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NOTE: The third volume continues with Journal proceedings proper (page 2277) of March 7 and concludes with the proceedings of March 9 ending with page 3322 of the Regular Session.

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(47) The division may issue special registration plates to members of Lions International as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with Lions International for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Lions International.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(48) The division may issue special registration plates supporting organ donation as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner which recognizes, supports, and honors organ and tissue donors and includes the words "Donate Life".

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee

shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(49) The division may issue special registration plates to members of the West Virginia Bar Association as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the West Virginia Bar Association for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the West Virginia Bar Association.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(50) The division may issue special registration plates bearing an appropriate logo, symbol, or insignia combined with the words "SHARE THE ROAD" designed to promote bicycling in the state as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(51) The division may issue special registration plates honoring coal miners and the coal industry as follows:

(A) Upon appropriate application, the division shall issue a special registration plate depicting and displaying coal miners in mining activities as prescribed and designated by the commissioner and the board of the National Coal Heritage Area Authority. The division may also issue registration plates with the words “Friends of Coal”.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of ~~the~~ license plates designated by this subdivision.

(52) The division may issue special registration plates to present and former Boy Scouts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of present or past membership in the Boy Scouts as either a member or a leader.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(53) The division may issue special registration plates to present and former Boy Scouts who have achieved Eagle Scout status as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of achievement of Eagle Scout status.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(54) The division may issue special registration plates recognizing and memorializing victims of domestic violence:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and memorialize victims of domestic violence, such plate to incorporate somewhere in the design the “purple ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(55) The division may issue special registration plates bearing the logo, symbol, insignia, letters, or words demonstrating association with or support for the University of Charleston as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(57) The commissioner may issue special registration plates for horse enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(58) The commissioner may issue special registration plates to the next of kin of a member of any branch of the armed services of the United States killed in combat as follows:

(A) Upon appropriate application, the division shall issue a special registration plate for any number of vehicles titled in the name of a qualified applicant depicting the Gold Star awarded by the United States Department of Defense as prescribed and designated by the commissioner.

(B) The next of kin shall provide sufficient proof of receiving a Gold Star lapel button from the United States Department of Defense in accordance with Public Law 534, 89th Congress, and criteria established by the United States Department of Defense, including criteria to determine next of kin.

(C) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of ~~the~~ special license plates designated by this subdivision.

(59) The commissioner may issue special registration plates for retired or former justices of the Supreme Court of Appeals of West Virginia as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(D) The provisions of §17A-3-14(d) of this code are not applicable for the issuance of ~~the~~ special license plates designated by this subdivision.

(60) Upon approval by the commissioner of an appropriate application, and upon all requirements of this subdivision being satisfied, the division may issue special registration plates for Class A and Class G motor vehicles to members of an organization for which a special registration plate has not been issued pursuant to any other subdivision in this subsection prior to January 1, 2010, in accordance with the provisions of this subdivision:

(A) An organization desiring to create a special registration plate must comply with the following requirements to be eligible to apply for the creation and issuance of a special registration plate:

(i) The organization must be a nonprofit organization organized and existing under Section 501(c)(3) of Title 26 of the Internal Revenue Code and based, headquartered, or have a chapter in West Virginia;

(ii) The organization may be organized for, but may not be restricted to, social, civic, higher education, or entertainment purposes;

(iii) The organization may not be a political party and may not have been created or exist primarily to promote a specific political or social belief, as determined by the commissioner in his or her sole discretion;

(iv) The organization may not have as its primary purpose the promotion of any specific faith, religion, religious belief, or antireligion;

(v) The name of the organization may not be the name of a special product or brand name, and may not be construed, as determined by the commissioner, as promoting a product or brand name; and

(vi) The organization's lettering, logo, image, or message to be placed on the registration plate, if created, may not be obscene, offensive, or objectionable as determined by the commissioner in his or her sole discretion.

(B) Beginning July 1, 2010, an organization requesting the creation and issuance of a special registration plate may make application with the division. The application shall include sufficient information, as determined by the commissioner, to determine whether the special registration plate requested and the organization making the application meet all of the requirements set forth in this subdivision. The application shall also include a proposed design, including lettering, logo, image, or message to be placed on the registration plate. The commissioner shall notify the organization of the commissioner's approval or disapproval of the application.

(C)(i) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this subdivision until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 250 persons and collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee for all of the applications submitted.

(ii) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate will not be produced until a new application is submitted and is approved by the commissioner: *Provided*, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(D) The division shall charge a special initial application fee of \$25 for each special license plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(E) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(F) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the organization.

(G) The commissioner shall discontinue the issuance or renewal of the registration of any special plate issued pursuant to this subdivision if:

(i) The number of valid registrations for the specialty plate falls below 250 plates for at least 12 consecutive months; or

(ii) The organization no longer exists or no longer meets the requirements of this subdivision.

(d) The minimum number of applications required prior to design and production of a special license plate shall be as follows:

(1) The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least 100 persons complete an application and deposit with the organization a check to cover the first year's basic registration, one-time design and manufacturing costs, and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That an organization or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization: *Provided, however*, That the provisions of this subdivision are not applicable to the issuance of plates authorized pursuant to §17A-3-14(c)(60) of this code.

(2) The commissioner may not begin the design or production of any license plates authorized by this section for which

membership or affiliation with a particular organization is not required until at least 250 registrants complete an application and deposit a fee with the division to cover the first year's basic registration fee, one-time design and manufacturing fee, and additional annual fee if applicable. If the commissioner fails to receive the required number of applications within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That if the minimum number of applications is not satisfied within the six months of the effective date of the original authorizing legislation, a person may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization.

(e)(1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse's prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special 10-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than 10 years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by §17A-10-3a of this code: *Provided*, That the provisions of this subsection do not apply to any person who has had a special

registration suspended for failure to maintain motor vehicle liability insurance as required by §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by §17A-3-3, §17A-10-3a, or §17A-10-15 of this code for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by §17D-2A-3 of this code or from paying personal property taxes on any motor vehicle as required by §17A-3-3a of this code.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers, and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner. The commissioner shall, whenever possible and cost effective, implement the latest technology in the design, production, and issuance of registration plates, indices of registration renewal and vehicle ownership documents, including, but not limited to, offering Internet renewal of vehicle registration and the use of bar codes for instant identification of vehicles by scanning equipment to promote the efficient and effective coordination and communication of data for improving highway safety, aiding law enforcement, and enhancing revenue collection.

(i) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order, or certified check and all applicable fees assessed as a result thereof have been paid.

(j) The division shall, upon request of a qualifying applicant, exempt one nonexempt military special registration plate per qualifying applicant from all registration fees. For purposes of this subsection:

(1) “Exempt military special registration plate” means a special registration plate related to military service that is issued pursuant to this section for which registration fees are exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, a special registration plate issued to one of the following:

(A) A disabled veteran pursuant to §17A-3-14(c)(6), §17A-10-8(4), or §17A-10-8(5) of this code;

(B) A recipient of the Purple Heart medal pursuant to §17A-3-14(c)(7) of this code;

(C) A survivor of the attack on Pearl Harbor pursuant to §17A-3-14(c)(8) of this code;

(D) A former prisoner of war pursuant to §17A-10-8(6) of this code; or

(E) A recipient of the Congressional Medal of Honor pursuant to §17A-10-8(7) of this code.

(2) “Nonexempt military special registration plate” means a special registration plate related to military service that is issued pursuant to this section for which registration fees are not exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, special registration plate issued to one of the following:

(A) A member of the National Guard forces pursuant to §17A-3-14(c)(3) of this code;

(B) An honorably discharged veteran pursuant to §17A-3-14(c)(5) or §17A-3-14(c)(21) of this code;

(C) An honorably discharged Marine Corps League member pursuant to §17A-3-14(c)(13) of this code;

(D) A member of a military organization pursuant to §17A-3-14(c)(14) of this code;

(E) A recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal pursuant to §17A-3-14(c)(20) of this code;

(F) A recipient of the Combat Infantry Badge or the Combat Medic Badge pursuant to §17A-3-14(c)(29) of this code;

(G) An honorably discharged female veteran pursuant to §17A-3-14(c)(33) of this code;

(H) A person retired from any branch of the armed services of the United States pursuant to §17A-3-14(c)(36) of this code; or

(I) A member of the 82nd Airborne Division Association pursuant to §17A-3-14(c)(40) of this code.

(3) “Qualifying applicant” means an applicant who qualifies for an exempt military special registration plate, and who also qualifies for a nonexempt military special registration plate, who requests that the division issue one such nonexempt military special registration plate instead of such exempt military special registration plate in order to have such nonexempt military special registration plate be exempt from the payment of registration fees.

The bill (Eng. H. B. 2846), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2849, Establishing different classes of pharmacy technicians.

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 three, section twelve, line eleven, by striking out the words “also known as tech-check-tech,”;

And,

On page three, section twelve, line twelve, after the word “necessary” by inserting the words “and the pharmacist makes the final verification”.

The bill (Eng. Com. Sub. for H. B. 2849), as amended, was then ordered to third reading.

Eng. House Bill 2850, Relating to qualifications for commercial driver’s license.

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

Eng. House Bill 2926, Requiring the Secretary of the Department of Veterans’ Affairs to study the housing needs of veterans.

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

Eng. House Bill 2934, West Virginia Lottery Interactive Wagering Act.

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 2982, Amending and updating the laws relating to auctioneers.

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

At the request of Senator Boso, as chair of the Committee on Government Organization, and by unanimous consent, the unreported Government Organization committee amendment to the bill was withdrawn.

On motion of Senator Boso, 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 2C. AUCTIONEERS.

§19-2C-1. Definitions.

For the purposes of this article:

(a) “Absolute auction” means the sale of real or personal property at auction whereby every item offered from the block is sold to the highest bidder without reserve and without the requirements of a minimum bid or other conditions which limit the sale other than to the highest bidder.

(b) “Auctioneer” means a person who sells goods or real estate at public auction for another on commission or for other compensation. ~~The term “auctioneer” does not include:~~

~~(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;~~

~~(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous twelve month period;~~

~~(3) Persons conducting sales pursuant to a deed of trust;~~

~~(4) Fiduciaries of estates when selling real or personal property of the estate;~~

~~(5) Persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; and~~

~~(6) Persons properly licensed pursuant to the provisions of article forty, chapter thirty of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: *Provided*, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of article two a of this chapter, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products~~

~~(b)~~ (c) "Commissioner" means the Commissioner of Agriculture of West Virginia.

~~(e)~~ (d) "Department" means the West Virginia Department of Agriculture.

~~(d)~~ (e) "Escrow account" means a separate custodial or trust fund account maintained by the auctioneer.

(f) "Estate auction" means the sale at auction of property of a specified deceased person or the property of a specified living person's estate. Estate auctions may contain property other than that of the specified living or deceased person. However, the inclusion of additional property must be included in all advertising and auction announcements.

(g) "In this state" means that an auction satisfies one of the following criteria:

(1) The auctioneer performed the auction within the borders of the State of West Virginia;

(2) The auctioneer is selling items for a person located in the State of West Virginia;

(3) The auctioneer is auctioning real or personal property located in the State of West Virginia;

(4) The auctioneer delivers purchased property to a location in the State of West Virginia; or

(5) The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.

(e) (h) “Public auction” or “auction” means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchasers and the property sold to the highest bidder.

§19-2C-2. License required; exceptions.

(a) ~~After June 30, 1974, no~~ Except as provided in subsection (b) of this section, no person shall conduct an auction as an auctioneer in this state unless he or she shall have first obtained from the commissioner a license therefor.

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

(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;

(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous 12-month period;

(3) Persons conducting sales pursuant to a deed of trust;

(4) Fiduciaries of estates when selling real or personal property of the estate;

(5) Persons conducting sales without compensation on behalf of charitable, religious, fraternal, or other nonprofit organizations: *Provided*, That the commissioner shall promulgate rules to limit the number of charitable auctions an exempt person may perform in a 12-month period;

(6) Persons properly licensed pursuant to the provisions in §30-40-1 *et seq.* of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether

corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: *Provided*, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of §19-2A-1 *et seq.* of this code, where the sale is confined solely to livestock, poultry, and other agriculture and horticulture products; and

(7) Persons listing items online for sale via a platform that establishes a fixed time for the conclusion of the sale without extension: *Provided*, That the commissioner may further define this exemption in legislative rules.

§19-2C-3. Procedure for license; Department of Agriculture as statutory agent for licensees.

(a) An applicant for an auctioneer license shall:

(1) Apply on forms prescribed by the commissioner;

(2) Pay a nonreturnable application fee and a license fee; and, upon successful completion of the application process, a license fee; and

(3) File a bond as required by this article.

(b) The commissioner shall, within 30 days after the receipt of an application, notify the applicant of his or her eligibility to be examined at the next regularly scheduled examination, as well as the date of the examination.

(c) If the license is denied, the commissioner shall refund the license fee submitted with the application to the applicant.

(d) All licenses expire on ~~December 31~~ June 30 of each year: *Provided*, That an auctioneer may continue to perform auctions for up to 30 days after June 30, so long as he or she has submitted the required paperwork to renew his or her auctioneer license: *Provided, however*, That licenses issued in 2019 shall continue to be active through June 30, 2020. A license may be renewed upon

the payment of the annual renewal fee within 60 days of the expiration date. Renewals received more than 60 days after the expiration date are subject to a late renewal fee in addition to the annual renewal fee.

(e) A license that has been expired for more than two years cannot be renewed until the auctioneer or apprentice auctioneer takes the written and oral examination, pays the examination fee and complies with the other requirements of this article.

(f) Where an auctioneer or apprentice auctioneer requires a duplicate or replacement license or a license reflecting a change in information, the auctioneer or apprentice auctioneer shall submit the fee with the request.

(g) The State Department of Agriculture is the agent for the purpose of service of process on a licensed auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every licensed auctioneer, by virtue of his or her application for a license, shall be considered to have consented to the statutory agency.

§19-2C-5. Requirements for auctioneer license; duties of licensee.

(a) A person seeking an auctioneer license shall submit satisfactory evidence to the commissioner showing that he or she:

(1) Has successfully completed the written and oral examinations required by this article;

(2) Has a good reputation;

~~He or she~~ (3) Is of trustworthy character;

(4) Has met the apprenticeship requirements set forth in this article, if applicable;

(5) Is a citizen of the United States; and

(6) Has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(b) A licensee shall:

(1) Promptly produce for inspection his or her license at all sales conducted by or participated in by the licensee when requested to do so by any person; and

(2) Keep complete and accurate records of all transactions engaged in for a period of three years from the date on which the sale was completed.

(c) For the purposes of this section, the term “record” includes, but is not limited to:

(1) Copies of signed contracts, including the names of buyers and their addresses;

(2) Clerk sheets showing items sold, including buyers numbers or names, and the selling prices; and

(3) Final settlement papers.

(d) The records of the auctioneer shall be open to inspection by the commissioner or his or her authorized representative.

(e) A person who has an auctioneer license is considered to be a professional in his or her trade.

§19-2C-5a. Examinations of applicants. ~~excuse for illness~~

(a) Examinations shall be held ~~in April and October~~ of a minimum of two times each year, at a time and place to be designated by the commissioner or his or her authorized representative.

(b) An individual auctioneer applicant may take the examination for auctioneer or apprentice auctioneer at the regularly scheduled time and place.

(c) The apprentice auctioneer’s examination shall consist of a written examination.

(d) The auctioneer's examination shall consist of both a written and oral examination. The passing grade for any written or oral examination shall be 70 percent out of 100 percent. The oral portion will be scored by the commissioner or his or her authorized representative.

(e) If the applicant fails either the written or oral portion of the examination, no license will be issued and he or she may not be administered the examination again until the next regularly scheduled examination date.

~~(f) A person who has an auctioneer license is considered to be a professional in his or her trade~~

~~(g)~~(f) Only one notice of the examination will be mailed or emailed to the applicant at the address given on the application. If the applicant fails to appear for an examination, except as provided in this subsection, a new application and a new fee shall be required. No fee will be returned, except when the applicant fails to take the examination because of illness evidenced by a doctor's certificate sent to the commissioner. If excused because of illness, the applicant shall be admitted to the next scheduled examination without paying an additional fee. No applicant may be excused from taking the scheduled examination for any reason other than illness, unless in the judgment of the commissioner the applicant would suffer undue hardship by not being excused.

~~(h)~~(g) An examination fee and any other fees required by this article, shall be collected from each person taking an examination. If the applicant has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, no additional examination fee will be required to take the auctioneer's examination.

~~(i)~~(h) If the commissioner determines that an applicant does not qualify for a license, he or she shall notify the applicant by certified mail. The notice shall state:

(1) The reason for the refusal to grant a license; and

(2) The applicant's right to appeal the commissioner's decision within 20 days of receipt of the notice.

(j)(i) An examination is not required for the renewal of a license, unless the license has been revoked or suspended, or has expired. If the license was revoked or suspended, then the commissioner may require a person to take and pass a written or oral examination. If a license has been expired for more than two years and was not revoked or suspended, then the applicant is required to take and pass any written and oral examinations required by the commissioner.

§19-2C-5b. Background checks required.

(a) A person applying for a license pursuant to §19-2C-5, §19-2C-6, or §19-2C-6c of this code may be required to submit to a state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(f) The commissioner may not disqualify an applicant for initial licensure, certification or registration because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure.

(g) The commissioner may not use crimes involving moral turpitude in making licensure, certification or registration determinations.

(h) If an applicant is disqualified for licensure, certification or registration because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: *Provided*, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the individual board or licensing authority.

(i) An individual with a criminal record who has not previously applied for licensure, certification or registration may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The commissioner shall inform the individual of his or her standing within 60 days of receiving the

petition from the applicant. The licensing authority may charge a fee to recoup its costs for each petition.

(j) Nothing in this section alters the standards and procedures the commissioner uses for evaluating licensure, certification or registration renewals.

(k) The commissioner shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

(l) The provisions of this section, enacted during the 2019 Regular Session of the Legislature, shall not apply to current licensees who maintain active licensure, but shall apply to individuals currently holding an apprentice auctioneer license who are applying for an auctioneer license, or to any current license holder whose license lapses and who is required to reapply.

§19-2C-6. Requirements for apprentice auctioneer license.

(a) A person seeking an apprentice auctioneer license shall furnish to the commissioner, on forms provided by the commissioner, satisfactory proof that he or she:

- (1) Has a good reputation;
- (2) Is a trustworthy character;
- (3) Is a citizen of the United States; and

(4) Has taken and passed a written examination relating to the skills and knowledge of the statutes and rules governing auctioneers.

(b) An apprentice auctioneer may take the examination to become an auctioneer after completing one of the following:

- (1) Serving a two-year apprenticeship under a licensed auctioneer; or

(2) Attending a nationally accredited graduate school of auctioneering, approved by the commissioner, and serving an apprenticeship of six months.

(c) Before an apprentice auctioneer may take the auctioneer's examination, the apprentice auctioneer shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer. The commissioner may waive the requirements of this section, on an individual basis, upon the presentation of written evidence that the applicant has educational training or exceptional experience in the auctioneering profession and that the applicant has been unable to obtain sponsorship by a licensed auctioneer: *Provided*, That the commissioner may not waive apprenticeship requirements for an applicant without the concurrence of the board of review.

(d) When an apprentice auctioneer is discharged or terminates his or her employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the commissioner. No discharged or terminated apprentice auctioneer may thereafter perform any acts under the authority of his or her license until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license may be issued to an apprentice auctioneer for the same period of time.

(e) The commissioner may not issue an apprentice auctioneer license until bond has been filed. All apprentice auctioneer licenses expire on ~~December 31~~ June 30 of each year, but are renewable upon the payment of the annual fee: *Provided*, That an apprentice auctioneer may continue to perform auctions for up to 20 days after June 30, so long as he or she has submitted the required paperwork to renew his or her apprentice auctioneer license: *Provided*, however, That licenses issued in 2019 shall continue to be active through June 30, 2020.

(f) A person cannot be licensed as an apprentice auctioneer for more than three years without applying for an auctioneer license. Should an apprentice auctioneer allow the three year limit to lapse, then the apprentice auctioneer shall be required to take the apprentice examination and meet all the requirements of this article.

§19-2C-6a. Investigation of complaints; board of review.

(a) The Department of Agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, establishes probable cause. Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all of the facts of the complaint and recommend a course of action to the commissioner.

(b) The board of review shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall consist of three members, each appointed for a staggered three-year term. Two members of the board of review shall be licensed auctioneers in West Virginia and residents of this state and shall have been licensed and been practicing the profession of auctioneering for five years immediately preceding their appointment. The third member shall be a lay person from the commercial or agricultural community who has utilized services of auctioneers for at least three years. No more than ~~one~~ two board ~~member~~ members shall be from any one congressional district and no more than two members shall be from the same political party. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations. ~~During the establishment of the board one member shall be appointed for a three year term, one member for a two year term and one member for a one year term. The first year of each term expires on January 1, 1992, and subsequently on January 1, of each year~~ There shall be no limit on the number of consecutive terms a member may serve on the board. The Governor is authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.

§19-2C-6c. Procedure for obtaining reciprocal or nonresident auctioneer's and apprentice auctioneer's license.

(a) To qualify for a ~~nonresident~~ license by reciprocity, the applicant must show evidence of licensing in another state for a period of one year preceding the date of application. The licensing may have been as an apprentice auctioneer or as an auctioneer. Provided this qualification is met and the applicant meets all the other requirements as required by this article and by regulation, he or she shall be licensed either as an apprentice auctioneer or as an auctioneer, based on a nonresident license, as the case may be.

(b) When an applicant's resident state has no licensing law for auctioneers or the applicant's resident state has no written or oral examination associated with its licensing requirements, the Department of Agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by the statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.

§19-2C-8. Penalties.

(a) *Criminal penalties.* — Any person, firm, association or corporation violating a provision of this article or the rules, is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$250 nor more than \$500 for the first offense, and not less than \$500 nor more than \$1,000 for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) *Civil penalties.* — Any person violating a provision of this article or the rules, may be assessed a civil penalty by the commissioner.

(1) In determining the amount of the civil penalty, the commissioner shall give due consideration to the history of previous violations by the person, the seriousness of the violation, and the demonstrated good faith of the person charged in attempting to achieve compliance with this article before and after written notification of the violation. The commissioner may assess a penalty of not more than ~~\$200~~ \$500 for ~~each~~ a first offense, and not more than \$1,000 for a each second and subsequent offense. ~~The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording~~

(2) In addition to a penalty assessed against an unlicensed auctioneer for practicing without the required license, the commissioner may assess penalties against an unlicensed auctioneer for violations of the provisions of this article that would have applied to the individual's conduct had he or she held the required license.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was probable cause for such action.

§19-2C-8a. Revocation.

In addition to the penalties in section eight of this article, the commissioner may, by order, suspend, deny or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer's or apprentice auctioneer's license;

(c) Engaging in a continued or flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within 15 days of conviction;

(f) Violating any other laws related to the conduct of auctions or auctioneering;

~~(f)~~(g) Engaging in any conduct of an auctioneer which demonstrates dishonesty or incompetency;

~~(g)~~(h) Engaging in any other conduct that constitutes fraudulent or dishonest dealing; ~~and~~

(i) Engaging in any other unethical conduct in the contexts of his or her work as an auctioneer; and

~~(h)~~(j) Acting as an attorney for a client.

Any auctioneer or apprentice auctioneer who has had his or her license suspended or revoked shall not be issued another such

license until a period not to exceed two years has elapsed from the date of revocation. The commissioner may also require the successful completion of the examinations required for an auctioneer's license or an apprentice auctioneer's license.

§19-2C-9. Written contracts.

(a) No person may act as an auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has entered into a written contract in duplicate with the owner or consignor of the property to be sold. No apprentice auctioneer may be authorized to enter into a contract without the written consent of his or her sponsoring auctioneer. All contracts shall be in the name of and on behalf of the sponsoring auctioneer.

(b) The written contract shall:

(1) State the terms and conditions upon which the auctioneer receives or accepts the property for sale at auction;

(2) Be between the auctioneer and the seller;

(3) Be made in duplicate;

(4) Be retained by the auctioneer for a period of three years from the date of final settlement;

(5) Be furnished to each person that entered into the contract;

(6) State that an apprentice auctioneer may not contract directly with a client but only through his or her sponsoring auctioneer;

(7) State that an apprentice auctioneer may not engage in a sale with an auctioneer by whom he or she is not sponsored without first obtaining the written consent of his or her sponsoring auctioneer;

(8) Have a prominent statement indicating that the auctioneer is licensed by the Department of Agriculture and is bonded in favor of the State of West Virginia; and

(9) Include the following information:

(A) The name, address and phone number of the owner of the property to be sold or the consignor;

(B) The date of the auction or a termination date of the contract;

(C) The terms and conditions of the auction;

(D) The location of the auction;

(E) The date the owner or consignor is to be paid;

(F) A statement establishing the responsibility for bad checks, debts and unpaid auction items;

(G) A detailed list of all fees to be charged by the auctioneer, including commissions, rentals, advertising and labor;

(H) A statement of the auctioneer's policy regarding absentee bidding;

(I) A statement above the owner's signature line: "I have read and accept the terms of the contract"; and

(J) A statement indicating that an explanation of settlement of the auction, or settlement sheet, will be provided to the owner or consignor at the end of the auction.

(c) As a condition of entering into a contract, the auctioneer shall be provided with proof or certificate of ownership for all titled property, or assurances of ownership for all other property. The auctioneer shall have such proof or certificate or ownership with him or her at the time the auction is held.

(d) Notwithstanding the provisions of subsection (a) of this section, an auctioneer may conduct an auction on behalf of an auction house or other business entity without having entered into a contract directly with the seller of the auctioned goods, so long as the following conditions are satisfied:

(1) The auction house or business must have a written contract with both the seller of the goods and the auctioneer;

(2) The contract between the auction house or business entity must satisfy all the requirements set forth in subsection (b) of this section; and

(3) The auction house or business entity must file with the commissioner a bond satisfying the requirements of §19-2C-4 of this code.

(e) By entering into contracts with sellers of property pursuant to this section, the owners and partners of any auction house or business entity agree to submit to the jurisdiction of the commissioner and the Board of Review and are subject to the penalties set forth in §19-2C-8 of this code.

§19-2C-10. Advertising.

In advertising an auction sale by any licensed auctioneer, the principal auctioneer or auctioneers who physically conduct the sale shall be listed prominently in such advertising as used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the sale shall be the person or persons who call for, accept and close bids on the majority of items offered for sale.

Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed.

The auctioneer's name and license number shall be displayed in equal prominence with the name of the apprentice auctioneer and license number in such advertisement.

Nothing in the provisions of this article shall be construed so as to prohibit any other auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding the failure to list the name of the other auctioneer in any advertising associated with such auction.

It is unlawful to conduct or advertise that an auction is absolute if minimum opening bids are required or other conditions are placed on the sale that limit the sale other than to the highest bidder.

No property other than the property of a specified deceased person or the property of a specified living person's estate may be sold at auction if the auction is conducted or advertised only as an estate auction. However, property other than that of the specified estate may be sold at the sale if all advertisements for the sale specify that items will be sold that do not belong to the estate and those items are identified at the sale.

The bill (Eng. Com. Sub. for H. B. 2982), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3016, Relating to the State Aeronautics Commission.

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

Eng. Com. Sub. for House Bill 3057, Relating to the Adult Drug Court Participation Fund.

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

Eng. House Bill 3132, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment.

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

Eng. House Bill 3141, Requiring capitol building commission authorization for certain renovations.

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:

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

ARTICLE 8. CAPITOL BUILDING COMMISSION.**§4-8-4. Powers and duties generally.**

The ~~capitol building commission~~ Capitol Building Commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state ~~Capitol capitol~~ building or surrounding complex, ~~including the public meeting rooms, hallways and grounds,~~ which affect the appearance thereof. In all instances constituting a substantial physical change, the approval of the commission is mandatory before a contract may be let or before changes are started if the work is not done under a contract and includes all areas occupied by the Legislature, the Governor, and the Supreme Court of Appeals. As used in this article, the surrounding complex shall include the Governor's mansion and other buildings used by the Governor as part of his or her residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state ~~Capitol capitol~~, and the roadways, structures and facilities which are incidental to such buildings. As used in this article, substantial physical change shall include, but not be limited to, permanent physical changes that alter the appearance of ~~the public~~ all areas of the capitol building and surrounding complex. The secretary of the Department of Administration shall promulgate rules and regulations, pursuant to the provisions of §29A-1-1 *et seq.* of this code, which rules and regulations shall be subject to the approval of the ~~capitol building commission~~ Capitol Building Commission, to implement the provisions of this article.

Following discussion,

The question being on the adoption of the Government Organization committee amendment to the bill, the same was put and prevailed.

The bill (Eng. H. B. 3141), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

Eng. House Bill 2474, Relating to a reserving methodology for health insurance and annuity contracts.

Eng. Com. Sub. for House Bill 2479, Corporate Governance Annual Disclosure Act.

Eng. Com. Sub. for House Bill 2503, Relating to court actions.

Eng. Com. Sub. for House Bill 2618, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

Eng. Com. Sub. for House Bill 2694, Relating to the state's ability to regulate hemp.

Eng. House Bill 2709, Relating to hunting licenses.

Eng. Com. Sub. for House Bill 2761, Modernizing the self-service storage lien law.

Eng. House Bill 2828, Relating to Qualified Opportunity Zones.

Eng. House Bill 2856, Relating to the administration of the operating fund of the securities division of the Auditor's office.

Eng. House Bill 3020, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions.

Eng. Com. Sub. for House Bill 3024, West Virginia Business Ready Sites Program.

Eng. House Bill 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

And,

Eng. House Bill 3143, Relating to requirements for consumer loans in West Virginia.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Weld, Palumbo, and Blair.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 2:34 p.m., the Senate recessed until 4:30 p.m. today.

The Senate reconvened at 5:07 p.m. today and, at the request of Senator Weld, unanimous consent being granted, returned to the third order of business.

Executive Communications

Senator Carmichael (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, regarding annual reports, which communication was received and filed with the Clerk:



Jim Justice
Governor of West Virginia

March 7, 2019

Executive Message 4
2019 Regular Session

The Honorable Mitch Carmichael
President, West Virginia State Senate
State Capitol, Rm 229M
Charleston, WV 25305

Dear Mr. President:

Pursuant to the provisions of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following annual reports have been received in the Office of the Governor:

Accountancy, West Virginia Board of; Annual Report

Administration, West Virginia Department of; Public Records Management and Preservation Act Annual Report

Administration, West Virginia Department of; Public Defender Services Annual Report Fiscal Year 2018

Aeronautics Commission, West Virginia Department of Transportation; 2018 Annual Report

Alcohol Beverage Control Administration, West Virginia; 2018 Fiscal Year Annual Report

Architects, West Virginia Board of; Annual Report FY 2018 & FY 2017

Attorney General, State of West Virginia; Biennial Report and Official Opinions for the Fiscal Years Beginning July 1, 2016 and Ending June 30, 2018

Attorney General, State of West Virginia; Annual Report 2018

OFFICE OF THE GOVERNOR

Attorney General, State of West Virginia; 2018 Annual Report on the Activities of the Consumer Protection and Antitrust Division

Auditor's Office, West Virginia State; West Virginia State Dollar Report 2018

Barbour County, West Virginia; Financial Statements of Barbour County for the Fiscal Year Ended June 30, 2018

Board of Risk and Insurance Management, State of West Virginia Department of Administration; Annual Report for fiscal year ending June 30, 2017

Bureau of Senior Services, State of West Virginia; FY 2017 Annual Report

Chiropractic Examiners, State of West Virginia Board of; Annual Report 2016-2018

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee; 2018 Annual Report

Consolidated Public Retirement Board's, West Virginia; (West Virginia State Police Disability Experience) Annual Report Fiscal Year 2018

Consumer Advocate Offices of the WV Insurance Commissioner, West Virginia Office of; 2018 Annual Report

Counseling, West Virginia Board of; 2016-2018 Annual Report

Culture and History, West Virginia Division of; Annual Report 2017-2018

Department of Health and Human Resources, State of West Virginia; SFY 2017 Sanction Policy Change Data Annual Report

Education, West Virginia Department and Board of; 2018 State of Education Report

Environmental Protection (Office of Oil and Gas), West Virginia Department of; FY 2017 Annual Report for Fund 3323

Environmental Protection (Office of Oil and Gas), West Virginia Department of; FY 2018 Annual Report for Fund 3322

Environmental Protection, West Virginia Department of; Quarterly Reports Special Reclamation Fund and the Special Reclamation Water Trust Fund for the Quarter Ended December 31, 2018

Federal Communications Commission; Annual Report

Financial Institutions, West Virginia Division of; 117th Annual Report Fiscal Year ending June 30, 2018

Forestry, West Virginia Division of; 2018 Logging Sediment Control Act Annual Report

Forward, West Virginia; 2018 Annual Report WV Women Moving Forward

OFFICE OF THE GOVERNOR

Funeral Service Examiners, West Virginia Board of; Annual Report (Period July 1, 2016- June 30, 2018)

Harrison County Department of Health and Human Resources; Annual Summary Report October 2016 to December 2017

Herbert Henderson Office of Minority Affairs; Annual Report 2017

Innovative Mine Safety Technology Credit Act, West Virginia; Annual Report

Insurance Commissioner, West Virginia Office of the; 2017 Annual Report

Insurance Commissioner, West Virginia Office of the; 2018 Annual Medical Malpractice Report

Interstate Commission on the Potomac River Basin; October 1, 2016 to September 30, 2017

Interstate Insurance Product Regulation Commission Compact; Annual Report 2017

Jobs Investment Trust, West Virginia; Years Ended June 30, 2018 and 2017

Judicial Compensation Commission, West Virginia; 2018 Report

Legislative Claims Commission, West Virginia; Reports of Legislative Claims Commission

Legislative Claims Commission, West Virginia; Supplemental Report for December 2018

Lottery, West Virginia; Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018 and 2017

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending January 31, 2019

Medical Imaging and Radiation Therapy Technology Board of Examiners, West Virginia; 2018 Annual Report

Medicine, West Virginia Board of; Annual Report for the Biennium 7/1/16-6/30/18

Municipal Bond Commission, West Virginia; Annual Report July 1, 2017- June 30, 2018

National Coal Heritage Area Authority; 2017 Annual Report

Natural Resources, West Virginia Division of; 2017-2018 Annual Report

Occupational Therapy, West Virginia Board; Annual Report for Fiscal Year 2017/2018

Office of Miners' Health, Safety and Training; 2017 Annual Report

Osteopathic Medicine, West Virginia School of; Annual Report

Personnel, West Virginia Division of; Annual Report FY 2018

OFFICE OF THE GOVERNOR

Pharmacy, West Virginia Board of (Controlled Substances Monitoring Program); 2018 Annual Report

Physical Therapy, West Virginia State Board of; Annual Report of the Biennium July 1, 2016-June 30, 2018

Professional Engineers, West Virginia State Board of Registered; Annual Report FY 2018

Public Employees Grievance Board; 2018 Annual Report

Public Service Commission Consumer Advocate Division, State of West Virginia; 2018 Annual Report

Public Service Commission of West Virginia; 2018 Management Summary Report and the Electric and Gas Utilities Supply-Demand Forecast Reports

Regional Intergovernmental Council (Boone, Clay, Kanawha, Putnam Counties); 2017 Annual Report

Ron Yost Personal Assistance Services (RYPAS) Board; 2018 Annual Report

Sanitarians, West Virginia Board of; 2018 Annual Report

Senior Services, West Virginia Bureau of; Annual Report State Fiscal Year 2018 July 1, 2017-June 30, 2018

State Tax Department (Manufacturing Property Tax Adjustment Credit), West Virginia; Annual Report

State Tax Department, West Virginia; West Virginia Fireworks Safety Fee Report

Tax Department, West Virginia State; Report for Tax Year 2018

Tax Department, West Virginia State; West Virginia Tax Expenditure Study

Tax Department, West Virginia State; Calculation of Regular School Levy Rates for Tax Year 2019 and the Effects on Projected County School Revenues

Treasury Investments, West Virginia Board of; Year Ended June 30, 2018

Treasury Investments, West Virginia Board of; Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018

United States Department of Energy (National Energy Technology Laboratory); 2017 Annual Report

Veterinary Medicine, West Virginia Board of; Biennium Report July 1, 2016-June 30, 2018

Water Development Authority, West Virginia; Fiscal Year 2018 Annual Report

West Virginia University Medicine; 2017 Annual Report

OFFICE OF THE GOVERNOR

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice". The signature is written in a cursive, flowing style with a large initial "J".

