Belle, Kanawha County, for the term ending June 30, 2015.

24. For Member, Workforce Investment Council, John Sorrenti, Weirton, Hancock County, for the term ending June 30, 2015.

25. For Member, Workforce Investment Council, Steve Stalnaker, Williamstown, Wood County, for the term ending June 30, 2015.

26. For Member, Workforce Investment Council, Diane Strong-Treister, Charleston, Kanawha County, for the term ending June 30, 2015.

27. For Member, Workforce Investment Council, Homer Sweeney, St. Albans, Kanawha County, for the term ending June 30, 2014.

28. For Member, Workforce Investment Council, Frank Ellis, Wheeling, Ohio County, for the term ending June 30, 2015.

29. For Member, Workforce Investment Council, Kenny Perdue, Charleston, Kanawha County, for the term ending June 30, 2015.

30. For Member, Workforce Investment Council, Roy Smith, Beckley, Raleigh County, for the term ending June 30, 2015.

31. For Member, Workforce Investment Council, Clarence Pennington, Martinsburg, Berkeley County, for the term ending June 30, 2015.

32. For Member, Workforce Investment Council, Joanne Jaeger Tomblin, Mount Gay, Logan County, for the term ending June 30, 2015.

33. For Member, Workforce Investment Council, Kim Tieman, Pittsburgh, Pennsylvania, for the term ending June 30, 2015.

34. For Member, Workforce Investment Council, Rev. Matthew Watts, Charleston, Kanawha County, for the term ending June 30, 2015.

35. For Member, Workforce Investment Council, Logan Williams, Hurricane, Putnam County, for the term ending June 30, 2015.

36. For Member, Workforce Investment Council, Robert Pasley, Wayne, Wayne County, for the term ending June 30, 2015.

37. For Member, Workforce Investment Council, Penny Brown, Philippi, Barbour County, for the term ending June 30, 2015.

38. For Member, Workforce Investment Council, Steve Whited, Grantsville, Calhoun County, for the term ending June 30, 2015.

39. For Member, Workforce Investment Council, Nancy Paxton, South Charleston, Kanawha County, for the term ending June 30, 2015.

40. For Member, Workforce Investment Council, Patrick Martin, Hurricane, Putnam County, for the term ending June 30, 2015.

41. For Member, Workforce Investment Council, Michael Bombard, Morgantown, Monongalia County, for the term ending June 30, 2015.

42. For Member, Workforce Investment Council, Will Turani, Wheeling, Ohio County, for the term ending June 30, 2015.

43. For Executive Director, School Building Authority, David Sneed, Cross Lanes, Kanawha County, to serve at the will and pleasure of the Governor.

44. For Member, School Building Authority, Tom Lange, Kearneysville, Jefferson County, for the term ending July 31, 2016.

45. For Member, School Building Authority, Eric J. Lewis, Charles Town, Jefferson County, for the term ending July 31, 2016.

46. For Member, School Building Authority, Victor L. Gabriel, Bridgeport, Harrison County, for the term ending July 31, 2015.

47. For Member, School Building Authority, Robert E. Holroyd, Princeton, Mercer County, for the term ending July 31, 2015.

48. For Member, School Building Authority, Chris Morris, Charleston, Kanawha County, for the term ending July 31, 2015.

49. For Member, Ethics Commission, The Honorable Jack Buckalew, Charleston, Kanawha County, for the term ending June 30, 2015.

50. For Member, Ethics Commission, The Honorable Betty Ireland, Charleston, Kanawha County, for the term ending June 30, 2017.

51. For Member, Ethics Commission, Monte Williams, Morgantown, Monongalia County, for the term ending June 30, 2015.

52. For Member, Ethics Commission, Robert Wolfe, Man, Logan County, for the term ending June 30, 2019.

53. For Member, Ethics Commission, Michael Greer, Bridgeport, Harrison County, for the term ending June 30, 2019.

54. For Member, Ethics Commission, Suzan Singleton, Moundsville, Marshall County, for the term ending June 30, 2017.

55. For Member, Ethics Commission, Terry Walker, Kearneysville, Jefferson County, for the term ending June 30, 2019.

56. For Member, Ethics Commission, Lawrence J. Tweel, Huntington, Cabell County, for the term ending June 30, 2015.

57. For Member, Ethics Commission, Karen Disibbio, Bluefield, Mercer County, for the term ending June 30, 2017.

58. For Member, Fire Commission, Dave Camp, Parkersburg, Wood County, for the term ending June 30, 2019.

59. For Member, Fire Commission, Robert Miller, Glenwood, Mason County, for the term ending June 30, 2018.

60. For Member, Fire Commission, Ted Shriver, Charleston, Kanawha County, for the term ending June 30, 2017.

61. For Member, Capitol Building Commission, Greg Barton, Ellenboro, Ritchie County, for the term ending June 30, 2018.

62. For Member, Capitol Building Commission, Michael Price, Wheeling, Ohio County, for the term ending June 30, 2018.

63. For Member, Board of the College Prepaid Tuition and Savings Program, Jamie Dickenson, Charleston, Kanawha County, for the term ending June 30, 2017.

64. For Member, Board of the College Prepaid Tuition and Savings Program, The Honorable Chuck Smith, Charleston, Kanawha County, for the term ending June 30, 2018.

65. For Member, Board of the College Prepaid Tuition and Savings Program, Terri Underhill, Charleston, Kanawha County, for the term ending June 30, 2015.

66. For Member, Board of Coal Mine Health and Safety, Brian Keaton, Julian, Boone County, for the term ending June 30, 2015.

67. For Member, Board of Risk and Insurance Management, Bobby Mitts, Lavalette, Wayne County, for the term ending June 30, 2017.

68. For Member, Board of Risk and Insurance Management, James Wilson, Grafton, Taylor County, for the term ending June 30, 2016.

69. For Member, Statewide Independent Living Council, Donald Carson, Beckley, Raleigh County, for the term ending June 30, 2017.

70. For Member, Statewide Independent Living Council, Michelle Norweck, Barboursville, Cabell County, for the term ending June 30, 2017.

71. For Member, Statewide Independent Living Council, Vanessa Vangilder, Charleston, Kanawha County, for the term ending June 30, 2017.

72. For Member, Statewide Independent Living Council, David George, Wheeling, Ohio County, for the term ending June 30, 2017.

73. For Member, Statewide Independent Living Council, Nancy Tyler, Charleston, Kanawha County, for the term ending June 30, 2017.

74. For Member, Statewide Independent Living Council, Aaron Morris, Cannelton, Fayette County, for the term ending June 30, 2017.

75. For Member, Statewide Independent Living Council, Greg Bilonick, Morgantown, Monongalia County, for the term ending June 30, 2017.

76. For Member, Statewide Independent Living Council, Todd Rundle, Fairmont, Marion County, for the term ending June 30, 2017.

77. For Member, Statewide Independent Living Council, Bob Waybright, Webster Springs, Webster County, for the term ending June 30, 2017.

78. For Member, Motor Vehicle Dealers Advisory Board, James Williams, Martinsburg, Berkeley County, for the term ending June 30, 2017.

79. For Member, Motor Vehicle Dealers Advisory Board, Michael Ratz, Logan, Logan County, for the term ending June 30, 2017.

80. For Member, Motorcycle Safety Awareness Board, Ray Carey, Charleston, Kanawha County, for the term ending June 30, 2017.

81. For Member, Motorcycle Safety Awareness Board, Kimberly Oldaker, Ashton, Mason County, for the term ending June 30, 2017.

82. For Member, Workforce Investment Council, Todd Shell, Huntington, Cabell County, for the term ending June 30, 2017.

83. For Member, Fire Commission, Victor Stallard, Williamstown, Wood County, for the term ending June 30, 2017.

84. For Member, Mine Safety Technology Task Force, Charles Russell III, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

85. For Member, Board of Control for Southern Regional Education, The Honorable Robert H. Plymale, Huntington, Wayne County, for the term ending June 30, 2018.

86. For Member, Board of Architects, Jan L. Fox, Charleston, Kanawha County, for the term ending June 30, 2017.

87. For Member, Board of Architects, Edward W. Tucker, Huntington, Cabell County, for the term ending June 30, 2016.

88. For Member, Board of Architects, Richard Forren, Bridgeport, Harrison County, for the term ending June 30, 2018.

89. For Member, Board of Architects, Todd Boggess, Princeton, Mercer County, for the term ending June 30, 2020.

90. For Member, Consolidated Public Retirement Board, Donald Murray, Chester, Hancock County, for the term ending June 30, 2018.

91. For Member, Consolidated Public Retirement Board, Joseph Bunn, Charleston, Kanawha County, for the term ending June 30, 2017.

92. For Member, Consolidated Public Retirement Board, David Wyant, Wheeling, Ohio County, for the term ending June 30, 2018.

93. For Member, Consolidated Public Retirement Board, Joe Lynch, Charleston, Kanawha County, for the term ending June 30, 2017.

94. For Member, Consolidated Public Retirement Board, Andy Bird, Hurricane, Putnam County, for the term ending June 30, 2017.

95. For Member, Consolidated Public Retirement Board, David Stover, Maben, Wyoming County, for the term ending June 30, 2015.

96. For Member, Consolidated Public Retirement Board, Angela Crank, Evans, Jackson County, for the term ending June 30, 2018.

97. For Member, Outdoor Heritage Conservation Fund, Rodney Bartgis, Elkins, Randolph County, for the term ending June 30, 2016.

98. For Member, Outdoor Heritage Conservation Fund, Calvert Armbrecht, Charleston, Kanawha County, for the term ending June 30, 2016.

99. For Member, Outdoor Heritage Conservation Fund, Terrell Ellis, Charleston, Kanawha County, for the term ending June 30, 2015.

100. For Member, Outdoor Heritage Conservation Fund, Lavonne Paden, Martinsburg, Berkeley County, for the term ending June 30, 2015.

101. For Member, Outdoor Heritage Conservation Fund, David Lilly, Buckhannon, Upshur County, for the term ending June 30, 2016.

102. For Member, Outdoor Heritage Conservation Fund, James Anderson, Morgantown, Monongalia County, for the term ending June 30, 2015.

103. For Member, Outdoor Heritage Conservation Fund, Amy Hessel, Morgantown, Monongalia County, for the term ending June 30, 2018.

104. For Member, Outdoor Heritage Conservation Fund, Doug Wood, Hurricane, Putnam County, for the term ending June 30, 2018.

105. For Member, Outdoor Heritage Conservation Fund, Edward F. Maguire II, Charleston, Kanawha County, for the term ending June 30, 2018.

106. For Member, Board of Sanitarians, The Honorable Delores Cook, Ridgeview, Boone County, for the term ending June 30, 2018.

107. For Member, Board of Sanitarians, Phyllis L. Lowe, Chapmanville, Logan County, for the term ending June 30, 2019.

108. For Member, Fairmont State University Board of Governors, Aaron Hawkins, Fairmont, Marion County, for the term ending June 30, 2018.

109. For Member, West Virginia State University Board of Governors, Leon Vincent Williams, Nashville, Tennessee, for the term ending June 30, 2018.

110. For Member, West Virginia State University Board of Governors, Gary Swingle, Charleston, Kanawha County, for the term ending June 30, 2018.

111. For Member, Concord University Board of Governors, Brace Mullett, Charleston, Kanawha County, for the term ending June 30, 2018.

112. For Member, Concord University Board of Governors, David Barnette, Charleston, Kanawha County, for the term ending June 30, 2018.

113. For Member, Shepherd University Board of Governors, Chad Robinson, Charleston, Kanawha County, for the term ending June 30, 2018.

114. For Member, Shepherd University Board of Governors, Marcia Brand, Martinsburg, Berkeley County, for the term ending June 30, 2018.

115. For Member, Shepherd University Board of Governors, Bridget M. Cohee, Martinsburg, Berkeley County, for the term ending June 30, 2018.

116. For Member, West Liberty University Board of Governors, Brian Joseph, Triadelphia, Ohio County, for the term ending June 30, 2018.

117. For Member, West Liberty University Board of Governors, Leslie DeFelice, Dillonvale, Ohio, for the term ending June 30, 2016.

118. For Member, Bluefield State College Board of Governors, Rev. Garry Moore, Sr., Bluefield, Mercer County, for the term ending June 30, 2018.

119. For Member, Bluefield State College Board of Governors, Lois Ann Manns, Beckley, Raleigh County, for the term ending June 30, 2018.

120. For Member, Bluefield State College Board of Governors, Robert Perkinson, Jr., Bluefield, Mercer County, for the term ending June 30, 2018.

121. For Member, Bluefield State College Board of Governors, Norris Kantor, Bluefield, Mercer County, for the term ending June 30, 2018.

122. For Member, Unemployment Compensation Board of Review, The Honorable Martha Walker, Charleston, Kanawha County, for the term ending January 1, 2017.

123. For Member, Blue Ridge Community and Technical College Board of Governors, Albert T. Britton, Charles Town, Jefferson County, for the term ending June 30, 2018.

124. For Member, Blue Ridge Community and Technical College Board of Governors, Teresa E. McCabe, Martinsburg, Berkeley County, for the term ending June 30, 2018.

125. For Member, Blue Ridge Community and Technical College Board of Governors, Rebecca Linton, Martinsburg, Berkeley County, for the term ending June 30, 2017.

126. For Member, Blue Ridge Community and Technical College Board of Governors, Keith Unger, Berkeley Springs, Morgan County, for the term ending June 30, 2016.

127. For Member, Blue Ridge Community and Technical College Board of Governors, William L. Stubblefield, Martinsburg, Berkeley County, for the term ending June 30, 2017.

128. For Member, Blue Ridge Community and Technical College Board of Governors, Stephanie L. Harvey, Martinsburg, Berkeley County, for the term ending June 30, 2016.

129. For Member, Blue Ridge Community and Technical College Board of Governors, Chuck Basa, Winchester, Virginia, for the term ending June 30, 2015.

130. For Member, Blue Ridge Community and Technical College Board of Governors, Heather McIntyre, Charles Town, Jefferson County, for the term ending June 30, 2015.

131. For Member, Eastern West Virginia Community and Technical College Board of Governors, Junior Helmick, Parsons, Tucker County, for the term ending June 30, 2016.