Jim Justice
Governor

cc: Lee Cassis, Clerk, West Virginia State Senate
Division of Culture and History

Senator Carmichael (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, submitting the annual probation and parole report, which was received:



Jim Justice
Governor of West Virginia

March 7, 2019

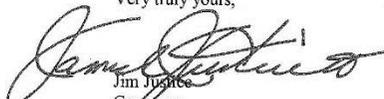
EXECUTIVE MESSAGE NO. 5
2019 REGULAR SESSION

The Honorable Mitch Carmichael
President, Senate of West Virginia
State Capitol, Rm 228M
Charleston, West Virginia 25305

Dear Mr. President:

In accordance with the provisions of section 11, article 7 of the Constitution of the State of West Virginia, and section 16, article 1, chapter 5 of the Code of West Virginia, I hereby report that I extended relief to the persons named on the attached report, during the period of March 6, 2018 through March 7, 2019.

Very truly yours,


Jim Justice
Governor

cc: Lee Cassis, Senate of West Virginia
Division of Archives and History

State Capitol | 1900 Kanawha Blvd., East, Charleston, WV 25305 | (304) 558-2000

OFFICE OF THE GOVERNOR

**PARDONS & MEDICAL RESPITES GRANTED
BY GOVERNOR JUSTICE
FOR THE PERIOD
MARCH 6, 2018 – MARCH 7, 2019**

**Richard Lee Devore, Sr.
Decided: March 15, 2018**

In March 2018, Governor Justice received a medical respite application that both the warden and commissioner of the Division of Corrections believed should be granted. Mr. Devore had been given a poor prognosis and had not reached his minimum sentence date (September 2018) and was no longer ambulatory and required palliative care.

For these reasons, Governor Justice granted a medical respite, allowing him to spend his last moments with his family.

NO PARDONS WERE GRANTED DURING THIS TIME PERIOD.

The Clerk next presented a communication from His Excellency, the Governor, advising that on March 7, 2019, he had approved **Enr. Committee Substitute for Senate Bill 13, Enr. Committee Substitute for Senate Bill 26, Enr. Committee Substitute for Senate Bill 270, Enr. Committee Substitute for Senate Bill 356, Enr. Senate Bill 358, Enr. Committee Substitute for Senate Bill 387, Enr. Senate Bill 442, Enr. Senate Bill 443, Enr. Senate Bill 444, and Enr. Senate Bill 452.**

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 7th day of March, 2019, 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. 2854), Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools.

And,

(H. B. 3140), Relating to the Division of Natural Resources Infrastructure.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Moore Capito,
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 Concurrent Resolution 54 (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study the appropriateness of granting access to adoption records to adult adoptees.

Whereas, Many adult adoptees have profound personal or medical interests in obtaining information regarding their birth parents; and

Whereas, Many birth parents desire anonymity and confidentiality regarding the adoption process and any adoption records, and are relying on the contracts they signed at the time of the adoption that guaranteed confidentiality; and

Whereas, Adoption records are only obtained through great difficulty and birth parents are often unlocatable or deceased; and

Whereas, A majority of states grant limited access to certain adoption records without first obtaining a court order; and

Whereas, The interest of both adoptees and birth parents should be respected; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the appropriateness of granting access to adoption records to adult adoptees; and, be it

Further Resolved, That the Joint Committee on Government and Finance examine the feasibility of the Department of Health and Human Resources locating birth parents, obtaining the health and medical history of the birth parents, and obtaining consent to release certain adoption records; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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 Weld, unanimous consent being granted, the resolution (S. C. R. 54) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 55 (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance to study price gouging during and after a declaration by the Governor or by the President of the United States of a state of emergency in West Virginia; to study the appropriate time frames controls on pricing should be in effect; and to study whether regulating such statutes should govern during emergencies declared by the Governor and the President of the United States.

Whereas, West Virginia requires a state of emergency and price controls to remain in effect for 30 days or the duration of the state of emergency, whichever is longer; and

Whereas, The statute relating to price controls relates to both a state of emergency declared by the Governor and a state of emergency declared by the President of the United States; and

Whereas, While consumer protection under such circumstances is necessary, the need for predictability and consistency in the West Virginia economy is equally necessary; therefore, be it,

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study price gouging during and after a declaration by the Governor or by the President of the United States of a state of emergency in West Virginia; to study the appropriate time frames controls on pricing should be in effect; and to study whether regulating such statutes should govern during emergencies declared by the Governor and the President of the United States; and, be it

Further Resolved, That the Joint Committee on Government and Finance study West Virginia Code requirements regarding the Governor's ability to declare a state of emergency in West Virginia whenever the President of the United States declares a national state of emergency or disaster; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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 Weld, unanimous consent being granted, the resolution (S. C. R. 55) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 56 (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study the utility of the enactment of laws clarifying the definition of employee and independent contractor for purposes of unemployment compensation and workers' compensation.

Whereas, Current law is unclear and produces inconsistent results as to whether a person is an employee or an independent contractor for purposes of unemployment compensation and workers' compensation; and

Whereas, Internal Revenue Service regulations provide one test, the West Virginia Code provides another, and the Supreme Court of Appeals provides a third; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the utility of the enactment of laws clarifying the definition of employee and independent contractor for purposes of unemployment compensation and workers' compensation; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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 Weld, unanimous consent being granted, the resolution (S. C. R. 56) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 57 (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study state measures to strengthen and modernize the protections for trade secrets and intellectual property.

Whereas, In 1986, the Legislature of West Virginia enacted into state law the Uniform Trade Secrets Act proposed by the Uniform Law Commission and, since that time, this act has not been amended by the Legislature, nor has the Uniform Law Commission adopted updates to the model law; and

Whereas, Social and technical innovation in the past three decades has led to a broader understanding of the types of information that may be considered intellectual property having important commercial value but may not be covered by existing trade secrets law; and

Whereas, International agreements between the United States and its trading partners incorporate new definitions of intellectual property and assurances of minimum, required protections; and

Whereas, The law of trade secrets is developing at many levels with different approaches occurring with the states, federal legislation and rules, and international law; and

Whereas, There is now an opportunity for West Virginia to move into the lead with intellectual property protections and to provide carefully considered and forward-looking protections that will encourage entrepreneurs and established corporations to locate within the state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study state measures to strengthen and modernize the protections for trade secrets and intellectual property; and, be it

Further Resolved, That in conducting this study, the committee shall include an evaluation of trade secret and intellectual property protections in other states and at the federal level; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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 Takubo, unanimous consent being granted, the resolution (S. C. R. 57) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 2079, Removing certain limitations on medical cannabis grower, processor and dispensary licenses.

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 Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2079) 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 Maroney, 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 2490, Preventing proposing or enforcing rules that prevent recreational water facilities from making necessary upgrades.

And,

Eng. Com. Sub. for House Bill 2945, Relating to vendors paying a single annual fee for a permit issued by a local health department.

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

Respectfully submitted,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2490 and 2945) 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 Maroney, 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 2583, Family Planning Access Act.

And has amended same.

Eng. Com. Sub. for House Bill 2770, Fairness in Cost-Sharing Calculation Act.

And has amended same.

Eng. Com. Sub. for House Bill 2947, Relating generally to telemedicine prescription practice requirements and exceptions.

And has amended same.

And,

Eng. Com. Sub. for House Bill 3131, Relating to providing salary adjustments to employees of the Department of Health and Human Resources.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2583, 2770, 2947, and 3131) 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.

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

On motion of Senator Takubo, at 5:18 p.m., the Senate adjourned until tomorrow, Friday, March 8, 2019, at 10 a.m.

FRIDAY, MARCH 8, 2019

The Senate met at 10:42 a.m.

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

Prayer was offered by the Honorable Rollan A. Roberts, a senator from the ninth 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 Thursday, March 7, 2019,

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

At the request of Senator Plymale, and by unanimous consent, Senator Plymale addressed the Senate regarding recent comments made by Dr. E. Gordon Gee, President of West Virginia University, concerning Marshall University.

Thereafter, at the request of Senator Palumbo, unanimous consent being granted, the remarks by Senator Plymale were ordered printed in the Appendix to the Journal.

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

At the request of Senator Takubo, and by unanimous consent, the provisions of Rule 54 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 Honorable Michael T. Azinger, a senator from the third district, privileges of the floor for the day.

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 153, Providing greater flexibility for making infrastructure project grants.

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 154, Using school facilities for funeral and memorial services for certain community members.

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 199, Authorizing certain miscellaneous agencies and boards promulgate legislative rules.

On motion of Senator Takubo, 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 thirty-one, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendment:

On page 4, after subdivision 5.6.b. by inserting a new subsection 5.7. to read as follows:

“5.7. All applications for tax credits must be received by the Department of Agriculture no later than January 31 of the year following the year in which the donation was made.”;

On page five, section two, line forty-one, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendment:

On page 8, by striking out paragraph “11.2.a.” in its entirety and renumbering the remaining paragraphs accordingly;

On page six, section five, line three, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendments:

On page 16, by striking paragraph “18.1.hh.2” in its entirety and renumber the remaining paragraphs accordingly;

On page six, section six, line six, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendments:

On page 5, subsection 4.2 after the words, “minimum of” by striking out “960” and inserting in lieu thereof “500”;

On page 5, subsection 4.2 after the words, “within a” by striking out “15” and inserting in lieu thereof “12”.

On page 5, subsection 4.3 after the words, “a pharmacy in a” by striking out “960” and inserting in lieu thereof “500”;

On page 6, subdivision 4.4.c after the word, “Within” by striking out “15” and inserting in lieu thereof “12”;

And,

On page 6, subdivision 4.4.e after the words “within the” by striking out “15” and inserting in lieu thereof “12”.

On page seven, section seven, line five, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendments:

On page 3, subdivision 4.1.d. after the word “misdemeanor” by striking out the words “involving moral turpitude” and inserting in lieu thereof the following: “that bears a rational nexus to the occupation requiring licensure”;

And

On page 29, subdivision 8.2.c. after the word “misdemeanor by striking out the words “involving moral turpitude” and inserting in lieu thereof the following: “that bears a rational nexus to the occupation requiring licensure”;

And on page 30, subdivision 9.2.f. after the word “misdemeanor” by striking out the words “involving moral turpitude” and inserting in lieu thereof the following: “that bears a rational nexus to the occupation requiring licensure.”;

And,

On page eight, section nine, line four, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendments:

On page 4, subdivision 5.1, after the words “New series rules” by striking out the word “may” and inserting in lieu thereof the word “shall”.

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

Engrossed Committee Substitute for Senate Bill 199, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 199) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 199) 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 Senate Bill 238, Increasing certain penalties for passing stopped school bus.

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 241, Permitting county court clerks scan certain documents in electronic form.

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

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

On page one, section eleven, line eight, by striking out the words “scan and record” and inserting in lieu thereof the words “scan, record, and make available online when determined to be financially feasible by the county commission”;

And,

On page one, section eleven, line twelve, after the word “followed” by changing the period to a colon and inserting the following proviso: *Provided further*, That any documents in an electronic format are stored on a server off site, such as a cloud based server, to retain a backup copy of electronic documents.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 241) and requested the House of Delegates to recede therefrom.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 317, Authorizing three or more adjacent counties form multicounty trail network authority.

On motion of Senator Takubo, 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:

ARTICLE 17. MULTICOUNTY TRAIL NETWORK AUTHORITIES.

§20-17-1. Legislative findings.

The West Virginia Legislature finds that outdoor recreation is an increasingly vital part of the state's economy and that outdoor recreation participants spend billions of dollars annually in the state and support a significant number of local jobs.

The Legislature further finds that well-managed areas for trail-oriented recreation in the state will increase outdoor recreational tourism, increasing revenue to the state and creating more jobs for West Virginia citizens.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide citizens and recreational tourists with greater access to trail-oriented recreation by incorporating private property into recreational trail systems and

areas throughout West Virginia to provide significant economic and recreational benefits to communities in the state.

The Legislature further finds that, under an appropriate contractual and management scheme, well-managed trail systems may 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 creating and empowering multicounty trail network authorities, that can work with the landowners, county officials, community leaders, state and federal government agencies, recreational user groups, and other interested parties to expand trail systems will greatly assist in improving and linking recreational trail systems.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make land available for public use, through multicounty trail network authorities, for recreational purposes by limiting landowner liability for injury to persons entering thereon, by limiting landowner liability for injury to the property of persons entering thereon, and by limiting landowner liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§20-17-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this article have the following meanings:

(1) "Adjacent county" means a nonparticipating county that directly borders any participating county in a multicounty trail network authority;

(2) "Authority" means a multicounty trail network authority created pursuant to this article;

(3) "Board" means the board of a multicounty trail network authority;

(4) “Contiguous counties” means a group of counties in which each county shares the border of at least one other county in the group;

(5) “Fee” means the amount of money asked in return for an invitation to enter or go upon a recreational area of a trail network, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by an authority, which may differ in amount for different categories of participants;

(6) “Land” or “property” includes, but is not limited to, roads, water, watercourses, private ways, buildings, premises, structures, and machinery or equipment, when attached to the realty;

(7) “Owner” or “owner of land” means a person vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, a tenant, lessee, licensee, holder of a dominant estate, or other lawful occupant;

(8) “Participant” means any person using a recreational area of a trail network for recreational purposes;

(9) “Person” means any public or private corporation, institution, association, society, firm, organization, or company organized or existing under the laws of this or any other state or country; the State of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust, or estate; a person or individual; a group of persons or individuals acting individually or as a group; any other legal entity; or any authorized agent, lessee, receiver, or trustee of any of the foregoing;

(10) “Participating county” means one of the three or more counties forming a multicounty trail network authority;

(11) “Recreational area” means the recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or

cultural interpretive sites, and other facilities or attractions that are a part of a multicounty trail network authority system; and

(12) “Recreational purposes” means:

(A) Any outdoor activity undertaken, or practice or instruction in any such activity, for the purpose of exercise, relaxation, or pleasure, including, but not limited to any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, kayaking, camping, picnicking, hiking, rock climbing, bouldering, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites, aircraft, or ultralight operations on private airstrips or farms, or otherwise using land for purposes of the user;

(B) Parking on or traversing land, outside of the state road system, for the purpose of engaging in a recreational activity described in paragraph (A) of this subdivision; or

(C) Maintaining or making improvements on land, including, but not limited to, artificial improvements for the purpose of making the land accessible or usable for a recreational activity described in paragraph (A) of this subdivision.

§20-17-3. Multicounty trail network authorities authorized; addition of counties; merger of existing authorities.

(a) For the purposes of this article, three or more contiguous counties may, upon approval of the county commission of each county desiring to participate, form a multicounty trail network authority. An authority established pursuant to this section is a public corporation and a joint development entity existing for the purpose of facilitating the development and operation of a system of recreational trails and areas throughout the participating counties. Such trails will be designated and made available for recreational purposes with significant portions of the trails system being located on private property throughout West Virginia, made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) An adjacent county may join a multicounty trail network authority as a participating county upon approval of both the board of the authority and the county commission of the adjacent county wishing to become a participating county.

(c) Two or more existing authorities may merge and become a single authority encompassing the participating counties in each merging authority upon approval of the board of each authority. Upon merger of two or more authorities, the board of the newly created authority will be composed of all board members serving on the board of each merging authority at the time the merger takes place. Thereafter, the authority will fill any vacancies and appoint board members as required by §20-17-4 of this code. The board of the newly created authority shall adopt appropriate procedures and bylaws to ensure that the newly created authority complies with all requirements of this article.

§20-17-4. Board; quorum; executive director; expenses; application of state Freedom of Information Act.

(a) The board is the governing body of an authority and the board shall exercise all the powers given the authority in this article. The county commission of each participating county shall appoint two members to the board, as follows:

(1) Each participating county shall appoint 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 authority's recreational area. This member shall be appointed to a four-year term.

(2) Each participating county shall appoint one member who is an experienced instructor, guide, or participant in recreational activities in the county or an individual who represents and is associated with travel, tourism, economic development, land surveying, or relevant engineering efforts within the county. The initial appointment for this member shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(3) 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. 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.

(b) Upon joining an existing authority as a participating county pursuant to §20-17-3 of this code, the newly participating county shall appoint board members only for the length of the unexpired terms of the authority's board members serving at the time the county joins the authority. Thereafter, the county shall appoint board members according to the regular appointment procedure provided in subsection (a) of this section.

(c) The board shall meet quarterly, unless a special meeting is called by its chairman. During the first meeting of each fiscal year beginning in an odd-numbered year, or as soon as feasible thereafter, the board shall elect a chairman, secretary, and treasurer from among its own members to serve for two-year terms.

(d) A majority of the members of the board constitutes a quorum and a quorum shall be present for the board to conduct business.

(e) The board may prescribe, amend, and repeal bylaws and rules governing the use of the trail system, safety standards for participants, and the manner in which the business of the authority is conducted.

(f) The board shall review and approve an annual budget. The fiscal year for an authority begins on July 1 and ends on the 30th day of the following June.

(g) 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 retain such

temporary legal, 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 an annual 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 of each year, 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.

(h) All costs incidental to the administration of the authority, including office expenses, personal services expenses, and current expenses, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(i) All expenses incurred by an authority in carrying out the provisions of this article shall be payable solely from funds that have accrued to the authority pursuant to this article. An authority may not incur liability or an obligation above the amount of funds that have accrued to the authority pursuant to this article.

(j) A multicounty trail network authority and the board is a “public body” for purposes of the West Virginia Freedom of Information Act, as provided in §29B-1-1 *et seq.* of this code.

§20-17-5. Financial review and oversight.

(a) An 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 an 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 authority, and, for these purposes, shall have the power to inspect the properties, equipment, and 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 45 days of the close of that fiscal year.

§20-17-6. Powers of an authority.

An authority, as a public corporation and 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 public;

(3) To mortgage or otherwise grant security interests in its property;

(4) To procure insurance against any losses in connection with its property, licenses, easements, operations, assets, or contracts, including hold-harmless agreements, 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 §5-3-1 et seq. 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 the authority's 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 out the purposes of this article, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation;

(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 place or places within the state as it may designate;

(14) To borrow money, to issue notes, to provide for the payment of notes, to provide for the rights of the holders of notes, and to purchase, hold, and dispose of any of its notes;

(15) To issue notes payable solely from the revenue or other funds available to the authority, which may be issued in such principal amounts as 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 notes issued by it, whether the notes or interest to be funded or refunded have or have not become due; and

(B) The establishment or increase of reserves to secure or to pay notes, or the interest on the notes, and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source;

(16) To issue renewal notes, except that no renewal notes may be issued to mature more than 10 years from the date of issuance of the notes renewed;

(17) To apply the proceeds from the sale of renewal notes to the purchase, redemption, or payment of the notes to be refunded;

(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 take appropriate measures in procuring, accepting, or disposing of gifts or grants;

(19) To the extent permitted under its contracts with the holders of 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 note, contract or agreement of any kind to which the authority is a party;

(20) To construct, reconstruct, improve, maintain, repair, operate, and manage the recreational areas at the locations within the 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 authority's recreational area and to reimburse the Division of Natural Resources for its costs therefor;

(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 authority at such locations within the participating counties as may be determined by the authority;

(23) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(24) To develop, maintain, and operate or contract for the development, maintenance, and operation of the authority;

(25) To enter into contracts 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 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 any of his or her agents or employees;

(26) 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 recreational area and to retain and utilize that revenue for any purposes consistent with this article: *Provided*, That such fee does not constitute a "charge" or a "fee" within the meaning and for the purposes of §19-25-5 of this code: *Provided, however*, That the authority may not charge a fee for any user to enter or go upon any trail that is already open for use by the public without fee as of January 1, 2019;

(27) To enter into contracts or other appropriate legal arrangements with landowners under which land is made available for use as part of the recreational area;

(28) To directly operate and manage recreation activities and facilities within the recreational area;

(29) To promulgate and publish rules governing the use of the recreational area and the safety of participants, including rules designating particular trails or segments of trails within the recreational area for certain activities and limiting use of designated trails to such activities;

(30) To coordinate and conduct athletic races, competitions, or events within the recreational area, in cooperation with the county commissions of participating counties in which such events will take place; and

(31) To exercise such other and additional powers as may be necessary or appropriate to carry out the purposes of this article.

§20-17-7. Requirements for trail users and prohibited acts; criminal penalties.

(a) A person may not enter or remain upon a recreational area without a valid, nontransferable user permit issued by the appropriate 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.

(b) An authority may require recreational users to wear protective helmets or use safety equipment that the authority determines to be appropriate for the recreational activity in which the user is engaged.

(c) Each trail user operating a bicycle or mountain bicycle shall obey all traffic laws, traffic-control devices, and signs within the recreational area, including those which restrict trails to certain types of bicycles or mountain bicycles.

(d) Each trail user shall at all times remain within and on a designated and marked trail while within the recreational area.

(e) A person may not ignite or maintain any fire within the recreational area except in a designated camp site.

(f) A person may not operate a motor vehicle within the recreational area unless the person is authorized to operate a motor vehicle in the area to perform maintenance services or emergency response.

(g) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, 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.

§20-17-8. Limiting liability.

(a) An owner of land used by an authority owes no duty of care to keep his or her land safe for entry or use by others for recreational purposes, or to give any warning of a dangerous or hazardous condition, use, structure, activity, or wild animal on such land to persons entering or going upon the land for such purposes. The provisions of this section apply regardless of whether the person entering or going upon the leased land is permitted to enter the land or is a trespasser.

(b) Unless otherwise agreed in writing, an owner of land who grants a lease, easement, or license of land to an 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 land is safe for any purpose; (2) confer upon those persons the legal status of a party to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property or death 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 or going upon the leased land is permitted to enter the land or is a trespasser.

(c) Nothing in this section 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.

§20-17-9. Purchasing and bidding procedures; criminal penalties.

(a) Purchasing and bidding procedures; criminal penalties. —

(1) Whenever an authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed \$25,000 in cost, the purchase or contract shall be based on competitive bidding. Where the purchase of particular commodities or services is reasonably anticipated to be less than \$25,000, 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 §5A-3-10e of this code.

(2) 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 such commodities or services: *Provided*, That the executive director may permit bids by electronic transmission to 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 §59-3-1 *et seq.* 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 for 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.

(3) 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 50 percent of the contract price conditioned upon faithful performance and completion of the contract.

(4) 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 recreational area, information distribution, and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage, or administrative facilities.

(5) Any person who violates a provision of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than 10 days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both fined and confined.

(b) Conflicts of interest in contracts prohibited. —

An authority or any of its board members, officers, employees, or agents may not enter into any contracts, agreements, or arrangements for purchases of services or commodities violating the requirements of §6B-2-5 or §61-10-15 of this code.

(c) Civil remedies. —

The county commission of a participating county in an authority may challenge the validity of any contract or purchase entered, solicited, or proposed by the authority in violation of this section 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 those sections

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 17A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-17A-1. Legislative findings; purpose.

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 the Potomac Highlands and north central West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in the Potomac Highlands and north central West Virginia through increased tourism in the same manner as whitewater rafting, snow skiing, and utility terrain motor vehicle riding benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a 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 purpose of this article is to provide additional opportunities and regulatory authorization for recreational trail networks and to provide for increased access to recreational areas, including, but not limited to, creating a contiguous trail system that connects to the Chesapeake and Ohio Canal Tow Path.

§20-17A-2. Creation of Mountaineer Trail Network Recreation Authority and establishment of recreation area.

There is hereby created the “Mountaineer Trail Network Recreation Authority” consisting of representatives from the counties of Barbour, Grant, Harrison, Marion, Mineral,

Monongalia, Preston, Randolph, Taylor, and Tucker organized pursuant to the provisions of §20-17-1 *et seq.* of this code. This authority is authorized to establish a Mountaineer Trail Network Recreation Area within the jurisdictions of those counties and the authority shall be subject to the powers, duties, immunities, and restrictions provided in §20-17-1 *et seq.* of this code. Visitors and participants in recreational activities within the trail network shall, in similar respects, be subject to the user requirements and prohibitions of §20-17-7 of this code.

§20-17A-3. Recreational purposes.

The allowed recreational purposes for the Mountaineer Trail Network Recreation Area include, but are not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, bicycling, mountain bicycling, running, cross-country running, nature study, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites.

§20-17A-4. Governing body and expenses.

(a) The governing body of the authority shall be a board constituted according to the provisions of §20-17-4 of this code.

(b) All costs incidental to the administration of the authority, including office expenses, personal services expenses and current expenses, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(c) 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 under §20-17-1 *et seq.* of this code. 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.

§20-17A-5. Protection for private landowners.

Owners of land used by the authority shall have the full benefit of the limitations of liability provided in §20-17-8 of this code.;

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 317—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-17-1, §20-17-2, §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-17-8 and §20-17-9; and to amend said code by adding thereto a new article, designated §20-17A-1, §20-17A-2, §20-17A-3, §20-17A-4, §20-17A-5, all relating generally to forming multicounty trail network authorities; creating a framework for establishment of multicounty trail network authorities and authorizing the formation of the Mountaineer Trail Network Recreation Authority; providing legislative findings; defining terms; providing that an authority is a public corporation and joint development entity; providing procedures for counties to join a trail network authority as a participating county and providing for the merger of two established authorities; providing for appointment of individuals to the board of an authority and for the filling of vacancies in the board; establishing the terms of appointment to a board; requiring quarterly meetings of a board; describing how a quorum is established; authorizing a board to promulgate bylaws and rules; providing that an authority is subject to Freedom of Information Act laws; describing the powers and duties of an authority; requiring a board to appoint an executive director; describing powers and duties of an executive director; authorizing employment of authority staff; requiring creation of an annual budget; providing for payment of an authority's expenses; allowing reimbursement of board member expenses; establishing financial audit requirements; requiring reporting and oversight of state funds; prohibiting certain actions by users of recreational area land and providing criminal penalties; limiting the liability of owners of land used by an authority; setting forth purchasing and bidding procedures for authority contracts and purchases; providing criminal penalties for violation of purchasing and bidding requirements; clarifying that certain provisions of the code prohibiting certain officers from having a pecuniary interest in

contracts applies to board members, officers, personnel, and agents of an authority; providing civil remedies for participating counties challenging purchasing contracts violating certain requirements; establishing the Mountaineer Trail Network Recreation Authority and authorizing the creation of the Mountaineer Trail Network Recreation Area; identifying participating counties; providing legislative findings and purposes for this authority; listing the recreational purposes for the recreation area; specifying manner of governance and payment of expenses; and ensuring liability protections for cooperating land owners.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for Com. Sub. for S. B. 317) 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 concurrence by that body in the passage, to take effect October 1, 2019, of

Eng. Com. Sub. for Senate Bill 318, Transferring Medicaid Fraud Control Unit to Attorney General's office.

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 357, Relating generally to Division of Administrative Services.

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

Eng. Com. Sub. for Senate Bill 360, Relating to third-party litigation financing.

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 400, Allowing Board of Dentistry create specialty licenses.

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

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

On page eight, section eight, line twenty, after the word “setting;” by striking out the word “and”;

On page eight, section eight, line twenty-two, after the word “setting;” by inserting the following: and

(E) The Board may consider clinical examinations taken prior to July 1, 2019, or individual state clinical examinations as equivalent which demonstrates competency.;

And,

On page nine, section eight-a, lines two and three, by striking out the words “in a dental specialty” and inserting in lieu thereof the words “upon proper application and fee for each specialty and as provided pursuant to the provisions of this article”.

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

Engrossed Committee Substitute for Senate Bill 400, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 400) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 404, Relating generally to sediment control during commercial timber harvesting operations.

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

Eng. Senate Bill 421, Relating to annual legislative review of economic development tax credit.

A message from the Clerk of the House of Delegates announced that that body had refused to recede from its amendment, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Com. Sub. for Senate Bill 481, Relating to Judicial Vacancy Advisory Commission.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Kump, Steele, and N. Brown.

On motion of Senator Takubo, the Senate agreed to the appointment of a conference committee on the bill.

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

Senators Weld, Rucker, and Romano.

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, without amendment, to take effect from passage, and requested the concurrence of the Senate in the changed effective date, as to

Eng. Com. Sub. for Senate Bill 485, Clarifying notification requirements for property insurance purposes.

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 487, Relating to admissibility of health care staffing requirements in litigation.

On motion of Senator Takubo, 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:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-7a. Admissibility and use of certain information.

(a) In an action brought, there is a rebuttable presumption that the following information may not be introduced unless it applies specifically to the injured person or it involves substantially similar conduct that occurred within one year of the particular incident involved:

(1) A state or federal survey, audit, review, or other report of a health care provider or health care facility;

(2) Disciplinary actions against a health care provider's license, registration, or certification;

(3) An accreditation report of a health care provider or health care facility; and

(4) An assessment of a civil or criminal penalty.

(b) In any action brought alleging inappropriate staffing or inadequate supervision, if the health care facility or health care provider demonstrates compliance with the minimum staffing requirements under state and federal law, the health care facility or health care provider is entitled to a rebuttable conclusive presumption that appropriate staffing was provided, and a rebuttable presumption that adequate supervision of patients to prevent accidents was provided, and the jury shall be instructed accordingly.

(c) If staffing is less than the requirements dictated by state and federal law the applicable regulations, then there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient's fall and injuries or death arising therefrom, and the jury shall be instructed accordingly.

(d) Information under this section may only be introduced in a proceeding if it is otherwise admissible under the West Virginia Rules of Evidence.;

And,

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

Eng. Com. Sub. for Senate Bill 487—A Bill to amend and reenact §55-7B-7a of the Code of West Virginia, 1931, as amended, relating to the admissibility of health care staffing requirements in medical professional liability litigation; providing that compliance with minimum staffing requirements under state and federal law creates a conclusive presumption that appropriate staffing was provided and a rebuttable presumption that adequate supervision of patients to prevent accidents was provided; requiring that if staffing is less than requirements dictated by state and federal law then there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient's

fall and resulting injuries or death; and, requiring the jury be instructed accordingly.

Senator Takubo moved that the Senate refuse to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 487) and request the House of Delegates to recede therefrom.

Following discussion,

The question being on the adoption of Senator Takubo's aforestated motion, 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.

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

Eng. Senate Bill 493, Correcting terminology referring to racing vehicles illegally on street.

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 496, Transferring authority to regulate milk from DHHR to Department of Agriculture.

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

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

On page fifteen, section seventeen, by striking out all of section seventeen and inserting in lieu thereof a new section, designated section seventeen, to read as follows:

§19-11E-17. Transfer of milk regulation authority from Department of Health and Human Resources (DHHR) to Department of Agriculture (WVDA).

(a) Effective July 1, 2019, authority for the regulation, including enforcement, of Grade “A” milk is hereby transferred to the commissioner from the Department of Health and Human Resources.

(b) Prior to July 1, 2019, the commissioner and the Department of Health and Human Resources shall enter into an agreement to provide for the orderly transition of regulatory operations from the Department of Health and Human Resources to the commissioner. Said agreement shall provide:

(1) For the transfer of records and equipment related to the milk regulation program to the commissioner;

(2) For the continued provision of services by staff of the Department of Health and Human Resources to the commissioner under the terms of the agreement;

(3) For transition, upon notice to Department of Health and Human Resources, of functions from the Department of Health and Human Resources to the commissioner; and

(4) For the completion of the transfer of all responsibilities from the Department of Health and Human Resources to the commissioner no later than December 31, 2019.

(c) During a period from July 1, 2019, to December 31, 2019, the Department of Health and Human Resources shall cooperate fully with the commissioner to ensure a smooth transition of authority, knowledge, and resources to guarantee that milk regulation in West Virginia suffers no gap or failure in regulation.

(d) All legislative rules issued by the Department of Health and Human Resources pursuant to its authority to regulate milk shall remain in effect until superseded by the commissioner’s regulations.

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

Engrossed Committee Substitute for Senate Bill 496, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Hamilton, Mann, Maroney, Maynard, Plymale, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—22.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Stollings, and Unger—12.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 496) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—27.

The nays were: Baldwin, Beach, Facemire, Ihlenfeld, Jeffries, Lindsay, and Romano—7.

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. 496) 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 Senate Bill 511, Creating alternating wine proprietorships.

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 537, Creating workgroup to review hospice need standards.

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

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

On page one, section thirty-one, line four, after the word “Authority” by inserting the words, “or designee”;

On page two, section thirty-one, line thirty-seven, by striking out the words “June 30, 2020” and inserting in lieu thereof the words “September 30, 2019”;

On page three, section thirty-one, line thirty-eight, by striking out the words “March 31, 2021” and inserting in lieu thereof the words “December 31, 2019”;

On page three, section thirty-one, line forty-one, by striking out the words “December 31, 2020” and inserting in lieu thereof the words “December 1, 2019”;

On page three, section thirty-one, line forty-three, by striking out “90” and inserting in lieu thereof “30”;

On page three, section thirty-one, line forty-five, after the words “Governor.” by striking out the remainder of the subsection;

On page three, section thirty-one, lines forty-eight 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) The need standards regulating hospice services and home health services shall be those that were in effect on January 1, 2018, and shall remain in effect until the Governor approves the new standards no sooner than December 31, 2019. ;

And,

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

Eng. Com. Sub. for Senate Bill 537—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-29B-31, relating to establishing health care standards by the Health Care Authority; establishing a workgroup to review certain standards in this state; designating members of workgroup; providing for duties of workgroup; providing that the West Health Care Authority provide staff for the workgroup; providing for public hearings; providing for the submission of a final report; establishing a termination date of the workgroup; providing a time frame to review health care standards; freezing current standards for a period of time; and establishing a time frame to complete the review.

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

Engrossed Committee Substitute for Senate Bill 537, as amended by the House of Delegates, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 537 pass?”

Senator Trump requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as his wife is a board member of Hospice of the Panhandle.

The Chair replied that any impact on Senator Trump would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 537) 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 566, Relating to compensation for State Athletic Commission members.

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

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

On page one, section one, line ten, after the word “article.” by striking out the remainder of the subsection and inserting in lieu thereof the following: Each member is entitled to receive compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law. A

board member may not receive compensation for travel days that are not on the same day as the official meeting or official duties.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendment to the bill (Eng. S. B. 566) and requested the House of Delegates to recede therefrom.

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

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

Eng. Senate Bill 596, Adjusting voluntary contribution amounts on certain DMV forms.

On motion of Senator Takubo, 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:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-12a. Commissioner of Motor Vehicles — commissioner shall prescribe forms providing for veteran contributions.

(a) Notwithstanding §17A-2-12 of this code, the commissioner shall prescribe and provide suitable forms of application which provide the following applicants the ability to make a contribution of \$3, \$5, or \$10, or any amount of the applicant's choosing to the West Virginia Department of Veterans Assistance, the West Virginia Farm Bureau Foundation, the West Virginia University Foundation, reserved for 4 H Youth Education Program, or the West Virginia Future Farmers of America Education Foundation:

(1) Applicants for original or renewal driver's licenses or identification cards; and

(2) Applicants for a renewal of a vehicle registration.

(b) A contribution under §17A-2-12a(a) of this code shall be added, as appropriate, to the regular fee for:

(1) An original or renewal driver's license or identification card; and

(2) A renewal of a vehicle registration.

(c) Contributions to the West Virginia Department of Veterans Assistance under §17A-2-12a(a) of this code shall be used exclusively for purposes set forth in §9A-1-1 *et seq.* of this code.

(d) (1) The division shall determine on a monthly basis the total amount collected for the West Virginia Department of Veterans Assistance under this section and report and transfer said amount to the State Treasurer. The State Treasurer shall transfer the amount collected under this section to the West Virginia Department of Veterans Assistance.

(2) The division shall determine on a biannual basis the total amount collected for the West Virginia Farm Bureau Foundation, the West Virginia University Foundation, reserved for 4 H Youth Education Program, and the West Virginia Future Farmers of America Education Foundation under this section and report and transfer said amount to the State Treasurer on July 1 and January 1 each fiscal year. The State Treasurer shall transfer the funds collected for the West Virginia Farm Bureau Foundation, the West Virginia University Foundation, reserved for 4 H Youth Education Program, and the West Virginia Future Farmers of America Education Foundation under this section in equal amounts to the West Virginia Farm Bureau Foundation, the West Virginia University Foundation, reserved for 4 H Youth Education Program, and the West Virginia Future Farmers of America Education Foundation.

(e) The West Virginia Department of Veterans Assistance shall reimburse the Motor Vehicle Fees Fund for the actual costs incurred by the division in the administration of this section The division may deduct from all contributions under this section no more than two percent as an administrative fee to recover processing costs prior to transferring any money to the State Treasurer or to any foundation.;

And,

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

Eng. Senate Bill 596—A Bill to amend and reenact §17A-2-12a of the Code of West Virginia, 1931, as amended, relating to allowing persons to donate to the West Virginia Farm Bureau, the West Virginia 4 H Program, and the West Virginia Future Farmers of America Education Foundation, in addition to the Department of Veterans Assistance, when renewing a driver's license or vehicle registration, altering the amounts which may be donated under the section to all organizations, and allowing DMV to retain 2% of the donations for administrative costs.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 596) 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 concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 597, Conforming state law to federal law for registration of appraisal management companies.

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, 2019, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 624, Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act.

On motion of Senator Takubo, 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 five, line one hundred five, after the word “Act.” by striking out the remainder of the subdivision and inserting in lieu thereof the following:

The department shall negotiate reasonable per student costs for the delivery and administration of the alternative assessment that is equal to the per-student assessment cost as determined by the statewide assessment contract. The department shall be responsible for the costs of collecting and submitting the evidence needed to satisfy the requirements specified in 20 U.S.C. § 6311 (b)(2)(H) and 34 CFR 200.3. If the U.S. Department of Education determines that an alignment study is needed, the department shall ensure that a holistic alignment approach is used to evaluate the degree of alignment between the assessment and the state academic standards and the study shall include at least three test forms.;

And,

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

Eng. Com. Sub. for Senate Bill 624—A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to allowing county boards of education to use alternative assessment pursuant to the locally selected assessment option provided for in the Every Student Succeeds Act; requiring per-student costs for delivery and administration of alternative assessment equal to per-student assessment costs in statewide assessment contract; making department responsible for costs of collecting and submitting evidence to satisfy requirements in federal law and regulation; providing for alignment study if needed

that uses certain approach and includes various test forms; and making technical corrections.

On motion of Senator Rucker, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 624) were reported by the Clerk, considered simultaneously, and adopted:

On page one, section five, subsection (d), subdivision (3), by striking out the words “The department shall negotiate reasonable per student costs for the delivery and administration of the alternative assessment that is equal to the per-student assessment cost as determined by the statewide assessment contract. The department shall be responsible for the costs of collecting and submitting the evidence needed to satisfy the requirements specified in 20 U.S.C. § 6311 (b)(2)(H) and 34 CFR 200.3. If the U.S. Department of Education determines that an alignment study is needed, the department shall ensure that a holistic alignment approach is used to evaluate the degree of alignment between the assessment and the state academic standards and the study shall include at least three test forms.” and inserting in lieu thereof the following: The state Department of Education shall pay no more than the general summative assessment per-student cost for a locally selected assessment used pursuant to the locally selected assessment option. If required by the U.S. Department of Education, the state department shall be responsible for contracting and paying no more than \$100,000 total, of the costs of any studies required as part of the peer review process to satisfy the requirements specified in 20 U.S.C. §6311 (b)(2)(H) and 34 CFR 200.3. If the U.S. Department of Education determines that an alignment study is needed for a locally selected assessment option, the state department shall ensure that an independent alignment study is used to evaluate the degree of alignment between the assessment and the state academic standards and the study shall include at least three test forms. If the locally selected assessment is approved by the U.S. Department of Education and meets federal and state law, the state department shall enter into a contract that allows for county boards of education to implement the locally selected assessment.;

And,

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

Eng. Com. Sub. for Senate Bill 624—A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to allowing county boards of education to use an alternative assessment, such as the ACT assessment, pursuant to the locally selected assessment option provided for in the Every Student Succeeds Act; and setting forth requirements for the West Virginia Department of Education pertaining to the alternative assessment.

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

Engrossed Committee Substitute for Senate Bill 624, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: Trump—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 S. B. 624) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Tarr, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: Trump—1.

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. 624) 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 passage of

Eng. Senate Bill 625, Clarifying and defining authority of State Athletic Commission.

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 633, Authorizing Board of Physical Therapy conduct criminal background checks on applicants for licenses.

On motion of Senator Takubo, 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 article heading and inserting in lieu thereof the following:

§30-41-4. West Virginia Board of Physical Therapy criminal history record checks.

(a) The West Virginia Board of Physical Therapy is authorized to require state and national criminal history record checks for the

purpose of issuing licenses. The West Virginia Board of Physical Therapy shall require an applicant, including physical therapists and physical therapy assistants, as a condition of eligibility for initial license to submit to a state and national criminal history record check as set forth in this section.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of Chapter 29B of this code.

(e) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(f) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(g) The board may not disqualify an applicant for initial licensure because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure.

(h) The board may not use crimes involving moral turpitude in making licensure determinations.

(i) If an applicant is disqualified for licensure because of a criminal conviction that has not been reversed, the board shall afford the applicant the opportunity to reapply for licensure after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: *Provided*, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the board.

(j) An individual with a criminal record who has not previously applied for licensure, certification or registration may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization to practice. This petition shall include sufficient details about the individual's criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The board shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The board may charge a fee established by rule to recoup its costs for each petition.

(k) The board shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

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

Engrossed Senate Bill 633, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton,

Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 633) 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 655, Relating to conservation districts generally.

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 657, Providing consumer protection regarding self-propelled farm equipment.

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

Eng. Senate Bill 658, Relating to motor vehicle salesperson licenses.

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 672, Authorizing School Building Authority to promulgate legislative rules.

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 676, Relating to off-road vehicle recreation.

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

Senate Concurrent Resolution 23, Jeffrey Alan Clovis 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 25, US Army PFC Andrew “Bo” Martin Harper Memorial Bridge.

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 2363, Relating to the Upper Kanawha Valley Resiliency and Revitalization Program.

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 2550, Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program.

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 2617, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers.

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 2647, Self Storage Limited License Act.

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 2703, Relating to refunds of excise taxes collected from dealers of petroleum products.

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 2954, Defining certain terms used in insurance.

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 2975, Relating to imposition of sexual acts on persons incarcerated.

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 2992, Relating to governmental websites.

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

Eng. House Bill 3135, Expiring funds to the balance of the Department of Commerce, Development Office.

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

Com. Sub. for House Concurrent Resolution 26, George” Roush Memorial Bridge.

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

Com. Sub. for House Concurrent Resolution 32, Requesting the Secretary of the Department of Transportation to authorize raising highway speed limits, where appropriate, to 75 miles per hour on Interstate highways in West Virginia and to 70 miles per hour on West Virginia’s Appalachian Corridor highways.

The Senate proceeded to the fourth order of business.

Senator Carmichael (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Eng. Senate Bill 28, Removing hotel occupancy tax limit collected for medical care and emergency services.

Having been amended, received as a House message, and referred to the Committee on Rules on February 1, 2019;

And reports the same back.

Respectfully submitted,

Mitch Carmichael,
Chairman ex officio.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. S. B. 28) contained in the preceding report from the Committee on Rules was taken up for immediate consideration.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (*shown in the Senate Journal of Friday, February 1, 2019, pages 498 and 499*) was reported by the Clerk:

On page four, section fourteen, subsection (c), subdivision (11), after the word “infrastructure” by inserting the words “in an amount not to exceed \$200,000”.

Following discussion,

The question being on the adoption of Senator Takubo’s amendment to the House of Delegates amendments to the bill, the same was put and prevailed.

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

Engrossed Senate Bill 28, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 28) 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.

Senator Maroney, 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

Senate Concurrent Resolution 58 (originating in the Committee on Health and Human Resources)—Requesting Joint Committee on Government and Finance study and analyze the cost and benefits of placing Automated External Defibrillators (AEDs) in West Virginia schools under the jurisdiction of a county board of education.

Whereas, According to the American Heart Association's latest figures, 7,037 children die from sudden cardiac arrest each year; and

Whereas, The average American child spends between 175 and 180 days in school each year and receives between 900 and 1,000 hours of instructional time per year, and, therefore, it is critically important for our public schools to have AEDs readily available; and

Whereas, The American College of Cardiology notes that the most important contributing factor for survival of sudden cardiac arrest is the time from collapse to defibrillation. Survival decreases 10 percent every minute until a shock is applied; and

Whereas, Studies indicate that students without any prior CPR or AED training can accurately use an AED as directed. Automated External Defibrillators are, by design, easy to use. By following an AED's simple, clear voice prompts, bystanders can perform the crucial steps that can save a life; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study and analyze the cost and benefits of placing Automated External Defibrillators (AEDs) in West Virginia schools under the jurisdiction of a county board of education; and, be it

Further Resolved, That third-party donations may be used to effectuate the placement of AEDs in the schools; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of other state agencies and departments as necessary in conducting this study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report its findings, conclusions, and recommendations to the regular session of the Legislature, 2020, 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,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 58) contained in the foregoing report from the Committee on Health and Human Resources was then referred to the Committee on Rules.

Senator Maroney, 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

Senate Concurrent Resolution 59 (originating in the Committee on Health and Human Resources)—Requesting the Joint Committee on Government and Finance study the causes of increased incidents of black lung; determine the most appropriate way to compensate for black lung; implement policies to reduce the risk of developing black lung; and determine which testing should be used when diagnosing black lung.

Whereas, According to a study published in the American Journal of Public Health, the rate of black lung disease in coal miners is growing, particularly in miners who work in central Appalachia; and

Whereas, One in five coal miners who have worked in West Virginia, Kentucky, or Virginia for more than 25 years has coal workers' pneumoconiosis, according to the American Journal of Public Health study. Nationally, more than 10 percent of miners with the same amount of experience have the debilitating and irreversible disease, which is caused by exposure to coal dust; and

Whereas, The rate of black lung started declining in 1969, when Congress shifted its focus on limiting dust exposure. But, scientists have found an increase in the disease since 1997, especially in younger miners whose careers started after 1969; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government on Finance study the causes of increased incidents of black lung; determine the most appropriate way to compensate for black lung; implement policies to reduce the risk of developing black lung; and determine which testing should be used when diagnosing black lung; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of other state agencies and departments as necessary in conducting the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report its findings, conclusions, and recommendations to the regular session of the Legislature, 2020, 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,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 59) contained in the foregoing report from the Committee on Health and Human Resources was then referred to the Committee on Rules.

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

Your Committee on Education has had under consideration

Senate Concurrent Resolution 60 (originating in the Committee on Education)—Requesting the Joint Committee on Government and Finance study the need for a new model of providing a thorough and efficient system of free schools in West Virginia.

Whereas, According to the National Center for Education Statistics, total student enrollment in West Virginia has dropped more than 22 percent from 351,837 during the 1986-1987 school year to 273,855 during the 2016-2017 school year; and

Whereas, Data from the West Virginia Department of Education shows that enrollments are continuing to decline, indicating a total headcount enrollment for this school year of 265,755; and

Whereas, Data from the West Virginia Department of Education indicates that county school district size can vary greatly, from a high of 25,668 students in Kanawha County to a low of 809 students in Gilmer County; and

Whereas, Data from the West Virginia Department of Education indicates that during the current school year, there are

11 county school districts with less than 1,400 in FTE enrollment; and

Whereas, With the statewide declines in student enrollment continuing to occur, more county school districts could fall within the “under 1,400 in student enrollment” category in the future; and

Whereas, The Legislature in the past has attempted to address the financial struggles of low-enrollment counties by creating a statutory formula for giving those counties with less than 1,400 in net enrollment credit for more students than are actually enrolled in the county for state aid funding purposes; and

Whereas, Merging smaller school districts could result in much more administrative efficiency than simply the sharing of services between the counties and could result in focusing more resources on the school and classroom levels; therefore, be it

Resolved by the Legislature of West Virginia:

Requesting the Joint Committee on Government and Finance study the need for a new model of providing a thorough and efficient system of free schools in West Virginia; and, be it

Further Resolved, That the study include changes that may require amendments to the state constitution. The study may include consideration of changes such as: Reducing the number of school districts to 17 with each school district having an equal number of residents and being similar to existing Senate districts; allowing district boundaries to be negotiated between adjoining school districts; reducing the number of school district board members to four; changing the State Superintendent to the Secretary of Schools; and changing the makeup of the West Virginia Board of Education; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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; but with the further recommendation that it first be referred to the Committee on Rules

Respectfully submitted,

Patricia Puertas Rucker,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 60) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

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

Your Committee on Education has had under consideration

Senate Concurrent Resolution 61 (originating in the Committee on Education)—Requesting the Joint Committee on Government and Finance study requiring county boards of education to provide, as determined necessary, adequate mental health evaluations and services, and counseling services, to students.

Whereas, House Bill No. 2397 was introduced during the 2019 regular session of the Legislature which, if enacted, would require county boards of education to provide adequate mental health evaluations, services and counseling services for students, and would establish a minimum student-to-school psychologist ratio of 1,000-to-1; and

Whereas, House Bill No. 2397 did not establish a similar ratio for school counselors; and

Whereas, According to the American School Counselor Association, West Virginia's student-to-school counselor ratio during the 2015-2016 school year was 380-to-1, which is much better than the national ratio of 464-to-1, but still fails to meet the association's recommended student-to-school counselor ratio of 250-to-1; and

Whereas, According to the Centers for Disease Control and Prevention, the states with the highest rates of death due to drug overdose in 2017 were West Virginia (57.8 per 100,000), Ohio (46.3 per 100,000), Pennsylvania (44.3 per 100,000), the District of Columbia (44.0 per 100,000), and Kentucky (37.2 per 100,000); and

Whereas, West Virginia's need for more mental health and counseling services in public schools may be higher than in other states due to the need to address mental health problems that stem from the state's drug epidemic; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study requiring county boards of education to provide, as determined necessary, adequate mental health evaluations and services and counseling services to students; and, be it

Further Resolved, That this study may include recommendations on the appropriate minimum student-to-school psychologist and school counselor ratios, and methods of funding the recommended ratios; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Patricia Puertas Rucker,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 61) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

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 2540, Prohibiting the waste of game animals, game birds or game fish.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 5, 2019;

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 Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2540) contained in the preceding report from the Committee on the Judiciary 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:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5i. Waste of game animals, game birds, or game fish; penalties.

(a) It is unlawful for any person to cause through carelessness, neglect, or otherwise to let any edible portion of any big game or game fish to go to waste needlessly.

(b) For purposes of this section, "edible portion" means, with respect to:

(1) *Big game.* — One or more of the following: (A) the meat of the front quarters to the knee; (B) the meat of the hind-quarters to the hock; or (C) the meat along the backbone between the front quarters and hind quarters: *Provided*, That an edible portion of a wild turkey is the meat of the breast only.

(2) *Game fish.* — The fillet meat from the gill plate to the tail fin.

(3) Edible portion does not include bones, sinew, viscera, meat from the head or neck, meat that has been damaged or rendered inedible by method of taking, or meat that is reasonably lost as a result of boning or close trimming of bones.

(c) It is unlawful for any person to take any big game and detach or remove from the carcass the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste.

(d) Any person who through no carelessness, neglect, or otherwise, is unable to locate the carcass of any lawfully taken big game prior to the spoilage or decay of any or all edible portions may detach or remove from the carcass the head, hide, antlers,

tusks, paws, claws, gall bladder, teeth, beards, or spurs: *Provided*, That the big game is registered and shall be counted toward the daily, seasonal, bag, and possession limit of the person in possession of, or responsible for taking the big game.

(e) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the following penalties, with respect to:

(1) *Big game violations.* —

(A) A fine of not less than \$500 nor more than \$2,500, or confinement in jail not less than 10 days nor more than 100 days, or both fined and confined;

(B) Suspension of hunting and fishing license for a period of five years; and

(C) All applicable forfeiture and replacement provisions in §20-2-5a of this code.

(2) *Game fish violations.* —

(A) A fine of not less than \$100 nor more than \$500, or confinement in jail not less than 10 days nor more than 100 days, or both fined and confined;

(B) Suspension of hunting and fishing license for a period of two years; and

(C) All applicable forfeiture and replacement provisions in §20-2-5a of this code.

Following discussion,

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2540), as amended, was then ordered to third reading.

The Senate proceeded to the sixth order of business.

At the request of Senator Sypolt, unanimous consent being granted, Senators Sypolt, Clements, Swope, Beach, Boley, Boso, Jeffries, Mann, Plymale, and Roberts offered the following resolution from the floor:

Senate Concurrent Resolution 62—Urging Congress to allow vehicles traveling on interstate highways in West Virginia to have the same maximum gross vehicle weight and axle configuration as currently permissible for vehicles traveling on U.S. routes in West Virginia.

Whereas, Federal law currently imposes a maximum gross vehicle weight of 80,000 pounds on interstate highways, without any tolerance, and with axle weight restrictions and the bridge formula often reducing such maximum weight; and

Whereas, West Virginia also has an 80,000-pound maximum gross vehicle weight limit, but permits a 10-percent tolerance, raising the permissible maximum weight to 88,000 pounds; and

Whereas, Vehicles transporting commodities through West Virginia often reach our state on interstate highways, but leave the interstate highways system and switch to West Virginia's local roads, taking advantage of the higher weight limit on such routes; and

Whereas, Such practice increases traffic on West Virginia's mountainous country roads, raises safety concerns, and limits economic avenues; and

Whereas, Interstates could safely support the same weight restrictions as those on U.S. routes in West Virginia given that the design standards used for both systems are identical and the weight increase would be minimal; and

Whereas, The West Virginia Department of Transportation, Division of Highways, is poised to address any questions Congress or the U.S. Department of Transportation, Federal Highway Administration, may have to demonstrate the feasibility of this request; and

Whereas, Providing an exception to the existing weight limits and restrictions in Title 23 of the United States Code, including the bridge formula, for vehicles operating on interstate highways in West Virginia will allow more vehicles to travel the safer interstate highways and expand economic access throughout West Virginia; and

Whereas, Congress has previously provided exceptions to the maximum gross vehicle weight on interstate highways for several states of the United States; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is urged to allow vehicles traveling on interstate highways in West Virginia to have the same maximum gross vehicle weight and axle configuration as currently permissible for vehicles traveling on U.S. routes in West Virginia; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the President and Secretary of the United States Senate, to the Speaker and Clerk of the United States House of Representatives, and to the members of West Virginia's congressional delegation.

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

The question being on the adoption of the resolution, and on this question, Senator Trump demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Blair—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. C. R. 62) adopted.

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

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

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 51, Requesting study relating to creation of long-term care medical review panels.

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

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

Senate Resolution 69, Congratulating George Washington High School Patriots boys' basketball team on winning 2018 Class AAA state championship.

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

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

Senate Resolution 75, Expressing support for President Donald J. Trump to sign Appalachian Sky Executive Order.

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

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2004, Providing for a program of instruction in workforce preparedness.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2004) 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 2004—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §18-2-7d and §18-2-42; to amend and reenact section §18B-3C-4 of said code; to amend said code by adding thereto a new article, designated §21-1E-1, §21-1E-2, §21-1E-3 and §21-1E-4; to amend and reenact section §29-3-9 of said code; and to amend said code by adding thereto a new article, designated §30-1E-1, §30-1E-2, §30-1E-3 and §30-1E-4, all relating to requiring a state board rule that adopts a program of instruction in general workforce and career preparedness; providing career and technical education program information to students and parents; requiring transcript of certain post-secondary credits earned by public school students to be provided to them; ensuring that certain career technical education students are eligible to participate in the graduation ceremony in the same

manner as all other students in the district; elevating priority on program integration to meet region and state labor market needs by community and technical college/career and technical education consortia; requiring the facilitating institution to annually submit the Carl D. Perkins local planning guide to the Council for Community and Technical College Education and State Board of Education; providing for joint State Board and Council for Community and Technical College Education guidelines on administration of the code section requiring the formation of community and technical college/career and technical education consortia; providing joint responsibility of State Superintendent and Chancellor for certain activities and reporting; requiring standards and procedures for recognizing career technical training acquired in public schools, apprenticeships and training programs toward occupational testing, certification and/or licensure; establishing purpose and intent; providing definitions; requiring rules providing standards and procedures be proposed by Commissioner of Labor, State Fire Commission, State Fire Marshal and the professions and occupations licensing boards and commissions.

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 2010, Relating to foster care.

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

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2010 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: Lindsay—1.

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. 2010) passed.

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

Eng. Com. Sub. for House Bill 2010—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-27; to amend and reenact §49-1-206 of said code; to amend and reenact §49-2-107, §49-2-113, and §49-2-708 of said code; to amend said code by adding thereto two new sections, designated §49-2-111A and §49-2-111B; and to amend and reenact §49-4-108, §49-4-406, §49-4-413, §49-4-604, §49-4-608, §49-4-711, §49-4-714 and §49-4-724 of said code, all relating to foster care; defining terms; transitioning the foster care population to a managed care organization; allowing the secretary to apply for waivers; setting out requirements for the managed care program; providing for an effective date; providing a sunset date; require the department to enter into certain types of contracts with child placing agencies; creating a state foster care ombudsman; setting out experience requirements for an ombudsman; providing duties and authority of the ombudsman; setting out preclusions for employment of certain department employees; providing for managed care employees allocation to foster care in West Virginia; providing for performance based contracting with child placement agencies; setting out procurement and contract requirements; requiring a study of kinship care; requiring the department to review certain legislative rules; extending the time to file legislative rules; extending the time a foster care certification is authorized; requiring home safety assessment to take place annually; prohibiting the removal of a child from a residential child care program in certain circumstances; providing exceptions to permit the removal of a child from a residential child care program; establishing payment rates for services; permitting those rates be exceeded when certain conditions are met; prohibiting the

termination of parental rights solely based upon participation in a medically assisted treatment program; prohibiting the placement of a foster child in an out of state facility; providing exceptions to the placement of a foster child in an out of state facility; setting out standard assessments of certain juveniles; and requiring reporting.

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

On motion of Senator Takubo, at 12:51 p.m., the Senate recessed for 45 minutes.

The Senate reconvened at 1:56 p.m. 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, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 402, Authorizing Division of Forestry investigate and enforce timber theft violations.

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

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

On page two, section fifty-two, line sixteen, by striking out “\$1,000” and inserting in lieu thereof “\$2,500”;

On page two, section fifty-two, line seventeen, by striking out “1,000” and inserting in lieu thereof “\$2,500”;

On page two, section fifty-two, line twenty, by striking out “\$1,000” and inserting in lieu thereof “\$2,500”;

And,

On page two, section fifty-two, line twenty-one, after the word “violation” by inserting the words “within ten years”.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for Com. Sub. for S. B. 402) was reported by the Clerk and adopted:

Eng. Senate Bill 402—A Bill to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-52 of said code, all relating to authorizing the Division of Forestry to investigate and enforce timber theft and intentional damage to the timber of another; increasing the threshold between felony and misdemeanor from \$1,000 to \$2,500; requiring ten years elapse between offenses for sentence enhancement purposes and establishing criminal penalties.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 402, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 402) 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.

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 405, Increasing limit on additional expenses incurred in preparing notice list for redemption.

On motion of Senator Takubo, 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:

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED,
ESCHEATED AND WASTE AND UNAPPROPRIATED
LANDS**

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-5 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien on the real estate was purchased by an individual may redeem at any time before a tax deed is issued for the real estate. In order to redeem, he or she shall pay to the State Auditor the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest at the rate of one percent per month from the date of sale;

(2) All other taxes which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) Any additional expenses incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, with interest at the rate of one percent per month from the date of payment for reasonable legal expenses incurred for the services of an attorney who has performed an examination of the title to the real estate and rendered written documentation used for the preparation of the list: ~~Provided, That the~~ The maximum amount the owner or other authorized person shall pay, excluding the interest, for the expenses incurred for the preparation of the list of those to be served required by §11A-3-19 of this code is ~~\$300~~ \$500: ~~Provided however, That the~~ An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) Where the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any written documentation used for the preparation of the list of those to be served with notice to redeem, including the certification required in subdivision (3), subsection (a) of this section, incident thereto, in the form of receipts or other evidence of legal expenses, incurred as provided in section nineteen of this article, the person redeeming shall pay the State Auditor the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant to the provisions of §11A-3-10, §11A-3-24, §11A-3-25, and §11A-3-32 of this code.

(c) The person redeeming shall be given a receipt for the payment and the written opinion or report used for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article.

(d) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself

to redeem the tax lien on all of the real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of that other person for the amount paid to redeem the interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she files with the clerk of the county commission his or her claim in writing against the owner of the interest, together with the receipt provided in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the claim. The lien may be enforced as other judgment liens are enforced.

(e) Before a tax deed is issued, the county clerk may accept, on behalf of the State Auditor, the payment necessary to redeem any real estate encumbered with a tax lien and write a receipt. The amount of the payment necessary to redeem any real estate encumbered with a tax lien shall be provided by the State Auditor and the State Auditor shall update the required payments plus interest at least monthly.

(f) On or before the tenth day of each month, the county clerk shall deliver to the State Auditor the redemption money paid and the name and address of the person who redeemed the property on a form prescribed by the State Auditor.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-23 of this code, and the State Auditor has delivered the redemption money to the sheriff pursuant to §11A-3-24 of this code, the sheriff shall, upon receipt of the sum necessary to redeem, promptly notify the purchaser or his or her heirs or assigns, by mail, of the fact of the redemption and pay to the purchaser or his or her heirs or assigns the following amounts:

(1) From the sale of tax lien surplus fund provided by §11A-3-10 of this code:

(A) The surplus of money paid in excess of the amount of the taxes, interest and charges paid by the purchaser to the sheriff at the sale; and

(B) The amount of taxes, interest and charges paid by the purchaser on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption;

(2) All other taxes on the land which have since been paid by the purchaser or his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment to the date of redemption;

(3) Any additional reasonable expenses that the purchaser may have incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, in accordance with §11A-3-19 of this code, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding the interest, for the expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-19 of this code shall not exceed the amount actually incurred by the purchaser or ~~\$300~~ \$500, whichever is less: *Provided*, That the attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the State Auditor;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list in accordance with §11A-3-19 of this code, the State

Auditor shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list from January 1 of the year following the sheriff's sale to the date of the sale to the date of the redemption.

(c) Where, pursuant to §11A-3-23 of this code, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, including written documentation used for preparation of the list, in the form of receipts or other evidence within thirty days from the date of notification by the State Auditor, the sheriff shall refund the amount to the person redeeming and the purchaser is barred from any claim. Where, pursuant to that section, the State Auditor has received from the person redeeming and therefore delivered to the sheriff the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale to the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-36. Operating fund for land department in Auditor's office.

(a) The Auditor shall establish a special operating fund for the land department in his or her office. He or she shall pay into such fund all redemption fees, all publication or other charges collected by him or her, if such charges were paid by or were payable to him or her, the unclaimed surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to this article, and all payments made to him or her under the provisions of §11A-3-64 and §11A-3-65 of this code, except such part thereof as represents state taxes and interest. All payments so excepted shall

be credited by the Auditor to the general school fund or other proper state fund.

(b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay any balances due to deputy commissioners for services rendered, and any unpaid costs including those for publication which have accrued or will accrue under the provisions of this article, to pay fees due surveyors under the provisions of §11A-3-43, and to pay for the operation and maintenance of the land department in his or her office. ~~The surplus over and above the amount of \$100,000, remaining in the fund at the end of any fiscal year, shall be paid by the Auditor into the general school fund. The surplus over and above the amount of 20 percent of gross revenue from operation of the fund from the prior year, remaining at the end of any fiscal year, shall be paid by the Auditor into the General School Fund.~~

§11A-3-52. What purchaser must do before he can secure a deed.

(a) Within forty-five days following the approval of the sale by the auditor pursuant to section fifty-one of this article, the purchaser, his heirs or assigns, in order to secure a deed for the real estate purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in sections fifty-four and fifty-five of this article;

(2) When the real property subject to the tax lien was classified as Class II property, provide the deputy commissioner with the actual mailing address of the property that is subject to the tax lien or liens purchased; and

(3) Deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving the notice.

(b) If the purchaser fails to fulfill the requirements set forth in paragraph (a) of this section, the purchaser shall lose all the benefits of his or her purchase.

(c) After the requirements of paragraph (a) of this section have been satisfied, the deputy commissioner may then sell the property in the same manner as he sells lands which have been offered for sale at public auction but which remain unsold after such auction, as provided in section forty-eight of this article.

(d) If the person requesting preparation and service of the notice is an assignee of the purchaser, he shall, at the time of the request, file with the deputy commissioner a written assignment to him of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

(e) The purchaser shall have unlimited access to inspect and secure the real property upon the payment of final costs and fees required by this section. At this point, the prior owner has no right of access to the real property for any purpose.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to 11A-3-45 or §11A-3-48 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the deputy commissioner the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale;

(2) ~~all~~ All other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) ~~such~~ Such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of

payment, but the amount he or she shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed \$200 \$500. An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-52 of this code;

(4) ~~all~~ All additional statutory costs paid by the purchaser; and

(5) ~~the~~ The deputy commissioner's fee and commission as provided by §11A-3-66 of this code. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, ~~and any examination of title or of any licensed attorney's title examination~~ incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon payment to the deputy commissioner of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the Auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the Auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his or her record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs, in

whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she shall file with the clerk of the county commission his or her claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the deputy commissioner shall promptly deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs or assigns.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall hold as surplus to be disposed of pursuant to §11A-3-64 of this code an amount thereof equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-58. Distribution to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-56 of this code, and the deputy commissioner has delivered the redemption money to the sheriff pursuant to §11A-3-57 of this code, the sheriff shall, upon delivery of the sum necessary to redeem, promptly notify the purchaser, his or her heirs or assigns, by mail, of the redemption and pay to the purchaser, his or her heirs or assigns, the following amounts:

(1) The amount paid to the deputy commissioner at the sale;

(2) all other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed ~~\$200~~ \$500; and

(4) all additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the deputy commissioner;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem ~~and any~~ or for any licensed attorney's title examination incident thereto, the deputy commissioner shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and for any licensed attorney's title examination incident thereto from the date of the sale to the date of the redemption.

(c) Where, pursuant §11A-3-56 of this code, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, in the form of receipts or other evidence of legal expenses, and any or for any licensed attorney's title examination and rendered written documentation used for the preparation of the list incident

thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of notification, the sheriff shall refund such amount to the person redeeming and the purchaser is barred from any claim thereto. Where, pursuant to §11A-3-56 of this code, the deputy commissioner has received from the purchaser and therefore delivered to the sheriff said sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

On motion of Senator Boso, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 405) was reported by the Clerk and adopted:

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

**ARTICLE 3. SALE OF TAX LIENS AND NONENTERED,
ESCHEATED AND WASTE AND UNAPPROPRIATED
LANDS**

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to §11A-3-5 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien on the real estate was purchased by an individual may redeem at any time before a tax deed is issued for the real estate. In order to redeem, he or she shall pay to the State Auditor the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest at the rate of one percent per month from the date of sale;

(2) All other taxes which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) Any additional expenses incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, with interest at the rate of one percent per month from the date of payment for reasonable legal expenses incurred for the services of an attorney who has performed an examination of the title to the real estate and rendered written documentation used for the preparation of the list: ~~Provided, That the~~ The maximum amount the owner or other authorized person shall pay, excluding the interest, for the expenses incurred for the preparation of the list of those to be served required by §11A-3-19 of this code is ~~\$300~~ \$500: ~~Provided however, That the~~ An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) Where the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any written documentation used for the preparation of the list of those to be served with notice to redeem, including the certification required in subdivision (3), subsection (a) of this section, incident thereto, in the form of receipts or other evidence of legal expenses, incurred as provided in section nineteen of this article, the person redeeming shall pay the State Auditor the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale for disposition by the sheriff pursuant to the provisions of §11A-3-10, §11A-3-24, §11A-3-25, and §11A-3-32 of this code.

(c) The person redeeming shall be given a receipt for the payment and the written opinion or report used for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article.

(d) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of the real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of that other person for the amount paid to redeem the interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she files with the clerk of the county commission his or her claim in writing against the owner of the interest, together with the receipt provided in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the claim. The lien may be enforced as other judgment liens are enforced.

(e) Before a tax deed is issued, the county clerk may accept, on behalf of the State Auditor, the payment necessary to redeem any real estate encumbered with a tax lien and write a receipt. The amount of the payment necessary to redeem any real estate encumbered with a tax lien shall be provided by the State Auditor and the State Auditor shall update the required payments plus interest at least monthly.

(f) On or before the tenth day of each month, the county clerk shall deliver to the State Auditor the redemption money paid and the name and address of the person who redeemed the property on a form prescribed by the State Auditor.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-23 of this code, and the State Auditor has delivered the redemption money to the sheriff pursuant to §11A-3-24 of this code, the sheriff shall, upon receipt of the sum necessary to redeem, promptly notify the purchaser or his or her heirs or assigns, by mail,

of the fact of the redemption and pay to the purchaser or his or her heirs or assigns the following amounts:

(1) From the sale of tax lien surplus fund provided by §11A-3-10 of this code:

(A) The surplus of money paid in excess of the amount of the taxes, interest and charges paid by the purchaser to the sheriff at the sale; and

(B) The amount of taxes, interest and charges paid by the purchaser on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption;

(2) All other taxes on the land which have since been paid by the purchaser or his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment to the date of redemption;

(3) Any additional reasonable expenses that the purchaser may have incurred from January 1 of the year following the sheriff's sale to the date of redemption for the preparation of the list of those to be served with notice to redeem and any written documentation used for the preparation of the list, in accordance with §11A-3-19 of this code, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding the interest, for the expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-19 of this code shall not exceed the amount actually incurred by the purchaser or ~~\$300~~ \$500, whichever is less: *Provided*, That the attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-19 of this code; and

(4) All additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the State Auditor;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list in accordance with §11A-3-19 of this code, the State Auditor shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of those to be served with notice to redeem and any written documentation used for the preparation of the list from January 1 of the year following the sheriff's sale to the date of the sale to the date of the redemption.

(c) Where, pursuant to §11A-3-23 of this code, the State Auditor has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem, including written documentation used for preparation of the list, in the form of receipts or other evidence within thirty days from the date of notification by the State Auditor, the sheriff shall refund the amount to the person redeeming and the purchaser is barred from any claim. Where, pursuant to that section, the State Auditor has received from the person redeeming and therefore delivered to the sheriff the sum of ~~\$300~~ \$500 plus interest at the rate of one percent per month from January 1 of the year following the sheriff's sale to the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification satisfactory proof of the expenses, and the amount of the expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-36. Operating fund for land department in Auditor's office.

(a) The Auditor shall establish a special operating fund for the land department in his or her office. He or she shall pay into such fund all redemption fees, all publication or other charges collected by him or her, if such charges were paid by or were payable to him or her, the unclaimed surplus proceeds received by him or her from the sale of delinquent and other lands pursuant to this article, and all payments made to him or her under the provisions of §11A-3-64 and §11A-3-65 of this code, except such part thereof as represents state taxes and interest. All payments so excepted shall be credited by the Auditor to the general school fund or other proper state fund.

(b) The operating fund shall be used by the Auditor in cases of deficits in land sales to pay any balances due to deputy commissioners for services rendered, and any unpaid costs including those for publication which have accrued or will accrue under the provisions of this article, to pay fees due surveyors under the provisions of §11A-3-43, and to pay for the operation and maintenance of the land department in his or her office. ~~The surplus over and above the amount of \$100,000, remaining in the fund at the end of any fiscal year, shall be paid by the Auditor into the general school fund. The surplus over and above the amount of 20 percent of gross revenue from operation of the fund from the prior year, remaining at the end of any fiscal year, shall be paid by the Auditor into the General School Fund.~~

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to 11A-3-45 or §11A-3-48 of this code, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he or she must pay to the deputy commissioner the following amounts:

(1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale;

(2) ~~all~~ All other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) ~~such~~ Such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he or she shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed ~~\$200~~ \$500. An attorney may only charge a fee for legal services actually performed and must certify that he or she conducted an examination to determine the list of those to be served required by §11A-3-52 of this code;

(4) ~~all~~ All additional statutory costs paid by the purchaser; and

(5) ~~the~~ The deputy commissioner's fee and commission as provided by §11A-3-66 of this code. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, ~~and any examination of title~~ or of any licensed attorney's title examination incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of §11A-3-57, §11A-3-58, and §11A-3-64 of this code. Upon payment to the deputy commissioner of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the Auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt

shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the Auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his or her record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself or herself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He or she shall lose his or her right to the lien, however, unless within thirty days after payment he or she shall file with the clerk of the county commission his or her claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his or her office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the deputy commissioner shall promptly deliver to the sheriff the redemption money paid and the name and address of the purchaser, his or her heirs or assigns.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall hold as surplus to be disposed of pursuant to §11A-3-64 of this code an amount thereof equal to the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-58. Distribution to purchaser.

(a) Where the land has been redeemed in the manner set forth in §11A-3-56 of this code, and the deputy commissioner has delivered the redemption money to the sheriff pursuant to §11A-3-57 of this code, the sheriff shall, upon delivery of the sum necessary

to redeem, promptly notify the purchaser, his or her heirs or assigns, by mail, of the redemption and pay to the purchaser, his or her heirs or assigns, the following amounts:

(1) The amount paid to the deputy commissioner at the sale;

(2) all other taxes thereon, which have since been paid by the purchaser, his or her heirs or assigns, with interest at the rate of one percent per month from the date of payment;

(3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and for any licensed attorney's title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by §11A-3-52 of this code, and for any licensed attorney's title examination incident thereto, shall not exceed ~~\$200~~ \$500; and

(4) all additional statutory costs paid by the purchaser.