132. For Member, Eastern West Virginia Community and Technical College Board of Governors, Greg Greenwalt, Moorefield, Hardy County, for the term ending June 30, 2016.

133. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Kim Nuckles, Charleston, Kanawha County, for the term ending January 31, 2015.

134. For Member, Board of Dentistry, Byron Black, Ripley, Jackson County, for the term ending June 30, 2019.

135. For Member, Board of Registration for Professional Engineers, Edward Robinson, Charleston, Kanawha County, for the term ending June 30, 2019.

136. For Member, Board of Medicine, Ahmed Faheem, Daniels, Raleigh County, for the term ending September 30, 2019.

137. For Member, Board of Medicine, Cathy Funk, Martinsburg, Berkeley County, for the term ending September 30, 2019.

138. For Member, Board of Medicine, Mustafa Rahim, Beckley, Raleigh County, for the term ending September 30, 2019.

139. For Member, Board of Directors of the West Virginia United Health System, William Stone, Danville, Boone County, for the term ending October 15, 2020.

140. For Member, Board of Directors of the West Virginia United Health System, Jose Sartarelli, Morgantown, Monongalia County, for the term ending October 15, 2020.

141. For Director, Division of Protective Services, Kevin J. Foreman, Elkview, Kanawha County, to serve at the will and pleasure of the Governor.

142. For Member, Children's Health Insurance Plan Board, Kellie Wooten-Willis, Logan, Logan County, for the term ending June 30, 2016.

143. For Member, West Liberty University Board of Governors, Patrick Ford, Weirton, Hancock County, for the term ending June 30, 2017.

144. For Member, Northern Community College Board of Governors, H. Brann Altmeyer, Wheeling, Ohio County, for the term ending June 30, 2018.

145. For Member, Northern Community College Board of Governors, Christin Byrum, Wheeling, Ohio County, for the term ending June 30, 2018.

146. For Member, Northern Community College Board of Governors, Jonathon H. Greer, Wheeling, Ohio County, for the term ending June 30, 2016.

147. For Member, New River Community and Technical College Board of Governors, Albert A. Martine III, Daniels, Raleigh County, for the term ending June 30, 2018.

148. For Member, New River Community and Technical College Board of Governors, Tom Lemke, Daniels, Raleigh County, for the term ending June 30, 2016.

149. For Member, Public Service Commission, The Honorable Brooks F. McCabe, Jr., Charleston, Kanawha County, for the term ending June 30, 2015.

150. For Member, Board of Risk and Insurance Management, Bruce Martin, Fairmont, Marion County, for the term ending June 30, 2018.

151. For Member, West Virginia University – Parkersburg Board of Governors, John Denbigh, Spencer, Roane County, for the term ending June 30, 2018.

152. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Eva Hallis, Charleston, Kanawha County, for the term ending June 30, 2016.

153. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Tuanya Layton, Charleston, Kanawha County, for the term ending June 30, 2016.

154. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Jamie S. Browning, West Logan, Logan County, for the term ending June 30, 2017.

155. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Howard W. Lafferty, Charleston, Kanawha County, for the term ending June 30, 2015.

156. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Tonya Painter, Fairlea, Greenbrier County, for the term ending June 30, 2015.

157. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Kristi Justice, St. Albans, Kanawha County, for the term ending June 30, 2017.

158. For Member, Medical Imaging and Radiation Therapy Technology Board of Examiners, Paul H. Blom, Barboursville, Cabell County, for the term ending June 30, 2017.

159. For Director, Division of Natural Resources, Robert A. Fala, Chapmanville, Logan County, for the term ending December 31, 2018.

160. For Commissioner, Division of Motor Vehicles, Patricia S. Reed, Beckley, Raleigh County, to serve at the will and pleasure of the Governor.

161. For Member, State Personnel Board, Erica Mani, Charleston, Kanawha County, for the term ending June 30, 2018.

162. For Member, Ohio River Valley Water Sanitation Commission, David Flannery, Charleston, Kanawha County, for the term ending June 30, 2020.

163. For Member, Property Valuation and Training Procedures Commission, Jason Nettles, Grantsville, Calhoun County, for the term ending June 30, 2018.

164. For Member, Property Valuation and Training Procedures Commission, Kurt A. Donaldson, Morgantown, Monongalia County, for the term ending June 30, 2018.

165. For Member, Property Valuation and Training Procedures Commission, Mickey Brown, Madison, Boone County, for the term ending June 30, 2018.

166. For Member, Property Valuation and Training Procedures Commission, Calvin A. Kent, Huntington, Cabell County, for the term ending June 30, 2018.

167. For Member, Property Valuation and Training Procedures Commission, Janice LaRue, Piedmont, Mineral County, for the term ending June 30, 2018.

168. For Member, Archives and History Commission, Robert Conte, Union, Monroe County, for the term ending June 30, 2017.

169. For Member, Archives and History Commission, Joan Walker, Hedgesville, Berkeley County, for the term ending June 30, 2017.

170. For Member, Archives and History Commission, Rebecca Frye, Martinsburg, Berkeley County, for the term ending June 30, 2017.

171. For Member, Archives and History Commission, Bill Richardson, Williamson, Mingo County, for the term ending June 30, 2017.

172. For Member, Archives and History Commission, Harold M. Forbes, Morgantown, Monongalia County, for the term ending June 30, 2016.

173. For Member, Archives and History Commission, Keven Walker, Martinsburg, Berkeley County, for the term ending June 30, 2016.

174. For Member, Archives and History Commission, Melissa Bingmann, Morgantown, Monongalia County, for the term ending June 30, 2015.

175. For Member, Archives and History Commission, Nathan J. Randolph, Huntington, Cabell County, for the term ending June 30, 2017.

176. For Member, Board of Education, Beverly E. Kingery, South Charleston, Kanawha County, for the term ending November 4, 2022.

177. For Member, Board of Education, James S. Wilson, Glen Dale, Marshall County, for the term ending November 4, 2023.

178. For Member, Archives and History Commission, Victor Greco, Wheeling, Ohio County, for the term ending June 30, 2015.

179. For Member, Archives and History Commission, Charles Ledbetter, Scott Depot, Putnam County, for the term ending June 30, 2015.

180. For Member, Municipal Pensions Oversight Board, Jason M. Matthews, Parkersburg, Wood County, for the term ending January 1, 2018.

181. For Member, Motor Vehicle Dealers Advisory Board, John Jenkins, Buckhannon, Upshur County, for the term ending June 30, 2017.

182. For Member, Motor Vehicle Dealers Advisory Board, Wally Thornhill, Pecks Mill, Logan County, for the term ending June 30, 2015.

183. For Member, Marshall University Board of Governors, Michael Sellards, Huntington, Cabell County, for the term ending June 30, 2018.

184. For Member, Marshall University Board of Governors, The Honorable Oshel B. Craigo, Winfield, Putnam County, for the term ending June 30, 2018.

185. For Member, Marshall University Board of Governors, Joseph McDonie, Milton, Cabell County, for the term ending June 30, 2018.

186. For Member, Regional Jail and Correctional Facility Authority, Steve Deweese, Winfield, Putnam County, for the term ending June 30, 2015.

187. For Member, Regional Jail and Correctional Facility Authority, Marshall Long, Princeton, Mercer County, for the term ending June 30, 2017.

188. For Member, Mountwest Community and Technical College Board of Governors, Thomas Gibson, Kenova, Wayne County, for the term ending June 30, 2018.

189. For Member, Mountwest Community and Technical College Board of Governors, Jeffrey D. Goad, Barboursville, Cabell County, for the term ending June 30, 2018.

190. For Member, Mountwest Community and Technical College Board of Governors, Matthew W. Deerfield, Prichard, Wayne County, for the term ending June 30, 2018.

191. For Member, Board of Hearing Aid Dealers, George Evans, Parkersburg, Wood County, for the term ending July 13, 2017.

192. For Member, School of Osteopathic Medicine Board of Governors, Greg A. Burton, Charleston, Kanawha County, for the term ending June 30, 2018.

193. For Member, School of Osteopathic Medicine Board of Governors, J. Fred Earley II, Parkersburg, Wood County, for the term ending June 30, 2017.

194. For Member, State Conservation Committee, Eli McCoy, Charleston, Kanawha County, for the term ending September 6, 2017.

195. For Member, State Conservation Committee, Angela Rosser, Charleston, Kanawha County, for the term ending September 6, 2015.

196. For Member, State Conservation Committee, Boyd Meadows, Milton, Cabell County, for the term ending September 6, 2018.

197. For Member, State Conservation Committee, Tom Warner, Beverly, Randolph County, for the term ending September 6, 2018.

198. For Member, Fire Commission, Carl Sizemore, Mineral Wells, Wood County, for the term ending June 30, 2018.

199. For Member, Fire Commission, Virgil White, Charleston, Kanawha County, for the term ending June 30, 2017.

200. For Member, Fire Commission, Grant Gunnoe, Winfield, Putnam County, for the term ending June 30, 2019.

201. For Member, Natural Resources Commission, Gregory K. Burnette, Elkview, Kanawha County, for the term ending June 30, 2021.

202. For Member, Board of Barbers and Cosmetologists, Khuong Nguyen, Charles Town, Jefferson County, for the term ending June 30, 2018.

203. For Member, Board of Barbers and Cosmetologists, Sean Stevens, Beckley, Raleigh County, for the term ending June 30, 2019.

204. For Member, West Virginia University – Parkersburg Board of Governors, Cheryl Donohoe, Ripley, Jackson County, for the term ending June 30, 2018.

205. For Member, West Virginia University – Parkersburg Board of Governors, Sam Winans, Vienna, Wood County, for the term ending June 30, 2018.

206. For Member, West Virginia University – Parkersburg Board of Governors, Steve Hardman, Parkersburg, Wood County, for the term ending June 30, 2018.

207. For Member, West Virginia University – Parkersburg Board of Governors, Donna M. Smith, Vienna, Wood County, for the term ending June 30, 2016.

208. For Member, Housing Development Fund, Julia Elbon, Elkins, Randolph County, for the term ending October 30, 2018.

And,

A letter from Cheryle M. Hall, Clerk of the Court of Claims, dated January 20, 2015, requesting confirmation by the Senate of the nomination mentioned therein. The following name is submitted:

1. For Judge of the Court of Claims, J. David Cecil, St. Albans, Kanawha County, for a term of six years commencing on July 1, 2015.

And reports the same back with the recommendation that the Senate do advise and consent to all of the nominations listed above.

Respectfully submitted,

Donna J. Boley,
Chair.

The time having arrived for the special order of business to consider the list of nominees for public office submitted by His Excellency, the Governor, and a legislative nomination submitted by

Cheryle M. Hall, Clerk of the Court of Claims, as required by Chapter 14, Article 2, Section 4 of the Code of West Virginia, the special order thereon was called by the President.

Thereupon, Senator Cole (Mr. President) laid before the Senate the following executive message and letter from Cheryle M. Hall, Clerk of the Court of Claims:

Senate Executive Message No. 2, dated March 2, 2015 (*shown in the Senate Journal of yesterday, Thursday, March 12, 2015, pages 2133 through 2155, inclusive*);

And,

A letter from Cheryle M. Hall, Clerk of the Court of Claims, dated January 20, 2015 (*shown in the Senate Journal of yesterday, Thursday, March 12, 2015, pages 2103 and 2104*).

Senator Boley then moved that the Senate advise and consent to all of the executive and legislative nominations referred to in the foregoing report from the Committee on Confirmations, except the nomination of the Honorable Robert H. Plymale to the Board of Control for Southern Regional Education (being nomination number 85 in Executive Message No. 2).

The question being on the adoption of Senator Boley's aforestated motion,

The roll was then taken; and

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared Senator Boley's motion had prevailed and that all the executive and legislative nominations referred to in the foregoing report from the Committee on Confirmations, except the nomination of the Honorable Robert H. Plymale to the Board of Control for Southern Regional Education (being nomination number 85 in Executive Message No. 2) had been confirmed.

Senator Boley then moved that the Senate advise and consent to the nomination of the Honorable Robert H. Plymale to the Board of Control for Southern Regional Education (being nomination number 85 in Executive Message No. 2).

Prior to the call of the roll, Senator Plymale moved to be excused from voting under rule number forty-three of the Rules of the Senate, which motion prevailed.

The roll was then taken; and

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: None.

Excused from voting: Plymale—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared Senator Boley's motion had prevailed and the nomination of the Honorable Robert

H. Plymale to the Board of Control for Southern Regional Education had been confirmed.

Consideration of executive and legislative nominations having been concluded,

Without objection, the Senate returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 19, Specifying minimum early childhood education program instruction days.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §18-5-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-44. Early childhood education programs.

(a) For the purposes of this section, an “early childhood education program” means ~~programs~~ a program created under this section for children who have attained the age of four prior to September 1 of

the school year in which the ~~pupil enters~~ children enter the program.
~~created in this section~~

(b) *Findings.* –

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance, and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor's degree, and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches, and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately 2,704 students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(c) Beginning no later than the school year 2012-2013, and continuing thereafter, county boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the ~~pupil enters~~ children enter the early childhood education program. Beginning no later than the school year 2016-2017, and continuing thereafter, ~~these~~ early childhood education programs that are full day and five days shall provide at least four days of instruction per week, shall be available to all children meeting the age requirement set forth in this subsection. provide at least one thousand two hundred minutes of instruction per week and include at least one hundred forty-six instructional days per year.

(d) The program shall meet the following criteria:

(1) It shall be voluntary, except that, upon enrollment, the provisions of section ~~one~~ one-a, article eight of this chapter apply to an enrolled student, subject to subdivision ~~(3)~~ (4) of this subsection;

(2) ~~At~~ It shall be open to all children meeting the age requirement set forth in this section; ~~shall have the opportunity to enroll in a program that is full day and five~~

(3) It shall provide at least four days of instruction per week, provide at least one thousand two hundred minutes of instruction per week and include at least one hundred forty-six instructional days per year; ~~The program may be for fewer than five days per week and may be less than full day based on family need if a sufficient number of families request such programs and the county board finds that such programs are in the best interest of the requesting families and students: *Provided*, That the ability of families to request programs that are fewer than five days a week or less than a full day does not relieve the county of the obligation to provide all resident children with the opportunity to enroll in a full-day program and~~

~~(3)~~ (4) ~~A~~ It shall permit a parent of a an enrolled child enrolled in an early education program may to withdraw a the child from that program for good cause by notifying the district. Good cause includes, but is not limited to, enrollment of the child in another program or the immaturity of the child. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(e) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in ~~subsection (k)~~ of this section, may be counted toward satisfying the requirement of subsection (c) of this section.