(b) (1) The notice shall include:

(A) A copy of the redemption certificate issued by the deputy commissioner;

(B) An itemized statement of the redemption money to which the purchaser is entitled pursuant to the provisions of this section; and

(C) Where, at the time of the redemption, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the list of those to be served with notice to redeem ~~and any~~ or for any licensed attorney's title examination incident thereto, the deputy commissioner shall also include instructions to the purchaser as to how these expenses may be claimed.

(2) Subject to the limitations of this section, the purchaser is entitled to recover any expenses incurred in preparing the list of

those to be served with notice to redeem and for any licensed attorney's title examination incident thereto from the date of the sale to the date of the redemption.

(c) Where, pursuant §11A-3-56 of this code, the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, in the form of receipts or other evidence of legal expenses, and any or for any licensed attorney's title examination and rendered written documentation used for the preparation of the list incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of notification, the sheriff shall refund such amount to the person redeeming and the purchaser is barred from any claim thereto. Where, pursuant to §11A-3-56 of this code, the deputy commissioner has received from the purchaser and therefore delivered to the sheriff said sum of ~~\$200~~ \$500 plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of notification such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 405, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 405) 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 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 529, Clarifying provisions of Nonintoxicating Beer Act.

On motion of Senator Takubo, 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:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

(1) “Brand” means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled or otherwise produced, ~~or~~ imported, or transshipped by a brewer or manufacturer, the labels of which have been registered and approved by the commissioner, that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

(2) “Brewer” or “manufacturer” means any person manufacturing, otherwise producing, importing, or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this article. A brewer may obtain only one brewer’s license for its nonintoxicating beer or nonintoxicating craft beer.

(3) “Brewpub” means a place of manufacture of nonintoxicating beer or nonintoxicating craft beer owned by a resident brewer, subject to federal and state regulations and guidelines, a portion of which premises ~~are~~ is designated for retail sales of nonintoxicating beer or nonintoxicating craft beer by the resident brewer owning the brewpub.

(4) “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter 60 of this code.

(5) “Class B retail license” means a retail license permitting the retail sale of liquor at a mixed retail liquor outlet licensed pursuant to chapter 60 of this code.

(6) “Commissioner” means the West Virginia Alcohol Beverage Control Administration Commissioner.

(7) “Distributor” means and includes any person jobbing or distributing nonintoxicating beer or nonintoxicating craft beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state. For purposes of a distributor only, the term “person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of §11-11-1 *et seq.* of this code notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

(8) “Franchise agreement” means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer’s nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the brewer’s assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

(9) “Franchise distributor network” means the distributors who have entered into a binding written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may only have one franchise distributor network: *Provided*, That a brewer that has acquired the manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and be bound by the selling brewer’s separate franchise distributor’s network for any of its existing brands, line extensions, and new brands.

(10) “Freestanding liquor retail outlet” means a retail outlet that sells only liquor, wine, beer, nonintoxicating beer, and other alcohol-related products, as defined pursuant to §60-3A-4 of this code.

(11) “Growler” means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than ~~only 32 or 64~~ 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not an open container under federal, state, and local law. A growler with a broken seal is an open container under federal, state, and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant seal, security tape, or other material, as approved by the commissioner, placed on or over the growler’s opening, which seal, security tape or other material is clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler.

(12) “Line extension” means any nonintoxicating beer product that is an extension of brand or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or otherwise related to a brewer’s existing brand through the use of a brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities. In determining whether a nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited to, the following factors: Name or partial name; trade name or partial trade name; logos; copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

(13) “Nonintoxicating beer” means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations

produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than ~~nine and six-tenths~~ 11.9 percent of alcohol by weight, or ~~12~~ 15 percent alcohol by volume, whichever is greater. The word “liquor” as used in chapter 60 of this code does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures, or preparations included within this definition.

(14) “Nonintoxicating beer floor plan extension” means a temporary one-day extension of an existing Class A licensee’s floor plan to a contiguous, adjoining and bounded area, such as a parking lot or outdoor area, which shall for the temporary period encompass the licensee’s licensed premises; further such license shall be endorsed or approved by the county or municipality where the license is located; such license shall be in good standing with the commissioner, and further such temporary event shall cease on or before midnight of the approved temporary one-day event.

(15) “Nonintoxicating beer sampling event” means an event approved by the commissioner for a Class A retail licensee to hold a nonintoxicating beer sampling authorized pursuant to §11-16-11a of this code.

~~(15)~~ (16) “Nonintoxicating beer sampling day” means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to §11-16-11a and §11-16-18(a)(1) of this code, and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

~~(16)~~ (17) “Nonintoxicating craft beer” means any beverage obtained by the natural fermentation of barley, malt, hops, or any other similar product or substitute and containing not less than one half of one percent by volume and not more than ~~12~~ 15 percent alcohol by volume or ~~nine and six-tenths~~ 11.9 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

(17) (18) “Original container” means the container used by a resident brewer or brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer or nonintoxicating craft beer for sale at wholesale.

(18) (19) “Person” means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

(19) (20) “Private club” means a license issued pursuant to §60-7-1 *et seq.* of this code.

(20) (21) “Resident brewer” means any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia and which does not brew or manufacture more than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-distribute more than 10,000 barrels thereof in the State of West Virginia annually.

(21) (22) “Retailer” means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, malt coolers at his or her established and licensed place of business.

(22) (23) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or the commissioner’s designee.

§11-16-5. State license required; alcoholic content of beer manufactured for sale without state.

No person shall manufacture, tender, sell, possess for sale, transport, or distribute nonintoxicating beer except in accordance with the provisions of this article, and after first obtaining a state license therefor, as provided in this article. ~~Nothing contained in this article shall prohibit any brewer located within the state from manufacturing or transporting for sale without the state beer of an alcoholic strength greater than that of nonintoxicating beer~~

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or resident brewer with its principal place of business and manufacture located in this state to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing brewing industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may offer only nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give or furnish nonintoxicating beer for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section.

(c) *Complimentary samples.* — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer complimentary samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. The complimentary samples may be no greater than two ounces per sample per patron, and a sampling shall not exceed 10

complimentary two-ounce samples per patron per day. A licensed brewer or resident brewer providing complimentary samples shall provide complimentary food items to the patron consuming the complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated.

(d) *Retail sales.* — Every licensed brewer or resident brewer under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A licensed brewer or resident brewer under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A licensed brewer or resident brewer under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(g) *Growler requirements.* — A licensed brewer or resident brewer under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale ~~up to two 64 ounce, or four 32 ounce,~~ growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer ~~per customer per day~~ for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section may refill a growler subject to the requirements

of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe or otherwise unfit to serve as a sealed beverage container.

(h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler and the date the growler was filled or refilled, and, further, all labeling on the growler shall be consistent with all federal labeling and warning requirements.

(i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized under this section to sell growlers.

(k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give complimentary samples and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this section

shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) *Rules.* — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§11-16-6b. Brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, and Class B retail licensee's authority to sell growlers.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing brewing industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of nonintoxicating beer.* — A licensed brewpub, Class A retail dealer, Class B retail dealer, private club, Class A retail licensee, or Class B retail licensee who pays the fee in subsection (i) of this section and meets the requirements of this section may offer nonintoxicating beer or nonintoxicating craft beer for retail sale to patrons from their licensed premises in a growler for personal consumption only off of the licensed premises and not for resale. Prior to the sale, the licensee shall verify, using proper identification, that any patron purchasing nonintoxicating beer or nonintoxicating craft beer is 21 years of age or over and that the patron is not visibly intoxicated. A licensee authorized under this section may not sell, give or furnish alcoholic liquors, including wine, for consumption off of its licensed premises, unless it is a

private club licensed to sell sealed wine for consumption off of the licensed premises and meets the requirements set out in §60-8-3(j) and §60-8-3(l) of this code, for the sale of wine, not liquor.

(c) *Retail sales.* — Every licensee authorized under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and shall be subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes and fees.* — A licensee authorized under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising.* — A licensee authorized under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(f) *Growler requirements.* — A licensee authorized under this section must fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensee authorized under this section must sanitize, fill, securely seal, and label any growler prior to its sale. A licensee authorized under this section may only offer for retail sale ~~up to two 64-ounce, or four 32-ounce,~~ growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer ~~per customer per day~~ for personal consumption off of the licensed premises and not for resale. A licensee under this section may refill a growler subject to the requirements of this section. A licensee shall visually inspect any growler before filling or refilling it. A licensee may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(g) *Growler labeling.* — A licensee authorized under this section selling growlers shall affix a conspicuous label on all sold

and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler, and the date the growler was filled or refilled, and, further, all labeling on the growler shall be consistent with all federal labeling and warning requirements.

(h) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(i) ~~Fee~~ *Fees.* — Commencing July 1, 2015, and ~~by~~ every July 1 thereafter, there is an annual \$100 nonrefundable fee for a licensee, except for a licensed brewpub, to sell growlers as provided by this section. The licensee must be in good standing with the state at the time of paying the fee.

(j) *Complimentary samples.* — A licensee authorized under this section may provide complimentary samples which may be no greater than one ounce per sample and a sampling shall not exceed three different nonintoxicating beer or nonintoxicating craft beer complimentary one-ounce samples per patron per day. A licensee authorized under this section providing complimentary samples shall prior to any sampling verify, using proper identification, that the patron sampling is 21 years of age or over and that the patron is not visibly intoxicated. All nonintoxicating beer and nonintoxicating craft beer utilized for sampling purposes must be purchased from the licensee's inventory.

(k) *Limitations on licensees.* — A licensee under this section may only sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. Any licensee licensed under this section must maintain a secure area for the sale of nonintoxicating

beer or nonintoxicating craft beer in a growler. The secure area must only be accessible by the licensee. Any licensee licensed under this section shall be subject to the applicable penalties under §11-16-23 of this code for violations of this section.

~~(k)~~ (l) Nonapplicability of certain statutes. — Notwithstanding any other provision of this code to the contrary, licensees under this section are permitted to break the seal of the original container for the limited purpose of filling a growler or providing complimentary samples as provided in this section. Any unauthorized sale of nonintoxicating beer or nonintoxicating craft beer or any consumption not permitted on the licensee's licensed premises is subject to penalties under this article.

~~(h)~~ (m) Rules. — The commissioner is authorized to propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§11-16-6c Class B retail dealer which is a grocery store, mobile application, or web-based sales privilege permit; fee.

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer and who operates a grocery store containing over \$100,000 of fresh produce and saleable food and food products fit for human consumption in a combination of displayed and stored inventory may apply for a Class B license privilege granting the licensee the ability to complete the sale of such nonintoxicating beer or nonintoxicating craft beer in the original sealed container for off-premises consumption to a person purchasing the nonintoxicating beer or nonintoxicating craft beer from a vehicle:

(1) If the vehicle is parked in a licensed parking area which is contiguous to the Class B licensee's licensed premises; or

(2) If the vehicle is parked in a licensed parking area which is within 500 feet of the Class B licensee.

(b) The parking area referenced in subsection (a) of this section shall be designated by signage solely for the use of persons who have previously ordered items including, but not limited to,

nonintoxicating beer or nonintoxicating craft beer using a mobile application or web-based software program.

(c) No nonintoxicating beer or nonintoxicating craft beer may be loaded into a vehicle under this section unless the Class B licensee or such licensee's staff have verified that both the person placing the order, and, if different from the person placing the order, the person picking up the order are 21 years of age or older and not noticeably intoxicated; and

(d) To operate under this section, a Class B retail dealer licensee must be in good standing with the commissioner, apply, qualify, pay the Class B license privilege fee and obtain the permit for the Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a designated parking area. The Class B license privilege permit nonrefundable and non-prorated annual fee is \$250. For purposes of criminal enforcement of the provisions of this article, persons placing orders and picking up orders are deemed to be purchasers.

(e) The licensee shall be subject to all requirements, penalties and sanctions of this article.

§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of such residency, that the applicant has been a resident of the state for a period of two years preceding the date of the application and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers for a period of two years preceding the date of such application. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a

distributor, such person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license, shall state under oath that each has been a bona fide resident of the state for four years preceding the date of such application. If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e), of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust must state that such beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of such beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number and birth date;

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application must state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary or other persons in active control of the activities of the trust

relating to the license is a citizen of the United States, and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application. The requirements as to residence do not apply to the officers of a corporation applying for a retailer's license but the officers, agent, or employee who manages and is in charge of the licensed premises shall possess all of the qualifications required of an individual applicant for a retailer's license including the requirement as to residence;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;

(5) That the place or building in which is proposed to do business conforms to all applicable laws of health, fire and zoning regulations and is a safe and proper place or building not within 300 feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating a proposed business in a place or building within 300 feet of a school does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within 300 feet of the college or university;

(6) That the applicant is not incarcerated and has not during the five years preceding the date of said application been convicted of a felony;

(7) That the applicant is the only person in any manner pecuniarily interested in the business so asked to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in 29B-1-1 *et seq.* of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance and, if any applicant fails to qualify, the license shall be refused. In addition to the information furnished in any application, the commissioner may make such additional and independent investigation of each applicant and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, must be ~~filed thirty days prior to the beginning of any fiscal year. If the application is for an unexpired portion of a fiscal year, the issuance of license may be withheld for such reasonable time as necessary for investigation~~ submitted with all true and correct information. For the purpose of conducting such independent investigation, the commissioner may withhold the granting or refusal to grant such license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it shall appear that such applicant meets the requirements in the code and the rules, including, but not limited to, being a suitable person of good reputation and morals; having made no false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in such application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant is not a suitable person to be licensed;

(2) That the place to be occupied by the applicant is not a suitable place or is within 300 feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating any such place within 300 feet of a school does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within 300 feet; or

(3) That the license should not be issued for reason of conduct declared to be unlawful by this article.

§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.

(a) All retail dealers, distributors, brewpubs, brewers and resident brewers of nonintoxicating beer and of nonintoxicating craft beer shall pay an annual fee to maintain an active license as required by this article. The license period begins on July 1 of each year and ends on June 30 of the following year. If the license is granted for a shorter period, then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year: Provided, That if a licensee fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, then an additional \$150 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or refunded, prior to the processing of any renewal application and applicable full year annual license fee; and furthermore a licensee who continues to operate upon the expiration of its license is subject to all fines, penalties and sanctions available in §11-16-23 of this code, all as determined by the commissioner.

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes: Class A and Class B.

(A) For a Class A retail dealer, the license fee is \$150 for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, is \$150: *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of \$10 for each dining, club or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.

(B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. A Class B retailer may sell to a patron, for personal use and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption.

A Class B license may be issued only to the proprietor or owner of a grocery store. For the purpose of this article, the term "grocery store" means any retail establishment commonly known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products and supplies for the table for consumption off the premises. Caterers or party supply stores are required to purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(2) For a distributor, the license fee is \$1,000 for each place of business.

(3) For a brewer or a resident brewer with its principal place of business or manufacture located in this state and who produces:

(A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections (c), (d) and (e) of this section: *Provided*, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d) and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements.

(5) For a brewpub, the license fee is \$500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it will produce during the year based upon the production capacity of the brewer's or

resident brewer's manufacturing facilities, and the prior year's production and sales volume of nonintoxicating beer or nonintoxicating craft beer.

(d) On or before July 15 of each year, every brewer or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of each year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with the application or renewal for a brewer's or resident brewer's license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is \$100, and the fee may not be prorated or refunded, and must be accompanied with a license application, certification that the event meets certain requirements in the code and rules, and such other information as the commissioner may reasonably require, at least 15 days prior to the event, all as determined by the commissioner.

§11-16-10. Brewer's license for foreign corporation; application; bond; contents of application; limitations; licensed representatives for brewers, resident brewers, and distributors; annual license fee; renewal; suspension; license

fee for sales representatives; transportation permits; container label registration; and Beer License Operations Fund created; and implementation operations of fee.

(a) A brewer's license shall be issued by the commissioner to a foreign corporation which submits an application therefor accompanied by the license fee hereinafter prescribed, ~~the bond required by section nine of this article~~ a certified copy of the certificate of authority issued by the Secretary of State authorizing such foreign corporation to transact business in the state, and a certified copy of its most recent corporation charter. Such application shall be verified and shall state:

(1) The name of the corporation and the state under the laws of which it is incorporated;

(2) The date of incorporation;

(3) The address of the principal office of the corporation;

(4) The names and respective addresses of the directors and officers of the corporation;

(5) The date that such foreign corporation qualified to transact business in this state; and

(6) Such other information as the commissioner, by rule or regulation, may require.

(b) So long as the foreign corporation remains qualified to transact business in this state so that the Secretary of State can accept service of notice and process for such foreign corporation, then, notwithstanding any other provision of this article to the contrary, none of the officers and directors of such foreign corporation need be residents of this state.

(c) The license fee for a brewer's license for a foreign corporation selling any nonintoxicating beer product within this state, whether or not its principal place of business be located in this state, shall be \$1,500 per annum. 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 lesser period, the same shall be prorated semiannually in proportion to the remainder of the fiscal year.

(d) As of July 1, 2019, there is an annual nonrefundable and non-prorated operational fee for all brewers, resident brewers, Class A retail dealers, Class B retail dealers, and distributors of \$100 which shall be paid on or before July 1, 2019 and every July 1 thereafter. All fees collected by the commissioner pursuant to this subsection shall be deposited in a special revenue account in the State Treasury, hereby created, to be known as the Beer License Operations Fund. Moneys in the fund may only be expended by the commissioner for the administration of this article, and as appropriated by law.

(e) All sales representatives ~~for~~ engaged in the selling, marketing, merchandising, or the conducting of any other sales on behalf of any brewer, ~~or manufacturer~~ resident brewer or distributor of nonintoxicating beer shall be issued a ~~permit~~ license by the commissioner. ~~The permit for each sales representative of or employed by a licensed brewer or manufacturer shall be \$50. A~~ licensee is subject to the provisions of §11-16-23 of this code for violations of this article and the rules promulgated thereunder. It is a violation of the code and rules to operate without such license and is punishable by the penalties available under this article. The commissioner shall prescribe forms to complete such licensure.

(f) Any brewer, resident brewer, distributor or any person transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state on behalf of such licensees or persons, or by contract or other means, who is operating in this state may only transport nonintoxicating beer or nonintoxicating craft beer available for resale, and not personal use, in or through this state. All vehicles transporting nonintoxicating beer or nonintoxicating craft beer shall be issued a nonintoxicating beer transportation permit. Transporting nonintoxicating beer or nonintoxicating craft beer for resale, and not for personal use, in or through this state without a nonintoxicating beer transportation permit is in violation of law and the penalties prescribed under §11-16-18 and §11-16-23 of this

code are applicable for any violation. The commissioner shall prescribe forms to complete such permitting.

(g) Any brewer or resident brewer offering nonintoxicating beer or nonintoxicating craft beer for sale under this article shall register, prior to offering such beer for sale in the state, with the commissioner each nonintoxicating beer or nonintoxicating craft beer container label. No nonintoxicating beer or nonintoxicating craft beer brand may be sold under this article unless all of such nonintoxicating beer or nonintoxicating craft beer brand's container labels for the product intended for sale in the state have been registered and reviewed by the commissioner. Prior to registration of any nonintoxicating beer or nonintoxicating craft beer container labels, this review shall include, but not be limited to, a review of the alcohol content, corporate or product information, marketing and advertising so that the nonintoxicating beer or nonintoxicating craft beer container label is not intended to be marketed to persons less than 21 years of age. The commissioner shall remove all nonrenewed nonintoxicating beer or nonintoxicating craft beer container labels, and any licensee who sells nonintoxicating beer or nonintoxicating craft beer with nonrenewed container labels shall be subject to the penalties under §11-16-23 of this code. Failure to register, obtain a review, and a certification for a nonintoxicating beer or nonintoxicating craft beer container label and failure to register such labels will subject the brewer or resident brewer to penalties under said section. The commissioner shall prescribe forms to complete such registration.

(e)(h) The licenses and permits issued under the provisions of this section shall be renewed annually upon application for renewal on a form prescribed by the commissioner and payment of the annual license fee.

(f)(i) If at any time ~~such a~~ foreign corporation is no longer qualified to transact business in this state, the Secretary of State shall notify the commissioner of such fact and the commissioner shall thereupon suspend the brewer's license issued to such foreign corporation until such time as such foreign corporation has again qualified to transact business in this state and has otherwise complied with the provisions of this section.

~~(g)~~(j) Notwithstanding any other provision of this article to the contrary, any corporation issued a brewer's license under the provisions of this article shall not engage in the business of a distributor or retailer as defined in this article.

§11-16-11b. Special license for one-day charitable events; application; license subject to provisions of article; exception.

(1) The commissioner may issue a special one-day license to be designated a Class S1 license for the retail sale of nonintoxicating beer and nonintoxicating craft 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 or nonintoxicating craft beer when raising money for artistic, athletic, charitable, educational, or religious purposes. The commissioner may not charge a fee to the applicant that meets requirements for licensure. The special license shall be issued for a term no longer than one day. No more than six licenses may be issued to any single licensee during any calendar year. The license application shall contain a copy of the documents showing approved federal tax-exempt status and other information required by the commissioner and shall be submitted to the commissioner at least 15 days prior to the event. Nonintoxicating beer served and sold during the event shall be purchased from a licensed distributor, or resident brewer, acting in the limited capacity of a distributor for its own products, that services the location where the festival, fair, or other event is occurring. All distributors and resident brewers in the area must be notified in writing by mail, facsimile or electronic mail of the event in advance and be presented with the opportunity to participate in the event. Licensed representatives of distributors, brewers, or resident brewers may attend the one-day event and discuss their products, but may not engage in the serving or selling of the nonintoxicating beer or nonintoxicating craft beer. A licensee licensed by this section may use bona fide employees or volunteers of the charitable entity to sell and serve nonintoxicating beer and nonintoxicating craft beer.

(2) A license issued under the provisions of this section and the licensee holding the license are 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 certain 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 §11-16-24 of this code: *Provided, however*, That under no circumstances may the provisions §11-16-18(a)(1), §11-16-18(a)(2), or §11-16-18(a)(3) of this code, be waived or an exception granted with respect to those provisions.

§11-16-12. ~~When bond not required; bond of brewer, distributor and a Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.~~

~~(a) In addition to furnishing the information required by this article, each brewer or distributor applying for a license under this article shall furnish, as prerequisite to a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, conditioned for the payment of any and all additional taxes accruing during the period of such license, and conditioned further for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the sale, transportation, storage and distribution of nonintoxicating beer, which said bonds shall be forfeited to the state upon the revocation of the license of any such brewer or distributor. The amount of such bond in the case of a resident brewer or brewpub shall be not less than \$5,000 nor more than \$10,000 and in the case of a distributor, not less than \$2,000 nor more than \$5,000 for each place of business licensed and conducted within the state, the amount of such bond, between the minimum and maximum amounts, to be determined in the discretion of the commissioner. There shall be no bond for a brewer, resident brewer, distributor, Class S brewpub license, as the license privilege itself secures the payment of taxes~~

and is subject to suspension and revocation for failure to pay said taxes. ~~In the case of brewers shipping nonintoxicating beer into the state, any brewer must also furnish a bond in a penalty of not less than \$5,000 nor more than \$25,000 conditioned as hereinabove in this subsection provided and any bond furnished pursuant hereto shall be forfeited to the state in the full amount of said bond upon revocation of license of any such brewer or distributor. Such money received by the state shall be credited to the State Fund, General Revenue~~

(b) Each Class A retail dealer, in addition to furnishing the information required by this article, shall furnish, as prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the State of West Virginia, in the amount not less than \$500 nor more than \$1,000 within the discretion of the commissioner. All such bonds shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the State of West Virginia generally relating to the distribution, sale and dispensing of nonintoxicating beer and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the State Fund, General Revenue.

(c) Upon the revocation of the license of any Class A retail dealer by the commissioner or by any court of competent jurisdiction, the commissioner or the clerk of said court shall notify the prosecuting attorney of the county wherein such retail dealer's place of business is located, or the prosecuting attorney of the county wherein the licensee resides, of such revocation, and, upon receipt of said notice, it shall be the duty of such prosecuting attorney forthwith to institute appropriate proceedings for the collection of the full amount of said bond. Upon request of such prosecuting attorney, the commissioner shall deliver the bond to him. Willful refusal without just cause therefor by the prosecuting attorney to perform said duty hereby imposed shall subject him or her to removal from office by the circuit court of the county for

which said prosecuting attorney was elected upon proper proceedings and proof in the manner provided by law.

§11-16-17a. Commissioner to investigate, review, and approve or deny franchise agreements, labels, brands, and line extensions.

(a) The commissioner shall investigate and review:

(1) All franchise agreements and any amendments to a franchise agreement to verify compliance with this article and the promulgated rules.

(2) The registration of all container labels for brands manufactured, imported or sold in West Virginia, as further specified in §11-16-10(g) of this code.

(3) The registration of all brands and line extensions with the commissioner that are the subject of a franchise agreement or an amendment to a franchise agreement.

(4) The appointment of all brands or line extensions to a distributor in a brewer's established franchise distributor network and to that distributor's assigned territory from the brewer.

(5) The appointment of all brands or line extensions acquired by a brewer as either an acquiring brewer, successor brewer and also any successor entities of a brewer, as specified in §11-16-21(a)(3) of this code, to the distributor in the selling brewer's established franchise distributor network and to that distributor's assigned territory.

(b) The commissioner's investigation and review under subsection (a) of this section may include, but is not limited to: the brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, associated entities or any other related entities, the brewer's corporate structure, the nature of the relatedness of various entities, ownership, trade names or partial trade names, logos, copyrights, trademarks or trade design, product codes, marketing and advertising, promotion or pricing.

(c) The commissioner may approve or deny any item listed in subsection (a) of this section as determined by the commissioner in accordance with this article, the promulgated rules as the facts and circumstances dictate.

(d) Any brewer adversely affected by a denial as specified in subdivision (3) or (4), subsection (a) of this section, may request, in writing, a final written determination from the commissioner.

(e) Upon receipt of final determination as provided in subsection (d) of this section, a brewer may request an administrative hearing by filing a written petition and as otherwise required per §11-16-24 of this code and the rules promulgated by the commissioner. Upon filing a written petition, the brewer shall file a \$1,000 hearing deposit, via certified check or money order, to cover the costs of the hearing. Such certified check or money order shall be made payable to the commissioner. In any such hearing held by the request of a brewer, the burden of proof is on the brewer and the standard of review for the administrative hearing is by a preponderance of the evidence.

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

Engrossed Committee Substitute for Senate Bill 529, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 529) 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, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill 635, Relating generally to coal mining activities.

On motion of Senator Takubo, 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:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers, and responsibilities:

~~(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;~~

~~(2)~~ (1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

~~(3)~~ (2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining

operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

(4) (3) To establish a procedure to develop action reports and annual updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

(5) (4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(6) (5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

(7) (6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining; and

(8) (7) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code.

§5B-2A-6. Community impact statement review.

(a)(1) The office shall, no less frequently than quarterly, either consult with representatives of the department's Office of Mining and Reclamation or review the department's permit application database(s) to determine whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure pursuant to this article. The operator shall develop a community impact statement, as described in this section, which shall be submitted to the office within sixty days of the filing of a surface mining application pursuant to the provisions of article three, chapter twenty two of this code. Failure

~~to submit a community impact statement to the office shall be considered a violation under the provisions of section seventeen of said article; and~~

~~(2) The operator shall provide copies of the community impact statement to the department's Office of Mining Reclamation and Office of Explosives and Blasting and to the county commissions, county clerks' offices and local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations.~~

~~(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:~~

~~(1) The amount and location of land to be mined or used in the actual mining operations;~~

~~(2) The expected duration of the mining operations in each area of the community;~~

~~(3) The extent of anticipated mining related property acquisitions, to the extent that such acquisitions are known or knowable;~~

~~(4) The intentions of the surface and mineral owners relative to the acquired property, to the extent that such intentions are known or knowable;~~

~~(5) A statement of the post mining land use for all land within the permit boundary;~~

~~(6) The intended blasting plan and the expected time and duration it will affect each community;~~

~~(7) Information concerning the extent and nature of valley fills and the watersheds to be affected;~~

~~(8) Economic information, such as the number of jobs created and annual coal production resulting from the surface mining operation, the anticipated life of the mining operation and such other information as may be deemed appropriate; and~~

~~(9) An acknowledgment of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure components needed to accomplish the designated post-mine land use required by the plan.~~

~~(c) Where the operator makes any significant revision to the permit application under section eighteen, article three, chapter twenty two of this code, which revision substantially affects any of the information provided in subsection (b) of this section, the operator shall revise the affected provisions of its community impact statement and shall submit such revisions as set forth in subsection (a) of this section.~~

~~(d) Within thirty days of receipt of a community impact statement pursuant to subdivision (2), subsection (a) of this section or a revised community impact statement pursuant to subsection (c) of this section, the local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations shall provide a written acknowledgment of the receipt of this community impact statement or revised community impact statement to the department's Division of Mining Reclamation, to the county commission or county commissions and to the office.~~

~~(e) (b) The provisions of this section shall apply as follows: to all surface mining permit applications granted after July 1, 2018.~~

~~(1) To all surface mining permits granted after June 11, 1999; and~~

~~(2) At the first renewal date of all previously issued permits: *Provided*, That the permittee shall be afforded ninety days from said date to comply with the provisions of this section.~~

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county, or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development, or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

~~(c) The operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:~~

~~(1) A map of the area for which a permit under article three, chapter twenty two of this code is being sought or has been obtained;~~

~~(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and~~

~~(3) A statement of the post-mining land use for all land which may be affected by the mining operations.~~

~~(c)~~ (c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) The prospects for the long-term viability of any asset developed under this section;

(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and

(4) The extent to which the community, local, state, or the federal government may participate in the development of assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations- for which it makes the determination authorized in §5B-2A-6 of this code.

(b) For the purposes of this section, the term “general area” shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, upon request by the office, shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 *et seq.* of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature, and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state, and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the

office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a Development Office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be construed to modify requirements of §22-3-1 *et seq.* of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational facility uses. A county commission or other governing body of a county may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period.

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan.

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010.

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan

submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article.

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article.

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval.

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: ~~(i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or development or redevelopment authority's anticipated need and market use; (iii) the property has in place necessary infrastructure components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with section twenty three, article three, chapter twenty-two of this code; and (vi) the use is feasible. Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before~~

~~such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period;~~

(A) The property use is compatible with adjacent land uses;

(B) The use satisfies the relevant county or development or redevelopment authority's anticipated need and market use;

(C) The property has in place necessary infrastructure components needed to achieve the anticipated use;

(D) The use is supported by all other appropriate public agencies;

(E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

(F) The use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions, or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period.

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to ~~paragraph (C), subdivision (1), subsection (c), section twenty three, article three, chapter twenty two~~ of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment, or planning agencies.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE AND COAL MINING RECLAMATION ACT.

§22-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

(a) The director shall promulgate separate rules directed toward the surface effects of underground coal mining operations, embodying the requirements in subsection (b) of this section: *Provided*, That in adopting such rules, the director shall consider the distinct difference between surface coal mines and underground coal mines in West Virginia. Such rules may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any rule issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts, or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and rules promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings, and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate

therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to §22-3-13 of this ~~article~~ code, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in §22-3-13(b)(20) of this ~~article~~ code;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and groundwater systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to

streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines: *Provided*, That in recognition of the distinct differences between surface and underground mining the monitoring of water from underground coal mine workings shall be in accordance with the provisions of the Clean Water Act of 1977;

(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under §22-3-13 of this code for such effects which result from surface-mining operations: *Provided*, That the director shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he or she

finds imminent danger to inhabitants of the urbanized areas, cities, towns, or communities.

(d) The provisions of this article relating to permits, bonds, insurance, inspections, reclamation and enforcement, public review, and administrative and judicial review are also applicable to surface operations and surface impacts incident to an underground mine with such modifications by rule to the permit application requirements, permit approval, or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface mines and underground mines in West Virginia.

(e) The secretary shall promulgate for review and consideration by the West Virginia Legislature during the regular session of the Legislature, 2020, revisions to legislative rules (38 CSR 2) pertaining to surface owner protection from material damage due to subsidence under this article. The secretary shall specifically consider adoption of the federal standards codified at 30 C.F.R. § 817.121.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

(a) The special revenue fund designated the Water Quality Management Fund established in the State Treasury on July 1, 1989, is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the Water Quality Management Fund. The secretary shall expend the proceeds of the Water Quality Management Fund for the review of initial permit applications, renewal permit applications, and permit issuance activities.

(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in §22-3-13 of this code. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: *Provided*, That no initial application fee may exceed \$15,000 for any facility nor may any permit renewal application fee exceed \$5,000. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code; to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in §22-3-1 *et seq.* of this ~~chapter~~ code. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: *Provided*, That no person holding a permit for a home aerator of ~~six hundred~~ 600 gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than ~~ninety~~ 90 days past due pursuant to the rules promulgated under this section. Voiding of the permit will only become effective upon the date the secretary mails, by

certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the Joint Committee on Government and Finance setting forth the fees established and collected pursuant to this section.

(f) On July 1, 2002, and each year thereafter, a \$1,000 fee shall be assessed for permit applications and renewals submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. On July 1, 2002, and each year thereafter, a \$500 fee shall be assessed for application for permit modifications submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. Beginning July 1, 2002 and every year thereafter, an annual permit fee shall be assessed on the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in §22-3-1 *et seq.* of this code. The annual permit fee shall be collected as follows: ~~Five hundred dollars~~ \$500 for the fiscal year beginning on July 1, 2002, and \$1,000 for each fiscal year thereafter. For all other categories of permitting actions pursuant to this article related to surface coal mining operations, the secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code to establish a schedule of permitting fees.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-3. Definitions.

For purposes of this article:

(1) "Aboveground storage tank" or "tank" or "AST" means a device made to contain an accumulation of more than ~~one thousand three hundred twenty~~ 1,320 gallons of fluids that are liquid at standard temperature and pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic, or fiberglass reinforced plastic, which provide structural support, more than ~~ninety percent~~ 90 percent of the capacity of which is above the surface of the ground, and includes all ancillary pipes

and dispensing systems up to the first point of isolation. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for ~~three hundred sixty five~~ 365 or more days. A device meeting this definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. § 265.201 is included in this definition but is not a regulated tank. Notwithstanding any other provision of this code to the contrary, the following categories of devices are not subject to the provisions of this article:

(A) Shipping containers that are subject to state or federal laws or regulations governing the transportation of hazardous materials, including, but not limited to, railroad freight cars subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R. ~~Parts §§~~172, 173, or 174;

(B) Barges or boats subject to federal regulation under the United States Coast Guard, United States Department of Homeland Security, including, but not limited to, federal regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to other federal law governing the transportation of hazardous materials;

(C) Swimming pools;

(D) Process vessels;

(E) Devices containing drinking water for human or animal consumption, surface water or groundwater, demineralized water, noncontact cooling water, or water stored for fire or emergency purposes;

(F) Devices containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

(G) Except when located in a zone of critical concern, a device located on a farm, the contents of which are used exclusively for farm purposes and not for commercial distribution;

(H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier, chlorine contact chamber, batch reactor, etc.);

(I) Empty tanks held in inventory or offered for sale;

(J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to oil or gas production and gathering operations;

(L) Electrical equipment such as transformers, circuit breakers, and voltage regulator transformers;

(M) Devices having a capacity of ~~two hundred ten~~ 210 barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern; and

(N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern: *Provided*, That all such devices exempted under subdivisions (M) and (N) of this subdivision must still meet the registration requirements contained in §22-30-4 of this code, the notice requirements contained in §22-30-10 of this code, and the signage requirements contained in §22-30-11 of this code.

(2) “Department” means the West Virginia Department of Environmental Protection.

(3) “First point of isolation” means the valve, pump, dispenser, or other device or equipment on or nearest to the tank where the

flow of fluids into or out of the tank may be shut off manually or where it automatically shuts off in the event of a pipe or tank failure.

(4) “Nonoperational storage tank” means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(5) “Operator” means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(6) “Owner” means a person who holds title to, controls, or owns an interest in an aboveground storage tank, including the owner immediately preceding the discontinuation of its use. “Owner” does not mean a person who holds an interest in a tank for financial security unless the holder has taken possession of and operated the tank.

(7) “Person”, “persons”, or “people” means any individual, trust, firm, owner, operator, corporation, or other legal entity, including the United States government, an interstate commission or other body, the state or any agency, board, bureau, office, department, or political subdivision of the state, but does not include the Department of Environmental Protection.

(8) “Process vessel” means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process or in which a biological, chemical, or physical change in the material occurs. This does not include tanks used for storage of materials prior to their introduction into the production process or for the storage of finished products or by-products of the production process.

(9) “Public groundwater supply source” means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir,

underground mine, or other primary sources of water supplies which are found underneath the surface of the state.

(10) “Public surface water supply source” means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or other primary sources of water supplies which are found on the surface of the state.