(f) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(g) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(h) A county board shall submit its plan to the Secretary of the Department of Health and Human Resources. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs; and

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of ~~subsection (k)~~ of this section; and or

(3) ~~If the Secretary of the Department of Health and Human Resources~~ The secretary finds that, if the county board has not met one or more of the requirements of this subsection, ~~but that~~ the county board has acted in good faith and the failure to comply was not the primary fault of the county board. ~~then the secretary shall approve the plan.~~ Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(i) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(j) Every county board shall submit its plan for reapproval by the Secretary of the Department of Health and Human Resources and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(k) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Health and Human Resources and the state board.

(l) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(n) Annually, the state board shall report to the Legislative Oversight Commission on Education Accountability on the progress of implementation of this section.

(o) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(p) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(q) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Health and Human Resources in the preparation of the rule. The rule shall contain the following:

- (1) Standards for curriculum;
- (2) Standards for preparing students;
- (3) Attendance requirements;
- (4) Standards for personnel; and

(5) Any other terms necessary to implement the provisions of this section.

(r) The rule shall include the following elements relating to curriculum standards:

- (1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children, consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision-making and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(s) The secretary and the state superintendent shall submit a report to the Legislative Oversight Commission on Education

Accountability and the Joint Committee on Government and Finance which addresses, at a minimum, the following issues:

- (1) A summary of the approved county plans for providing the early childhood education programs pursuant to this section;
- (2) An analysis of the total cost to the state and county boards of implementing the plans;
- (3) A separate analysis of the impact of the plans on counties with increasing enrollment; and
- (4) An analysis of the effect of the programs on the maximization of the use of federal funds for early childhood programs.

The intent of this subsection is to enable the Legislature to proceed in a fiscally responsible manner and make any necessary program improvements based on reported information prior to implementation of the early childhood education programs.

(t) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Health and Human Resources and the state superintendent:

- (1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and
- (2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill No. 19—A Bill to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended, relating to minimum periods of instruction for early childhood education programs; and setting forth minimum instructional days per week, minimum instructional minutes per week and minimum instructional days per year for early childhood education programs.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 19, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 19) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to the House of Delegates amendments to, and the passage as amended, with its Senate amended title, of

Eng. Com. Sub. for Senate Bill No. 30, Permitting shared animal ownership agreement to consume raw milk.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill No. 106, Excepting professional engineer member from sanitary board when project engineer is under contract.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 140, Amending State Administrative Procedures Act.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page four, section two, line four, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”;

On page four, section two, line six, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”;

On page five, section two, lines five and six, after the word “rule” by striking out the comma and the words “as defined in subdivision (j) of this section,”;

On page five, section two, line seventeen, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”;

On page seven, section two, line twelve, by striking out the word “private” and inserting in lieu thereof the words “constitutional, statutory or common law”;

And,

On page eight, section three-a, line ten, by striking out the words “or grammatical errors” and inserting in lieu thereof the words “grammatical errors, or changes to language to standardize rules generally without affecting the content of any rule”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 140, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 140) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 140) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence in the changed effective date.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill No. 182, Authorizing Department of Military Affairs and Public Safety promulgate legislative rules.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page seven, line sixteen, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendment:

On page six, section seven, subsection seven after the words “Code of West Virginia” by striking out the comma and the remainder of sentence and inserting in lieu thereof the following:

“And shall pass a test developed by the state fire marshal on HVAC Fire Safety.”

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill No. 182, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 182) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 182) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill No. 192, Authorizing Department of Transportation promulgate legislative rules.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF
TRANSPORTATION TO PROMULGATE
LEGISLATIVE RULES.**

§64-8-1. Division of Motor Vehicles.

The legislative rule filed in the State Register on August 1, 2014, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 31, 2014, relating to the Division of Motor Vehicles (examination and issuance of driver's licenses, 91 CSR 4), is authorized with the following amendments:

On page 2, subsection 3.1., lines 8 and 9, by striking out “§17B-2-8(I)” and inserting in lieu thereof “§17B-2-8(i)”;

On page 6, subdivision 3.11.a., line 6, by striking out “§17B-2-8(I)” and inserting in lieu thereof “§17B-2-8(i)”;

On page 7, subsection 3.11, after line 2, by adding a new subdivision 3.11.e to read as follows:

“3.11.e In lieu of a social security card as proof of social security number, the following documents may be used to obtain a not for federal use driver's license or a not for federal use identification card:

(i) An original or a copy of a certified Military Discharge Form DD 214 issued by the U.S. Military, with the social security number; or

(ii) A Medicare card issued in the applicant's full name, which contains the applicant's social security number and the signature of the applicant as the card holder.”

On page 7, subsection 4.1, line 17, after the word “Commissioner.” by adding the following:

“The Division shall make available information for driver’s license and ID applicants that clearly delineates the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page 10, subsection 4.1.f, line 5 after the word “commissioner” by adding the following:

“which form must require and be accompanied by a certification by a medical doctor that a sex change has been completed, otherwise the requested change shall not be approved”

On page 21, subsection 7.2, line 6, after the word “record.” by adding the following:

“The renewal form shall clearly delineate the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page 25, line 8, by adding a new subsection 7A.1.c to read as follows:

“7A.1.c. The Division’s online renewal process shall clearly delineate the requirements for a for federal use driver license or ID and a not for federal use driver’s license and ID.”;

On page 27, subsection 8.2.c, line 1 after the word “commissioner” by adding the following:

“which form must require and be accompanied by a certification by a medical doctor that a sex change has been completed”

On page 31, subsection 9.5, line 17 after the word “commissioner” by adding the following:

“which form must require and be accompanied by a certification by a medical doctor that a sex change has been completed”

On page 34, subdivision 11.1.b, lines 17 through 19, by striking out all of subdivision 11.1.b and inserting in lieu thereof the following:

“11.1.b. A valid photo driver’s license or identification card expired six months or less issued the Division only on a not for federal use driver’s license and a not for federal use identification card.”

And by renumbering the remaining subdivisions;

On page 35, subdivision 11.1.d., line one, by striking out “§17B-2-8(I)” and inserting in lieu thereof “§17B-2-8(i), only on a not for federal use driver’s license and a not for federal use identification card “;

On page 36, lines 14 and 15, by striking out all of subdivision 12.2.b. and inserting in lieu thereof a new subdivision 12.2.b. to read as follows:

“12.2.b. A United States passport or passport card, currently valid or expired less than 2 years, only on a not for federal use driver’s license and a not for federal use identification card.”;

On page 47, subdivision 14.7.e, line 15, after the word “endocrinologist” by inserting the words “or primary care physician”;

On page 52, subsection 14.14, line 3, by striking out the word “two” and inserting in lieu thereof the word “three”;

And,

On page 52, subsection 14.14, line 6, by striking out the word “two” and inserting in lieu thereof the word “three”.

§64-8-2. Office of Administrative Hearings.

The legislative rule filed in the State Register on July 31, 2014, authorized under the authority of section four-a, article five-c, chapter seventeen-c of this code, modified by the Office of Administrative Hearings to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 23, 2014, relating to the Office of Administrative Hearings (appeal procedures, 105 CSR 1), is authorized with the following amendment:

On page 14, subdivision 16.3.1., by changing the period to a colon and adding the following proviso: *Provided*, That if a party prevails in its appeal, the OAH shall refund the \$50 filing fee.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendment to the bill (Eng. Com. Sub. for S. B. No. 192) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 243, Relating to school nutrition standards during state of emergency or preparedness.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page three, section six-a, line thirteen, by striking out the word “effected” and inserting in lieu thereof the word “affected”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 243, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 243) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 243) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

At the request of Senator Carmichael, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill No. 284, Relating to chief law-enforcement officer's requirement to certify transfer or making of certain firearms.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 287, Providing posthumous high school diplomas.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-32, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-32. Posthumous high school diplomas.

(a) This section shall be known as “Todd’s Law”.

(b) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of a high school diploma to a deceased student, at the request of the parent, guardian or custodian if the student:

(1) Was enrolled in a public school in this state at the time of death;

(2) Was academically eligible or on track to complete the requirements for graduation at the time of death; and

(3) Died after the completion of the eleventh grade school year.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill No. 287—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-34a, relating to providing for awarding posthumous high school diplomas under certain circumstances; and designating provisions as “Todd’s Law”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 287, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 287) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill No. 342, Clarifying scope, application and requirements for error corrections by CPRB.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill No. 360, Repealing code sections relating to book indexes and claims reports required by court clerks.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the

concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 390, Authorizing PSC approve expedited cost recovery of natural gas utility infrastructure projects.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page five, section one-k, line four, after the word “section” by inserting the words “if the proposed plans have been found to be prudent and useful”;

On page seven, section one-k, line eight, by striking out the word “may” and inserting in lieu thereof the word “shall”;

And,

On page seven, section one-k, line nine, after the word “notice” by inserting a semicolon and the words “unless no opposition to the rate change is received by the Public Service Commission within one week of the proposed hearing date, in which case the hearing can be waived,”.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 390, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 390) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill No. 403, Increasing period during which motor vehicle lien is valid.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill No. 409, Establishing Fair and Open Competition in Governmental Construction Act.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill No. 412, Relating to Real Estate Commission complaint filings.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested

the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 430, Permitting mutual orders enjoining certain contact between parties to domestic relations actions.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §48-27-507 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 §51-2A-2a, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART V. PRODUCTIVE ORDERS; VISITATION ORDERS.

§48-27-507. Mutual protective orders prohibited.

Mutual protective orders are prohibited unless both parties have filed a petition under part three of this article and have proven the allegations of domestic violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the interest of justice and judicial economy. The court shall enter a separate order for each petition filed: Provided, That nothing in this

section shall preclude the court from entering an order restricting contact pursuant to section two-a, article two-a, chapter fifty-one of this code.

CHAPTER 51. COURTS IN GENERAL.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2a. Family court jurisdiction to restrict contact between parties.

(a) A family court in its discretion may, at any time during the pendency of any action prosecuted under chapter forty-eight of this code, restrict contact between the parties thereto without a finding of domestic violence under article twenty-seven of said chapter. This order shall not be considered a protective order for purposes of section five hundred seven, article twenty-seven, chapter forty-eight of this code. A court may enter a standing order regarding the conduct expected of the parties during the proceeding. Any standing order may restrict the parties from:

(1) Entering the home, school, business or place of employment of the other for the purpose of bothering or annoying the other;

(2) Contacting the other, in person, in writing, electronically or by telephone, for purposes not clearly necessary for the prosecution of the underlying action or any obligation related thereto or resulting therefrom;

(b) Upon a finding of misconduct by a party, the court shall enter an order against the offending party enjoining the conduct which disturbs or interferes with the peace or liberty of the other party so long as such conduct does not rise to the level of or constitute domestic violence as defined in article twenty-seven, chapter forty-eight of this code. The court shall not issue orders under this section in cases where the conduct of either party has previously risen to the level of domestic violence.

(c) Nothing in this section shall preclude the court from entering an emergency protective order, or final protective order, as provided in article twenty-seven, chapter forty-eight of this code.

(d) Notwithstanding the provisions of section five hundred five, article twenty-seven, chapter forty-eight of this code, an order entered pursuant to the provisions of this section shall remain in effect for a period of time as specified in the order.

(e) The court may enforce orders under this section against the offending party through its powers of contempt, pursuant to section nine of this article.

(f) It is the express intent of the Legislature that orders issued pursuant to this section are to restrict behavior which is not of sufficient severity to implicate the provisions of article twenty-seven, chapter forty-eight of this code and 18 U. S. C. §922(g)(8).;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill No. 430—A Bill to amend and reenact §48-27-507 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-2A-2a, all relating to exempting orders enjoining certain contact between parties to a domestic relations action from the prohibition against mutual protective orders; authorizing family courts of the state to enter standing orders enjoining certain contact between parties to a domestic relations action; providing for certain terms and effective length of such orders; authorizing family courts of the state to enter orders enjoining certain contact between parties to a domestic relations action when there has been a finding of misconduct by a party; authorizing family court to enforce its order through an order of contempt; and expressing intent of the Legislature.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 430, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 430) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 430) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill No. 481, Relating to municipal policemen's and firemen's pension and relief funds' investment.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

Eng. Senate Bill No. 481—A Bill to amend and reenact §8-22-22 and §8-22-22a of the Code of West Virginia, 1931, as amended, all relating to the investment authority of municipal policemen's and firemen's pension and relief funds; authorizing the delegation of investment authority; requiring diversification of investments of municipal policemen's and firemen's pension and relief funds; and providing investment requirements.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Senate Bill No. 481, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall,

Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 481) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill No. 483, Clarifying continuing election of municipal policemen's and firemen's pension and relief funds' trustees.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF
FUND; FIREMEN'S PENSION AND RELIEF
FUND; PENSION PLANS FOR EMPLOYEES
OF WATERWORKS SYSTEM, SEWERAGE**

**SYSTEM OR COMBINED WATERWORKS
AND SEWERAGE SYSTEM.**

§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

(a) The board of trustees of the policemen's pension and relief fund shall consist of the mayor of the municipality and four members of the paid police department, to be chosen as hereinafter in this section specified. The mayor of such municipality shall give notice of an election to be held on the second Monday of the month following the adoption of the ordinance providing for the establishment and maintenance of such fund, which notice shall be served upon each member of the paid police department and which shall notify each member that between the hours of nine in the forenoon and six in the afternoon, on the day designated for such election, an election will be held for such purpose and that each member shall furnish in writing the names of four members of the paid police department voted for; and all votes so cast shall be counted and canvassed by the mayor and the governing body for the first election, and thereafter the votes shall be counted by the then existing members of such board, who after such election shall announce the results, and the four members of the paid police department receiving the highest number of votes shall, with the mayor, constitute "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)". As to the first election held following the adoption of the ordinance providing for the establishment and maintenance of such fund, the member receiving the highest number of votes shall serve for a period of four years, the member receiving the second highest number of votes shall serve for a period of three years, the member receiving the third highest number of votes shall serve for a period of two years and the member receiving the fourth highest number of votes shall serve for a period of one year.

(b) After ~~such~~ the first election, the board shall hold a similar election each year to elect one member to succeed, for a term of four years, the retiring member. In the case of a tie vote being received

by any two individuals for the office of trustee, such tie vote shall be decided by casting lots, or in any other way which may be agreed upon by the individuals for whom such tie vote was cast. The results of such election shall be entered in the record of the proceedings of the board and the members so elected shall, except as hereinabove specified with respect to the first election, serve for four years and until their successors are elected and have qualified. The election for such members of the board of trustees shall be held annually upon the second Monday of the same month during which the first election was held. In case of a vacancy by death; ~~resignation, or otherwise,~~ or resignation among the members so elected, the remaining members of the board shall choose the successor, or successors, until the next annual election at which latter time all vacancies shall be filled: Provided, That in the case of an elected member retiring during his or her term, the retired member may continue to serve the remainder of his or her term.

(c) The board of trustees of the firemen's pension and relief fund shall consist of the mayor of the municipality and four members of the paid fire department, to be chosen in the same manner and for such terms as is provided above in this section for the election of policemen to the policemen's pension and relief fund board of trustees.

(d) The presiding officer of any such board of trustees shall be the mayor of the municipality and the secretary thereof shall be appointed by the board. It shall be the duty of such secretary to keep a full and permanent record of all of the proceedings of the board and said trustees may fix the secretary's compensation for this work, which shall be paid out of the funds of said policemen's pension and relief fund or firemen's pension and relief fund, as the case may be.

(e) For all pension and relief funds closed after January 1, 2010, pursuant to subsection (e), section twenty of this article and those closed after April 1, 2011, pursuant to subsection (f) of said section, the boards shall continue to elect four trustees until there are no more beneficiaries to be paid from the fund. Trustees are elected in

the same manner and for the same terms but may be members of the paid police or fire departments or retirees from the paid police or fire departments.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill No. 483, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 483) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 488, Reestablishing and modifying Broadband Deployment Council.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be repealed; and that §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND ENHANCEMENT.

§31-15C-2. Definitions.

For the purposes of this article:

(1) “Broadband” or “broadband service” means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as voice-over Internet protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within sixty days of the federal update.

(2) “Broadband demand promotion project” means a statewide or regional project to undertake activities to promote demand for broadband services and broadband applications.

(3) “Broadband deployment project” means a project to provide broadband services in ~~a type 2 and/or type 3 unserved area~~ areas as defined in section six of this article.

(4) “Council” means the Broadband ~~Deployment~~ Enhancement Council.

(5) “Downstream data rate” means the transmission speed from the service provider source to the end-user.

(6) “Upstream data rate” means the transmission speed from the end-user to the service provider source.

(7) “Unserved area” means a community that has no access to broadband service.

§31-15C-3. Broadband Enhancement Council; members of council; administrative support.

(a) The Broadband ~~Deployment~~ Enhancement Council is ~~continued~~ hereby established. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.

(b) The council shall consist of ~~fifteen~~ thirteen voting members, designated as follows:

(1) ~~The Governor or his or her designee;~~

~~(2)~~ (1) The Secretary of Commerce or his or her designee;

~~(3)~~ (2) The Secretary of Administration or his or her designee; The Department of Administration Chief Technology Officer or his or her designee; and

~~(4)~~ (3) The Director of Homeland Security and Emergency Management or his or her designee The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;

~~(5)~~ (4) The State Superintendent of Schools or his or her designee; and

~~(6)~~ (5) Ten Nine public members that serve at the will and pleasure of the Governor and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing ~~employees of communications and cable providers who is a member or representative of a union representing communications workers~~ users of large amounts of broadband services in this state;

(ii) One member from each congressional district representing ~~the interests of the business community in this state~~ rural business users in this state;

(iii) One member from each congressional district representing ~~incumbent local exchange carriers who provide broadband services in this state~~ rural residential users in this state;

(iv) One member representing ~~cable operators who provide broadband services in this state;~~ urban business users in this state; and

~~(v) One member representing competitive local exchange carriers who provide broadband services in this state; urban residential users in this state.~~

~~(vi) One member representing broadband equipment or device manufacturers;~~

~~(vii) One member representing higher education or secondary education; and~~

~~(viii) Three members representing the general public who are residents of the state, one of whom shall represent rural communities, and who may not reside in the same congressional district.~~

~~(7) (6) In addition to the ~~fifteen~~ thirteen voting members of the council, the President of the Senate shall name two senators from the West Virginia Senate, one from each party, and the Speaker of the House shall name two delegates from the West Virginia House of Delegates, one from each party, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.~~

~~(c) The Secretary of Commerce or his or her designee shall chair the council and appoint one of the other council members to serve as vice chair. The Secretary of Commerce shall chair the first meeting at which time a chair and vice chair shall be elected from the members of the council. In the absence of the ~~Secretary of Commerce or his or her designee~~ chair, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.~~

~~(d) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.~~

(e) ~~Eight~~ Seven voting members of the council constitute a quorum and the affirmative vote of ~~at least the~~ a simple majority of those members present is necessary for any action taken by vote of the council.

(f) The council is part time. Public members appointed by the Governor may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in or otherwise associated with a broadband deployment project, project sponsor or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under section five, article two, chapter six-b of this code and is not subject to prosecution for violation of said section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor or project participant so long as the member recuses himself or herself from board participation regarding the conflicting issue in the manner set forth in legislative rules promulgated by the West Virginia Ethics Commission.

(g) No member of the council who serves by virtue of his or her office receives any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

§31-15C-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

~~(1)~~ (3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

~~(2)~~ (4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

~~(3)~~ (5) Cooperate and assist in the expansion of electronic instruction and distance education services. ~~by July 2014.~~

(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 effectuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;

(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(4) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state; and categorization of areas within the state 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) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

(7) Perform any and all other activities in furtherance of its purpose.

(c) The council shall exercise its powers and authority to bring advise the Legislature on bringing broadband service to unserved and underserved 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 without access to broadband service of any type or any speed before providing governmental funding for projects in areas with existing 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. To the

extent the report addresses data gathered in connection with subdivision (2), subsection (a), section four of this article, a copy of the report shall be provided to the Attorney General. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31-15C-5. Creation of the Broadband Enhancement Fund.

All moneys collected by the council, which may, in addition to appropriations, include gifts, bequests or donations, shall be deposited in a special revenue account in the State Treasury known as the Broadband ~~Deployment~~ Enhancement Fund. The fund shall be administered by and under the control of the ~~council~~ Secretary of the Department of Commerce. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code: *Provided, That for the fiscal year ending the thirtieth day of June, two thousand nine, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. Provided, That any funds remaining in the fund of the former Broadband Development Council shall be transferred to the Department of Commerce by June 30, 2015.*

§31-15C-7. Retention of outside expert consultant.

In order to assist the council with the highly technical task of categorizing the areas of the state and evaluating and prioritizing projects, the council may retain an outside expert consultant or consultants qualified to map the state on the basis of broadband availability, to evaluate, categorize and prioritize projects, to assist in public outreach and education in order to stimulate demand, ~~to advise the council on the granting or denying of funding to projects, and to provide other support and assistance as necessary to accomplish the purposes of this article. The provisions of article three, chapter five-a of this code, shall not apply to the retention of an outside expert consultant pursuant to this section. *Provided, that*~~

~~the council shall select the expert or experts by a competitive selection process.~~

§31-15C-9. Development of guidelines and application for funding assistance; legislative 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 Secretary of the Department of Commerce, with the advice and recommendation of the council, shall propose rules for legislative approval, pursuant to the provisions of 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:~~

~~(1) The cost-effectiveness 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 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.~~

~~(c) Under no circumstances may the council's guidelines allow for the approval of any project for broadband service involving the construction of a network that does not meet the minimum specifications for broadband service as set by the Federal Communications Commission.~~

~~(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 advise applicants of information required by state agencies that will 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.;~~

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill No. 488—A Bill to repeal §31-15C-10, §31-15C-11 and §31-15C-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-7 and §31-15C-9 of said code, all relating to creation of Broadband Enhancement Council; modifying definitions; establishing membership; outlining powers and duties; establishing Broadband Enhancement Fund; requiring Secretary of the Department of Commerce to administer and control the Broadband Enhancement Fund; transferring funds from Broadband Deployment Fund to Department of Commerce; modifying requirements for retention of outside expert consultant; and granting legislative rule-making authority.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 488, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall,

Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)–34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 488) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill No. 514, Relating to investments of local policemen's and firemen's pension and relief funds.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page six, section fourteen-d, line six, after the word "period," by inserting the words "provided in subsection (e), section nineteen, article twenty-two, chapter eight of this code,";

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 514—A Bill to amend and reenact §33-3-14d of the Code of West Virginia, 1931, as amended, relating to investments by local policemen's and firemen's pension and relief fund boards; requiring annual review of investment performance; requiring investment with the Investment Management Board in certain circumstances; and reallocating certain tax revenue in certain circumstances.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill No. 514, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 514) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as

amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill No. 515, Allowing Municipal Pensions Oversight Board invest funds with Investment Management Board or Board of Treasury Investments.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

Eng. Senate Bill No. 515—A Bill to amend and reenact §8-22-18a and §8-22-18b of the Code of West Virginia, 1931, as amended, all relating to Municipal Pensions Oversight Board; and retention, allocation, distribution and investment of funds.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Senate Bill No. 515, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 515) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to the House of Delegates amendment to, and the passage as amended, of

Eng. Senate Bill No. 532, Relating to civil liability immunity for clinical practice plans and medical and dental school personnel.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect July 1, 2015, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill No. 581, Relating to Tourism Promotion Fund and Courtesy Patrol Fund.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page six, section three, line fifteen, after the word “state.” by striking out the remainder of the section and inserting in lieu thereof the following: For that reason, on July 1, 2015:

(1) The administration of the Courtesy Patrol Program shall be transferred to the Division of Highways and expenditures made by the division to fund the Courtesy Patrol Program providing assistance to motorists on the state’s highways shall be made pursuant to appropriation of the Legislature from the State Road Fund or as otherwise provided by law; and

(2) The administration of the special revenue account in the State Treasury known as the Courtesy Patrol Fund shall be transferred to the Division of Highways: *Provided*, That any balances remaining in the Courtesy Patrol Fund at the end of fiscal year 2015 shall be transferred and deposited into the Tourism Promotion Fund. After the June 30, 2015, expenditures from the Courtesy Patrol Fund shall be used solely to fund the Courtesy Patrol Program providing assistance to motorists on the state's highways. Amounts collected in the Courtesy Patrol Fund which are found, from time to time, to exceed funds needed for the purposes set forth in this subdivision may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. Moneys paid into the fund may be derived from the following sources:

(A) Any gifts, grants, bequests, transfers, appropriations or other donations which may be received from any governmental entity or unit or any person, firm, foundation, corporation or other private entity;

(B) Any appropriations by the Legislature which may be made for the purposes of this section; and

(C) All interest or other return accruing to the fund.

Any moneys remaining in the fund at the end of a fiscal year shall remain in the fund and be available for expenditure during the ensuing fiscal year.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 581—A Bill to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17-1-3 of said code, all relating to transferring administration of the Courtesy Patrol Program and the Courtesy Patrol Fund from

Division of Tourism to Division of Highways; authorizing expenditures to fund the Courtesy Patrol Program to be made pursuant to appropriation of the Legislature from the State Road Fund; eliminating requirement that moneys be transferred from the Tourism Promotion Fund to the Courtesy Patrol Fund; providing for the disposition of balances in the fund upon transfer; providing sources of funding for the program; and providing for the uses of moneys in the fund.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill No. 581, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 581) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings,

Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 581) takes effect July 1, 2015.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect July 1, 2015, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill No. 583, Increasing tax rate on providers of certain nursing facility services.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page three, section eleven, line thirteen, by striking out the words “after June 30” and inserting in lieu thereof the words “on and after October 1”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 583—A Bill to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, relating to increasing the tax rate on providers of certain nursing facility services; and providing effective dates for the tax rate.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill No. 583, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 583) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 583) takes effect July 1, 2015.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 3, Requesting DOH name portion of Rt. 25 in Kanawha County “U. S. Army Sgt. James Lawrence Taylor Memorial Road”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Com. Sub. for Senate Concurrent Resolution No. 20, Requesting DOH name stretch of road in McDowell County “U. S. Army 1SG Joe C. Alderman Memorial Road”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 22, Requesting DOH name portion of U. S. Rt. 119 in Boone County “U. S. Army SGT Mark Andrew Messer Memorial Road”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 23, Requesting DOH name bridge in McDowell County “U. S. Army SFC Anthony Barton Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 25, Requesting DOH name bridge in Harrison County “U. S. Army PFC Nick A. Cavallaro Memorial Bridge” and “U. S. Army SSG Benjamin T. Portaro Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 29, Requesting DOH name bridge in Kanawha County “Rosie the Riveter Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Com. Sub. for Senate Concurrent Resolution No. 34, Requesting DOH name bridge in Greenbrier County “U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Com. Sub. for Senate Concurrent Resolution No. 35, Requesting DOH name bridge in McDowell County “U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony ‘Tony’ Gero Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 41, Requesting DOH name bridge in Berkeley County “W. C. Honaker and Clyde Spies Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 42, Requesting DOH name bridge in Fayette County “Tygrett Brothers Seven Veterans Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 43, Requesting DOH name bridge in Nicholas County “U. S. Army SPC Richard Nesselrotte Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 44, Requesting DOH name bridge in Randolph County “U. S. Navy PO2 Robert Paul Laderach Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the adoption of

Senate Concurrent Resolution No. 45, Requesting DOH name bridge in Jackson County “James P. Spano, Jr., Memorial Bridge”.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill No. 2016—A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

At the request of Senator Carmichael, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

The bill (Eng. Com. Sub. for H. B. No. 2016) was then read a second time.