(11) “Public surface water influenced groundwater supply source” means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir, or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

(12) “Public water system” means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of ~~twenty five~~ 25 individuals per day for at least ~~sixty~~ 60 days per year, or which has at least ~~fifteen~~ 15 service connections, and shall include:

(i) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a bathhouse located on coal company property solely for the use of its employees or a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.

(13) “Regulated level 1 aboveground storage tank” or “level 1 regulated tank” means:

(A) An AST located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area, or any AST system designated by the secretary as a level 1 regulated tank; or

(B) An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance” (42 U. S. C. § 9601(14)); or is on EPA’s Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act (CAA) (known as the List of Lists) as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a concentration of one percent or greater, regardless of the AST’s location, except ASTs containing petroleum are not level 1 regulated tanks based solely upon containing constituents recorded on the CERCLA lists; or

(C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or location.

(14) “Regulated level 2 aboveground storage tank” or “level 2 regulated tank” means an AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

(15) “Regulated aboveground storage tank” or “regulated tank” means an AST that meets the definition of a level 1 or level 2 regulated tank.

(16) “Release” means any spilling, leaking, emitting, discharging, escaping, or leaching of fluids from an aboveground storage tank into the waters of the state or escaping from secondary containment.

(17) “Secondary containment” means a safeguard applied to one or more aboveground storage tanks that prevents the discharge into the waters of the state of the entire capacity of the largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary containment, the barrier and containment field must be sufficiently impervious to contain fluids in the event of a release, and may include double-walled tanks, dikes, containment curbs, pits, or drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or holding pond. Earthen dikes and similar containment structures must be designed and constructed to contain, for a minimum of ~~seventy-two~~ 72 hours, fluid that escapes from a tank.

(18) “Secretary” means the Secretary of the Department of Environmental Protection, or his or her designee.

(19) “Source water protection area” for a public groundwater supply source is the area within an aquifer that supplies water to a public water supply well within a five-year time of travel; and is determined by the mathematical calculation of the locations from which a drop of water placed at the edge of the protection area would theoretically take five years to reach the well.

(20) “Zone of critical concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time of travel of water in the streams to the intake. The width of the zone of critical concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured

horizontally from each bank of the tributaries draining into the principal stream.

(21) “Zone of peripheral concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of peripheral concern is determined using a mathematical model that accounts for stream flows, gradient, and area topography. The length of the zone of peripheral concern is based on an additional five-hour time of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates a protection zone of ~~ten~~ 10 hours above the water intake. The width of the zone of peripheral concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

§22-30-24. Powers and duties of secretary.

(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary may receive and expend money from the federal government or any other sources to implement this article.

(c) The secretary may revoke any registration or certificate to operate for a significant violation of this article or the rules promulgated hereunder.

(d) The secretary may issue orders, assess civil penalties, institute enforcement proceedings, and prosecute violations of this article as necessary.

(e) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action, or authorize a third party to take corrective action.

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.

(g) The secretary shall promulgate for review and consideration by the West Virginia Legislature in the regular session of the Legislature, 2020, legislative rules to incorporate the relevant provisions of this article in the Groundwater Protection Rules for Coal Mining, 38 CSR 2F, for tanks and devices located at coal mining operations.

CHAPTER 22A. MINERS' HEALTH, SAFETY, AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-21. Penalties.

(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than \$5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated

pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than \$250 for each occurrence of the violation. Any miner issued a violation under this subsection shall either appeal the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not appealed or paid within 30 days shall become delinquent.

Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for purposes of §22A-1-31 of this code.

(4) A civil penalty under subdivision (1) or (2), subsection (a) of this section or subdivision (1) or (2), subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues

of fact which were or could have been litigated in review proceedings before a circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under §22A-1-15 of this ~~article~~ code, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than \$5,000 and for a second or subsequent violation assessed a civil penalty of not more than \$10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under §22A-1-22 of this code.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least \$5,000 and not more than \$10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, any director, officer, or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or confined in jail not more than one year, or both fined and confined. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal

mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and confinement that may be imposed upon a person under subsection (d) of this section.

(f) Any person who willfully violates any safety standard pursuant to this chapter or a rule promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or confined in a state correctional facility not less than one year and not more than five years, or both fined and ~~imprisoned~~ confined.

(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety and Training Fund. All civil penalty assessments collected under this section shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

§22A-1-35. Mine rescue teams.

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team ~~may~~ shall serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The operator shall contact the office and ~~obtain the state's agreement to serve as a backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine~~ notify them of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus funds from the West Virginia Office of Miners' Health, Safety, and Training's special revenue fund to provide backup mine rescue services.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion, or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than ~~seventy~~ 70 mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for

providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least ~~forty~~ 40 hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; and

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire, or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the

rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than 1,000 feet in by the fresh air base: *Provided*, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to ~~sixty~~ 60 atmospheres, or its equivalent.

(l) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines, or a separate mine rescue

structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least ~~one thousand~~ 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses

shall inspect and test the apparatuses at intervals not exceeding ~~thirty~~ 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with §22A-1-15 of this article code.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have ~~twenty-four~~ 24 hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within ~~thirty~~ 30 days of the effective date of this statute: *Provided*, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

§22A-1-43. Hold harmless clause; decision to enter mine.

(a) If any injury or death shall occur to any person who has entered any mine, whether active workings, inactive workings, or abandoned workings, without permission, neither:

(1) The owner of that mine or property; nor

(2) The State of West Virginia or any of its political subdivisions, or any agency operating under color of law thereunder; nor

(3) Any person, organization, or entity involved in any rescue or attempted rescue of such person who has committed an entry without permission, shall be held liable in any court or other forum for such injury or death.

(b) The director is authorized to make the decision on whether a mine is too dangerous, and this decision is not subject to review by a court of this state.

(c) A company shall not be required or ordered to conduct rescue operations.

§22A-1-44. Temporary exemption for environmental regulations.

In the event of an unauthorized entry by any person or persons into any mine whether active workings, inactive workings, or abandoned workings, neither the owner of that mine or property, nor any other person, organization, or entity involved in any rescue or attempted rescue of such person, may be held liable for any violation of any environmental regulation, if such violation occurred as part of any rescue efforts.

**ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY,
AND TRAINING; ADMINISTRATION; SUBSTANCE
ABUSE.**

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in §22A-1-2 of this ~~chapter~~ ~~code~~, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, ~~ten~~ 10-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners' Health, Safety, and Training:

- (A) Amphetamines;
- (B) Cannabinoids/THC;
- (C) Cocaine;
- (D) Opiates;
- (E) Phencyclidine (PCP);
- (F) Benzodiazepines;
- (G) Propoxyphene;
- (H) Methadone;
- (I) Barbiturates; and
- (J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40, which may be amended, from time to time, by legislative rule of the Office of Miners' Health, Safety, and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection.

“Random testing” means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons’ Social Security numbers, payroll identification numbers, or other comparable identifying numbers; and

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer’s out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) Any employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer.

~~(e)~~ (d) (1) Every employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) ~~A~~ Any positive drug or alcohol test of a certified person.; ~~whether it be a preemployment test, random test, reasonable suspicion test or post accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(2) With respect to any certified person subject to a collective bargaining agreement, the employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) ~~A Any positive drug or alcohol test of a certified person, whether it be a preemployment test, random test, reasonable suspicion test or post accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to §22A-1-2 of this ~~article~~ code.

~~(d)~~ (e) Suspension or revocation of a certified person's certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for

substance abuse-related matters shall result in the director's immediately and temporarily suspending the certified person's West Virginia certificate until such time as the certified person's certification is reinstated in the other jurisdiction.

(e) (f) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: *Provided*, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a "safety-sensitive position" means an employment position where the employee's job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person's certificate pursuant to this article, shall be conducted within ~~sixty~~ 60 days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within ~~forty~~ 40 days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of §22A-1-31 of this ~~chapter~~ code. In addition to the rules and procedures in §22A-1-31 of this ~~chapter~~ code in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If

the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet-based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to §22A-6-14 of this ~~chapter~~ code. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter; during the period of the suspension imposed by the Board of Appeals. For all miners determined to have a positive drug or alcohol test as determined pursuant to the provisions of this article, the board shall suspend the miner's certification card(s) for a minimum of six months from the date of the drug test. This six-month minimum suspension shall also apply to miners who enter into a treatment program after testing positive in a drug test administered pursuant to the provisions of this article and are placed under probationary treatment and testing agreements by the board. The director shall promulgate an emergency rule and legislative rule by July 1, 2019, requiring all miners who have a positive drug or alcohol test shall have their miner certification card(s) suspended for a minimum of six months.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to §29A-5-4 of this code.

ARTICLE 2. UNDERGROUND MINES.**§22A-2-2. Submittal of detailed ventilation plan to director.**

~~(a) A mine operator shall submit a detailed ventilation plan and any addenda to the director for review and comment. The mine operator shall review the plan with the director and address concerns to the extent practicable. The operator shall deliver to the miners' representative employed by the operator at the mine, if any, a copy of the operator's proposed annual ventilation plan at least 10 days prior to the date of submission. The miners' representative, if any, shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition, the miners' representative, if any, may submit written comments to the director. The director shall submit any concern that is not addressed to the United States Department of Labor Mine Safety and Health Administration (MSHA) through comments to the plan. The mine operator shall provide a copy of the plan to the director 10 days prior to the submittal of the plan to MSHA. The MSHA approved plan shall serve as the state approved plan: Provided, That the MSHA approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.~~

~~(b) (a) The A mine operator shall give the director a copy of the MSHA United States Department of Labor's Mine Safety and Health Administration (MSHA)-approved plan and any addenda as soon as the operator receives the approval from MSHA. The MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or state rules.~~

~~(c) (b) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners' representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible.~~

(d) (c) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addenda thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane-detecting devices; records of examination; maintenance of methane detectors, etc.

(a) The Office of Miners' Health, Safety, and Training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within ~~twelve~~ 12 weeks after any person is first employed as a miner. It is further the duty and responsibility of the Office of Miners' Health, Safety, and Training to see that the course is given to all persons as above provided after their first being employed in any mine in this state. In addition to other enforcement actions available to the director, upon a finding by the director of the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall notify the ~~Board of Miners' Training, Education and Certification~~ Board of Coal Mine Health and Safety, which shall cause additional training to occur at the mine addressing such safety issue or issues identified by the director, pursuant to §22A-7-1 *et seq.* of this ~~chapter~~ code. The Director of the Office of Miners' Health, Safety, and Training is authorized to promulgate emergency and legislative rules establishing a course of instruction.

(b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this ~~chapter~~ code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct

apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first ~~one hundred twenty~~ 120 days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that the mine foreman, assistant mine foreman, or experienced miner can effectively respond to cries for help of the apprentice: Provided, that if the apprentice has completed an approved training program as certified by the Board of Coal Mine Health and Safety, this period may be reduced by an amount not to exceed 30 days. The location shall be on the same side of any belt, conveyor, or mining equipment.

(c) Persons whose duties require them to use an approved methane-detecting device or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the Office of Miners' Health, Safety, and Training and a record of the examination shall be kept by the operator and the office. Approved methane-detecting devices and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible approved methane-detecting device or any other approved device for detecting methane and oxygen deficiency by a person trained in the maintenance, and, before each shift, care shall be taken to ensure that the approved methane-detecting device or other device is in a permissible condition and maintained according to manufacturer's specifications.

§22A-2-13. Daily inspection of working places; records.

Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his or her assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep

under this chapter. The mine foreman, assistant mine foreman, or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman or his or her assistants upon observing a violation or potential violation of §22A-2-1 *et seq.* of this ~~chapter~~ code or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself or herself. Should the mine foreman or his or her assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He or she shall place his or her initials, time and the date at or near each place he or she examines. He or she shall also record any dangerous conditions and practices found during his or her examination in a book provided for that purpose.

Notwithstanding any other law to the contrary, the director may use any data collected from a tracking device as evidence that a person designated to perform daily examinations under this section neglected or failed to perform a duty mandated by this section under §22A-1-31 of this code and may decertify any miner who is found to have failed to perform his or her duties.

§22A-2-80. Existing regulations to be revised.

By August 31, 2019, all existing rules or regulations under authority of this article shall be revised to reflect the changes enacted during the 2019 Regular Session of the Legislature.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22A-8-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him or her, and under his or her supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss, or assistant mine foreman or fire boss, may have three persons working with him or her under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman, or fire boss supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five apprentices under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the ~~Board of Miner Training, Education and Certification~~ Board of Coal Mine Health and Safety.

Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it is the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the Office of Miners' Health, Safety, and Training.

§22A-8-10. Loss of certification for unlawful trespass.

Upon a conviction under the provisions of §61-3B-6 of this code, the certification of any person certified under the provision of §22A-8-1 et seq. of this code, including a safety sensitive certification issued pursuant to 56 CSR 19, shall be deemed revoked and person shall be permanently barred from holding a certification under the provisions of §22A-8-1 et seq. of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 3. CRIMES AGAINST PROPERTY.****§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment.**

If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, ~~underground coal mine~~, storehouse, warehouse, banking house, or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than 10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and be fined not exceeding \$100.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.

ARTICLE 3B. TRESPASS.**§61-3B-6. Mine trespass; penalties.**

(a) A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon conviction thereof shall be imprisoned in a correctional facility not less than one year and nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000: *Provided*, that for any conviction pursuant to this subsection, any inactive or abandoned underground workings must be either: (1) sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense,

(b) A person who willfully enters a surface coal mine, whether active workings, inactive workings or abandoned workings, without permission, and with the intent to commit a felony or any larceny, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than one week and not more than one month and shall be fined not less than \$1,000 nor more than \$5,000. For a second conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than one year and not more than five years and shall be fined not less than \$5,000 nor more than \$10,000. For a third or subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than five year and not more than 10 years and shall be fined not less than \$10,000, nor more than \$25,000.

(c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than one year and shall be fined not less than

\$1,000 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not less than seven days.

(d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than two nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000.

(e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than three nor more than 15 years and shall be fined not less than \$10,000 nor more than \$25,000.

(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass in violation of this section is liable to the property owner in the amount of twice the amount of such damage.

(g) The terms “mine”, “active workings”, “inactive workings,” and “abandoned workings” have the same meaning ascribed to such terms as set forth in §22A-1-2 of this code.

(h) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.;

And,

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

Eng. Senate Bill 635—A Bill to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8, and §5B-2A-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-14 of said code; to amend and reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend said code by adding thereto two new sections, designated §22A-1-43 and §22A-1-44; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section, designated, §22A-2-80; to amend and reenact §22A-8-5 of said code; to amend said code by adding thereto a new section, designated §22A-8-10; to amend and reenact §61-3-12 of said code; and to amend said code by adding thereto a new section, designated §61-3B-6, all relating generally to coal mining activities; eliminating the requirement for submission of the community impact statement; requiring review of new mining activity for submission to the Office of Coalfield Community Development; eliminating requirements for submission of certain additional information; requiring the submission of certain information related to land and infrastructure needs upon request of the Office of Coalfield Community Development; requiring and authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to mine subsidence protection for dwelling owners; authorizing the Secretary of the Department of Environmental Protection to promulgate rules for permit modification and renewal fees for surface mining operations pursuant to the Water Pollution Control Act; authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to exemptions pursuant to the Aboveground Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine or appeal a violation within 30 days; requiring the Office of Miners' Health, Safety, and Training Mine Rescue Team be provided to a coal operation where the operation has no mine rescue team available within one hour's drive; permitting employers to drug test an employee

involved in an accident that results in physical injuries or damage to equipment or property; requiring miners testing positive for drug use to undergo a mandatory minimum six-month suspension; eliminating timing requirements for submission of a detailed mine ventilation plan to the Director of the Office of Miners' Health, Safety, and Training; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate emergency rules for establishing a course of instruction for apprentice miners; requiring apprentice miners to work 90 days in a mine within sight and sound of a mine foreman or assistant foreman; permitting the Director of the Office of Miners' Health, Safety, and Training to decertify miners who fail to perform daily examinations; allowing the Director of the Office of Miners' Health, Safety, and Training to use the employer's tracking data of the designated daily examiner; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate rules generally; allowing certified competent miners to supervise up to two apprentice miners; holding mine owners, the state, and person or entities engaged in rescue operations harmless for injury or death; authorizing a temporary exemption from environmental regulations during rescue operations; revoking certifications of persons convicted of mine trespass; removing underground coal mines from those places subject to the crime of unlawful entry of building other than a dwelling; creating the new criminal misdemeanor and felony offenses of mine trespass; establishing penalties for mine trespass including enhanced penalties for bodily injury or death during rescue operations; authorizing increased liability for damages caused during a mine trespass; and exempting lawful activities under the West Virginia and United States Constitutions, and state and federal law from the operation of the mine trespass criminal statute.

On motions of Senators Stollings, Smith, and Hardesty, the following amendments to the House of Delegates amendments to the bill (Eng. S. B. 635) were reported by the Clerk, considered simultaneously, and adopted:

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

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers, and responsibilities:

~~(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;~~

~~(2)~~ (1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

~~(3)~~ (2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

(4) (3) To establish a procedure to develop action reports and annual updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

(5) (4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(6) (5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

~~(7)~~ (6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining; and

~~(8)~~ (7) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code.

§5B-2A-6. Community impact statement review.

~~(a)(1) The office shall, no less frequently than quarterly, either consult with representatives of the department's Office of Mining and Reclamation or review the department's permit application database(s) to determine whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure pursuant to this article. The operator shall develop a community impact statement, as described in this section, which shall be submitted to the office within sixty days of the filing of a surface mining application pursuant to the provisions of article three, chapter twenty two of this code. Failure to submit a community impact statement to the office shall be considered a violation under the provisions of section seventeen of said article; and~~

~~(2) The operator shall provide copies of the community impact statement to the department's Office of Mining Reclamation and Office of Explosives and Blasting and to the county commissions, county clerks' offices and local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations.~~

~~(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:~~

~~(1) The amount and location of land to be mined or used in the actual mining operations;~~

~~(2) The expected duration of the mining operations in each area of the community;~~

~~(3) The extent of anticipated mining related property acquisitions, to the extent that such acquisitions are known or knowable;~~

~~(4) The intentions of the surface and mineral owners relative to the acquired property, to the extent that such intentions are known or knowable;~~

~~(5) A statement of the post mining land use for all land within the permit boundary;~~

~~(6) The intended blasting plan and the expected time and duration it will affect each community;~~

~~(7) Information concerning the extent and nature of valley fills and the watersheds to be affected;~~

~~(8) Economic information, such as the number of jobs created and annual coal production resulting from the surface mining operation, the anticipated life of the mining operation and such other information as may be deemed appropriate; and~~

~~(9) An acknowledgment of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure components needed to accomplish the designated post mine land use required by the plan.~~

~~(c) Where the operator makes any significant revision to the permit application under section eighteen, article three, chapter twenty two of this code, which revision substantially affects any of the information provided in subsection (b) of this section, the operator shall revise the affected provisions of its community impact statement and shall submit such revisions as set forth in subsection (a) of this section.~~

~~(d) Within thirty days of receipt of a community impact statement pursuant to subdivision (2), subsection (a) of this section or a revised community impact statement pursuant to subsection (c) of this section, the local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations shall provide a written acknowledgment of the receipt of this community impact statement or revised community impact statement to the department's Division of Mining Reclamation, to the county commission or county commissions and to the office.~~

~~(e) (b) The provisions of this section shall apply as follows: to all surface mining permit applications granted after July 1, 2018.~~

~~(1) To all surface mining permits granted after June 11, 1999; and~~

~~(2) At the first renewal date of all previously issued permits: *Provided*, That the permittee shall be afforded ninety days from said date to comply with the provisions of this section.~~

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county, or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development, or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

~~(c) The operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:~~

~~(1) A map of the area for which a permit under article three, chapter twenty-two of this code is being sought or has been obtained;~~

~~(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and~~

~~(3) A statement of the post mining land use for all land which may be affected by the mining operations.~~

~~(d)~~ (c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) The prospects for the long-term viability of any asset developed under this section;

(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and

(4) The extent to which the community, local, state, or the federal government may participate in the development of assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations- for which it makes the determination authorized in §5B-2A-6 of this code.

(b) For the purposes of this section, the term “general area” shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, upon request by the office, shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 *et seq.* of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature, and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state, and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a Development Office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of §22-3-10 of this code. No provision

of this section may be construed to modify requirements of §22-3-1 *et seq.* of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational facility uses. A county commission or other governing body of a county may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period.

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan.

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010.

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article.

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the

review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article.

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval.

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: ~~(i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or development or redevelopment authority's anticipated need and market use; (iii) the property has in place necessary infrastructure components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with section twenty three, article three, chapter twenty-two of this code; and (vi) the use is feasible. Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period;~~

(A) The property use is compatible with adjacent land uses;

(B) The use satisfies the relevant county or development or redevelopment authority's anticipated need and market use;

(C) The property has in place necessary infrastructure components needed to achieve the anticipated use;

(D) The use is supported by all other appropriate public agencies;

(E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

(F) The use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions, or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period.

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to ~~paragraph (C), subdivision (1), subsection (c), section twenty three, article three, chapter twenty two~~ of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment, or planning agencies.

CHAPTER 11. TAXATION.

ARTICLE 28. POST-COAL MINE SITE BUSINESS CREDIT.

§11-28-1. Definitions.

For purposes of this article:

“Business entity” or “person” means an individual, firm, sole proprietorship, partnership, corporation, association, or other entity entitled to a post-coal mine site business credit.

“Coal mining operation” means the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite.

“Post-coal mine site” means property that has remained undeveloped for business purposes, subsequent to coal mining

operations on the property within the bonded area of the last issued coal mine permit.

“Principal place of business” means the physical location from which the entity’s direction, control, and coordination of the operations of the business are primarily exercised, with consideration given, but not limited to:

(1) The physical location at which the primary executive and administrative headquarters of the entity is located; and

(2) From which the management of overall operations of the entity is directed.

“Undeveloped for business purposes” means land has been previously used for coal mining operations and has not been built or developed for use for other activities in the commercial or manufacturing sectors of the economy.

§11-28-2. Eligibility for credit.

For those tax years beginning on or after January 1, 2020, a business entity will be allowed a credit against certain taxes imposed by this chapter, as described in §11-28-3 of this code, if the business entity meets the following requirements:

(1) The entity is a corporation, small business corporation, limited liability company, partnership, or unincorporated business entity as defined in this code that also has a principal place of business in the state;

(2) The entity employs at the post-coal mine site a minimum of 10 full-time (32 hours a week or more) employees; and

(3) The entity’s principal place of business is located on a post-coal mine site within this state.

§11-28-3. Application of credit.

(a) Amount of credit. — For those tax years beginning on or after January 1, 2020, an eligible business entity will be allowed a tax credit in the amount of 50 percent of that entity’s capital

expenditures (as defined in Section 263 of the United States Internal Revenue Code of 1986, as amended) at the post-coal mine site for the first five taxable years during which the entity's principal place of business is located on the post-coal mine site within this state. The dollar amount of the credit claimed by an eligible business entity may not exceed the amount of 50 percent of the entity's state income tax for a single year.

(b) *Application of annual credit allowance.* — The credit created by this article is allowed as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) and (2) of this subsection, and in that order.

(1) *Corporation net income taxes.* — Any credit is first applied to reduce the taxes imposed by §11-24-1 *et seq.* of this code for the taxable year.

(2) *Personal income taxes.* — After application of §11-28-3(b)(1) of this code, any unused credit is next applied as follows:

(A) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership or a limited liability company that is treated as a partnership for federal income tax purposes, then any unused credit (after application of §11-28-3(b)(1) of this code) is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this code on the income from business or other activity subject to tax under §11-23-1 *et seq.* of this code.

(B) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) A credit is not allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(c) *Unused credit.* — A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance. If the amount of the allowable credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code for each of the next 10 taxable years following the year of creation of the tax credit unless sooner used.

(d) *Eligibility requirements.* — Those businesses that benefit from other state economic development programs or incentives that result in a reduction of their income tax liability due shall not be eligible for this tax credit.

(e) *Rule-making authority.* — The State Tax Division shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code. These rules shall include, at a minimum, forms for use in claiming the credit authorized in this article, administration of the credit authorized in this article, and any other matter seen necessary by the State Tax Division for the administration of this article.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE AND COAL MINING RECLAMATION ACT.

§22-3-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

(a) The director shall promulgate separate rules directed toward the surface effects of underground coal mining operations, embodying the requirements in subsection (b) of this section: *Provided*, That in adopting such rules, the director shall consider the distinct difference between surface coal mines and underground coal mines in West Virginia. Such rules may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any rule issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: *Provided*, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts, or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and rules promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings, and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards

and criteria developed pursuant to §22-3-13 of this ~~article~~ code, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in §22-3-13(b)(20) of this ~~article~~ code;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and groundwater systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines: *Provided*, That in recognition of the distinct differences between surface and underground mining the monitoring of water from underground coal mine workings shall be in accordance with the provisions of the Clean Water Act of 1977;

(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under §22-3-13 of this code for such effects which result from surface-mining operations: *Provided*, That the director shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife, and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he or she finds imminent danger to inhabitants of the urbanized areas, cities, towns, or communities.

(d) The provisions of this article relating to permits, bonds, insurance, inspections, reclamation and enforcement, public review, and administrative and judicial review are also applicable to surface operations and surface impacts incident to an underground mine with such modifications by rule to the permit application requirements, permit approval, or denial procedures and bond requirements as are necessary to accommodate the

distinct difference between surface mines and underground mines in West Virginia.

(e) The secretary shall promulgate for review and consideration by the West Virginia Legislature during the regular session of the Legislature, 2020, revisions to legislative rules (38 CSR 2) pertaining to surface owner protection from material damage due to subsidence under this article. The secretary shall specifically consider adoption of the federal standards codified at 30 C.F.R. § 817.121.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

(a) The special revenue fund designated the Water Quality Management Fund established in the State Treasury on July 1, 1989, is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the Water Quality Management Fund. The secretary shall expend the proceeds of the Water Quality Management Fund for the review of initial permit applications, renewal permit applications, and permit issuance activities.

(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in §22-3-13 of this code. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit

application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: *Provided*, That no initial application fee may exceed \$15,000 for any facility nor may any permit renewal application fee exceed \$5,000. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code; to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in §22-3-1 *et seq.* of this ~~chapter~~ code. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: *Provided*, That no person holding a permit for a home aerator of ~~six hundred~~ 600 gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than ~~ninety~~ 90 days past due pursuant to the rules promulgated under this section. Voiding of the permit will only become effective upon the date the secretary mails, by certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the Joint Committee on Government and Finance setting forth the fees established and collected pursuant to this section.

(f) On July 1, 2002, and each year thereafter, a \$1,000 fee shall be assessed for permit applications and renewals submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. On July 1, 2002, and each

year thereafter, a \$500 fee shall be assessed for application for permit modifications submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. Beginning July 1, 2002 and every year thereafter, an annual permit fee shall be assessed on the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in §22-3-1 *et seq.* of this code. The annual permit fee shall be collected as follows: ~~Five hundred dollars~~ \$500 for the fiscal year beginning on July 1, 2002, and \$1,000 for each fiscal year thereafter. For all other categories of permitting actions pursuant to this article related to surface coal mining operations, the secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code to establish a schedule of permitting fees.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-3. Definitions.

For purposes of this article:

(1) “Aboveground storage tank” or “tank” or “AST” means a device made to contain an accumulation of more than ~~one thousand three hundred twenty~~ 1,320 gallons of fluids that are liquid at standard temperature and pressure, which is constructed primarily of nonearthen materials, including concrete, steel, plastic, or fiberglass reinforced plastic, which provide structural support, more than ~~ninety percent~~ 90 percent of the capacity of which is above the surface of the ground, and includes all ancillary pipes and dispensing systems up to the first point of isolation. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for ~~three hundred sixty five~~ 365 or more days. A device meeting this definition containing hazardous waste subject to regulation under 40 C. F. R. Parts 264 and 265, exclusive of tanks subject to regulation under 40 C. F. R. § 265.201 is included in this definition but is not a regulated tank. Notwithstanding any other provision of this code to the contrary, the following categories of devices are not subject to the provisions of this article:

(A) Shipping containers that are subject to state or federal laws or regulations governing the transportation of hazardous materials, including, but not limited to, railroad freight cars subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C. §§20101-2015, as amended, including, but not limited to, federal regulations promulgated thereunder at 49 C. F. R. Parts §§172, 173, or 174;

(B) Barges or boats subject to federal regulation under the United States Coast Guard, United States Department of Homeland Security, including, but not limited to, federal regulations promulgated at 33 C. F. R. 1, *et seq.* or subject to other federal law governing the transportation of hazardous materials;

(C) Swimming pools;

(D) Process vessels;

(E) Devices containing drinking water for human or animal consumption, surface water or groundwater, demineralized water, noncontact cooling water, or water stored for fire or emergency purposes;

(F) Devices containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug and Cosmetic Act (21 U. S. C. §301-392);

(G) Except when located in a zone of critical concern, a device located on a farm, the contents of which are used exclusively for farm purposes and not for commercial distribution;

(H) Devices holding wastewater that is being actively treated or processed (e.g., clarifier, chlorine contact chamber, batch reactor, etc.);

(I) Empty tanks held in inventory or offered for sale;

(J) Pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service

Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(K) Liquid traps, atmospheric and pressure vessels, or associated gathering lines related to oil or gas production and gathering operations;

(L) Electrical equipment such as transformers, circuit breakers, and voltage regulator transformers;

(M) Devices having a capacity of ~~two hundred ten~~ 210 barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern; and

(N) Devices having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern: *Provided*, That all such devices exempted under subdivisions (M) and (N) of this subdivision must still meet the registration requirements contained in §22-30-4 of this code, the notice requirements contained in §22-30-10 of this code, and the signage requirements contained in §22-30-11 of this code.

(2) “Department” means the West Virginia Department of Environmental Protection.

(3) “First point of isolation” means the valve, pump, dispenser, or other device or equipment on or nearest to the tank where the flow of fluids into or out of the tank may be shut off manually or where it automatically shuts off in the event of a pipe or tank failure.

(4) “Nonoperational storage tank” means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(5) “Operator” means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(6) “Owner” means a person who holds title to, controls, or owns an interest in an aboveground storage tank, including the owner immediately preceding the discontinuation of its use. “Owner” does not mean a person who holds an interest in a tank for financial security unless the holder has taken possession of and operated the tank.

(7) “Person”, “persons”, or “people” means any individual, trust, firm, owner, operator, corporation, or other legal entity, including the United States government, an interstate commission or other body, the state or any agency, board, bureau, office, department, or political subdivision of the state, but does not include the Department of Environmental Protection.

(8) “Process vessel” means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process or in which a biological, chemical, or physical change in the material occurs. This does not include tanks used for storage of materials prior to their introduction into the production process or for the storage of finished products or by-products of the production process.

(9) “Public groundwater supply source” means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine, or other primary sources of water supplies which are found underneath the surface of the state.

(10) “Public surface water supply source” means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or other primary sources of water supplies which are found on the surface of the state.

(11) “Public surface water influenced groundwater supply source” means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir, or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

(12) “Public water system” means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of ~~twenty five~~ 25 individuals per day for at least ~~sixty~~ 60 days per year, or which has at least ~~fifteen~~ 15 service connections, and shall include:

(i) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a bathhouse located on coal company property solely for the use of its employees or a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.

(13) “Regulated level 1 aboveground storage tank” or “level 1 regulated tank” means:

(A) An AST located within a zone of critical concern, source water protection area, public surface water influenced groundwater supply source area, or any AST system designated by the secretary as a level 1 regulated tank; or

(B) An AST that contains substances defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as a “hazardous substance” (42 U. S. C. § 9601(14)); or is on EPA’s Consolidated List of Chemicals Subject to the Emergency Planning and Community Right to Know Act (EPCRA), CERCLA, and §112(r) of the Clean Air Act (CAA) (known as the List of Lists) as provided by 40 C. F. R. §§ 355, 372, 302, and 68) in a concentration of one percent or greater, regardless of the AST’s location, except ASTs containing petroleum are not level 1 regulated tanks based solely upon containing constituents recorded on the CERCLA lists; or

(C) An AST with a capacity of 50,000 gallons or more, regardless of its contents or location.

(14) “Regulated level 2 aboveground storage tank” or “level 2 regulated tank” means an AST that is located within a zone of peripheral concern that is not a level 1 regulated tank.

(15) “Regulated aboveground storage tank” or “regulated tank” means an AST that meets the definition of a level 1 or level 2 regulated tank.

(16) “Release” means any spilling, leaking, emitting, discharging, escaping, or leaching of fluids from an aboveground storage tank into the waters of the state or escaping from secondary containment.

(17) “Secondary containment” means a safeguard applied to one or more aboveground storage tanks that prevents the discharge into the waters of the state of the entire capacity of the largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary containment, the barrier and containment field

must be sufficiently impervious to contain fluids in the event of a release, and may include double-walled tanks, dikes, containment curbs, pits, or drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or holding pond. Earthen dikes and similar containment structures must be designed and constructed to contain, for a minimum of ~~seventy-two~~ 72 hours, fluid that escapes from a tank.

(18) “Secretary” means the Secretary of the Department of Environmental Protection, or his or her designee.

(19) “Source water protection area” for a public groundwater supply source is the area within an aquifer that supplies water to a public water supply well within a five-year time of travel, and is determined by the mathematical calculation of the locations from which a drop of water placed at the edge of the protection area would theoretically take five years to reach the well.

(20) “Zone of critical concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants detailed scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time of travel of water in the streams to the intake. The width of the zone of critical concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

(21) “Zone of peripheral concern” for a public surface water supply source and for a public surface water influenced groundwater supply source is a corridor along streams within a watershed that warrants scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of peripheral concern is determined using a mathematical model that accounts for stream

flows, gradient, and area topography. The length of the zone of peripheral concern is based on an additional five-hour time of travel of water in the streams beyond the perimeter of the zone of critical concern, which creates a protection zone of ~~ten~~ 10 hours above the water intake. The width of the zone of peripheral concern is ~~one thousand~~ 1,000 feet measured horizontally from each bank of the principal stream and ~~five hundred~~ 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

§22-30-24. Powers and duties of secretary.

(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary may receive and expend money from the federal government or any other sources to implement this article.

(c) The secretary may revoke any registration or certificate to operate for a significant violation of this article or the rules promulgated hereunder.

(d) The secretary may issue orders, assess civil penalties, institute enforcement proceedings, and prosecute violations of this article as necessary.

(e) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action, or authorize a third party to take corrective action.

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.

(g) The secretary shall promulgate for review and consideration by the West Virginia Legislature in the regular session of the Legislature, 2020, legislative rules to incorporate the relevant provisions of this article in the Groundwater Protection

Rules for Coal Mining, 38 CSR 2F, for tanks and devices located at coal mining operations.

CHAPTER 22A. MINERS' HEALTH, SAFETY, AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-21. Penalties.

(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than \$5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than \$250 for each occurrence of the violation. Any miner issued a violation under this subsection shall either appeal the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not appealed or paid within 30 days shall become delinquent.

Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for purposes of §22A-1-31 of this code.

(4) A civil penalty under subdivision (1) or (2), subsection (a) of this section or subdivision (1) or (2), subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and

represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under §22A-1-15 of this ~~article~~ code, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than \$5,000 and for a second or subsequent violation assessed a civil penalty of not more than \$10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances;
or

(F) A discrimination violation under §22A-1-22 of this code.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least \$5,000 and not more than \$10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under §22A-1-22(a) or §22A-1-22(b) of this ~~article~~ code, any director, officer, or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or confined in jail not more than one year, or both fined and confined. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same

fine and confinement that may be imposed upon a person under subsection (d) of this section.

(f) Any person who willfully violates any safety standard pursuant to this chapter or a rule promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or confined in a state correctional facility not less than one year and not more than five years, or both fined and ~~imprisoned~~ confined.

(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety and Training Fund. All civil penalty assessments collected under this section shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

§22A-1-35. Mine rescue teams.

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team ~~may~~ shall serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The operator shall contact the office and ~~obtain the state's agreement to serve as a~~

~~backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine~~ notify them of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus funds from the West Virginia Office of Miners' Health, Safety, and Training's special revenue fund to provide backup mine rescue services.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion, or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than ~~seventy~~ 70 mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience

requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least ~~forty~~ 40 hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; and

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire, or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than 1,000 feet in by the fresh air base: *Provided*, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to ~~sixty~~ 60 atmospheres, or its equivalent.

(1) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least ~~one thousand~~ 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding ~~thirty~~ 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with §22A-1-15 of this ~~article~~ code.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have ~~twenty-four~~ 24 hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within ~~thirty~~ 30 days of the effective date of this statute: *Provided*, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

§22A-1-43. Hold harmless clause; decision to enter mine.