On motion of Senator M. Hall, the following amendment to the bill was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the provisions of Engrossed Committee Substitute for Senate Bill No. 233.

Following extended discussion and a point of inquiry to the President, with resultant response thereto,

The question being on the adoption of Senator M. Hall's amendment to the bill, the same was put and prevailed.

The bill, as amended, was ordered to third reading.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. No. 2016) was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Trump, Walters, Williams and Cole (Mr. President)—24.

The nays were: Beach, Facemire, Kessler, Laird, Romano, Snyder, Unger and Yost—8.

Absent: Takubo and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2016) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Trump, Walters, Williams and Cole (Mr. President)—24.

The nays were: Beach, Facemire, Kessler, Laird, Romano, Snyder, Unger and Yost—8.

Absent: Takubo and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2016) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

Eng. Com. Sub. for House Bill No. 2128, Permitting those individuals who have been issued concealed weapons permits to keep loaded firearms in their motor vehicles on the State Capitol Complex grounds.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, to take effect from passage, of

Eng. House Bill No. 2283, Authorizing the Department of Environmental Protection to promulgate legislative rules.

A message from The Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

Eng. Com. Sub. for House Bill No. 2368, Relating to child welfare.

On motion of Senator Carmichael, the Senate refused to recede from its amendments to the bill and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

Whereupon, Senator Cole (Mr. President) appointed the following conferees on the part of the Senate:

Senators Ferns, Gaunch and Plymale.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments to the Senate amendments, as to

Eng. Com. Sub. for House Bill No. 2527, Creating a Task Force on Prevention of Sexual Abuse of Children; “Erin Merryn’s Law”.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the Senate amendments to the bill were reported by the Clerk:

On page one, by striking out the article heading and section caption and inserting in lieu thereof a new article heading and a new section caption, to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-814. Task Force on Prevention of Sexual Abuse of Children.;

On page four, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

§49-2-126. Legislative findings and declaration of intent for goals for foster children.;

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §49-2-126 and §49-2-814, all to read as follows.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for House Bill No. 2527—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §49-2-126 and §49-2-814, all relating to the welfare of children; establishing the Task Force on Prevention of Sexual Abuse of Children; authorizing section to be called “Erin Merryrn’s Law”; specifying membership; specifying responsibilities, including report of recommendations to Legislature and Governor; precluding member compensation or expense reimbursement; relating to legislative findings and declaration of intent for goals for foster children; requiring the Department of Health and Human Resources to propose legislative rules; providing that no new cause of action against the state is created; providing that no expenditure of funds is required; and providing for notifying former foster parents of child’s availability for placement.

On motion of Senator Carmichael, the Senate concurred in the foregoing House of Delegates amendments to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill No. 2527, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Takubo and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2527) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

Eng. Com. Sub. for House Bill No. 2536, Relating to travel insurance limited lines producers.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

Eng. Com. Sub. for House Bill No. 2557, Clarifying that an insured driver of a motor vehicle is covered by the driver's auto insurance policy when renting or leasing a vehicle.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, to take effect from passage, with its Senate amended title, of

Eng. House Bill No. 2652, Reducing the assessment paid by hospitals to the Health Care Authority.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

Eng. House Bill No. 2658, Relating to the inspection and slaughter of nontraditional agriculture.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

Eng. Com. Sub. for House Bill No. 2968, Exempting from property tax certain properties in this state owned by nonprofit youth organizations.

The Senate proceeded to the fourth order of business.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 36, Requesting DOH name bridge in McDowell County “Homer Hopkins Bridge”.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution No. 36 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name the bridge on County Route 5/3, bridge number 24-5/3-3.10 (1030), crossing the Tug River in McDowell County the “Homer Hopkins Bridge”.

Whereas, Homer Allen Hopkins was born on March 6, 1944, in Bradshaw, McDowell County, and had five siblings. At age one, his family moved to Garland, 8.1 miles north of his birthplace; and

Whereas, Homer Allen Hopkins graduated from high school in 1962 and enrolled at Nashville Auto Diesel College (now known as Lincoln College of Technology). After college, he returned to Garland. In 1963, he married Joyce. After living briefly in Alexandria, Virginia, he and his wife returned to Garland, where they raised four children; and

Whereas, Homer Allen Hopkins is known locally for his hard working habits. As a business owner, he created jobs and new opportunities for everyone in and around the community of Garland; and

Whereas, In July 1975, Homer Allen Hopkins left his employment and opened his own mining business. During his lifetime, he owned approximately 30 coal mines, employing approximately 500 employees; and

Whereas, In addition to the coal industry, Homer Allen Hopkins owned his own construction business. He was a certified contractor and installed septic systems. He built a total of eleven Dollar General stores throughout West Virginia, including three in his home county of McDowell. In 1985, he built a convenient store/gas station in Garland, known as “Hopkins’ Best-Way”, which was family owned and operated. In 1987, he built “Hoppy’s Skating Rink” on the outskirts of Bradshaw, which brought a new recreational activity to the residents of his community and McDowell County. He was instrumental in building the Marquee Cinemas in Welch, the Jaeger City Hall, and the buildings for the McDowell County Ambulance Authority and the Panther Fire Department. After a flood in 2002, he helped rebuild Jaeger High School’s football field and announcement booth; and

Whereas, In 1989, Homer Allen Hopkins opened “Bradshaw Auto Parts”, which was the only automotive business in the area; and

Whereas, Homer Allen Hopkins unselfishly spent his lifetime working for the betterment of his community and McDowell County by serving the needs of the people; and

Whereas, Homer Allen Hopkins is now 71 years of age and still lives in the home he hand-built as a newlywed on his childhood stomping grounds. He loves to spend time with his very close-knit

family, including his four children and five grandchildren who all live within ten minutes of his home; and

Whereas, Naming the bridge on County Route 5/3, bridge number 24-5/3-3.10 (1030), crossing the Tug River in McDowell County the “Homer Hopkins Bridge” is an appropriate recognition of his contributions to his state, McDowell County and community; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the bridge on County Route 5/3, bridge number 24-5/3-3.10 (1030), crossing the Tug River in McDowell County the “Homer Hopkins 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 “Homer Hopkins 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 Homer Hopkins and his family.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Chris Walters,
Chair.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 60, Requesting DOH name bridge in Logan County “U. S. Army SGT Bernard C. Maynard Memorial Bridge”.

House Concurrent Resolution No. 7, The Kenneth A. Chapman, Sr. Memorial Bridge.

Com. Sub. for House Concurrent Resolution No. 24, The US Army SP5 Johnnie Marvin Ayers Memorial Bridge.

House Concurrent Resolution No. 30, The Baisden Family Memorial Bridge.

Com. Sub. for House Concurrent Resolution No. 32, The Lipscomb Brothers Veterans Bridge.

Com. Sub. for House Concurrent Resolution No. 39, The USMC LCpl Julius C. “Corky” Foster Memorial Bridge.

Com. Sub. for House Concurrent Resolution No. 42, The Boyhood Home of Booker T. Washington.

And,

Com. Sub. for House Concurrent Resolution No. 98, Jack Furst Drive.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Chris Walters,
Chair.

Senator Cole (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Concurrent Resolution No. 62, Requesting Joint Committee on Government and Finance study racing and gaming industries.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

William P. Cole III,
Chairman, ex officio.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2160, WV Schools for the Deaf and Blind eligible for School Building Authority funding.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator M. Hall, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2160) contained in the preceding report from the Committee on Finance was taken up

for immediate consideration, read a second time and ordered to third reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. House Bill No. 2161, Adopting the Uniform Act on Prevention of and Remedies for Human Trafficking.

With amendments from the Committee on the Judiciary pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 10, 2015;

And reports the same back with the recommendation that it do pass as amended by the Committee on the Judiciary to which the bill was first referred.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator M. Hall, unanimous consent being granted, the bill (Eng. H. B. No. 2161) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5 and §15-14-6; that §61-2-17 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §61-2-17a and §61-2-17b; and that §62-1D-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 14. UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING.

§15-14-1. Short title.

This article may be cited as the Uniform Act on Prevention of and Remedies for Human Trafficking.

§15-14-2. Legislative findings.

(a) The Legislature hereby finds and declares that:

(1) Human trafficking constitutes a serious problem in West Virginia and across the nation;

(2) Human trafficking is abhorrent to a civilized society and deserving of the most diligent response from the state;

(3) Human trafficking often involves minors who have been forced into involuntary servitude and commercial sexual activity;

(4) Human trafficking can take many forms, but generally includes the use of physical abuse, threats of harm, or fear of other consequences to prevent victims from reporting the activity; and

(5) Human trafficking creates a cycle of violence, impacting victims, families, and communities.

(b) The Legislature further finds and declares that:

(1) Legislation is required to combat this despicable practice, to make it easier to prosecute and punish persons who engage in human trafficking and to protect and support the victims; and

(2) The Legislature supports a comprehensive approach to combating human trafficking, which approach includes prevention, protection, prosecution, and partnerships.

(c) Now, therefore, the Legislature joins the federal government and other states around the nation in passing legislation in order to combat human trafficking and protect the victims.

§15-14-3. Definitions.

Unless otherwise specified in this article, the terms used in this article have same meaning ascribed to them by section seventeen, article two, chapter sixty-one of this code. “Commission” means the Commission on the Prevention of Human Trafficking.

§15-14-4. Commission on the Prevention of Human Trafficking.

(a) The Commission on Human Trafficking is hereby created. Membership on the commission consists of the following:

(1) The Director of the Division of Justice and Community Service or a designee;

(2) The Attorney General, or a designee;

(3) The Secretary of the Department of Health and Human Resources, or a designee;

(4) The Superintendent of the State Police, or a designee;

(5) The Commissioner of Labor, or a designee;

(6) The Commissioner of the Division of Highways, or a designee;

(7) The Director of Juvenile Services, or a designee;

(8) A representative of the West Virginia Sheriff's Association, selected by the membership of the Association;

(9) A representative from the membership of the West Virginia Chiefs of Police Association, selected by the membership of the Association;

(10) A representative of the West Virginia Prosecuting Attorneys Association, selected by the leadership of the Association;

(11) A representative from the membership of the West Virginia Foundation for Rape and Information Services, selected by the membership of the Foundation;

(12) A representative from the membership of the West Virginia Child Advocacy Network, selected by the membership of the Network; and

(13) A representative from the membership of the West Virginia Coalition Against Domestic Violence, selected by the membership of the Coalition;

(b) The state agencies represented on the commission created under this section shall provide staff to the commission.

(c) The first meeting of the commission shall be held no later than September 1, 2015, where the members of the commission shall elect a chairperson. Thereafter, the commission shall meet at least twice each calendar year. Meetings may be held via teleconference or other electronic means. A majority of the members of the council constitute a quorum.

(d) The commission created under this section shall:

(1) Develop a coordinated and comprehensive plan to provide victims with services;

(2) Promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

(3) Create a public-awareness poster that contains the National Human Trafficking Resource Center hotline information;

(4) Develop a concise card or brochure for victims, concerning their rights to any state, federal, or privately funded services;

(5) Coordinate training on human-trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators; and

(6) Submit a report to the Governor and the Joint Committee on Government and Finance summarizing the accomplishments of the commission during the preceding fiscal year and making recommendations regarding the development and coordination of the state's responses to fight human trafficking and support victims.

§15-14-5. Display of public-awareness poster; penalty for failure to display.

(a) The Division of Highways shall display a public-awareness poster that contains the National Human Trafficking Resource Center hotline information in every rest area and welcome center in the state which is open to the public.

(b) An employer shall display the public-awareness poster described in subsection (a) in a place that is clearly conspicuous and visible to employees and the public at each of the following locations in this state at which the employer has employees:

(1) A strip club or other sexually-oriented business;

(2) A business entity that has been found to be in violation of section five, article eight, chapter sixty-one of this code;

(3) A job-recruitment center;

(4) A hospital; or

(5) An emergency-care provider.

§15-14-6. Eligibility for services.

(a) A victim is eligible for benefits or services available through the state or identified in the plan developed under subsection (d), section four of this article, including, but not limited to, the advocacy and shelter services required by article twenty-six, chapter forty-eight of this code.

(b) A victim is eligible for compensation under the Crime Victim's Compensation Fund established in article two-a, chapter fourteen of this code.

(c) A minor who has engaged in commercial sexual activity is eligible for benefits or services available through the state and identified in the plan developed under subsection (d), section four of this article, including, but not limited to, the children's protective services required by article six, chapter forty-nine of this code.

(d) As soon as practicable after a first encounter with an individual who reasonably appears to a law-enforcement officer to be a victim or minor who has engaged in commercial sexual activity, the law enforcement officer shall notify the appropriate agencies identified in the co-ordinated and comprehensive plan developed under subsection (d), section four of this article, that the individual may be eligible for a benefit or service under this code. Nothing in this article is intended to prevent individuals from reporting suspected commercial sexual activity of a victim or minor to law enforcement, or any other appropriate agency or entity.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 2. CRIMES AGAINST THE PERSON.****§61-2-17. Human trafficking; criminal penalties.**

(a) As used in this section:

(1) “Coercion” means:

(A) The use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;

(B) The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;

(C) The abuse or threatened abuse of law or legal process;

(D) Controlling or threatening to control an individual’s access to a controlled substance as defined in article two, chapter sixty-a of this code;

(E) The destruction or taking of or the threatened destruction or taking of an individual’s identification document or other property;

(F) The use of debt bondage;

(G) The use of an individual’s physical or mental impairment when the impairment has a substantial adverse effect on the individual’s cognitive or volitional function; or

(H) The commission of civil or criminal fraud.

(†) (2) “Debt bondage” means inducing an individual to provide:

(A) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(B) Labor or services in payment toward or satisfaction of a real or purported debt, if the status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services, or those of a person under the debtor's control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

~~(2)~~ (3) "Forced labor ~~or services~~" means labor or services that are performed or provided by ~~another~~ one person and are obtained or maintained through ~~a~~ another person's:

(A) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services that person or another person would suffer serious bodily harm or physical restraint: *Provided*, That, this does not include work or services provided by a minor to the minor's parent or legal guardian so long as the legal guardianship or custody of the minor was not obtained for the purpose compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services.

(B) Physically restraining or threatening to physically restrain a person;

(C) Abuse or threatened abuse of the legal process; or

(D) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.

"Forced labor ~~or services~~" does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

~~(3) (4) “Human trafficking” means the labor trafficking or sex trafficking involving adults or minors where two or more persons are trafficked within any one year period~~ commission of an offense created by subsection (b) of this section.

~~(5) “Identification document” means a passport, driver’s license, immigration document, travel document or other government-issued identification document, including a document issued by a foreign government.~~

~~(6) “Labor or services” means activity having economic value.~~

~~(7) “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision agency or instrumentality.~~

~~(8) “Sexual activity” includes sexual contact, sexual intercourse, and sexual intrusion as defined by section one, article eight-b, chapter sixty-one of this code. The term also includes a sexually explicit performance.~~

~~(9) “Sexually explicit performance” means an act or show, whether public or private, live, or photographed, recorded, or videotaped, intended to appeal to an individual’s prurient interest or to depict in a patently offensive way, sexual conduct, and to do so in a way that lacks artistic or scientific value.~~

~~(10) “Victim” means an individual who is subjected to human trafficking or to conduct what would have constituted human trafficking had this section been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.~~

~~(4) “Labor trafficking” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:~~

~~(A) Debt bondage or forced labor or services; or~~

~~(B) Slavery or practices similar to slavery.~~

~~(5) “Sex trafficking of minors” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining or receipt of a person under the age of eighteen by any means, whether a United States citizen or foreign national, for the purpose of causing the minor to engage in sexual acts, or in sexual conduct violating the provisions of subsection (b), section five, article eight of this chapter or article eight-c of this chapter.~~

~~(6) “Sex trafficking of adults” means the promotion, recruitment, transportation, transfer, harboring, enticement, provision, obtaining, receipt of a person eighteen years of age or older, whether a United States citizen or foreign national for the purposes of engaging in violations of subsection (b), section five, article eight of this chapter by means of force, threat, coercion, deception, abuse or threatened abuse of the legal process, or any scheme, plan, pattern, or other action intended to cause a person to believe that, if the person did not engage in a violation of subsection (b), section five, article eight of this chapter, that person or another person would suffer serious bodily harm or physical restraint.~~

(b) A person commits the offense of human trafficking if the person:

(1) Knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of forced labor or to coerce an individual to engage in commercial sexual activity.

(2) Knowingly uses coercion to compel an individual to provide labor or services, except when such conduct is permissible under federal law or state law.

(3) Knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or

(4) Uses coercion or deception to compel an adult to engage in commercial sexual activity.

(c) A business entity may be prosecuted for human trafficking under this section if:

(1) The entity knowingly engaged in conduct that constitutes human trafficking; or

(2) An employee or agent of the entity engaged in conduct that constitutes human trafficking and the commission of the offense was part of a pattern of illegal activity under this section for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

~~(b)~~ (d) Any person who knowingly and willfully engages in human trafficking is guilty of a felony and, upon conviction shall be incarcerated in a state correctional facility for an indeterminate sentence of not less than three nor more than fifteen years or fined not more than \$200,000, or both. Any business entity that engages in human trafficking may be fined not more than \$500,000 for each offense, be required to disgorge profit from activity in violation of this section pursuant to section five, article thirteen of this chapter, and be debarred from state and local government contracts.

~~(c)~~ (e) Any person who is a victim of human trafficking A victim may bring a civil action in circuit court against a person that commits an offense of human trafficking for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. The court may award actual damages; compensatory damages, punitive damages, injunctive relief and any other appropriate relief. A prevailing plaintiff victim is also entitled to attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious. An action under

this section must be commenced not later than ten (10) years after the later date on which the victim was freed from the human trafficking situation, or attained 18 years of age. Damages awarded to the victim under this section must be offset by any other restitution paid to the victim. This section does not preclude any other remedy available to the victim under federal law or the law of this state other than the Uniform Act on Prevention of and Remedies for Human Trafficking.

~~(d)~~ (f) Notwithstanding the definition of victim in subsection (k), section three, article two-a, chapter fourteen of this code, a person who is a victim of human trafficking is a victim for all purposes of article two-a, chapter fourteen of this code.

~~(e)~~ (g) This article and the rights and remedies provided in this article are cumulative and in addition to other existing rights.

~~(f) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, any person convicted of prostitution in violation of subsection (b), section five, article eight of this chapter where the conviction was a result of the person being a victim of human trafficking as defined in this section, may petition the circuit court of the county of conviction for an order of expungement pursuant to section twenty-six, article eleven of this chapter:~~

~~No victim of human trafficking seeking relief under this subsection shall be required to prove her or she has rehabilitated himself or herself in order to obtain expungement.~~

§61-2-17a. Immunity of a minor victim of sex trafficking.

(a) The terms used in this section have the same meaning ascribed to them by subsection (a), section seventeen of this article.

(b) An individual is not criminally liable or subject to juvenile-delinquency proceedings for prostitution, in violation of

subsection (b), section five, article eight of this chapter, if the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim.

(c) A minor who under subsection (a) or (b) is not subject to criminal liability or a juvenile-delinquency proceeding is presumed to be a neglected or abused child, in need of services under section nine, article six, chapter forty-nine of this code.

(d) This section does not apply in a prosecution or a juvenile-delinquency proceeding for soliciting, inducing, enticing or procuring a prostitute in violation of subsection (b), section five, article eight of this chapter.

§61-2-17b. Petition to vacate and expunge conviction of sex trafficking victim.

(a) The terms used in this section have the same meaning ascribed to them by subsection (a), section seventeen of this article.

(b) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, an individual convicted of prostitution in violation of subsection (b), section five, article eight of this chapter as a direct result of being a victim of human trafficking may apply by petition to the circuit court in the county of conviction to vacate the conviction and expunge the record of conviction. The court may grant the petition on a finding that the individual's participation in the offense was a direct result of being a victim of human trafficking.

(c) No victim of human trafficking seeking relief under this section shall be required to prove he or she has rehabilitated himself or herself in order to obtain expungement.

(d) A petition filed under subsection (b), any hearing conducted on the petition, and any relief granted shall meet the procedural requirements of section twenty-six, article eleven, chapter sixty-one

of this code: *Provided*, That a victim of human trafficking is not subject to the age and criminal history limitations set forth in that section.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.

The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in section seven of this article and such judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (i) Kidnapping or abduction as defined and prohibited by the provisions of sections fourteen and fourteen-a, article two, chapter sixty-one of this code and including threats to kidnap or demand ransom as defined and prohibited by the provisions of section fourteen-c of said article two; or (ii) of any offense included and prohibited by section eleven, article four, chapter twenty-five of said code, sections eight, nine and ten, article five, chapter sixty-one of said code or section one, article eight, chapter sixty-two of said code to the extent that any of said sections provide for offenses punishable as a felony; or (iii) dealing, transferring or trafficking in any controlled substance or substances in the felonious violation of chapter sixty-a of this code; or (iv) human trafficking as defined and prohibited by section seventeen, article two, chapter sixty-one of this code; or (v) any aider or abettor to any of the foregoing offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or conspirator is a party to the communication to be intercepted.

The bill (Eng. H. B. No. 2161), as amended, was then ordered to third reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill No. 2515, Relating to elk restoration.

With amendments from the Committee on Natural Resources pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 9, 2015;

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator M. Hall, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. No. 2515) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

At the further request of Senator M. Hall, and by unanimous consent, the bill was advanced to third reading with the unreported committee amendments pending and with the right for further amendments to be considered on that reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. House Bill No. 2926, Relating to deferral charges in connection with a consumer credit sale or consumer loan.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 6, 2015;

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator M. Hall, unanimous consent being granted, the bill (Eng. H. B. No. 2926) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

At the further request of Senator M. Hall, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendments pending and with the right for further amendments to be considered on that reading.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Com. Sub. for House Concurrent Resolution No. 21, The PFC James Elwood Wickline Memorial Bridge.

And has amended same.

And,

Com. Sub. for House Concurrent Resolution No. 27, The West Virginia Air National Guard 167th Fighter Squadron Memorial Bridge.

And has amended same.

And reports the same back with the recommendation that they each be adopted, as amended.

Respectfully submitted,

Chris Walters,
Chair.

The Senate proceeded to the sixth order of business.

Senators Yost, Boley and Takubo offered the following resolution:

Senate Concurrent Resolution No. 64—Requesting the Joint Committee on Government and Finance study the benefits, costs and feasibility of developing a federally compliant, public sector state occupational safety and health plan.

Whereas, The West Virginia Occupational Safety and Health Act was enacted into law in 1987 for the safety and health of public employees in the workplace and this Legislature found that safe workplaces reduce the costs to public employers because unsafe or unhealthful work environments result in lost productivity and workers' compensation expenses; and

Whereas, The safety standards for public employees were last reviewed eighteen years ago and the Division of Labor has been unable to conduct meaningful oversight of public employee safety due to competing demands for scarce resources; and

Whereas, The current Occupational Safety and Health Act specifically exempts two categories of employees in sectors that experience a greater rate of employee injuries and lost hours than in other public employee occupations; and

Whereas, The United States Bureau of Labor Statistics found in 2013 that the incidence rate of on-the-job injuries has increased more rapidly for public health care workers than in any other industry, public or private, but public employee health care workers in West Virginia have been exempted from the protections of our current Occupational Safety and Health Act; and

Whereas, West Virginia currently ranks fifth highest of all the states in rates of worker injuries, fatalities and lost work hours; and

Whereas, In the absence of an active enforcement and ongoing review of broadly accepted safety standards by the state, the United States Occupational Safety and Health Administration has primary, and largely exclusive, jurisdiction over employee protection and enforcement of workplace safety standards for public sector employees in West Virginia; and

Whereas, There are just seven inspectors employed by the U. S. Occupational Safety and Health Administration for oversight of all work environments and employment sectors for the entire state, and based upon the existing number of employers in West Virginia, it would take 173 years for these seven inspectors just to visit every job site in the state; and

Whereas, Federal law allows individual state governments to assume primary jurisdiction and local control over the administration of workplace safety standards and cooperative compliance programs between employers and enforcement staff

when the state meets sufficient criteria in its legislative and regulatory specifications and planned administration of those provisions; and

Whereas, Rather than attempting to assume primary oversight of all employment sectors, a state may opt to develop a state compliance plan limited solely to state public sector, and optionally to local government, employers and employees; and

Whereas, If the state develops a federally compliant plan for its own administration of occupational safety and health programs, the state would be eligible to receive funding from the federal government for fifty percent of the cost of administering the state's program; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the potential benefits, costs and feasibility of developing a federally compliant, public sector state occupational safety and health plan; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Petitions

Senator Sybolt presented a petition from Jennifer Ends and numerous West Virginia residents, opposing Senate Bill No. 337 (*Creating workplace freedom act*), Engrossed Committee Substitute

for Senate Bill No. 361 (*Eliminating prevailing hourly wage requirement for construction of public improvements*) and Committee Substitute for Senate Bill No. 14 (*Creating Public Charter Schools Act of 2015*).

Referred to the Committee on the Judiciary.

At the request of Senator Carmichael, and by unanimous consent, the Senate returned to the fourth order of business.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 65 (originating in the Committee on Transportation and Infrastructure)—Requesting the Joint Committee on Government and Finance study state road funding needs, alternative ways of providing additional funding for new roads and bridges and improvements to existing roads and bridges to foster public safety, health and welfare and promote economic development and jobs.

Whereas, Roads maintained by the Department of Transportation include: (1) 38,684 miles of public roads (2012 Public Certified Mileage); (2) 35,893 miles of state-owned highways; (3) 468 miles of state-owned interstate highway; (4) 88 miles of West Virginia Turnpike; (5) 1,972 miles included in the National Highway System, 23 miles of which are connectors to other modes of transportation such as airports, trains and buses; (6) 6,914 bridges of which 33 percent are more than 100 feet in length; (7) one all-American road; (8) five national byways; (9) 14 state byways; and (10) eight backways; and

Whereas, A 2012 road needs assessment prepared for Governor Tomblin's Blue Ribbon Commission by Wilbur Smith Associates revealed that during the next 17 years: (1) 51,108 lane miles of road

will need to be improved; (2) 10,401 lane miles will need modernization improvements including lane widening, road reconstruction and shoulder improvements; and (3) 3,402 lane miles will need to be constructed; and

Whereas, The Wilbur Smith needs assessment also concluded that over a 25-year period: (1) 814 bridges will need to be replaced; (2) 577 bridges will need to be widened; (3) eight bridges will need to be straightened; and (4) one bridge will need to be razed; and

Whereas, Road construction, improvements and maintenance are primarily funded by taxes and fees on motor vehicles and motor fuels; and

Whereas, The Wilbur Smith needs assessment projected the funding gap for road construction and maintenance over the next 25 years to be \$36.7 billion, excluding new road construction; and the funding gap for bridges construction and maintenance was estimated to be \$2.4 billion, excluding the cost of new bridge construction; and

Whereas, Modern, safe roads and bridges are essential to the growth of our communities and the public health, welfare and safety and are critical to economic development and jobs; and

Whereas, Counties need greater ability to influence when and where new roads are constructed and existing roads and bridges are modernized or upgraded, the ability to recommend to the Division of Highways road and bridge construction projects, and to assist in the financing of those projects; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study state road funding needs, alternative ways of providing additional funding for new roads and bridges and improvements to existing roads and bridges to foster public safety,

health and welfare and promote economic development and jobs; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, 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 reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Chris Walters,
Chair.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 66 (originating in the Committee on Transportation and Infrastructure)—Requesting the Joint Committee on Government and Finance study future legislation relating to revenue sources for increased highway and bridge construction and maintenance.