(a) If any injury or death shall occur to any person who has entered any mine, whether active workings, inactive workings, or abandoned workings, without permission, neither:

(1) The owner of that mine or property; nor

(2) The State of West Virginia or any of its political subdivisions, or any agency operating under color of law thereunder; nor

(3) Any person, organization, or entity involved in any rescue or attempted rescue of such person who has committed an entry without permission, shall be held liable in any court or other forum for such injury or death.

(b) The director is authorized to make the decision on whether a mine is too dangerous, and this decision is not subject to review by a court of this state.

(c) A company shall not be required or ordered to conduct rescue operations.

§22A-1-44. Temporary exemption for environmental regulations.

In the event of an unauthorized entry by any person or persons into any mine whether active workings, inactive workings, or abandoned workings, neither the owner of that mine or property, nor any other person, organization, or entity involved in any rescue or attempted rescue of such person, may be held liable for any violation of any environmental regulation, if such violation occurred as part of any rescue efforts.

ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY, AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in §22A-1-2 of this ~~chapter~~ code, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, ~~ten~~ 10-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners' Health, Safety, and Training:

- (A) Amphetamines;
- (B) Cannabinoids/THC;
- (C) Cocaine;
- (D) Opiates;
- (E) Phencyclidine (PCP);
- (F) Benzodiazepines;
- (G) Propoxyphene;
- (H) Methadone;
- (I) Barbiturates; and
- (J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40, which may be amended, from time to time, by legislative rule of the Office of Miners' Health, Safety, and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. "Random testing" means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons' Social Security numbers, payroll identification numbers, or other comparable identifying numbers; and

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer's out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) Any employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer.

~~(e)~~ (d) (1) Every employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) ~~A~~ Any positive drug or alcohol test of a certified person.; ~~whether it be a preemployment test, random test, reasonable suspicion test or post-accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(2) With respect to any certified person subject to a collective bargaining agreement, the employer shall notify the director, on a

form prescribed by the director, within seven days of any of the following:

(A) ~~A~~ Any positive drug or alcohol test of a certified person, ~~whether it be a preemployment test, random test, reasonable suspicion test or post accident test.~~ However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to §22A-1-2 of this ~~article~~ code.

~~(d)~~ (e) Suspension or revocation of a certified person's certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director's immediately and temporarily suspending the certified person's West Virginia certificate until such time as the certified person's certification is reinstated in the other jurisdiction.

~~(e)~~ (f) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require

an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: *Provided*, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a “safety-sensitive position” means an employment position where the employee’s job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person’s certificate pursuant to this article, shall be conducted within ~~sixty~~ 60 days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within ~~forty~~ 40 days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of §22A-1-31 of this ~~chapter~~ code. In addition to the rules and procedures in §22A-1-31 of this ~~chapter~~ code in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet-based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the disciplinary actions referenced in

this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to §22A-6-14 of this ~~chapter~~ code. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter; during the period of the suspension imposed by the Board of Appeals. For all miners determined to have a positive drug or alcohol test as determined pursuant to the provisions of this article, the board shall suspend the miner's certification card(s) for a minimum of six months from the date of the drug test. This six-month minimum suspension shall also apply to miners who enter into a treatment program after testing positive in a drug test administered pursuant to the provisions of this article and are placed under probationary treatment and testing agreements by the board. The director shall promulgate an emergency rule and legislative rule by July 1, 2019, requiring all miners who have a positive drug or alcohol test shall have their miner certification card(s) suspended for a minimum of six months.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to §29A-5-4 of this code.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-2. Submittal of detailed ventilation plan to director.

~~(a) A mine operator shall submit a detailed ventilation plan and any addenda to the director for review and comment. The mine operator shall review the plan with the director and address concerns to the extent practicable. The operator shall deliver to the miners' representative employed by the operator at the mine, if any, a copy of the operator's proposed annual ventilation plan at least~~

~~10 days prior to the date of submission. The miners' representative, if any, shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition, the miners' representative, if any, may submit written comments to the director. The director shall submit any concern that is not addressed to the United States Department of Labor—Mine Safety and Health Administration (MSHA) through comments to the plan. The mine operator shall provide a copy of the plan to the director 10 days prior to the submittal of the plan to MSHA. The MSHA approved plan shall serve as the state approved plan: Provided, That the MSHA approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.~~

~~(b) (a) The A mine operator shall give the director a copy of the MSHA United States Department of Labor's Mine Safety and Health Administration (MSHA)-approved plan and any addenda as soon as the operator receives the approval from MSHA. The MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or state rules.~~

~~(e) (b) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners' representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible.~~

~~(d) (c) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addenda thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.~~

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane-detecting devices; records of examination; maintenance of methane detectors, etc.

(a) The Office of Miners' Health, Safety, and Training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within ~~twelve~~ 12 weeks after any person is first employed as a miner. It is further the duty and responsibility of the Office of Miners' Health, Safety, and Training to see that the course is given to all persons as above provided after their first being employed in any mine in this state. In addition to other enforcement actions available to the director, upon a finding by the director of the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall notify the ~~Board of Miners' Training, Education and Certification~~ Board of Coal Mine Health and Safety, which shall cause additional training to occur at the mine addressing such safety issue or issues identified by the director, pursuant to §22A-7-1 *et seq.* of this ~~chapter~~ code. The Director of the Office of Miners' Health, Safety, and Training is authorized to promulgate emergency and legislative rules in consultation with the Board of Coal Mine Health and Safety establishing a course of instruction.

(b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this ~~chapter~~ code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first ~~one hundred twenty~~ 120 days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in

a location that the mine foreman, assistant mine foreman, or experienced miner can effectively respond to cries for help of the apprentice; Provided, that if the apprentice has completed an approved training program as approved by the Board of Coal Mine Health and Safety, this period may be reduced by an amount not to exceed 30 days. The location shall be on the same side of any belt, conveyor, or mining equipment.

(c) Persons whose duties require them to use an approved methane-detecting device or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the Office of Miners' Health, Safety, and Training and a record of the examination shall be kept by the operator and the office. Approved methane-detecting devices and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible approved methane-detecting device or any other approved device for detecting methane and oxygen deficiency by a person trained in the maintenance, and, before each shift, care shall be taken to ensure that the approved methane-detecting device or other device is in a permissible condition and maintained according to manufacturer's specifications.

§22A-2-13. Daily inspection of working places; records.

Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his or her assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. The mine foreman, assistant mine foreman, or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine

foreman or his or her assistants upon observing a violation or potential violation of §22A-2-1 *et seq.* of this ~~chapter~~ code or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself or herself. Should the mine foreman or his or her assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe; or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He or she shall place his or her initials, time and the date at or near each place he or she examines. He or she shall also record any dangerous conditions and practices found during his or her examination in a book provided for that purpose.

§22A-2-80. Existing regulations to be revised.

By August 31, 2019, all existing rules or regulations under authority of this article shall be revised to reflect the changes enacted during the 2019 Regular Session of the Legislature.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22A-8-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him or her, and under his or her supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss, or assistant mine foreman or fire boss, may have three persons working with him or her under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman, or fire boss supervising apprentices in an area where no coal is being produced or which is outby the working section may

have as many as five apprentices under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the ~~Board of Miner Training, Education and Certification~~ Board of Coal Mine Health and Safety.

Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it is the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the Office of Miners' Health, Safety, and Training.

§22A-8-10. Loss of certification for unlawful trespass.

Upon a conviction under the provisions of §61-3B-6 of this code, the certification of any person certified under the provision of §22A-8-1 et seq. of this code, including a safety sensitive certification issued pursuant to 56 CSR 19, shall be deemed revoked and person shall be permanently barred from holding a certification under the provisions of §22A-8-1 et seq. of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment.

If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, ~~underground coal mine,~~ storehouse, warehouse, banking house, or any house or building,

other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than 10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and be fined not exceeding \$100.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.

ARTICLE 3B. TRESPASS.

§61-3B-6. Mine trespass; penalties.

(a) A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon conviction thereof shall be imprisoned in a correctional facility not less than one year and nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000: *Provided*, that for any conviction pursuant to this subsection, any inactive or abandoned underground workings must be either: (1) sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense.

(b) A person who willfully enters a surface coal mine, whether active workings, inactive workings or abandoned workings,

without permission, and with the intent to commit a felony or any larceny, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than one week and not more than one month and shall be fined not less than \$1,000 nor more than \$5,000. For a second conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than one year and not more than five years and shall be fined not less than \$5,000 nor more than \$10,000. For a third or subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be confined in a correctional facility not less than five year and not more than 10 years and shall be fined not less than \$10,000, nor more than \$25,000.

(c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than one year and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That such jail term shall include actual confinement of not less than seven days.

(d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for any such person, there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than two nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000.

(e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for

not less than three nor more than 15 years and shall be fined not less than \$10,000 nor more than \$25,000.

(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass in violation of this section is liable to the property owner in the amount of twice the amount of such damage.

(g) The terms “mine”, “active workings”, “inactive workings,” and “abandoned workings” have the same meaning ascribed to such terms as set forth in §22A-1-2 of this code.

(h) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.;

And,

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

Eng. Senate Bill 635—A Bill to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8, and §5B-2A-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §11-28-1, §11-28-2, and §11-28-3; to amend and reenact §22-3-14 of said code; to amend and reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend said code by adding thereto two new sections, designated §22A-1-43 and §22A-1-44; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section, designated, §22A-2-80; to amend and reenact §22A-2A-405 of said code; to amend and reenact §22A-8-5 of said code; to amend said code by adding thereto a new section, designated §22A-8-10; to amend and reenact §61-3-12 of said code; and to amend said code by adding thereto a new section, designated

§61-3B-6, all relating generally to coal mining activities; eliminating the requirement for submission of the community impact statement; requiring review of new mining activity for submission to the Office of Coalfield Community Development; eliminating requirements for submission of certain additional information; requiring the submission of certain information related to land and infrastructure needs upon request of the Office of Coalfield Community Development; requiring and authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to mine subsidence protection for dwelling owners; creating a tax credit for post coal mine development; authorizing the Secretary of the Department of Environmental Protection to promulgate rules for permit modification and renewal fees for surface mining operations pursuant to the Water Pollution Control Act; authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to exemptions pursuant to the Aboveground Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine or appeal a violation within 30 days; requiring the Office of Miners' Health, Safety, and Training Mine Rescue Team be provided to a coal operation where the operation has no mine rescue team available within one hour's drive; permitting employers to drug test an employee involved in an accident that results in physical injuries or damage to equipment or property; requiring miners testing positive for drug use to undergo a mandatory minimum six-month suspension; eliminating timing requirements for submission of a detailed mine ventilation plan to the Director of the Office of Miners' Health, Safety, and Training; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate emergency rules for establishing a course of instruction for apprentice miners; requiring apprentice miners to work 90 days in a mine within sight and sound of a mine foreman or assistant foreman; permitting the Director of the Office of Miners' Health, Safety, and Training to decertify miners who fail to perform daily examinations; allowing the Director of the Office of Miners' Health, Safety, and Training to use the employer's tracking data of the designated daily examiner; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate rules generally; amending standards for controlling and monitoring exhaust gases for diesel-powered underground coal mining

equipment; allowing certified competent miners to supervise up to two apprentice miners; holding mine owners, the state, and person or entities engaged in rescue operations harmless for injury or death; authorizing a temporary exemption from environmental regulations during rescue operations; revoking certifications of persons convicted of mine trespass; removing underground coal mines from those places subject to the crime of unlawful entry of building other than a dwelling; creating the new criminal misdemeanor and felony offenses of mine trespass; establishing penalties for mine trespass including enhanced penalties for bodily injury or death during rescue operations; authorizing increased liability for damages caused during a mine trespass; and exempting lawful activities under the West Virginia and United States Constitutions, and state and federal law from the operation of the mine trespass criminal statute.

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

Engrossed Senate Bill 635, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 635) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard,

Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 635) 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 amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill 673, Relating to public higher education accountability and planning.

On motion of Senator Takubo, 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:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Administratively linked community and technical college” means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

(2) “Advanced technology center” means a facility established under the direction of an independent community and technical college or the council for the purpose of implementing and delivering education and training programs for high-skill, high-performance Twenty-first Century workplaces;

(3) “Approve” or “approval”, when used in reference to action by the Commission or the Council, means action in which the governance rationale of a governing board under its jurisdiction is given due consideration, and the action of the Commission is to additionally establish whether the proposed institutional action is consistent with law and established policy and is an appropriate advancement of the public interest;

(4) “Board of visitors” means the advisory board previously appointed for the West Virginia Graduate College and the advisory board previously appointed for West Virginia University Institute of Technology, which provide guidance to the Marshall University Graduate College and West Virginia University Institute of Technology, respectively;

(5) “Broker” or “brokering” means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state;

(6) “Chancellor” means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for Community and Technical College Education where the context

refers to a function of the West Virginia Council for Community and Technical College Education;

(7) “Chancellor for Community and Technical College Education” means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

(8) “Chancellor for Higher Education” means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

(9) “Collaboration” means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(10) “Community and technical college”, in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg;

(11) “Community and technical college education” means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;

(12) “Community and technical college education program” means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets;

developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are under the jurisdiction of the council. Any reference to “post-secondary vocational education programs” means community and technical college education programs as defined in this subsection;

(13) “Confirm” or “confirmation”, when used in reference to action by the Commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the Commission is to review whether the proposed institutional action is consistent with law and established policy;

(14) “Council” means the West Virginia Council for Community and Technical College Education created by article two-b of this chapter;

(15) “Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level.

(16) “Essential conditions” means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(17) “Exempted schools” means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; Fairmont State University; Shepherd University; and the West Virginia School of Osteopathic Medicine;

(18) “Free-standing community and technical colleges” means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and Eastern West Virginia Community and Technical College, which may not be operated as branches or off-campus locations of any other state institution of higher education;

(19) “Governing boards” or “boards” means the institutional boards of Governors created by section one, article two-a of this chapter;

(20) “Higher Education Policy Commission”, “Policy Commission” or “Commission” means the commission created by section one, article one-b of this chapter;

(21) “Independent community and technical college” means a state institution of higher education under the jurisdiction of the council which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

(22) “Institutional compact” means the compact developed by a state institution of higher education, consistent with the public policy agenda for higher education;

(23) “Institutional operating budget” or “operating budget” means for any fiscal year an institution’s total unrestricted education and general funding from all sources, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(24) “Rule” or “rules” means a regulation, standard, policy or interpretation of general application and future effect;

(25) “Sponsoring institution” means a state institution of higher education that maintained an administrative link to a community

and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus or a division delivering community and technical college education and programs;

(26) “State college and university” means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University or West Virginia State University;

(27) “State institution of higher education” means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

(28) “Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state; and

(29) “Vice Chancellor for Administration” means the person employed in accordance with section two, article four of this chapter. Any reference in this chapter or chapter eighteen-c of this code to “Senior Administrator” means Vice Chancellor for Administration.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-1. Master plan repealed; accountability system continued.

(a) The Legislature finds that:

(1) Accountability and strategic planning are valuable and necessary components of establishing and achieving goals for higher education in this state and fulfilling missions of the institutions;

(2) To be most effective and efficient, the accountability and strategic planning process should be coordinated, streamlined, and nonduplicative; and

(3) Redundant reporting requirements exist in the accountability and strategic planning process which serve to waste scarce resources and decrease efficiency.

(b) It is the intent of the Legislature that the accountability and strategic planning process for public higher education in this state continues in a unified and comprehensive manner while utilizing the resources of the higher education systems in an economical and efficient manner. To that end:

(1) The requirement for a statewide master plan for public higher education is repealed, and any provision of this code regarding the plan is void and of no effect;

(2) The requirements for state and institutional compacts for public higher education are repealed, and any provision of this code regarding the compacts are void and of no effect; and

(3) When collecting data from an institution, the commission and council first shall consider data generated from the unit-record student, registration, course and personnel files, the audited financial statements, and any source previously submitted formally to the commission or council from which the requested data may be obtained, so long as the data or information available through these sources reflects the most current reporting period.

§18B-1D-2. Definitions.

[Repealed]

§18B-1D-3. State vision for public higher education; findings; establishment of objectives.

[Repealed]

§18B-1D-4. Responsibilities of Higher Education Policy Commission and Council for Community and Technical College Education; development of public policy agendas; reports; institutional responsibilities.

[Repealed.]

§18B-1D-5. Master plans; reports; approval process.

[Repealed]

§18B-1D-8. ~~Institutional and system report cards~~ Publication of institution and system data.

(a) The purpose of the institutional and statewide ~~report cards~~ data reporting system is to make information available through the official websites of the commission and council to parents, students, faculty, staff, state policymakers, and the general public on the quality and performance of public higher education. ~~The focus of the report cards is to determine annual progress of the commission, the council and institutions under their respective jurisdictions toward achieving state goals and objectives identified in this article and section one a, article one of this chapter and system goals and objectives contained in the statewide master plans of the commission and council created pursuant to section five of this article.~~

(b) The information ~~contained in the report cards~~ provided through the reporting system shall be consistent and comparable between and among state institutions of higher education. If applicable, the information shall allow for easy comparison with higher education-related data collected and disseminated by the Southern Regional Education Board, the United States Department of Education and other education data-gathering and data-disseminating organizations upon which state policymakers frequently rely in setting policy.

(c) The rules required by ~~subsection (c), section one~~ of this article shall provide for the collection, analysis, and dissemination of information on the performance of the state institutions of higher education, including health sciences education, in relation to the findings, goals, and objectives set forth in this article and §18B-1-1a of this code. ~~and those contained in the statewide master plans of the commission and council developed pursuant to section five of this article~~

(1) The objective of this portion of the rule is to ensure that the Legislative Oversight Commission on Education Accountability and others identified in subsection (a) of this section are provided with full and accurate information while minimizing the institutional burden of recordkeeping and reporting.

(2) This portion of the rule shall identify various indicators of student and institutional performance that, at a minimum, must be reported annually, set forth general guidelines for the collection and reporting of data, and provide for the preparation ~~printing and distribution of report cards under this section~~ and publication of the statewide data and reports.

~~(d)~~ The report cards statewide annual report shall be analysis-driven, rather than simply data-driven, and shall present information in a format that can inform education policymaking. ~~They shall include an executive summary which outlines~~ It shall outline significant trends, ~~identifies~~ identify major areas of concern, and ~~discusses~~ discuss progress toward meeting state and system goals and objectives. ~~They~~ It shall be brief and concise, reporting required information in nontechnical language. ~~Any technical or supporting material to be included shall be contained in a separate appendix.~~

~~(e)~~ (d) The statewide ~~report card~~ data reporting system shall include the data for each separately listed, applicable indicator identified in the rule promulgated pursuant to subsection (c) of this section and the aggregate of the data for all public institutions of higher education.

~~(f)~~ (e) A statewide annual report ~~eard~~ shall be prepared using actual institutional, state, regional, and national data, as applicable and available, indicating the present performance of the individual institutions, the governing boards, and the state systems of higher education. The statewide report eards shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case the year shall be clearly noted.

~~(g)~~ (f) The president or chief executive officer of each state institution of higher education shall prepare and submit annually all requested data to the commission at the times established by the commission.

~~(h)~~ (g) The higher education central office staff, under the direction of the vice chancellor for administration, shall provide technical assistance to each institution and governing board in data collection and reporting and is responsible for assembling the statewide annual report ~~eard~~ from information submitted by each governing board.

~~(i)~~ (h) Current data shall be published to the statewide data reporting system prior to January 1 annually. The statewide annual report shall be completed and disseminated with copies to the Legislative Oversight Commission on Education Accountability prior to January 1 ~~of each year annually~~, and the staff of the commission and the council shall prepare a report highlighting specifically the trends, progress toward meeting goals and objectives, and major areas of concern for public higher education, including medical education, for presentation to the Legislative Oversight Commission on Education Accountability annually at the interim meetings in January. ~~2009, and annually thereafter.~~

~~(j) For a reasonable fee-~~

(i) The vice chancellor for administration shall make ~~copies a~~ digital copy of the statewide annual report eards, including any appendices of supporting material, available to any individual requesting them available to the public for download from the official websites of the commission and council.

ARTICLE 7. PERSONNEL GENERALLY.**§18B-7-8. Reporting.**

[Repealed]

**CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS
AND STATE AID.****ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.****§18C-1-1. Legislative findings; purpose; administration generally; reporting.**

(a) The Legislature makes the following findings:

(1) Although enrollments in institutions of higher education in this state and throughout the nation continue to increase at a rapid pace, West Virginia has not developed sufficiently the state's human talent and resources because many able, but needy, students are not able to finance a higher education program;

(2) The state can achieve its full economic and social potential only when the following elements are in place:

(A) Every individual has the opportunity to contribute to the full extent of his or her capability; and

(B) The state assists in removing financial barriers to the individual's education goals that remain after he or she has used all resources and work opportunities available;

(b) The ultimate state goal in providing student financial aid is to create a culture that values education, to improve the quality of the workforce, and to enhance the quality of life for the citizens of West Virginia.

(c) The vice chancellor for administration has a ministerial duty to administer, oversee, and monitor all state and federal student financial aid programs administered at the state level in accordance with established rules under the direction of the commission and

council and in consultation with the Higher Education Student Financial Aid Advisory Board.

(d) These programs include, but are not limited to, the following programs:

(1) The Guaranteed Student Loan Program, which may be administered by a private nonprofit agency;

(2) The Medical Student Loan Program;

(3) The Underwood-Smith Teacher Scholarship Program;

(4) The Engineering, Science and Technology Scholarship Program;

(5) The West Virginia Higher Education Grant Program;

(6) The Higher Education Adult Part-Time Student Grant Program;

(7) The West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program;

(8) The Higher Education Student Assistance Loan Program established pursuant to ~~article twenty-two d, chapter eighteen~~ §18-22D-1 et seq. of this code;

(9) The West Virginia College Prepaid Tuition and Savings Program established pursuant to ~~article thirty, chapter eighteen~~ §18-30-1 et seq. of this code, which is administered by the state Treasurer;

(10) The state aid programs for students of optometry, pursuant to ~~article three~~ §18C-3-1 et seq. of this ~~chapter~~ code;

(11) The state aid programs for students of veterinary medicine pursuant to ~~section six-a, article eleven, chapter eighteen~~ §18-11-6a of this code;

(12) Any reciprocal program and contract program for student aid established pursuant to ~~sections three and four, article four, chapter eighteen b~~ §18B-4-3 and §18B-4-4 of this code;

(13) Any other state-level student aid programs in this code; and

(14) Any federal grant or contract student assistance or support programs administered at the state level.

(e) Notwithstanding any provision of this chapter to the contrary, the Vice Chancellor for Administration shall ~~prepare a single, comprehensive report~~ publish comprehensive data to the official websites of the commission and council regarding the implementation of the financial aid programs identified in subsection (d) of this section which are administered under his or her supervision. ~~The~~ A concise summary report shall be provided to the commission and the council and shall be presented to the Legislative Oversight Commission on Education Accountability no later than ~~November 30, 2009, and annually thereafter~~ January 1 annually. The report shall address all financial aid issues for which reports are required in this code, as well as any findings and recommendations.;

And,

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

Eng. Senate Bill 673—A Bill to repeal §18B-1D-2, §18B-1D-3, §18B-1D-4, and §18B-1D-5 of the Code of West Virginia, 1931, as amended; to repeal §18B-7-8 of said code; to amend and reenact §18B-1D-1 and §18B-1D-8 of said code; and to amend and reenact §18C-1-1 of said code, all relating to public higher education governance, accountability and planning; changing the definition of exempted schools; ensuring efficiency in planning and accountability; modifying the data collection and reporting processes; eliminating the requirement for a statewide master plan for public higher education; eliminating the requirement for state and institutional compacts for public higher education; eliminating

the requirement for a human resources report card for public higher education; modifying the reporting methods for certain institutional and statewide reports; modifying the reporting method for the student financial aid report card for public higher education; and continuing the accountability system for public higher education.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 673) 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.

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

Eng. House Bill 2209, Allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2209) 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 2378, Relating generally to grounds for revocation of a teaching certificate.

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

On motion of Senator Rucker, the Senate reconsidered the vote by which on yesterday, Thursday, March 7, 2019, it adopted the Education committee amendments to the bill (*shown in the Senate Journal of that day, page 2191*).

The vote thereon having been reconsidered,

The question again being on the adoption of the Education committee amendments to the bill.

Thereafter, at the request of Senator Rucker, as chair of the Committee on Education, and by unanimous consent, the Education committee amendments to the bill were withdrawn.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2378) was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2378) passed.

At the request of Senator Rucker, as chair of the Committee on Education, and by unanimous consent, the unreported Education 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.

At the request of Senator Trump, unanimous consent being granted, Senator Trump announced a meeting of the committee of conference on Engrossed Committee Substitute for Senate Bill 295.

Eng. Com. Sub. for House Bill 2396, West Virginia Fresh Food 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: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2396) passed.

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

Eng. Com. Sub. for House Bill 2396—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-37-1, §19-37-2, and §19-37-3, all relating to requiring all state-funded institutions to purchase a minimum of five percent of fresh produce, meat and poultry products from in-state producers if available; providing legislative findings and purpose; and establishing rule-making authority and enforcement authority.

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

Eng. House Bill 2412, Relating to criminal acts concerning government procurement of commodities and 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: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2412) 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 2412—A Bill to repeal §5A-3-28, §5A-3-30, and §5A-3-31 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §61-5B-1, §61-5B-2, and §61-5B-3, all relating to state purchasing; moving and modifying certain criminal provisions relating to government procurement from chapter 5A of the code to chapter 61; defining terms; prohibiting persons purchasing commodities and services for a governmental entity from having an interest in entities selling or contracting to sell commodities or services to a governmental entity; prohibiting persons purchasing commodities or services for a governmental entity from accepting things of value from persons selling, attempting to sell, or contracting to sell commodities or services to a governmental entity; prohibiting

persons or entities attempting to sell or selling commodities to a governmental entity from offering anything of value to the person acting as a governmental entity's agent; prohibiting delivery and acceptance of inferior commodities or services, authorizing change orders made in good faith from prohibited conduct; creating exceptions to prohibited conduct consistent with state ethics law; and establishing 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 2422, Relating to the time for the observation of "Celebrate Freedom Week".

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2422) 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 2486, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: Tarr—1.

Absent: Mann—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. 2486) 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 2486—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22; and to amend and reenact §30-5-11, §30-5-11a, §30-10-8, §30-10-10, §30-13A-9, §30-13A-12, §30-14-11, §30-20-8, §30-20-10, §30-21-7, §30-22-10, §30-23-9, §30-23-15, §30-23-17, §30-23-20, §30-25-8, §30-26-5, §30-26-13, §30-30-8, §30-30-10, §30-30-12, §30-30-14, §30-30-26, §30-31-8, §30-31-9, §30-38-12 and §30-39-6 of said code, all relating to the use of post-criminal conduct in professional and occupational initial licensure decision making; creating a rational nexus requirement between prior criminal conduct and initial licensure decision making; removing offenses of moral turpitude as to basis for license denial; authorizing persons to petition licensure boards for a determination as to whether a person's criminal record precludes licensure; limiting licensure disqualification.

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 2524, Permitting a pharmacist to convert prescriptions authorizing refills under certain circumstances.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2524) 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 2541, Requiring certain safety measures be taken at public 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: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2541) 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 2601, Relating to the review and approval of state property leases.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2601) 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 2661, Relating to natural gas utilities.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2661) 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 2662, Relating to certificates or employment of school personnel.

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

On motion of Senator Rucker, the Senate reconsidered the vote by which on yesterday, Thursday, March 7, 2019, it adopted the Education committee amendments to the bill (*shown in the Senate Journal of that day, page 2240*).

The vote thereon having been reconsidered,

The question again being on the adoption of the Education committee amendments to the bill.

Thereafter, at the request of Senator Rucker, as chair of the Committee on Education, and by unanimous consent, the Education committee amendments to the bill were withdrawn.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2662) was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—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. 2662) passed.

At the request of Senator Rucker, as chair of the Committee on Education, and by unanimous consent, the unreported Education 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 2715, Relating to Class Q special hunting permit for disabled persons.

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 2715 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2715) passed with its title.

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

Eng. House Bill 2716, Relating to vessel lighting and equipment requirements.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2716) passed with its title.

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

Eng. House Bill 2739, Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2739) 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 2768, Reducing the use of certain prescription 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: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Weld—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. 2768) 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 2809, Relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area.

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 2809 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Mann, Maroney, Palumbo, Plymale, Prezioso,

Roberts, Romano, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Woelfel, and Carmichael (Mr. President)—29.

The nays were: Facemire, Lindsay, Maynard, and Stollings—4.

Absent: Weld—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. 2809) passed with its title.

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

Eng. House Bill 2816, Removing the terms “hearing impaired,” “hearing impairment,” and “deaf mute” from the West Virginia Code and substituting terms.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Weld—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2816) 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 2831, 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, with the unreported Finance committee amendments pending, and with the right having been granted on yesterday, Thursday, March 7, 2019, for amendments to be received on third reading, was reported by the Clerk.

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

On page five, section one, subsection (j), after item (45), by inserting a new item, designated item (46), to read as follows:

“(46) Wilson Restoration, Inc.\$29,000.00”;

And,

By renumbering the remaining items.

On motion of Senator Sypolt, the following amendments to the bill (Eng. Com. Sub. for H. B. 2831) were next reported by the Clerk, considered simultaneously, and adopted:

On page twelve, section one, item (139), by striking out “\$8,500.00” and inserting in lieu thereof “\$5,525.00”;

On page twenty-five, section one, item (492), by striking out “\$215,000.00” and inserting in lieu thereof “\$139,750.00”;

And,

On page twenty-five, section one, item (493), by striking out “\$42,750.00” and inserting in lieu thereof “\$27,787.50”.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for House Bill 2831), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton,

Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Weld—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. 2831) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Weld—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. 2831) 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 2846, Designating a “Back the Blue” plate in support of law-enforcement 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: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard,

Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Weld—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2846) passed.

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

Eng. House Bill 2846—A Bill to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to special vehicle registration plates; designating a “Back the Blue” plate in support of law-enforcement personnel; designating a special beekeeper pollinator plate; establishing fees related to plates; and permitting extension of registration fee exemption to military-related special registration plates.

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

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

On motion of Senator Takubo, at 2:58 p.m., the Senate recessed until 3:30 p.m. today.

The Senate reconvened at 3:53 p.m. 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, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 4, Relating generally to Municipal Home Rule Program.

On motion of Senator Takubo, 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:

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule ~~Pilot~~ Program.

(a) *Legislative findings.*— The Legislature finds and declares that:

(1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;

(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

(5) Municipalities are sometimes restrained by state statutes, policies, and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient, and timely manner;

~~(6) Continuing the Municipal Home Rule Pilot Program is in the public interest~~ Establishing the Municipal Home Rule Pilot Program as a permanent program is in the public interest; and

(7) Increasing the powers and duties of the Municipal Home Rule Board, subject to the limitations set forth herein, will enhance the Municipal Home Rule ~~Pilot~~ Program.

~~(b) Continuance of pilot program.~~ — ~~The Municipal Home Rule Pilot Program is continued until July 1, 2019. The ordinances enacted by the participating municipalities pursuant to the Municipal Home Rule Pilot Program may remain in effect, subject to the requirements of this section, until the ordinances are repealed: Provided, That any ordinance enacting a municipal occupation tax is hereby null and void.~~

(b) The Municipal Home Rule Pilot Program is established as a permanent program and shall be identified as the Municipal Home Rule Program. Any plan or amendment to a plan approved by the board during the period of the Municipal Home Rule Pilot Program is continued. Any ordinance, act, resolution, rule, or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect unless and until repealed: Provided, That municipalities that are participants in the Municipal Home Rule Program shall update their ordinances, acts, resolutions, rules, and regulations to comply with any additions or modifications to subsection (i), subsection (j), or subsection (k) of this section.

~~(c) Authorizing participation.~~ —

(1) Commencing ~~July 1, 2015~~ July 1, 2019, ~~30~~ any Class I, Class II, ~~and~~ or Class III ~~municipalities~~ municipality that is ~~and four Class IV municipalities that are current in payment of all state fees may apply to participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section. Also, commencing July 1, 2019, up to four applications per year from Class IV municipalities may be approved by the board for participation in the Municipal Home Rule Program pursuant to the~~

provisions of this section, provided the Class IV municipality is current in payment of all state fees.

(2) The municipalities participating in the ~~pilot program~~ Municipal Home Rule Pilot Program on the effective date of the amendment and reenactment of this section are hereby authorized to continue in the ~~pilot program~~ Municipal Home Rule Program, subject to the requirements of this section, and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.

(3) On July 1, 2019, all municipalities currently participating in the Municipal Home Rule Pilot Program shall pay an annual assessment of \$2,000 for the operation and administration of the Home Rule Board. On July 1 of each year thereafter, all municipalities participating in the Municipal Home Rule Program as of that date shall pay the annual assessment. Any participating municipality that fails to timely remit its assessment when due may be assessed a penalty of an additional \$2,000 by the board.

(4) There is created in the office of the State Treasurer a special revenue account fund to be known as the Home Rule Board Operations Fund. The assessments required by the provisions of subdivision (3) of this subsection shall be deposited into the fund, and expenditures from the fund shall be made in accordance with appropriation of the Legislature under the provisions of §12-3-1 et seq. of this code, and in compliance with the provisions of §11B-2-1 et seq. of this code: Provided, That legislative appropriation is not required during fiscal year 2019.

(5) Any balance in the fund created under subdivision (4) of this subsection at the end of a fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account for uses consistent with the provisions of this section.

(6) All costs and expenses lawfully incurred by the board may be paid from the fund created under subdivision (4) of this subsection.

(7) Notwithstanding any provision of this section to the contrary, if at the end of a fiscal year the unencumbered balance of the fund created in subdivision (4) of this subsection is \$200,000 or more, then annual assessments shall be suspended until the board determines that the unencumbered balance in the fund is insufficient to meet operational expenses. The board shall notify all participating municipalities of the suspension of the annual assessment prior to the end of the fiscal year and provide an estimate of when payment of annual assessments will resume.

(d) *Municipal Home Rule Board.*— The Municipal Home Rule Board is hereby continued. ~~Effective July 1, 2015, the~~ The Municipal Home Rule Board shall consist of the following five voting members:

(1) The Governor, or a designee, who shall serve as chair;

(2) The Executive Director of the West Virginia Development Office, or a designee;

(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;

(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

(5) One member representing the West Virginia Chapter of the ~~American Institute of Certified Planners~~ Planning Association, appointed by the Governor with the advice and consent of the Senate.

The Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall ~~continue to be~~ serve as ex officio nonvoting members of the board.

(e) *Board's powers and duties.*— The Municipal Home Rule Board ~~has the following powers and duties~~ shall:

(1) Review, evaluate, make recommendations, and approve or reject, for any lawful reason, by a majority vote of the board, each aspect of the written plan, or the written plan in its entirety, submitted by a municipality;

(2) By a majority vote of the board, select, based on the municipality's written plan, new Class I, Class II, Class III, and/or Class IV municipalities to participate in the Municipal Home Rule ~~Pilot~~ Program;

(3) Review, evaluate, make recommendations, and approve or reject, for any lawful reason, by a majority vote of the board, the amendments to the existing approved written plans submitted by municipalities: Provided, That any new application or amendment that does not reasonably demonstrate the municipality's ability to manage its associated costs or liabilities shall be rejected;

(4) Consult with any agency affected by the written plans or the amendments to the existing approved written plans; and

(5) Perform any other powers or duties necessary to effectuate the provisions of this section: Provided, That any administrative rules established by the board for the operation of the Municipal Home Rule Program shall be published on the Municipal Home Rule Board's website, and made available to the public in print upon request.

(f) *Written plan*.— Any Class I, Class II, Class III, or Class IV municipality desiring to participate in the Municipal Home Rule ~~Pilot~~ Program, or any municipality desiring to amend its existing approved written plan, shall submit a written plan to the board stating in detail the following:

(1) The specific laws, acts, resolutions, policies, rules, or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective, and timely manner;

(2) The problems created by ~~the~~ those laws, acts, resolutions, policies, rules, or regulations;

(3) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules, and regulations: *Provided*, That the specific municipal ordinance instituting the solution does not have to be included in the written plan; and

(4) A written opinion, by an attorney licensed to practice in the State of West Virginia, stating that the proposed written plan does not violate the provisions of this section.

(g) *Public hearing on written plan.*— Prior to submitting its written plan, or an amendment to an existing approved written plan, to the board, the municipality shall:

(1) Hold a public hearing on the written plan or the amendment to the existing approved written plan;

(2) Provide notice of the public hearing at least 30 days prior to the public hearing by a Class II legal advertisement: *Provided*, That on or before the first day of publication, the municipality shall send a copy of the notice by certified mail to the Municipal Home Rule Board and the cabinet secretary of every state department;

(3) Make a copy of the written plan or amendment available for public inspection at least 30 days prior to the public hearing; and

(4) After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan or amendment to the Municipal Home Rule Board: ~~after~~ *Provided*, That the proposed ordinance has been read two times, as required by §8-11-4 of this code.