Whereas, Recent research conducted for the Contractors Association of West Virginia noted that 28 percent of West Virginia's roads eligible for federal aid are rated "not acceptable"

and 35.2 percent of West Virginia's bridges are either structurally deficient or functionally obsolete; and

Whereas, Such research also identified West Virginia as having the highest rate of traffic fatalities per mile traveled in the country; and

Whereas, Inflation and better fuel economy are two factors that have contributed to a reduced funding level for West Virginia's infrastructure construction and maintenance; and

Whereas, On March 10, 2015, the West Virginia Senate Committee on Transportation and Infrastructure discussed the merits of Senate Bill No. 478, entitled "Generating and maintaining revenue for road construction and maintenance and infrastructure" and the potential economic impact of an annual \$500 million increase in highway and bridge construction investment in West Virginia; and

Whereas, Appropriate funding for highway and bridge maintenance and construction is of utmost importance for the safety and economic prosperity of West Virginians; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study future legislation relating to revenue sources for increased highway and bridge construction and maintenance; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, 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 reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Chris Walters,
Chair.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 67 (originating in the Committee on Transportation and Infrastructure)—Requesting the Joint Committee on Government and Finance study the development, funding and construction of a statewide fiber optic broadband infrastructure network, known as the broadband middle mile, to be owned by the state.

Whereas, In building and improving the infrastructure of West Virginia, access to broadband services for all communities is vital; and

Whereas, Access to the Internet and high-speed broadband services is expensive and sometimes nonexistent in many areas of the state, reducing the chances of communities to attract and retain businesses and high-paying jobs; and

Whereas, It is essential to economic development and the viability of many communities that there be statewide access to high-speed, high-quality and inexpensive broadband services; and

Whereas, The National Broadband Plan (NBP) announced by the FCC in March, 2010, visualizes a significantly enhanced commitment to community institutions as an element of the plans for promoting broadband availability; and

Whereas, The plan states that every American community should have affordable access to at least 1 gigabit per second broadband service to anchor institutions such as schools, hospitals and government buildings; and

Whereas, The middle-mile provision is a major issue in reducing the price of broadband Internet service to nonincumbent operators. Internet bandwidth is relatively inexpensive to purchase in bulk at the major Internet peering points; and

Whereas, Middle-mile access, when bought from the incumbent operator, is often much more expensive and typically forms the major expense of nonincumbent broadband ISPs and inhibits communities' access to high-speed, high-quality and inexpensive broadband services; and

Whereas, The alternative, building out of their own fiber networks, is capital intensive and thus unavailable to most new operators; and

Whereas, For these reasons, many proposals for government broadband stimulus initiatives are directed at building out the middle mile; and

Whereas, The State of West Virginia must work with the NBP to develop a plan for broadband middle-mile infrastructure development and to create a separate infrastructure fund for broadband middle-mile infrastructure projects; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the development, funding and construction of a

statewide fiber optic broadband infrastructure network, known as the broadband middle mile, to be owned by the state; and, be it

Further Resolved, That the West Virginia Network (WVNET) develop a statewide broadband middle-mile infrastructure draft plan and make recommendations to the Joint Committee on Government and Finance on how such a network may be realized; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2016, 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 reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Chris Walters,
Chair.

On motion of Senator Carmichael, the Senate recessed until 2 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill No. 233, Budget Bill.

On third reading, coming up in regular order, was reported by the Clerk.

On motion of Senator Carmichael, the bill was recommitted to the Committee on Finance.

Eng. Com. Sub. for House Bill No. 2005, Relating to alternative programs for the education of teachers.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams and Cole (Mr. President)—29.

The nays were: Miller, Romano and Yost—3.

Absent: Takubo and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2005) passed.

On motion of Senator Sypolt, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2005—A Bill to amend and reenact §18A-3-1, §18A-3-1a, §18A-3-1b and §18A-3-2a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto seven new sections, designated §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g, §18A-3-1h and §18A-3-1i, all relating to revising, reorganizing and clarifying provisions regarding teacher certifications, including standard certifications, alternative certifications, certifications for out-of-state teachers and certifications for athletic coaches and extracurricular coaches; expanding criteria upon which a teacher's certificate may be awarded to a teacher from another state; defining terms relating

to alternative programs for the education of teachers; authorizing certain partnerships to provide alternative certification programs; modifying entities eligible to deliver alternative programs; specifying permissible partners; requiring partnership agreements and specifying necessary contents; requiring posting of vacancies; limiting circumstance where partnership may enroll alternative program candidate; requiring or authorizing approval by state board of education under certain circumstances; modifying and specifying criteria and components required for alternative certification program delivery; specifying certain required components of alternative certification program; requiring minimum hours of instruction; specifying eligibility criteria for alternative certification program teacher candidate; requiring that employment be in an area of critical need and shortage; providing for professional support team to participate in alternative program delivery and specifying responsibilities; modifying the charges which may be imposed for alternative program participation or delivery; specifying required and prohibited acts by certain entities; requiring continued contract renewal of participating program teacher and continued delivery of alternative certification program under certain circumstances and providing exception; providing retention preference for professional educators; providing for evaluation of and recommendation regarding award of professional teaching certificate for alternative program teacher; authorizing appeal of recommendation under certain circumstances; expanding program fields and conditions in which an alternative program teacher may be employed; removing preference among certain applicants when considering applicants for alternative teacher programs; modifying provisions for alternative program teacher to attain professional teaching certificate; modifying institutions from which professional teaching certificate candidates may have graduated; providing guidelines for alternative programs for certain highly qualified special education teachers; providing for certification under certain circumstances of teachers educated or certified in other states; expanding criteria upon which a teacher's certificate may be awarded to teachers; removing references to internship programs; extending alternative program teacher certificate and making nonrenewable; removing requirement,

regarding athletic and extracurricular coaches, that a currently employed certified professional educator has not applied for position; and requiring legislative rule promulgation by state board.

Senator Carmichael moved that the bill take effect July 1, 2015.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams and Cole (Mr. President)—29.

The nays were: Miller, Romano and Yost—3.

Absent: Takubo and Woelfel—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2005) takes effect July 1, 2015.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2140, Building governance and leadership capacity of county board during period of state intervention.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Takubo and Woelfel-2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2140) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2240, Providing that an act of domestic violence or sexual offense by strangling is an aggravated felony offense.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)-32.

The nays were: None.

Absent: Takubo and Woelfel-2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2240) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2240-A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new

section, designated §61-2-9d, relating to crimes against the person; providing that strangling is a criminal offense; defining bodily injury and strangling; providing a felony offense of strangling another; and providing criminal penalties.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2366, Relating generally to the solicitation of minors.

Having been amended and read a third time on yesterday, Thursday, March 12, 2015, and now coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill No. 2466, Exempting valid nonprofit organizations from licensing requirements of the West Virginia Alcoholic Beverage Control Authority during certain events.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Takubo and Woelfel-2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2466) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2466—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-16-11b; and to amend and reenact §60-6-7 and §60-8-3 of said code, all relating to the sale of alcoholic beverages by certain nonprofit organizations; creating a one-day special license; establishing a license fee; updating archaic language; and allowing nonintoxicating beer and wine to be sold and served at fund-raising events.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2479, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. House Bill No. 2492, Repealing the requirement that an entity charging admission to view certain closed circuit telecast or subscription television events needs to obtain a permit from the State Athletic Commission.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Takubo and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2492) passed.

At the request of Senator Blair, as chair of the Committee on Government Organization, and by unanimous consent, the unreported Government Organization committee amendment to the title of the bill was withdrawn.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2549, Relating to the preparation and publication of county financial statements.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Takubo and Woelfel-2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2549) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2549—A Bill to amend and reenact §7-5-16 of the Code of West Virginia, 1931, as amended, relating to changing the deadline of disclosure of county financial statements; and requiring publication as a Class I-0 legal advertisement of the county financial statements.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2607, Relating to the violation of interfering with emergency services communications and clarifying penalties.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—32.

The nays were: None.

Absent: Takubo and Woelfel-2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2607) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. House Bill No. 2607—A Bill to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to penalties incurred from obstructing, fleeing from and making false statements to law-enforcement, probation and parole officers and interfering with emergency communications; and amending the penalties for several of the violations to make it clear that the convicted person may be both fined and confined.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2646, Legalizing and regulating the sale and use of fireworks.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill No. 2646 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boso, Carmichael, Facemire, Ferns, D. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—29.

The nays were: Boley, Gaunch, M. Hall and Nohe—4.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2646) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. House Bill No. 2646—A Bill to repeal §11-12-86 of the Code of West Virginia, 1931, as amended; to repeal §29-3-23, §29-3-24, §29-3-25 and §29-3-26 of said code; to amend said code by adding thereto a new section, designated §9A-1-11b; to amend and reenact §11-17-3 of said code; to amend and reenact §16-2-11 of said code; to amend said code by adding a new section, designated §16-2-13a; to amend said code by adding thereto a new article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8, §29-3E-9, §29-3E-10, §29-3E-11, §29-3E-12 and §29-3E-13; and to amend and reenact §61-3E-1 and §61-3E-11 of said code, all relating to raising funds for veterans' facilities generally, increasing the excise tax on cigarettes by one dollar over a two year period beginning July 1, 2015; dedicating twenty million dollars from cigarette excise taxes collected to the Veterans Program Fund for building a new veteran's facility; creating the West Virginia Veterans' Program Fund in the office of the State Treasurer; dedicating twenty million dollars from cigarette excise taxes collected from July 1, 2016 through June 30, 2017, to the Consolidated Medical Services Fund, Continuum of Care exclusively for purposes of treating controlled substance abuse and operating drug treatment facilities; dedicating two million dollars annually, beginning July 1, 2015, to the Fire Protection Fund for distribution to Volunteer Fire Departments; legalizing and regulating the sale and use of fireworks; eliminating the prohibition on the sale, possession and ignition of fireworks; eliminating the requirement that the State Fire Marshal seize and destroy fireworks and combustibles illegally held; establishing age limitation for purchase and sale of consumer fireworks; eliminating the prohibition on nonresidents without in-state legal counsel to obtain a permit for conducting of a pyrotechnic display; increasing the sparkler and

novelty registration fee; eliminating certain defined terms; eliminating exemptions; defining terms relating to consumer fireworks; creating standards for the production and transport of fireworks; establishing registration requirements for sales of sparklers, novelties and toy caps; requiring local boards of health to assist Fire Marshal's office in developing a fireworks safety program; clarifying that certain veterans' organizations and racetrack video lottery facilities may only allow smoking of tobacco products if nonsmoking areas are provided; setting ventilation age and space requirements for racetrack video lottery facilities which allow smoking; creating a certification requirement for the sale of consumer fireworks; limiting sale of consumer fireworks to certain facilities including parking lots of certain veterans' organizations, licensed racetrack video facilities, retail store parking lots and freestanding stores; establishing permit requirements for public fireworks displays; specifying imposition of a fireworks safety fee of ten percent of sales for the retail sale of consumer fireworks dedicated to the West Virginia Veterans' Program Fund; specifying collection and deposit of monies from fees, specifying one percent retainage by Tax Commissioner for administration, designating the allocation and distribution of the fee; creating the West Virginia Veterans Program Fund to be administered by the Department of Veterans' Assistance; regulating public fireworks displays; providing for rules; authorizing seizures by the State Fire Marshal; providing exemptions; and providing for criminal penalties.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill No. 2663, Creating the Rehabilitation Services Vending Program Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall,

Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. No. 2663) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2674, Making home schooled students eligible for a PROMISE scholarship without taking the GED test.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2674) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2674—A Bill to amend and reenact §18C-7-6 of the Code of West Virginia, 1931, as amended, relating to making home-schooled students eligible for a PROMISE scholarship without obtaining a high school equivalency certificate.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2674) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill No. 2811, Deleting obsolete provisions regarding the Physicians' Mutual Insurance Company.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder,

Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2811) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill No. 2878, Creating a one-stop electronic business portal in West Virginia.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. No. 2878) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill No. 2878—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-1-131, relating to creating a web-based electronic business portal in West Virginia; requiring the Secretary of State to create a web-based business portal to facilitate interaction between government and businesses in West Virginia; requiring Secretary of State to establish a call center to assist businesses obtain information regarding compliance with state law; requiring the Secretary of State to develop requirements for the web-based business portal; and requiring the Secretary of State to propose rules for legislative approval to implement the provisions of the bill.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill No. 2233, Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 3. RULE-MAKING.

§29A-3-16. Legislative review of procedural rules, interpretive legislative rules.

(a) The Legislative Rule-Making Review Committee may, with the assistance of the Legislative Auditor's Office, review any procedural rules rule, interpretive rules rule or existing legislative rules and may make recommendations concerning such rules to the Legislature, or to the agency or to both the Legislature and the agency rule to determine if the rule is achieving its purpose, and based on its determination, if the rule should be continued, amended or repealed.

(b) Following the review, the Legislative Rule-Making Committee shall make recommendations to the agency or board, which promulgated the rule, and to the Joint Committee on Government and Finance.

The bill (Eng. Com. Sub. for H. B. No. 2233), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2263, Providing guidance for prosecuting attorneys in cases involving abused and neglected children.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Trump, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and with the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill No. 2266, Relating to the publication requirements of the administration of estates.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the bill was withdrawn.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §16-5-9a; that §44-1-14a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-1-30; and that §44-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-9a. Legal residences to be included on certificates of death.

In order to assist clerks of county commission fulfill their responsibilities under chapter forty-four of this code, the State Registrar shall require persons completing certificates of death, to include any known legal residences of the decedent, if different than the place of death.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisal of any estate or within one hundred twenty days of the date of qualification of the personal representative if an appraisal is not filed as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in

a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

- (1) The name of the decedent;
- (2) The name and address of the county commission before whom the proceedings are pending;
- (3) The name and address of the personal representative;
- (4) The name and address of any attorney representing the personal representative;
- (5) The name and address of the fiduciary commissioner, if any;
- (6) The date of first publication;
- (7) A statement that claims against the estate must be filed within sixty days of the date of first publication in accordance with ~~the provisions of~~ article two or article three-a of this chapter;
- (8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with ~~the provisions of~~ section eleven, twelve or thirteen, article five, chapter forty-one of this code;
- (9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within ~~three months~~ sixty days after the date of first publication or thirty days of service of the notice, whichever is later; and
- (10) If the appraisal of the assets of the estate shows the value to be ~~\$100,000~~ \$200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is

competent at law, a statement substantially as follows: "Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within ~~ninety~~ sixty days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner." If a party in interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and the personal representative shall be required to pay no further fees, except to the fiduciary commissioner for conducting any hearings, or performing any other duty as a fiduciary commissioner. The time period for filing claims against the estate shall expire upon the time period set out in the notice to creditors published by the clerk of the county commission as required in this subsection (a). ~~In the event that~~ If an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration of the estate as requested by the interested party.

(11) This notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication of such notice shall be equivalent to personal service on creditors, distributees and legatees.

(b) If no appraisal is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisal has not been filed. ~~Notwithstanding any other provision of this code to the contrary, the county clerk shall publish the notice required in subsection (a) of this section within six months of the qualification of the personal representative.~~

(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within ~~ninety~~ sixty days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid, or by personal service on the following persons:

(1) If the personal representative is not the decedent's surviving spouse and not the sole beneficiary or sole heir, the decedent's surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ninety days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service

of the notice in accordance with this subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of \$20 for the publication of the notice required in this section.

(h) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.

§44-1-30. Death certificate or other proof of death and residence may be required.

The clerk of the county commission may require a certified copy of a decedent's death certificate or other proof of death and residence prior to fulfilling the clerk's responsibilities under this chapter.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary for the settlement of the estate: *Provided*, That in counties where there are two or more commissioners, the estates of decedents must be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than \$300 and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission that the fee is based upon the actual time spent and actual services rendered pursuant to a schedule of fees or rate of compensation for fiduciary commissioners promulgated by the commission in

accordance with the provisions of section nine, article one, chapter fifty-nine of this code.

(b) If the personal representative delivers to the clerk an appraisal of the assets of the estate showing their value to be ~~\$100,000~~ \$200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record the appraisal. If an unpaid creditor files a claim against the estate, the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

The personal representative shall, within a reasonable time after the date of recordation of the appraisal: (i) File a waiver of final settlement in accordance with the provisions of section twenty-nine of this article; or (ii) make a report to the clerk of his or her receipts, disbursements and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for ten days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of \$10 for recording and mailing the waiver of final settlement or report.

If no request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, the personal representative and his or her surety shall be discharged; but if an objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: *Provided*, That the

personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made.

(c) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.

The bill (Eng. Com. Sub. for H. B. No. 2266), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2395, Storm Scammer Consumer Protection Act.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 6M. STORM SCAMMER CONSUMER PROTECTION ACT.

§46A-6M-1. Definitions.

As used in this article:

(1) “Emergency repair” means a repair that is necessary to prevent the risk of imminent injury to a person or further damage to the homeowner’s residence;

(2) “Residential real estate” means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling;

(3) “Roof system” means the components of a roof to include, but not be limited to, covering, framing, insulation, sheathing, ventilation, guttering and weatherproofing; and

(4) “Roofing contractor” means a person or entity in the business of contracting or offering to contract with an owner of residential real estate to repair or replace a roof system.

§46A-6M-2. Consumer’s right to cancel residential roofing contract.

(a) An owner, who on or after July 1, 2015, enters into a contract with a roofing contractor to provide goods or services related to a roof system of residential real estate and who expects the goods or services to be paid from the proceeds of a property and casualty insurance policy, may cancel the contract prior to midnight of the fifth business day after the owner has received notice from the insurer that all or part of the claim is not a covered loss under the property and casualty insurance policy.

(b) The contract with the roofing contract is cancelled when the owner either personally delivers written notice of cancellation to the roofing contractor; deposits the written notice of cancellation in the United States mail, postage prepaid and addressed to the roofing contractor at the address stated in the contract; transmits the notice of cancellation to the roofing contractor by facsimile; or sends an e-mails containing a notice of cancellation.

(c) The owner may use any form of notice of cancellation that is sufficient to indicate, by any form of written expression, the intention of the owner not to be bound by the contract.

§46A-6M-3. Roofing contractor’s duty to disclose rights of the consumer via standard form.

Prior to entering into a contract on or after July 1, 2015, for the provision of goods or services relating to the repair or replacement of any part of a roof system of residential real estate as provided in

section two of this article, a roofing contractor shall furnish the owner of the residential real estate with:

(1) The mailing address of the roofing contractor through which written communication may be received;

(2) The telephone number of the roofing contractor and, if applicable, the facsimile number and e-mail address of the contractor;

(3) A statement in at least ten point boldface type that states: “Because you expect all or part of the cost of the roofing repair or replacement to be paid out of the proceeds of a property and casualty insurance policy, you may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation you may have under state or federal law or rule or regulation. However, be advised that if you cancel this contract, you are still responsible to pay the reasonable and customary expenses of any emergency repair services you authorized. See the attached Notice of Cancellation form for an explanation of this right.”; and

(4) A fully completed form in duplicate, under the conspicuous caption “NOTICE OF CANCELLATION”, and attached to, but easily detachable from the contract, in at least ten point boldface type that shall read as follows:

“NOTICE OF CANCELLATION

(enter date of transaction)

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel this contract without penalty or monetary obligation, except where you have authorized emergency repair services for which you

are still responsible for payment, before midnight of the fifth business day after you have received notice from your insurer. To cancel this transaction you may use any of the following methods: Mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation which you- sign-and date, to (enter physical address of roofing contractor), or e-mail a notice of cancellation to (enter e-mail address of roofing contractor), or transmit a notice of cancellation to (enter facsimile number of roofing contractor), not later than midnight of the fifth day after you receive notice from your insurer. By signing below, you certify that your insurer has denied all or part of your claim.

I HEREBY ATTEST THAT I HAVE BEEN NOTIFIED BY THE INSURER THAT ALL OR PART OF MY CLAIM HAS BEEN DENIED AND I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)"

§46A-6M-4. Advanced payments prohibited; refunds; emergency repairs; unenforceable contract.

(a) Except as provided in subsection (c) of this section, on or after July 1, 2015, a roofing contractor may not require any advance payments under a contract for the repair or replacement of any part of a roof system of a residential real estate, when payment is expected to be made from the proceeds of a property or casualty insurance policy until the cancellation period, as provided in section two of this article has expired.

(b) Within ten days after a contract has been canceled, as provided in section two of this article, a roofing contractor shall tender to the owner, any payments, partial payments, or deposits made, and any note or other evidence of indebtedness, except as provided in subsection (c) of this section.

(c) A roofing contractor that performs any emergency repair services authorized by the owner of residential real estate may collect a reasonable and customary amount for the emergency repair services performed for the authorizing owner.

(d) Any provision in a contract executed on or after July 1, 2015, for the repair of a roof system of residential real estate, as provided in sections one and five of this article, that requires the payment of any fee, except for repair services performed under subsection (c) of this section, is not enforceable against any person who has canceled a contract under section two of this article.

§46A-6M-5. Roofing contractors; prohibited acts.

(a) Notwithstanding the provisions relating to public adjusters, as defined in section one-e, article twelve-b, chapter thirty-three of this code, on or after July 1, 2015, a roofing contractor may not represent, negotiate, or advertise to represent or negotiate on behalf of an owner of residential real estate on any insurance claim in connection with the repair or replacement of a roof system. Nothing in this subsection may be construed to prohibit a roofing contractor from:

(1) Providing an estimate for repair, replacement, construction or reconstruction of the roof system to the owner of residential real estate; or

(2) Conferring with an insurance company's representative about damage to the property after a claim has been submitted by the owner of residential real estate.

(b) On or after July 1, 2015, a roofing contractor or person representing a roofing contractor may not:

(1) Offer to pay or rebate all or any portion of an insurance deductible or claims proceeds as an inducement to the sale of goods or services related to a residential roofing contract;

(2) Pay the owner of residential real estate for whom services have been performed pursuant to this article for any reason or any form of compensation, including, but not limited to a:

- (A) Bonus;
- (B) Coupon;
- (C) Credit;
- (D) Gift;
- (E) Prize;
- (F) Referral fee; or
- (G) Any other tangible item having a monetary value.

§46A-6M-6. Private remedies for violation of article; criminal penalties.

(a) If a roofing contractor violates the provisions of this article, the owner or the applicable insurer may bring an action against the roofing contractor in a court of competent jurisdiction for damages sustained by the owner or insurer as a consequence of the roofing contractor's violation.

(b) A roofing contractor who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.

The bill (Eng. Com. Sub. for H. B. No. 2395), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill No. 2571, Creating a fund for pothole repair contributed to by private businesses or entities.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2585, Requiring leaseholders of mineral interests to notify the owners of the minerals when there is an assignment of the lease to another party.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Kessler, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and with the right for further amendments to be considered on that reading.

Eng. House Bill No. 2598, Ensuring that teachers of students with disabilities receive complete information about the school's plan for accommodating the child's disabilities.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill No. 2636, Exempting information contained in a concealed weapon permit application from the Freedom of Information Act.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar.

Eng. House Bill No. 2664, Creating "Andrea and Willy's Law"; increasing certain penalties for driving under the influence of alcohol, controlled substances or drugs.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure: ~~and~~

~~(3) Commits the act or failure to act in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death;~~
~~2 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two years nor more than ten years and shall be fined not less than \$1,000 nor more than \$3,000.~~

(b) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

~~(2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than \$500 nor more than \$1,000.~~

(2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes serious bodily injury to any person other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility

for not less than two nor more than ten years and shall be fined not less than \$1,000 nor more than \$3,000.

(3) As used in this subsection, the words “serious bodily injury” mean bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment.

(c) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than \$200 nor more than \$1,000.

(3) As used in this subsection, the words “bodily injury” mean bodily injury that causes substantial pain, illness or any impairment of physical condition.

(d) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, except as provided in section two-b of this article, shall be confined in jail for up to six months and shall be fined not less than \$100 nor more than \$500. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than \$200 nor more than \$1,000. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who, being a habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state

is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than \$100 nor more than \$500. A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who:

(1) Knowingly permits his or her vehicle to be driven in this state by any other person who:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug;

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500.

(h) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500.

(i) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$100. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than \$100 nor more than \$500. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of this subsection or subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(j) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) The person while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours and shall be fined not less than \$200 nor more than \$1,000.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year and the court may, in its discretion, impose a fine of not less than \$1,000 nor more than \$3,000.

(l) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000.

(m) For purposes of subsections (k) and (l) of this section relating to second, third and subsequent offenses, the following events shall be regarded as offenses under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e), (f) or (g) of this section or under a prior enactment of this section for an offense which occurred within the ten-year

period immediately preceding the date of arrest in the current proceeding;

(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding; and,

(3) Any period of conditional probation imposed pursuant section two-b of this article for violation of subsection (d) of this article, which violation occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(n) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to section two-b of this article.

(o) The fact that any person charged with a violation of subsection (a), (b), (c), (d), (e) or (f) of this section, or any person permitted to drive as described under subsection (g) or (h) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section.

(p) For purposes of this section, the term “controlled substance” has the meaning ascribed to it in chapter sixty-a of this code.

(q) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: *Provided further*, That the court may impose a term of conditional probation pursuant to section two-b of this article to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: *Provided, however*, That for any period of home incarceration ordered for a person convicted of second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of this code: *Provided further*, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of this code.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION
AND REVOCATION OF LICENSES FOR DRIVING
UNDER THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR DRUGS.**

§17C-5A-2. Hearing; revocation; review.

(a) Written objections to an order of revocation or suspension under the provisions of section one of this article or section seven, article five of this chapter shall be filed with the Office of

Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard by the Office of Administrative Hearings. The written objection must be filed with Office of Administrative Hearings in person, by registered or certified mail, return receipt requested, or by facsimile transmission or electronic mail within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted: *Provided*, That a successful transmittal sheet shall be necessary for proof of written objection in the case of filing by fax. The hearing shall be before a hearing examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues. The West Virginia Rules of Evidence shall apply without exception to all proceedings before the hearing examiner. Upon consideration of the designated record, the hearing examiner shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the action protested: *Provided*, That the DUI information sheet may only be used to refresh the memory of the officer who completed it. The decision shall contain findings of fact and conclusions of law and shall be provided to all parties by registered or certified mail, return receipt requested, or with a party's written consent, by facsimile or electronic mail.

(b) The hearing shall be held at an office of the Division of Motor Vehicles suitable for hearing purposes located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available. At the discretion of the Office of Administrative Hearings, the hearing may also be held at an office of the Office of Administrative Hearings located in or near the county in which the arrest was made in this state. The Office of Administrative Hearings shall send a notice of hearing to the person whose driving privileges are at issue and the person's legal counsel if the person is represented by legal counsel, by regular mail, or with the written consent of the person whose driving privileges are at issue or their legal counsel, by facsimile

or electronic mail. The Office of Administrative Hearings shall also send a notice of hearing by regular mail, facsimile or electronic mail to the Division of Motor Vehicles, and the Attorney General's Office, if the Attorney General has filed a notice of appearance of counsel on behalf of the Division of Motor Vehicles.

(c) (1) Any hearing shall be held within one hundred eighty days after the date upon which the Office of Administrative Hearings received the timely written objection unless there is a postponement or continuance.

(2) The Office of Administrative Hearings may postpone or continue any hearing on its own motion or upon application by the party whose license is at issue in that hearing or by the commissioner for good cause shown.

(3) The Office of Administrative Hearings may issue subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of documents, items or other things. Subpoenas duces tecum shall be returnable on the date of the next scheduled hearing unless otherwise specified. The Office of Administrative Hearings shall issue subpoenas and subpoenas duces tecum at the request of a party or the party's legal representative. The party requesting the subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by a person over eighteen years of age or by registered or certified mail, return receipt requested, and received by the party responsible for serving the subpoena or subpoena duces tecum: *Provided*, That the Division of Motor Vehicles may serve subpoenas to law-enforcement officers through electronic mail to the department of his or her employer. If a person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person may petition the circuit court wherein the action lies for enforcement of the subpoena.

(d) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the Office of Administrative Hearings by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.

(f) In the case of a hearing in which a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether the person was lawfully placed under arrest for