(h) *Selection of municipalities.*— ~~On or after June 1, 2015~~, by By a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote new Class I, Class II, Class III, and/or Class IV municipalities to participate in the Municipal Home Rule ~~Pilot~~ Program.

(i) *Powers and duties of municipalities.*— The municipalities participating in the Municipal Home Rule ~~Pilot~~ Program ~~have the~~

~~authority to~~ may not pass an ordinance, act, resolution, rule, or regulation, under the provisions of this section, that is ~~not~~ contrary to the following:

- (1) Environmental law;
- (2) Laws governing bidding on government construction and other contracts;
- (3) The Freedom of Information Act;
- (4) The Open Governmental Proceedings Act;
- (5) Laws governing wages for construction of public improvements;
- (6) The provisions of this section;
- (7) The provisions of §8-12-5a of this code;
- (8) The municipality's written plan;
- (9) The Constitution of the United States or the Constitution of the State of West Virginia;
- (10) Federal law, including those governing ~~or~~ crimes and punishment;
- (11) Chapters 60A, 61, and 62 of this code or any other provisions of this code governing state crimes and punishment;
- (12) Laws governing pensions or retirement plans;
- (13) Laws governing annexation;
- (14) Laws governing taxation: *Provided*, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or eliminates its municipal business and occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program, it shall reduce or

eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program or the Municipal Home Rule Program in an amount comparable to the revenue estimated to be generated by the reinstated tax: *Provided further,* That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce, and collect the tax ~~in the same manner as the state consumers sales and service tax and use tax under~~ required by the provisions of §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code and all applicable provisions of the Streamlined Sales and Use Tax Agreement: *And provided further,* That ~~such~~ the tax will ~~does~~ not apply to the sale of motor fuel or motor vehicles;

(15) Laws governing tax increment financing;

(16) Laws governing extraction of natural resources; ~~and~~

(17) Marriage and divorce laws;

(18) Laws governing professional licensing or certification, including the administration and oversight of those laws, by state agencies to the extent required by law;

(19) Laws, rules, or regulations governing the enforcement of state building or fire codes;

(20) Federal laws, regulations, or standards that would affect the state's required compliance or jeopardize federal funding;

(21) Laws or rules governing procurement of architectural and engineering services: *Provided,* That notwithstanding any other provision of this section to the contrary, the change made in this subdivision applies prospectively and any ordinance enacted by the participating municipalities prior to the effective date of the amendments to this section during the 2019 Regular Legislative Session and pursuant to the Municipal Home Rule Pilot Program remains in effect.

(22) The provisions of chapter 17C of this code; or

(23) Laws, rules, or regulations governing communication technologies or telecommunications carriers, as the term “telecommunications carrier” is defined by the Federal Communications Commission in 47 U.S.C. §153 or as determined by the Public Service Commission of West Virginia.

(24) Laws governing the sale, transfer, possession, use, storage, taxation, registration, licensing or carrying firearms, ammunition or accessories thereof.

(j) Municipalities The municipalities participating in the Municipal Home Rule Program may not pass an ordinance, act, resolution, rule, or regulation under the provisions of this section that:

(1) Affects persons or property outside the boundaries of the municipality: *Provided*, That this prohibition under the Municipal Home Rule ~~Plan~~ Program does not limit a municipality’s powers outside its boundary lines to the extent permitted under other provisions of this section, other sections of this chapter, other chapters of this code, or court decisions; ~~or~~

(2) Enacts an occupation tax, fee, or assessment payable by a nonresident of a municipality; or

(3) Imposes duties on another governmental entity, unless the performance of the duties is part of a legally executed agreement between the municipality and the other governmental entity, or is otherwise permitted by state law;

(k) Municipalities may not prohibit or effectively limit the rental of a property, in whole or in part, or regulate the duration, frequency, or location of such rental, in whole or in part. A municipality may regulate activities that arise when a property is used as a rental: *Provided*, That such regulation applies uniformly to all properties, without regard to whether such properties are used as a rental: *Provided, however*, That nothing in this subdivision may be construed to prohibit a municipality from imposing a hotel occupancy tax as prescribed in §7-18-1 *et seq.* of this code.

~~(l) Amendments to written plans.~~— A municipality participating in the Municipal Home Rule Pilot Program may amend its written plan at any time subject to the requirements of this section.

~~(i) (m) Amendments to ordinances, acts, resolutions, rules, or regulations.~~— A municipality participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution, rule, or regulation enacted pursuant to the municipality's approved written plan at any time ~~so~~ as long as any the amendment is consistent with the municipality's approved written plan, as modified by any amendments adopted pursuant to this section, complies with the provisions of ~~subsections (i) and (j) of this section,~~ and the municipality complies with all applicable state law procedures for enacting municipal legislation.

~~(m) (n) Reporting requirements.~~— ~~Commencing On or before December 1, 2015, and of each year thereafter,~~ each participating municipality shall give a written progress report to the Municipal Home Rule Board, and ~~commencing on or before January 1, 2016, and of each year thereafter,~~ the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

~~(n) Termination of the pilot program.~~— ~~The Municipal Home Rule Pilot Program terminates on July 1, 2019. An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed~~

(o) Notwithstanding any other provision of this code to the contrary, ~~on and after the effective date of the enactment of this provision in 2015,~~ no a distributee under the provisions of this section may not seek from the Tax Division of the Department of Revenue a refund of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek a change in past amounts distributed, or any other retrospective adjustment relating to any amount distributed, to the extent that the moneys in question have been distributed by the Tax Division to

another distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous, misdirected, or otherwise inaccurate or incorrect. For purposes of this section, the term “distributee” means any municipality that has enacted a sales and use tax under this section or as otherwise permitted by law that receives or is authorized to receive a specific distribution of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue pursuant to this section.

On motion of Senator Weld, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 4) 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 Senate Bill 4—A Bill to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended, relating to municipal home rule; making legislative findings; establishing the Municipal Home Rule Pilot Program as a permanent program identified as the Municipal Home Rule Program; providing for continuation of plans and amendments approved during Municipal Home Rule Pilot Program; providing that any ordinance, act, resolution, rule, or regulation enacted pursuant to the Municipal Home Rule Pilot Program shall continue until repealed; expanding eligibility to participate in home rule to additional municipalities; establishing annual assessment for participants in Municipal Home Rule Program; establishing penalty for failing to timely pay annual assessment; creating special revenue account for Municipal Home Rule Board; authorizing certain expenditures from special revenue fund; providing suspension of annual assessment when certain conditions are met; clarifying the authority of the Municipal Home Rule Board; requiring Municipal Home Rule Board to reject any application or amendment that does not reasonably demonstrate municipality’s ability to manage related costs or liabilities; requiring publication of administrative rules of Municipal Home Rule Board on its website and made available to the public in print upon request; clarifying procedures related to submitting amendment to approved plan; requiring certain notice prior to

proposing or amending a plan; requiring public hearing and notice of hearing prior to municipality proposing a plan or amendment; amending certain prohibitions on the powers and duties of municipalities under home rule; providing more specific direction regarding the requirements for municipalities participating in the Municipal Home Rule Program that reinstate or raise business and occupation taxes and its impact on municipal sales tax in certain circumstances; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws governing professional licensing or certification of employees; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing enforcement of building codes or fire codes; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to federal laws, regulations, or standards that would affect state's required compliance or jeopardize federal funding; prohibiting municipalities participating in the Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws or rules governing procurement of architectural and engineering services with certain exceptions; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to chapter 17C of the Code of West Virginia, 1931, as amended; prohibiting municipalities participating in the Municipal Home Rule Program from passing an ordinance, act, resolution, rule, or regulation contrary to laws, rules, or regulations governing communication technologies or telecommunication carriers; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that governs the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or accessories thereof; prohibiting municipalities participating in the Municipal Home Rule Program from enacting any ordinance, act, resolution, rule, or regulation that imposes duties on another governmental entity and providing certain exceptions to that prohibition; prohibiting municipalities from

prohibiting or effectively limiting the rental of a property or regulating the duration, frequency, or location of such rental and providing certain exceptions to that prohibition and limitation; modifying reporting requirements; eliminating automatic termination of the Municipal Home Rule Pilot Program on July 1, 2019; and making technical corrections throughout.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 4, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 4) 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.

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 600, Relating to preservation of biological evidence obtained through criminal investigations and trials.

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

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

On page one, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

§15A-1-8. Preservation of biological evidence from criminal cases; directing Secretary to undertake a study and report to the Legislature.;

And,

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

Eng. Com. Sub. for Senate Bill 600—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-1-8, relating generally to preservation of biological evidence obtained through criminal investigations and criminal trials; directing the Secretary of Military Affairs and Public Safety to investigate methods of storage and preservation of biological materials obtained by law enforcement in criminal investigations and criminal prosecutions; directing the Secretary of Military Affairs and Public Safety to submit to the Senate President and Speaker of the House of Delegates a proposed plan, along with proposed legislation, creating a program for the centralized storage and preservation of biological evidence obtained in criminal investigations and criminal trials throughout the state; requiring that such plan and proposed legislation be submitted on or before January 1, 2020; and defining terms.

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

Engrossed Committee Substitute for Senate Bill 600, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 600) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 600) 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 amendment, as amended by the House of Delegates, passage as amended, to take effect from passage, and requested the concurrence of the

Senate in the House of Delegates amendment to the Senate amendment, as to

Eng. Com. Sub. for House Bill 2020, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

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

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

By striking out the Senate amendment in its entirety and inserting in lieu thereof the following:

A Bill making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

TITLE I – GENERAL PROVISIONS.

Section 1. General policy. – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2020.

Sec. 2. Definitions. — For the purpose of this bill:

“Governor” shall mean the Governor of the State of West Virginia.

“Code” shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year 2020” shall mean the period from July 1, 2019, through June 30, 2020.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

“Special revenue funds” shall mean specific revenue sources which by legislative enactments are not required to be accounted for as general revenue, including federal funds.

“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

Sec. 3. Classification of appropriations. — An appropriation for:

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. “Personal services” shall include “annual increment” for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation

be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its “unclassified” appropriation, or its “current expenses” appropriation or other appropriate appropriation. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation and workers compensation. Such expenditures shall be considered an employee benefit.

“BRIM Premiums” shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for “BRIM Premium” be insufficient to cover such cost, the remainder of such costs shall be paid by each spending unit from its “unclassified” appropriation, its “current expenses” appropriation or any other appropriate appropriation to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments. If there is no appropriation for “BRIM Premium” such costs shall be paid by each spending unit from its “current expenses” appropriation, “unclassified” appropriation or other appropriate appropriation.

West Virginia Council for Community and Technical College Education and Higher Education Policy Commission entities operating with special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

“Current expenses” shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands. Each spending unit shall be

responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

From appropriations made to the spending units of state government, upon approval of the Governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided*, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however*, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services and employee benefits” appropriation unless the source funds are also wholly from a “personal services and

employee benefits” line, or unless the source funds are from another appropriation that has exclusively funded employment expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to “personal services and employee benefits,” “current expenses,” “repairs and alterations,” “equipment,” “other assets,” “land,” and “buildings” to other appropriations within the same account and no funds from other appropriations shall be transferred to the “personal services and employee benefits” or the “unclassified” appropriation: *And provided further*, That no authority exists hereunder to transfer funds into appropriations to which no funds are legislatively appropriated: *And provided further*, That if the Legislature consolidates, reorganizes or terminates agencies, boards or functions, the secretary or other appropriate agency head, or in the case of the termination of a spending unit of the state, the Director of the State Budget Office, in the absence of general law providing otherwise, may transfer the funds formerly appropriated to such agency, board or function, allocating items of appropriation as may be necessary if only part of the item may be allocated, in order to implement such consolidation, reorganization or termination. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.

Sec. 4. Method of expenditure. — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

Sec. 5. Maximum expenditures. — No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

TITLE II – APPROPRIATIONS.

ORDER OF SECTIONS

- SECTION 1. Appropriations from general revenue.
- SECTION 2. Appropriations from state road fund.
- SECTION 3. Appropriations from other funds.
- SECTION 4. Appropriations from lottery net profits.
- SECTION 5. Appropriations from state excess lottery revenue.
- SECTION 6. Appropriations of federal funds.
- SECTION 7. Appropriations from federal block grants.
- SECTION 8. Awards for claims against the state.
- SECTION 9. Appropriations from general revenue surplus accrued.
- SECTION 10. Appropriations from lottery net profits surplus accrued.
- SECTION 11. Appropriations from state excess lottery revenue surplus accrued.
- SECTION 12. Special revenue appropriations.
- SECTION 13. State improvement fund appropriations.

SECTION 14. Specific funds and collection accounts.

SECTION 15. Appropriations for refunding erroneous payment.

SECTION 16. Sinking fund deficiencies.

SECTION 17. Appropriations for local governments.

SECTION 18. Total appropriations.

SECTION 19. General school fund.

Section 1. Appropriations from general revenue. – From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2020.

LEGISLATIVE

1 - Senate

Fund 0165 FY 2020 Org 2100

	Appropriation	General Revenue Fund
Compensation of Members (R).....00300	\$	1,010,000
Compensation and Per Diem of Officers and Employees (R)00500		4,011,332
Current Expenses and Contingent Fund (R) .02100		276,392
Repairs and Alterations (R)06400		50,000
Computer Supplies (R)10100		20,000
Computer Systems (R).....10200		60,000
Printing Blue Book (R)10300		125,000
Expenses of Members (R).....39900		370,000
BRIM Premium (R)91300		<u>29,482</u>
Total.....	\$	<u>5,952,206</u>

The appropriations for the Senate for the fiscal year 2019 are to remain in full force and effect and are hereby reappropriated to

June 30, 2020. Any balances so reappropriated may be transferred and credited to the fiscal year 2019 accounts.

Upon the written request of the Clerk of the Senate, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the Auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

The distribution of the blue book shall be by the office of the Clerk of the Senate and shall include 75 copies for each member of the Legislature and two copies for each classified and approved high school and junior high or middle school and one copy for each elementary school within the state.

Included in the above appropriation for Senate (fund 0165, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

2 - House of Delegates

Fund 0170 FY 2020 Org 2200

Compensation of Members (R).....00300	\$	3,000,000
Compensation and Per Diem of Officers and Employees (R)		00500 575,000
Current Expenses and Contingent Fund (R) .02100		4,399,031
Expenses of Members (R).....39900		1,350,000
BRIM Premium (R)		91300 80,000
Total.....	\$	9,404,031

The appropriations for the House of Delegates for the fiscal year 2019 are to remain in full force and effect and are hereby reappropriated to June 30, 2020. Any balances so reappropriated may be transferred and credited to the fiscal year 2019 accounts.

Upon the written request of the Clerk of the House of Delegates, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of

Delegates' offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Speaker of the House of Delegates shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution, and the compensation of all personnel shall be as fixed in such House resolution for the session, or fixed by the Speaker during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House of Delegates is hereby authorized to draw requisitions upon the Auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in the House resolution, unless increased between sessions under the authority of the Speaker and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

Included in the above appropriation for House of Delegates (fund 0170, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

3 - Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2020 Org 2300

Joint Committee on

Government and Finance (R).....	10400	\$ 6,725,138
Legislative Printing (R).....	10500	260,000
Legislative Rule-Making		
Review Committee (R).....	10600	147,250
Legislative Computer System (R).....	10700	1,447,500
Legislative Fees & Dues (R).....	#####	600,000

BRIM Premium (R)	91300	60,569
Total.....		\$ 9,240,457

The appropriations for the Joint Expenses for the fiscal year 2019 are to remain in full force and effect and are hereby reappropriated to June 30, 2020. Any balances reappropriated may be transferred and credited to the fiscal year 2019 accounts.

Upon the written request of the Clerk of the Senate, with the approval of the President of the Senate, and the Clerk of the House of Delegates, with the approval of the Speaker of the House of Delegates, and a copy to the Legislative Auditor, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

JUDICIAL

4 - Supreme Court –

General Judicial

Fund 0180 FY 2020 Org 2400

Personal Services and

Employee Benefits (R)	00100	\$ 110,767,344
Intermediate Court of Appeals.....	09001	0
Military Service Members Court (R).....	#####	300,000
Current Expenses (R).....	13000	9,943,616
Repairs and Alterations (R)	06400	10,000
Equipment (R).....	07000	1,600,000
Judges' Retirement System (R).....	11000	791,000
Buildings (R).....	25800	20,000
Other Assets (R).....	69000	200,000
BRIM Premium (R)	91300	<u>690,384</u>
Total.....		\$ 124,322,344

The appropriations to the Supreme Court of Appeals for the fiscal years 2017, 2018 and 2019 are to remain in full force and effect and are hereby reappropriated to June 30, 2020. Any balances so reappropriated may be transferred and credited to the fiscal year 2019 accounts.

This fund shall be administered by the Administrative Director of the Supreme Court of Appeals, who shall draw requisitions for warrants in payment in the form of payrolls, making deductions there from as required by law for taxes and other items.

The appropriation for the Judges’ Retirement System (fund 0180, appropriation 11000) is to be transferred to the Consolidated Public Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5 - Governor’s Office

(WV Code Chapter 5)

Fund 0101 FY 2020 Org 0100

Personal Services and Employee Benefits00100	\$	3,250,758
Current Expenses (R).....13000		800,000
Repairs and Alterations.....06400		25,000
National Governors Association12300		60,700
Herbert Henderson		
Office of Minority Affairs13400		146,726
BRIM Premium.....91300		<u>183,645</u>
Total.....	\$	4,466,829

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), and Current Expenses (fund 0101, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, appropriation 13400) shall be transferred to the Minority Affairs Fund (fund 1058).

6 - Governor’s Office –

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2020 Org 0100

Personal Services and Employee Benefits00100	\$	381,293
Current Expenses (R)	13000	183,158
Repairs and Alterations	06400	<u>5,000</u>
Total	\$	569,451

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Appropriations are to be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

*7 - Governor's Office –**Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2020 Org 0100

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), and Natural Disasters – Surplus (fund 0105, appropriation 76400) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed \$1,000 as West Virginia's contribution to the interstate oil compact commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor's Office.

8 - Auditor's Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2020 Org 1200

Personal Services and Employee Benefits00100	\$ 2,797,589
Current Expenses (R).....13000	13,429
BRIM Premium.....91300	<u>12,077</u>
Total.....	\$ 2,823,095

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0116, appropriation 00100), is \$95,000 for the Salary of the Auditor.

9 - Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2020 Org 1300

Personal Services and Employee Benefits00100	\$ 2,561,063
Unclassified.....09900	30,415
Current Expenses (R).....13000	782,911
Abandoned Property Program.....11800	41,794
Other Assets.....69000	10,000

ABLE Program	69201	150,000
BRIM Premium.....	91300	<u>59,169</u>
Total.....		\$ 3,635,352

Any unexpended balances remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0126, appropriation 00100), is \$95,000 for the Salary of the Treasurer.

10 - Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2020 Org 1400

Personal Services and Employee Benefits	00100	\$ 6,346,674
Animal Identification Program	03900	131,942
State Farm Museum	05500	87,759
Current Expenses (R)	13000	141,960
Gypsy Moth Program (R)	11900	1,003,440
WV Farmers Market	12801	150,467
Black Fly Control.....	13700	453,698
Donated Foods Program	36300	45,000
Veterans to Agriculture Program (R).....	36301	255,624
Predator Control (R)	47000	176,400
Bee Research.....	69100	70,634
Microbiology Program.....	78500	99,828
Moorefield Agriculture Center	78600	975,284
Chesapeake Bay Watershed.....	83000	112,427
Livestock Care Standards Board.....	84300	8,820
BRIM Premium.....	91300	138,905
State FFA-FHA Camp and Conference Center	94101	638,554
Threat Preparedness	94200	73,122
WV Food Banks.....	96900	126,000

Senior's Farmers' Market Nutrition

Coupon Program.....	97000	<u>55,835</u>
Total.....		\$ 11,092,373

Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Veterans to Agriculture Program (fund 0131, appropriation 36301), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0131, appropriation 00100), is \$95,000 for the Salary of the Commissioner.

The above appropriation for Predator Control (fund 0131, appropriation 47000) is to be made available to the United States Department of Agriculture, Wildlife Services to administer the Predator Control Program.

A portion of the Current Expenses appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

From the above appropriation for WV Food Banks (fund 0131, appropriation 96900), \$20,000 is for House of Hope and the remainder of the appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11 - West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2020 Org 1400

Personal Services and Employee Benefits....	00100	\$	794,191
Unclassified.....	09900		77,059
Current Expenses (R).....	13000		317,848
Soil Conservation Projects (R).....	12000		9,799,709

BRIM Premium.....	91300	<u>34,428</u>
Total.....		\$ 11,023,235

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000), and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

12 - Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2020 Org 1400

Personal Services and Employee Benefits	00100	\$ 668,030
Unclassified.....	09900	7,090
Current Expenses	13000	<u>82,605</u>
Total.....		\$ 757,725

Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13 - Department of Agriculture –

Agricultural Awards Fund

(WV Code Chapter 19)

Fund 0136 FY 2020 Org 1400

Programs and Awards for		
4-H Clubs and FFA/FHA.....	57700	\$ 15,000
Commissioner’s Awards and Programs.....	73700	<u>39,250</u>
Total.....		\$ 54,250

14 - Department of Agriculture –

West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	99,547
Unclassified.....09900		<u>950</u>
Total.....	\$	100,497

15 - Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2020 Org 1500

Personal Services and Employee Benefits (R)	00100	\$	2,818,788
Unclassified (R)	09900		24,428
Current Expenses (R)	13000		762,097
Repairs and Alterations.....	06400		1,000
Equipment.....	07000		1,000
Criminal Convictions and Habeas Corpus Appeals (R).....	26000		946,078
Better Government Bureau	74000		279,412
BRIM Premium.....	91300		<u>120,654</u>
Total.....		\$	4,953,457

Any unexpended balances remaining in the above appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020, with the exception of fund 0150, fiscal year 2016, appropriation 00100 (\$208,241.14), and fund 0150, fiscal year 2017, appropriation 00100 (\$1,474,457.07) which shall expire on June 30, 2019.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0150, appropriation 00100), is \$95,000 for the Salary of the Attorney General.

When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: *Provided*, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the Attorney General: *Provided, however*, That if the spending unit and the Attorney General are unable to agree on the amount and terms of the reimbursement, the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for final determination.

16 - Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2020 Org 1600

Personal Services and Employee Benefits00100	\$	118,794
Unclassified (R)09900		9,555
Current Expenses (R)13000		805,948
BRIM Premium.....91300		<u>23,297</u>
Total.....	\$	957,594

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0155, appropriation 00100), is \$95,000 for the Salary of the Secretary of State.

17 - State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2020 Org 1601

Personal Services and Employee Benefits00100	\$	2,477
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Unclassified.....	09900	75
Current Expenses	13000	<u>4,956</u>
Total.....		\$ 7,508

DEPARTMENT OF ADMINISTRATION

18 - Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2020 Org 0201

Personal Services and Employee Benefits	00100	\$ 606,584
Unclassified.....	09900	9,177
Current Expenses	13000	85,009
Repairs and Alterations	06400	100
Equipment	07000	1,000
Financial Advisor (R)	30400	27,546
Lease Rental Payments	51600	15,000,000
Design-Build Board	54000	4,000
Other Assets	69000	100
BRIM Premium.....	91300	<u>6,736</u>
Total.....		\$ 15,740,252

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The appropriation for Lease Rental Payments (fund 0186, appropriation 51600) shall be disbursed as provided by W.Va. Code §31-15-6b.

19 - Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2020 Org 0205

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

20 - Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2020 Org 0209

Personal Services and Employee Benefits00100	\$	64,696
Unclassified.....09900		1,400
Current Expenses13000		66,721
GAAP Project (R).....12500		612,666
BRIM Premium.....91300		<u>7,517</u>
Total.....	\$	753,000

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

21 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2020 Org 0211

Personal Services and Employee Benefits00100	\$	2,722,499
Unclassified.....09900		20,000
Current Expenses13000		728,849
Repairs and Alterations.....06400		500
Equipment.....07000		5,000
Fire Service Fee12600		14,000
Buildings (R).....25800		500
Preservation and Maintenance of Statues and Monuments on Capitol Grounds.....37100		68,000

Capital Outlay, Repairs and Equipment (R).....	58900	27,078,888
Other Assets.....	69000	500
Land (R).....	73000	500
BRIM Premium.....	91300	<u>129,983</u>
Total.....		\$ 30,769,219

Any unexpended balances remaining in the above appropriations for Buildings (fund 0230, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900), Capital Outlay, Repairs and Equipment – Surplus (fund 0230, appropriation 67700), and Land (fund 0230, appropriation 73000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (fund 0230, appropriation 37100), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

The above appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) shall be expended for capital improvements, maintenance, repairs and equipment for state-owned buildings.

22 - Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2020 Org 0213

Personal Services and Employee Benefits	00100	\$ 1,055,926
Unclassified.....	09900	144
Current Expenses	13000	1,285
Repairs and Alterations.....	06400	200
BRIM Premium.....	91300	<u>6,922</u>
Total.....		\$ 1,064,477

The Division of Highways shall reimburse Fund 2031 within the Division of Purchasing for all actual expenses incurred pursuant to the provisions of W.Va. Code §17-2A-13.

23 - Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2020 Org 0215

Personal Services and Employee Benefits00100	\$	802,363
Unclassified.....09900		12,032
Current Expenses13000		440,247
Repairs and Alterations.....06400		1,000
Equipment.....07000		5,000
Buildings (R).....25800		100
Other Assets.....69000		<u>100</u>
Total.....	\$	1,260,842

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

24 - Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2020 Org 0217

Current Expenses13000	\$	45,550
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To pay expenses for members of the commission on uniform state laws.

25 - West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2020 Org 0219

Personal Services and Employee Benefits00100	\$	969,627
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Unclassified.....	09900	1,000
Current Expenses	13000	143,754
Equipment.....	07000	50
BRIM Premium.....	91300	<u>10,281</u>
Total.....		\$ 1,124,712

26 - Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2020 Org 0220

Personal Services and Employee Benefits	00100	\$ 606,969
Unclassified.....	09900	2,200
Current Expenses	13000	104,501
Repairs and Alterations.....	06400	500
Other Assets	69000	100
BRIM Premium.....	91300	<u>5,574</u>
Total.....		\$ 719,844

27 - Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2020 Org 0221

Personal Services and Employee Benefits	00100	\$ 1,711,081
Unclassified.....	09900	314,700
Current Expenses	13000	12,740
Public Defender Corporations.....	35200	19,538,435
Appointed Counsel Fees (R).....	78800	12,898,115
BRIM Premium.....	91300	<u>10,575</u>
Total.....		\$ 34,485,646

Any unexpended balance remaining in the above appropriation for Appointed Counsel Fees (fund 0226, appropriation 78800) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).

28 - Committee for the Purchase of

Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2020 Org 0224

Personal Services and Employee Benefits00100	\$	3,187
Current Expenses	13000	<u>868</u>
Total.....	\$	4,055

29 - Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2020 Org 0225

PEIA Subsidy.....	80100	\$ 21,000,000
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The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.

The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

30 - West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2020 Org 0228

Forensic Medical Examinations (R)	68300	\$	141,579
Federal Funds/Grant Match (R)	74900		<u>105,074</u>
Total		\$	246,653

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

31 - Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2020 Org 0233

Personal Services and Employee Benefits00100		\$	681,101
Unclassified.....09900			1,000
Current Expenses	13000		138,631
Repairs and Alterations	06400		100
Equipment	07000		2,500
BRIM Premium.....91300			<u>8,534</u>
Total		\$	831,866

DEPARTMENT OF COMMERCE

32 - West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2020 Org 0304

Tourism – Brand Promotion	61803	\$	5,000,000
Tourism – Public Relations.....	61804		750,000
Tourism – Events and Sponsorships	61805		250,000
Tourism – Industry Development	61806		250,000
State Parks and Recreation Advertising	61900		<u>750,000</u>
Total		\$	7,000,000

The Executive Director of the West Virginia Tourism Office, with approval from the Secretary of Commerce, shall have the authority to transfer between the above items of appropriation.

33 - Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2020 Org 0305

Personal Services and Employee Benefits00100	\$	2,881,455
Unclassified.....09900		21,435
Current Expenses13000		338,953
Repairs and Alterations.....06400		80,000
Equipment (R).....07000		2,061
BRIM Premium.....91300		<u>98,754</u>
Total.....	\$	3,422,658

Any unexpended balance remaining in the appropriation for Equipment (fund 0250, appropriation 07000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

34 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2020 Org 0306

Personal Services and Employee Benefits00100	\$	1,678,448
Unclassified.....09900		27,678
Current Expenses13000		51,524
Repairs and Alterations.....06400		968
Mineral Mapping System (R)20700		1,134,143
BRIM Premium.....91300		<u>24,486</u>
Total.....	\$	2,917,247

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The above Unclassified and Current Expense appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.

35 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2020 Org 0307

Personal Services and Employee Benefits00100	\$ 4,400,420
Unclassified.....09900	108,055
Current Expenses13000	3,765,277
National Youth Science Camp.....13200	241,570
Local Economic Development	
Partnerships (R)13300	1,250,000
ARC Assessment13600	152,585
Guaranteed Work Force Grant (R).....24200	976,579
Mainstreet Program.....79400	167,467
BRIM Premium.....91300	3,157
Hatfield McCoy Recreational Trail.....96000	<u>198,415</u>
Total.....	\$ 11,263,525

Any unexpended balances remaining in the appropriations for Sales and Marketing Enhancement – Surplus (fund 0256, appropriation 05099), Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Guaranteed Work Force Grant (fund 0256, appropriation 24200), Industrial Park Assistance (fund 0256, appropriation 48000), and Local Economic Development Assistance (fund 0256, appropriation 81900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the West Virginia Development Office for the award of funding assistance to county and regional economic development corporations or authorities participating in the Certified

Development Community Program developed under the provisions of W.Va. Code §5B-2-14. The West Virginia Development Office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed \$34,000 per county served by an economic development or redevelopment corporation or authority.

36 - Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$ 1,564,676
Current Expenses13000	227,000
Repairs and Alterations06400	28,000
Equipment07000	15,000
BRIM Premium91300	<u>8,500</u>
Total	\$
1,843,176	

37 - Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2020 Org 0310

Personal Services and Employee Benefits00100	\$ 16,956,925
Unclassified09900	184,711
Current Expenses13000	196,302
Repairs and Alterations06400	100
Equipment07000	100
Buildings25800	100
Capital Outlay – Parks (R)28800	3,000,000
Litter Control Conservation Officers56400	146,986
Upper Mud River Flood Control65400	164,791
Other Assets69000	100
Land (R)73000	100
Law Enforcement80600	2,552,994
BRIM Premium91300	<u>45,141</u>
Total	\$ 23,248,350

Any unexpended balances remaining in the appropriations for Buildings (fund 0265, appropriation 25800), Capital Outlay – Parks (fund 0265, appropriation 28800), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the Division of Natural Resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

38 - Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2020 Org 0314

Personal Services and Employee Benefits00100	\$	9,550,243
Unclassified.....09900		111,016
Current Expenses13000		1,396,141
Coal Dust and Rock Dust Sampling27000		487,752
BRIM Premium.....91300		<u>80,668</u>
Total.....	\$	11,625,820

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is \$500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.

39 - Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2020 Org 0319

Personal Services and Employee Benefits00100	\$	233,981
Unclassified.....09900		3,480
Current Expenses13000		<u>118,138</u>
Total.....	\$	355,599

Included in the above appropriation for Current Expenses (fund 0280, appropriation 13000) up to \$29,000 shall be used for the Coal Mine Safety and Technical Review Committee.

40 - WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2020 Org 0323

Personal Services and Employee Benefits00100	\$	51,433
Unclassified.....09900		593
Current Expenses13000		<u>7,337</u>
Total.....	\$	59,363

41 - Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2020 Org 0327

Personal Services and Employee Benefits00100	\$	588,872
Unclassified.....09900		501,490
Current Expenses13000		<u>17,099</u>
Total.....	\$	1,107,461

From the above appropriation for Unclassified (fund 0606, appropriation 09900), \$500,000 shall be transferred to the Broadband Enhancement Fund (fund 3013).

42 - Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2020 Org 0328

Personal Services and Employee Benefits00100	\$	198,299
Unclassified.....09900		12,395
Current Expenses13000		1,029,679
BRIM Premium.....91300		<u>3,894</u>
Total.....	\$	1,244,267

From the above appropriation for Current Expenses (fund 0612, appropriation 13000) \$558,247 is for West Virginia University and \$308,247 is for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

43 - State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2020 Org 0932

Personal Services and Employee Benefits00100	\$ 11,459,977
Independent Living Services.....00900	429,418
Current Expenses13000	558,815
Workshop Development16300	1,817,427
Supported Employment	
Extended Services.....20600	77,960
Ron Yost Personal Assistance Fund40700	333,828
Employment Attendant Care Program.....59800	131,575
BRIM Premium.....91300	<u>77,464</u>
Total.....	\$ 14,886,464

From the above appropriation for Workshop Development (fund 0310, appropriation 16300), fund shall be used exclusively with the private nonprofit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those organizations.

DEPARTMENT OF EDUCATION

44 - State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$	348,042
Current Expenses		<u>2,118,865</u>
Total.....	\$	2,466,907

45 - State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$	4,598,523
Teachers' Retirement Savings Realized		42,954,000
Unclassified (R)		420,000
Current Expenses (R)		2,572,000
Equipment		5,000
Center for Professional Development (R).....		150,000
Increased Enrollment		3,060,000
Safe Schools.....		4,781,026
National Teacher Certification (R)		300,000
Jim's Dream –		
Childhood Drug Prevention Education...21901		5,000,000
Buildings (R).....		1,000
Allowance for County Transfer		476,348
Technology Repair and Modernization.....		951,003
HVAC Technicians		516,791
Early Retirement Notification Incentive		300,000
MATH Program		336,532
Assessment Programs		1,339,588
Benedum Professional		
Development Collaborative		429,775
Governor's Honors Academy		1,059,270
21st Century Fellows		274,899
English as a Second Language.....		96,000
Teacher Reimbursement		297,188
Hospitality Training		272,775
Hi-Y Youth in Government		100,000
High Acuity Special Needs (R).....		1,500,000
Foreign Student Education.....		100,294

State Board of Education		
Administrative Costs	68400	277,403
Other Assets	69000	1,000
IT Academy (R)	72100	500,000
Land (R)	73000	1,000
Early Literacy Program	75600	5,705,624
School Based Truancy Prevention (R)	78101	2,032,238
Mastery Based Education	#####	125,000
Communities in Schools (R)	78103	400,000
21st Century Learners (R)	88600	1,756,470
BRIM Premium	91300	342,859
21st Century Assessment and Professional Development	93100	2,006,978
21st Century Technology		
Infrastructure Network		
Tools and Support	93300	7,636,586
Special Olympic Games	96600	25,000
Educational Program Allowance	99600	<u>516,250</u>
Total		\$ 93,218,420

The above appropriations include funding for the state board of education and their executive office.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional Development (fund 0313, appropriation 11500), National Teacher Certification (fund 0313, appropriation 16100), Buildings (fund 0313, appropriation 25800), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor's Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), Land (fund 0313, appropriation 73000), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), and 21st Century Learners (fund 0313, appropriation 88600) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Teachers' Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), \$120,000 shall be for assisting low income students with AP exam fees.

The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

From the above appropriation for Educational Program Allowance (fund 0313, appropriation 99600), \$100,000 shall be expended for Webster County Board of Education for Hacker Valley; \$150,000 shall be for the Randolph County Board of Education for Pickens School; \$100,000 shall be for the Preston County Board of Education for the Aurora School; \$100,000 shall be for the Fayette County Board of Education for Meadow Bridge; and \$66,250 is for Project Based Learning in STEM fields.

46 - State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2020 Org 0402

Special Education – Counties	15900	\$ 7,271,757
Special Education – Institutions.....	16000	3,968,631
Education of Juveniles		
Held in Predispositional		
Juvenile Detention Centers	30200	649,758
Education of Institutionalized		
Juveniles and Adults (R).....	47200	<u>20,474,233</u>
Total.....		\$ <u>32,364,379</u>

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

47 - State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2020 Org 0402

Other Current Expenses	02200	\$ 156,065,940
Advanced Placement.....	05300	644,087
Professional Educators.....	15100	901,230,362
Service Personnel.....	15200	304,858,302
Fixed Charges	15300	106,085,858
Transportation	15400	75,457,864
Professional Student Support Services	65500	40,513,635
Improved Instructional Programs.....	15600	51,527,411
21st Century Strategic		
Technology Learning Growth.....	93600	25,549,588
Teacher and Leader Induction.....	93601	4,584,707
Basic Foundation Allowances.....		1,666,517,754
Less Local Share		(478,449,993)
Adjustments		(2,681,318)
Total Basic State Aid		1,185,386,443
Public Employees' Insurance Matching	01200	223,979,027
Teachers' Retirement System	01900	65,201,000
School Building Authority	45300	24,000,000
Retirement Systems – Unfunded Liability....	77500	345,517,000
Total.....		\$ 1,844,083,470

48 - State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$	1,339,713
Unclassified.....09900		268,800
Current Expenses13000		883,106
Wood Products –		
Forestry Vocational Program.....14600		78,691
Albert Yanni Vocational Program14700		132,123
Vocational Aid14800		23,997,756
Adult Basic Education14900		5,195,128
Jim’s Dream.....14901		6,000,000
Program Modernization30500		884,313
High School Equivalency		
Diploma Testing (R).....72600		803,397
FFA Grant Awards.....83900		11,496
Pre-Engineering Academy Program84000		<u>265,294</u>
Total.....	\$	<u>39,859,817</u>

Any unexpended balance remaining in the appropriation for High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.....

*49 - State Board of Education –**West Virginia Schools for the Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2020 Org 0403

Personal Services and Employee Benefits00100	\$	11,379,675
Unclassified.....09900		110,000
Current Expenses13000		2,240,696
Repairs and Alterations.....06400		164,675
Equipment07000		77,000
Buildings (R).....25800		45,000
Capital Outlay and Maintenance (R)75500		520,000

BRIM Premium.....	91300	<u>140,842</u>
Total.....		\$ 14,677,888

Any unexpended balances remaining in the appropriations for Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2020 Org 0432

Personal Services and Employee Benefits	00100	\$ 3,463,493
Current Expenses	13000	610,843
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	1
Unclassified (R)	09900	28,483
WV Humanities Council.....	16800	250,000
Buildings (R).....	25800	1
Other Assets.....	69000	1
Educational Enhancements	69500	573,500
Land (R).....	73000	1
Culture and History Programming.....	73200	231,573
Capital Outlay and Maintenance (R)	75500	19,600
Historical Highway Marker Program.....	84400	57,548
BRIM Premium.....	91300	<u>39,337</u>
Total.....		\$ 5,275,381

Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), Buildings (fund 0293, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), Land (fund 0293, appropriation 73000), and Capital Outlay and Maintenance (fund 0293, appropriation 75500)

at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The Current Expense appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.

From the above appropriation for Educational Enhancements (fund 0293, appropriation 69500), \$500,000 shall be used for Save the Children and \$73,500 shall be used for the Clay Center.

51 - Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2020 Org 0433

Personal Services and Employee Benefits00100	\$	1,314,744
Current Expenses	13000	139,624
Repairs and Alterations	06400	6,500
Services to Blind & Handicapped.....	18100	161,717
BRIM Premium.....	91300	<u>18,205</u>
Total.....	\$	1,640,790

52 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2020 Org 0439

Personal Services and Employee Benefits00100	\$	1,840,433
Current Expenses	13000	1,591,805
Mountain Stage	24900	300,000
Capital Outlay and Maintenance (R)	75500	50,000
BRIM Premium.....	91300	<u>48,453</u>
Total.....	\$	3,830,691

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500)

at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

53 - Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2020 Org 0311

Personal Services and Employee Benefits00100	\$	82,539
Current Expenses13000		28,453
Repairs and Alterations.....06400		800
Equipment.....07000		500
Other Assets.....69000		400
BRIM Premium.....91300		<u>791</u>
Total.....	\$	113,483

54 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	4,196,400
Water Resources		
Protection and Management06800		576,278
Current Expenses13000		96,916
Repairs and Alterations.....06400		1,500
Unclassified.....09900		14,825
Dam Safety.....60700		237,824
West Virginia Stream Partners Program.....63700		77,396
Meth Lab Cleanup.....65600		139,000
WV Contributions to River Commissions77600		148,485
Office of Water Resources		
Non-Enforcement Activity85500		<u>1,009,855</u>
Total.....	\$	6,498,479

A portion of the appropriations for Current Expense (fund 0273, appropriation 13000) and Dam Safety (fund 0273, appropriation

60700) may be transferred to the special revenue fund Dam Safety Rehabilitation Revolving Fund (fund 3025) for the state deficient dams rehabilitation assistance program.

55 - Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2020 Org 0325

Personal Services and Employee Benefits00100	\$	60,737
Current Expenses	13000	11,612
Repairs and Alterations	06400	800
Equipment	07000	400
Other Assets	69000	200
BRIM Premium.....	91300	<u>2,304</u>
Total.....	\$	76,053

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56 - Department of Health and Human Resources –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2020 Org 0501

Personal Services and Employee Benefits00100	\$	384,638
Unclassified.....	09900	6,459
Current Expenses	13000	50,613
Commission for the		
Deaf and Hard of Hearing.....	70400	<u>225,534</u>
Total.....	\$	667,244

Any unexpended balance remaining in the appropriation for the Women's Commission (fund 0400, appropriation 19100) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

*57 - Division of Health –**Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$ 12,946,328
Chief Medical Examiner04500	9,666,347
Unclassified.....09900	671,795
Current Expenses13000	4,877,059
State Aid for Local and Basic	
Public Health Services18400	14,160,490
Safe Drinking Water Program (R)18700	2,211,323
Women, Infants and Children21000	38,621
Early Intervention22300	8,134,060
Cancer Registry.....22500	206,306
Office of Drug Control Policy (R)35401	567,953
Statewide EMS Program Support (R).....38300	1,845,271
Office of Medical Cannabis42001	2,380,489
Black Lung Clinics46700	170,885
Vaccine for Children.....55100	338,235
Tuberculosis Control.....55300	379,256
Maternal and Child Health Clinics, Clinicians	
Medical Contracts and Fees (R)57500	6,342,707
Epidemiology Support62600	1,547,192
Primary Care Support62800	4,263,706
Sexual Assault Intervention and Prevention...72300	125,000
Health Right Free Clinics.....72700	3,750,000
Capital Outlay and Maintenance (R)75500	100,000
Healthy Lifestyles77800	1,000,000
Maternal Mortality Review.....83400	49,933
Diabetes Education and Prevention87300	97,125
BRIM Premium.....91300	169,791
State Trauma and Emergency Care System..91800	2,021,322
WVU Charleston Poison Control Hotline.....91800	712,942
Total.....	<u>\$ 78,774,136</u>

Any unexpended balances remaining in the appropriations for Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund 0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), Statewide EMS Program Support (fund 0407, appropriation 38300), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than \$100,000 is for the West Virginia Cancer Coalition; \$50,000 shall be expended for the West Virginia Aids Coalition; \$100,000 is for Adolescent Immunization Education; \$73,065 is for informal dispute resolution relating to nursing home administrative appeals; \$50,000 is for Hospital Hospitality House of Huntington; and \$200,000 is for Potomac Center Inc. of Romney, West Virginia.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to \$400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and \$11,000 is for the Marshall County Health Department for dental services.

58 - Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	1,632,588
Current Expenses		13000
Behavioral Health Program (R)		21900
Jim's Dream		14901
		71,843,953
		9,000,000

Family Support Act.....	22100	251,226
Institutional Facilities Operations (R).....	33500	137,929,180
Substance Abuse Continuum of Care (R).....	35400	5,000,000
Capital Outlay and Maintenance (R)	75500	950,000
Renaissance Program	80400	165,996
BRIM Premium.....	91300	<u>1,296,098</u>
Total.....		\$ 228,083,154

Any unexpended balances remaining in the appropriations for Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

Included in the above appropriation for Behavioral Health Program (fund 0525, appropriation 21900) is \$100,000 for the Healing Place of Huntington.

The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) contains prior year salary increases due to the Hartley court order in the amount of \$2,202,013 for William R. Sharpe Jr. Hospital, and \$2,067,984 for Mildred Mitchel-Bateman Hospital.

From the above appropriation for Substance Abuse Continuum of Care (fund 0525, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

Additional funds have been appropriated in fund 5156, fiscal year 2020, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

59 - Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2020 Org 0506

West Virginia Drinking Water Treatment

Revolving Fund-Transfer.....	68900	\$	647,500
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The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund as provided by Chapter 16 of the Code.

60 - Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2020 Org 0510

Personal Services and Employee Benefits	00100	\$	1,073,553
Unclassified.....	09900		4,024
Current Expenses	13000		331,304
BRIM Premium.....	91300		<u>10,764</u>
Total.....		\$	1,419,645

61 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2020 Org 0511

Personal Services and Employee Benefits00100	\$ 48,078,212
Unclassified.....09900	5,688,944
Current Expenses13000	11,404,008
Child Care Development.....14400	4,102,718
Medical Services.....18900	456,659,803
Social Services19500	196,114,014
Family Preservation Program19600	1,565,000
Family Resource Networks27400	1,762,464
Domestic Violence Legal Services Fund38400	400,000
James “Tiger” Morton	
Catastrophic Illness Fund45500	105,695
I/DD Waiver.....46600	88,753,483
Child Protective Services Case Workers46800	24,917,075
OSCAR and RAPIDS51500	6,493,207
Title XIX Waiver for Seniors.....53300	13,593,620
WV Teaching Hospitals	
Tertiary/Safety Net54700	6,356,000
Child Welfare System60300	1,334,615
In-Home Family Education.....68800	1,000,000
WV Works Separate State Program.....69800	935,000
Child Support Enforcement70500	6,758,806
Temporary Assistance for Needy Families/ Maintenance of Effort.....70700	25,819,096
Child Care – Maintenance of Effort Match ..70800	5,693,743
Grants for Licensed Domestic Violence	
Programs and Statewide Prevention75000	2,500,000
Capital Outlay and Maintenance (R)75500	11,875
Community Based Services	
and Pilot Programs for Youth75900	1,000,000
Medical Services Administrative Costs78900	38,234,761
Traumatic Brain Injury Waiver.....83500	800,000
Indigent Burials (R)85100	2,050,000
BRIM Premium.....91300	892,642
Rural Hospitals Under 150 Beds.....94000	2,596,000
Children’s Trust Fund – Transfer.....95100	<u>220,000</u>
Total.....	\$955,840,781

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0403, appropriation 75500) and Indigent Burials (fund 0403, appropriation 85100) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

The above appropriation for Domestic Violence Legal Services Fund (fund 0403, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The above appropriation for James “Tiger” Morton Catastrophic Illness Fund (fund 0403, appropriation 45500) shall be transferred to the James “Tiger” Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the Code.

The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the secretary of the Department of Health and Human Resources.

From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed \$300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be distributed according to the formula established by the Family Protection Services Board.

The above appropriation for Children's Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children's Trust Fund (fund 5469, org 0511).

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

62 - Department of Military Affairs and Public Safety –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2020 Org 0601

Personal Services and Employee Benefits00100	\$	672,826
Unclassified (R)	09900	18,949
Current Expenses	13000	137,480
Repairs and Alterations.....	06400	1,500
Equipment.....	07000	1,500
Fusion Center (R).....	46900	553,678
Other Assets.....	69000	2,500
Directed Transfer	70000	32,000
BRIM Premium.....	91300	18,190

WV Fire and EMS Survivor Benefit (R)	93900	200,000
Homeland State Security		
Administrative Agency (R).....	95300	<u>315,220</u>
Total.....		\$ 1,953,843

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Directed Transfer (fund 0430, appropriation 70000) shall be transferred to the Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

63 - Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2020 Org 0603

Unclassified (R)	09900	\$ 106,798
College Education Fund.....	23200	4,000,000
Civil Air Patrol.....	23400	249,664
Mountaineer ChalleNGe Academy	70900	1,500,000
Armory Board Transfer.....	70015	2,317,555
Military Authority (R).....	74800	6,260,251
Drug Enforcement and Support	74801	<u>1,500,000</u>
Total.....		\$ 15,934,268

Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, appropriation 09900), Military Authority (fund 0433, appropriation 74800), and Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriations an amount approved by the Adjutant General and the secretary of Military Affairs and Public Safety may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

The adjutant general shall have the authority to transfer between appropriations.

From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than \$4,500,000 to the Mountaineer Challenge Academy to meet anticipated program demand.

64 - Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2020 Org 0603

Personal Services and Employee Benefits00100	\$	100,000
Current Expenses	13000	<u>57,775</u>
Total.....	\$	157,775

65 - West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2020 Org 0605

Personal Services and Employee Benefits00100	\$	405,066
Current Expenses	13000	355,234
Unclassified.....	09900	10,000
Salaries of Members of West Virginia		
Parole Board	22700	609,833
BRIM Premium.....	91300	<u>6,149</u>
Total.....	\$	1,386,282

The above appropriation for Salaries of Members of West Virginia Parole Board (fund 0440, appropriation 22700) includes

funding for salary, annual increment (as provided for in W.Va. Code §5-5-1), and related employee benefits of board members.

66 - Division of Homeland Security and

Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2020 Org 0606

Personal Services and Employee Benefits00100	\$	1,572,931
Unclassified.....09900		25,022
Current Expenses13000		57,314
Repairs and Alterations.....06400		600
Radiological Emergency Preparedness55400		17,052
SIRN55401		600,000
Federal Funds/Grant Match (R)74900		1,009,145
Mine and Industrial Accident Rapid		
Response Call Center.....78100		469,911
Early Warning Flood System (R)87700		484,448
BRIM Premium.....91300		96,529
Total.....	\$	4,332,952

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

67 - Division of Corrections and Rehabilitation –

Central Office

(WV Code Chapter 15A)

Fund 0446 FY 2020 Org 0608

Personal Services and Employee Benefits00100	\$	559,966
Current Expenses13000		2,400
Total.....	\$	562,366

*68 - Division of Corrections and Rehabilitation –**Correctional Units*

(WV Code Chapter 15A)

Fund 0450 FY 2020 Org 0608

Employee Benefits	01000	\$ 1,258,136
Children's Protection Act (R)	09000	838,437
Unclassified.....	09900	1,578,800
Current Expenses (R)	13000	52,016,936
Facilities Planning and Administration (R) ..	38600	1,274,200
Charleston Correctional Center	45600	3,281,752
Beckley Correctional Center.....	49000	2,228,700
Anthony Correctional Center.....	50400	5,909,312
Huttonsville Correctional Center	51400	22,397,941
Northern Correctional Center.....	53400	7,769,520
Inmate Medical Expenses (R)	53500	21,226,064
Pruntytown Correctional Center	54300	8,303,659
Corrections Academy.....	56900	1,776,147
Information Technology Services.....	59901	2,259,052
Martinsburg Correctional Center	66300	4,201,864
Parole Services.....	68600	5,641,740
Special Services	68700	6,230,985
Investigative Services	71600	3,301,523
Capital Outlay and Maintenance (R)	75500	7,000,000
Salem Correctional Center	77400	11,108,923
McDowell County Correctional Center	79000	2,542,590
Stevens Correctional Center.....	79100	7,863,195
Parkersburg Correctional Center.....	82800	3,742,751
St. Mary's Correctional Center	88100	14,006,323
Denmar Correctional Center	88200	5,039,544
Ohio County Correctional Center	88300	2,003,675
Mt. Olive Correctional Complex	88800	21,709,603
Lakin Correctional Center.....	89600	10,346,422
BRIM Premium.....	91300	<u>2,527,657</u>
Total.....		\$ 239,385,451

Any unexpended balances remaining in the appropriations for Children’s Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0450, appropriation 67700), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 0450, appropriation 75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations to the individual correctional units above and may transfer funds from the individual correctional units to Current Expenses (fund 0450, appropriation 13000) or Inmate Medical Expenses (fund 0450, appropriation 53500).

From the above appropriation to Current Expenses (fund 0450, appropriation 13000) payment shall be made to house Division of Corrections and Rehabilitation inmates in federal, county, and /or regional jails.

Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

69 - Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2020 Org 0608

Statewide Reporting Centers.....	26200	\$	7,233,094
Robert L. Shell Juvenile Center	26700		2,417,029

Resident Medical Expenses (R)	53501	3,604,999
Central Office.....	70100	2,086,638
Capital Outlay and Maintenance (R)	75500	250,000
Gene Spadaro Juvenile Center	79300	2,595,691
BRIM Premium.....	91300	115,967
Kenneth Honey Rubenstein		
Juvenile Center (R)	98000	5,654,445
Vicki Douglas Juvenile Center	98100	2,292,201
Northern Regional Juvenile Center.....	98200	2,876,302
Lorrie Yeager Jr. Juvenile Center	98300	2,330,333
Sam Perdue Juvenile Center	98400	2,455,085
Tiger Morton Center	98500	2,545,259
Donald R. Kuhn Juvenile Center	98600	4,877,936
J.M. “Chick” Buckbee Juvenile Center	98700	<u>2,439,816</u>
Total.....		\$ 43,774,795

Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The Director of Juvenile Services shall have the authority to transfer between appropriations to the individual juvenile centers above including statewide reporting centers and central office and may transfer funds from the individual juvenile centers to Resident Medical Expenses (fund 0570, appropriation 53501).

70 - West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2020 Org 0612

Personal Services and Employee Benefits	00100	\$ 62,755,235
Children’s Protection Act	09000	1,009,529

Current Expenses	13000	10,384,394
Repairs and Alterations	06400	450,523
Trooper Class (R).....	52100	3,207,832
Barracks Lease Payments	55600	237,898
Communications and Other Equipment (R).....	55800	570,968
Trooper Retirement Fund.....	60500	7,004,590
Handgun Administration Expense	74700	77,892
Capital Outlay and Maintenance (R)	75500	250,000
Retirement Systems – Unfunded Liability....	77500	13,187,000
Automated Fingerprint		
Identification System	89800	2,211,693
BRIM Premium.....	91300	<u>5,743,921</u>
Total.....		\$ 107,091,475

Any unexpended balances remaining in the appropriations for Trooper Class (fund 0453, appropriation 52100), Communications and Other Equipment (fund 0453, appropriation 55800), and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than \$25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

71 - Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2020 Org 0619

Current Expenses	13000	\$	64,021
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72 - Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2020 Org 0620

Personal Services and Employee Benefits00100	\$	570,979
Current Expenses	13000	133,360
Repairs and Alterations.....	06400	1,804
Child Advocacy Centers (R).....	45800	2,206,954
Community Corrections (R)	56100	6,927,323
Statistical Analysis Program	59700	49,819
Sexual Assault Forensic Examination Commission (R)	71400	77,525
Qualitative Analysis and Training for Youth Services (R).....	76200	332,446
Law Enforcement Professional Standards	83800	164,272
BRIM Premium.....	91300	<u>2,123</u>
Total.....	\$	10,466,605

Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546 appropriation 71400), Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200), and Law Enforcement Professional Standards – Surplus (fund 0546, appropriation 83899) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

73 - Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2020 Org 0622

Personal Services and Employee Benefits00100	\$	3,029,459
Unclassified (R)	09900	21,991
Current Expenses	13000	443,357
Repairs and Alterations.....	06400	8,500
Equipment (R).....	07000	64,171

BRIM Premium.....	91300	<u>12,226</u>
Total.....		\$ 3,579,704

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000), and Unclassified (fund 0585, appropriation 09900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

74 - Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2020 Org 0623

Personal Services and Employee Benefits	00100	\$ 2,306,255
Current Expenses	13000	<u>30,000</u>
Total.....		\$ 2,336,255

DEPARTMENT OF REVENUE

75 - Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2020 Org 0701

Personal Services and Employee Benefits	00100	\$ 516,906
Unclassified (R)	09900	5,837
Current Expenses	13000	81,594
Repairs and Alterations.....	06400	1,262
Equipment.....	07000	8,000
Other Assets.....	69000	<u>500</u>
Total.....		\$ 614,099

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09900) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

76 - Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2020 Org 0702

Personal Services

and Employee Benefits (R).....00100	\$ 19,272,541
Unclassified (R)09900	224,578
Current Expenses (R)13000	5,888,635
Repairs and Alterations.....06400	10,150
Equipment07000	154,850
Tax Technology Upgrade09400	3,700,000
Multi State Tax Commission65300	77,958
Other Assets69000	10,000
BRIM Premium.....91300	<u>15,579</u>
Total.....	\$ 29,354,291

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and Integrated Tax Assessment System (fund 0470, appropriation 29200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

77 - State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2020 Org 0703

Personal Services and Employee Benefits00100	\$ 694,942
Unclassified (R)09900	<u>1,199</u>
Total.....	\$ 696,141

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, appropriation 09900) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

78 - West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2020 Org 0709

Personal Services and Employee Benefits00100	\$	452,106
Current Expenses (R).....13000		93,022
Unclassified.....09900		5,255
BRIM Premium.....91300		<u>3,062</u>
Total.....	\$	553,445

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

*79 - Division of Professional and Occupational Licenses –**State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2020 Org 0933

Personal Services and Employee Benefits00100	\$	7,200
Current Expenses13000		<u>29,611</u>
Total.....	\$	36,811

DEPARTMENT OF TRANSPORTATION*80 - State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2020 Org 0804

Personal Services and Employee Benefits00100	\$	328,369
Current Expenses13000		287,707
Other Assets (R).....69000		1,303,277
BRIM Premium.....91300		<u>201,541</u>
Total.....	\$	2,120,894

Any unexpended balance remaining in the appropriation Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

81 - Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2020 Org 0805

Equipment (R).....	07000	\$	89,710
Current Expenses (R).....	13000		<u>2,173,279</u>
Total.....		\$	2,262,989

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

82 - Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2020 Org 0807

Personal Services and Employee Benefits	00100	\$	178,740
Current Expenses (R).....	13000		591,839
Repairs and Alterations.....	06400		100
BRIM Premium.....	91300		<u>4,438</u>
Total.....		\$	775,117

Any unexpended balances remaining in the appropriations for Unclassified (fund 0582, appropriation 09900) and Current Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

DEPARTMENT OF VETERANS' ASSISTANCE*83 - Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 0456 FY 2020 Org 0613

Personal Services and Employee Benefits00100	\$ 1,987,212
Unclassified.....09900	20,000
Current Expenses13000	427,767
Repairs and Alterations.....06400	5,000
Veterans' Field Offices22800	292,206
Veterans' Nursing Home (R)28600	6,801,772
Veterans' Toll Free Assistance Line32800	2,015
Veterans' Reeducation Assistance (R).....32900	29,502
Veterans' Grant Program (R).....34200	560,000
Veterans' Grave Markers47300	10,254
Veterans Outreach Programs61700	175,190
Memorial Day Patriotic Exercise69700	20,000
Veterans Cemetery80800	391,646
BRIM Premium.....91300	<u>25,530</u>
Total.....	\$ 10,748,094

Any unexpended balances remaining in the appropriations for Veterans' Nursing Home (fund 0456, appropriation 28600), Veterans' Reeducation Assistance (fund 0456, appropriation 32900), Veterans' Grant Program (fund 0456, appropriation 34200), Veterans' Bonus – Surplus (fund 0456, appropriation 34400), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

*84 - Department of Veterans' Assistance –**Veterans' Home*

(WV Code Chapter 9A)

Fund 0460 FY 2020 Org 0618

Personal Services and Employee Benefits00100	\$	1,217,096
Current Expenses	13000	<u>46,759</u>
Total.....	\$	1,263,855

BUREAU OF SENIOR SERVICES

85 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2020 Org 0508

Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	\$	29,950,955
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The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (fund 0420, appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

The above appropriation is in addition to funding provided in fund 5405 for this program.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

86 - West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2020 Org 0420

West Virginia Council for Community and Technical Education (R)	39200	\$	738,955
Transit Training Partnership	78300		34,293

Community College		
Workforce Development (R)	87800	2,786,925
College Transition Program	88700	278,222
West Virginia Advance		
Workforce Development (R)	89300	3,118,960
Technical Program Development (R)	89400	1,800,735
WV Invests Grant Program.....	#####	<u>10,034,748</u>
Total.....		\$ 18,792,838

Any unexpended balances remaining in the appropriations for West Virginia Council for Community and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus (fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), and Technical Program Development (fund 0596, appropriation 89400) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for the Community College Workforce Development (fund 0596, appropriation 87800), \$200,000 shall be expended on the Mine Training Program in Southern West Virginia.

Included in the above appropriation for West Virginia Advance Workforce Development (fund 0596, appropriation 89300) is \$200,000 to be used exclusively for advanced manufacturing and energy industry specific training programs.

87 - Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2020 Org 0444

Mountwest Community and Technical College	48700	\$ 6,489,307
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88 - New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2020 Org 0445

New River Community
and Technical College35800 \$ 5,864,886

89 - Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2020 Org 0446

Pierpont Community
and Technical College93000 \$ 7,820,129

90 - Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2020 Org 0447

Blue Ridge Community
and Technical College88500 \$ 7,830,842

91 - West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2020 Org 0464

West Virginia University – Parkersburg47100 \$ 10,319,284

92 - Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2020 Org 0487

Southern West Virginia Community
and Technical College44600 \$ 8,241,823

93 - West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2020 Org 0489

West Virginia Northern Community
and Technical College44700 \$ 7,285,825

94 - Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2020 Org 0492

Eastern West Virginia Community
and Technical College41200 \$ 2,179,912

95 - BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2020 Org 0493

BridgeValley Community
and Technical College71700 \$ 8,098,811

HIGHER EDUCATION POLICY COMMISSION

96 - Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2020 Org 0441

Personal Services and Employee Benefits00100	\$ 2,708,695
Current Expenses13000	1,113,606
Higher Education Grant Program16400	40,619,864
Tuition Contract Program (R)16500	1,225,120
Underwood-Smith Scholarship Program-Student Awards.....16700	328,349
Facilities Planning and Administration.....38600	1,760,254
Higher Education System Initiatives.....48801	1,630,000

PROMISE Scholarship – Transfer.....	80000	18,500,000
HEAPS Grant Program (R).....	86700	5,014,728
Health Professionals’		
Student Loan Program	#####	182,000
BRIM Premium.....	91300	<u>17,817</u>
Total.....		\$ 73,100,433

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0589, appropriation 09700), Tuition Contract Program (fund 0589, appropriation 16500), Capital Improvements – Surplus (fund 0589, appropriation 66100), Capital Outlay and Maintenance (fund 0589, appropriation 75500), and HEAPS Grant Program (fund 0589, appropriation 86700) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Facilities Planning and Administration (fund 0589, appropriation 38600) is for operational expenses of the West Virginia Education, Research and Technology Park between construction and full occupancy.

The above appropriation for Higher Education Grant Program (fund 0589, appropriation 16400) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by W.Va. Code §18C-5-3.

The above appropriation for Underwood-Smith Scholarship Program-Student Awards (fund 0589, appropriation 16700) shall be transferred to the Underwood-Smith Teacher Scholarship and Loan Assistance Fund (fund 4922, org 0441) established by W.Va. Code §18C-4-1.

The above appropriation for PROMISE Scholarship – Transfer (fund 0589, appropriation 80000) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

*97 - Higher Education Policy Commission –
Administration -*

West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B9)

Fund 0551 FY 2020 Org 0495

WVNET 16900 \$ 1,747,826

98 - West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2020 Org 0463

WVU School of Health Science –

 Eastern Division.....05600 \$ 2,235,352

WVU – School of Health Sciences 17400 15,056,370

WVU – School of Health Sciences –

 Charleston Division 17500 2,286,711

 Rural Health Outreach Programs 37700 164,517

West Virginia University School of Medicine

 BRIM Subsidy 46000 1,203,087

 Total..... \$ 20,946,037

The above appropriation for Rural Health Outreach Programs (fund 0343, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for West Virginia University School of Medicine BRIM Subsidy (fund 0343, appropriation 46000) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to the

institution as part of the full cost of their malpractice insurance coverage.

99 - West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2020 Org 0463

West Virginia University	45900	\$ 97,017,960
Jackson's Mill	46100	491,458
West Virginia University		
Institute of Technology	47900	8,020,938
State Priorities – Brownfield		
Professional Development	53100	316,556
Energy Express	86100	382,935
West Virginia University – Potomac State ...	99400	<u>4,512,711</u>
Total		\$ 110,742,558

From the above appropriation for Jackson's Mill (fund 0344, appropriation 46100) \$250,000 shall be used for the West Virginia State Fire Training Academy.

100 - Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2020 Org 0471

Marshall Medical School	17300	\$ 12,235,068
Rural Health Outreach Programs (R)	37700	156,022
Forensic Lab	37701	227,415
Center for Rural Health	37702	157,096
Marshall University Medical School		
BRIM Subsidy	44900	<u>872,612</u>
Total		\$ 13,648,213

Any unexpended balance remaining in the appropriation for Rural Health Outreach Program (fund 0347, appropriation 37700) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Rural Health Outreach Programs (fund 0347, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for Marshall University Medical School BRIM Subsidy (fund 0347, appropriation 44900) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.

101 - Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2020 Org 0471

Marshall University	44800	\$ 46,761,199
Luke Lee Listening		
Language and Learning Lab	44801	99,015
Vista E-Learning (R).....	51900	229,019
State Priorities – Brownfield		
Professional Development (R).....	53100	309,606
Marshall University Graduate College		
Writing Project (R)	80700	25,412
WV Autism Training Center (R)	93200	<u>1,808,381</u>
Total.....		\$ 49,232,632

Any unexpended balances remaining in the appropriations for Vista E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training

Center (fund 0348, appropriation 93200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

102 - West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2020 Org 0476

West Virginia School		
of Osteopathic Medicine.....	17200	\$ 8,879,296
Rural Health Outreach Programs (R).....	37700	166,111
West Virginia School of Osteopathic Medicine		
BRIM Subsidy	40300	153,405
Rural Health Initiative –		
Medical Schools Support.....	58100	<u>397,592</u>
Total.....		\$ 9,596,404

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for West Virginia School of Osteopathic Medicine BRIM Subsidy (fund 0336, appropriation 40300) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to the institution as part of the full cost of their malpractice insurance coverage.

103 - Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2020 Org 0482

2658	JOURNAL OF THE SENATE	[March 8
Bluefield State College	40800	\$ 6,383,221
<i>104 - Concord University</i>		
(WV Code Chapter 18B)		
Fund <u>0357</u> FY <u>2020</u> Org <u>0483</u>		
Concord University	41000	\$ 10,476,415
<i>105 - Fairmont State University</i>		
(WV Code Chapter 18B)		
Fund <u>0360</u> FY <u>2020</u> Org <u>0484</u>		
Fairmont State University	41400	\$ 18,600,341
<i>106 - Glenville State College</i>		
(WV Code Chapter 18B)		
Fund <u>0363</u> FY <u>2020</u> Org <u>0485</u>		
Glenville State College	42800	\$ 6,446,942
<i>107 - Shepherd University</i>		
(WV Code Chapter 18B)		
Fund <u>0366</u> FY <u>2020</u> Org <u>0486</u>		
Shepherd University	43200	\$ 12,683,829
<i>108 - West Liberty University</i>		
(WV Code Chapter 18B)		
Fund <u>0370</u> FY <u>2020</u> Org <u>0488</u>		
West Liberty University	43900	\$ 9,102,662

109 - West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2020 Org 0490

West Virginia State University	44100	\$ 11,342,512
West Virginia State University		
Land Grant Match.....	95600	<u>2,950,192</u>
Total.....		\$ 14,292,704

From the above appropriation for West Virginia State University (fund 0373, appropriation 44100), \$300,000 shall be for the Healthy Grandfamilies program.

Total TITLE II, Section 1 – General Revenue
 (Including claims against the state) \$4,635,887,842

Sec. 2. Appropriations from state road fund. — From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2020.

DEPARTMENT OF TRANSPORTATION

110 - Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2020 Org 0802

	Appropriation	State Road Fund
Personal Services and Employee Benefits	00100	\$ 25,977,939
Current Expenses	13000	16,187,194
Repairs and Alterations.....	06400	144,000
Equipment.....	07000	1,080,000
Buildings	25800	10,000
Other Assets.....	69000	2,600,000

BRIM Premium.....	91300	<u>78,586</u>
Total.....		\$ 46,077,719

111 - Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2020 Org 0803

Debt Service.....	04000	\$ 89,000,000
Maintenance.....	23700	336,386,000
Nonfederal Improvements	23701	224,046,854
Inventory Revolving	27500	4,000,000
Equipment Revolving	27600	22,500,000
General Operations	27700	91,663,229
Interstate Construction	27800	90,000,000
Other Federal Aid Programs	27900	370,000,000
Appalachian Programs	28000	100,000,000
Highway Litter Control.....	28200	1,719,000
Courtesy Patrol.....	28201	<u>5,000,000</u>
Total.....		\$ 1,334,315,083

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17C of the code.

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of

Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.

112 - Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2020 Org 0808

Personal Services and Employee Benefits00100	\$	1,698,752
Current Expenses13000		338,278
Repairs and Alterations.....06400		3,000
Equipment.....07000		15,500
BRIM Premium.....91300		<u>10,000</u>
Total.....	\$	2,065,530

Total TITLE II, Section 2 – State Road Fund

(Including claims against the state) \$1,384,161,478

Sec. 3. Appropriations from other funds. — From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2020.

LEGISLATIVE

113 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2020 Org 2300

	Appropriation	Other Funds
Personal Services and Employee Benefits00100	\$	498,020
Current Expenses13000		133,903
Repairs and Alterations.....06400		1,000

Economic Loss Claim Payment Fund.....	33400	2,000,000
Other Assets.....	69000	<u>3,700</u>
Total.....		\$ 2,636,623

JUDICIAL

114 - Supreme Court –

Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2020 Org 2400

Current Expenses	13000	\$ 1,050,000
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115 - Supreme Court –

Court Advanced Technology Subscription Fund

(WV Code Chapter 51)

Fund 1704 FY 2020 Org 2400

Current Expenses	13000	\$ 100,000
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116 - Supreme Court –

Adult Drug Court Participation Fund

(WV Code Chapter 62)

Fund 1705 FY 2020 Org 2400

Current Expenses	13000	\$ 200,000
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EXECUTIVE

117 - Governor's Office –

Minority Affairs Fund

(WV Code Chapter 5)

Fund 1058 FY 2020 Org 0100

Personal Services and Employee Benefits00100	\$	177,737
Current Expenses13000		503,200
Martin Luther King, Jr. Holiday Celebration03100		<u>8,926</u>
Total.....	\$	689,863

118 - Auditor's Office –

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2020 Org 1200

Personal Services and Employee Benefits00100	\$	799,211
Unclassified.....09900		15,139
Current Expenses13000		715,291
Repairs and Alterations.....06400		2,600
Equipment07000		426,741
Cost of Delinquent Land Sales.....76800		<u>1,341,168</u>
Total.....	\$	3,300,150

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

119 - Auditor's Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2020 Org 1200

Personal Services and Employee Benefits00100	\$	627,779
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Current Expenses	13000	282,030
Repairs and Alterations.....	06400	6,000
Equipment.....	07000	10,805
Other Assets.....	69000	50,000
Statutory Revenue Distribution.....	74100	<u>3,500,000</u>
Total.....		\$ 4,476,614

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer of 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.

120 - Auditor's Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2020 Org 1200

Personal Services and Employee Benefits00100		\$ 2,487,017
Unclassified.....09900		31,866
Current Expenses	13000	1,463,830
Repairs and Alterations.....	06400	12,400
Equipment.....	07000	394,700
Other Assets.....	69000	<u>900,000</u>
Total.....		\$ 5,289,813

121 - Auditor's Office – Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2020 Org 1200

Current Expenses	13000	\$ 10,000
Other Assets.....	69000	<u>5,000</u>
Total.....		\$ 15,000

Fifty percent of the deposits made into this fund shall be transferred to the Treasurer's Office – Technology Support and

Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.Va. Code §12-3-10c.

122 - Auditor's Office –

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2020 Org 1200

Personal Services and Employee Benefits00100	\$	2,824,837
Current Expenses	13000	2,303,622
Repairs and Alterations.....	06400	5,500
Equipment.....	07000	650,000
Other Assets.....	69000	308,886
Statutory Revenue Distribution.....	74100	<u>8,000,000</u>
Total.....	\$	14,092,845

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 the Purchasing Improvement Fund (fund 2264), the Hatfield-McCoy Regional Recreation Authority, and the State Park Operating Fund (fund 3265) per W.Va. Code §12-3-10d.

123 - Auditor's Office –

Chief Inspector's Fund

(WV Code Chapter 6)

Fund 1235 FY 2020 Org 1200

Personal Services and Employee Benefits00100	\$	3,583,096
Current Expenses	13000	765,915
Equipment.....	07000	<u>50,000</u>
Total.....	\$	4,399,011

124 - Auditor's Office –

Volunteer Fire Department Workers'

Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

Fund 1239 FY 2020 Org 1200

Volunteer Fire Department

Workers' Compensation Subsidy83200 \$ 2,500,000

*125 - Treasurer's Office**College Prepaid Tuition and Savings Program**Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2020 Org 1300

Personal Services and Employee Benefits00100	\$	810,372
Unclassified.....09900		14,000
Current Expenses13000		<u>619,559</u>
Total.....	\$	1,443,931

*126 - Department of Agriculture –**Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	2,425,446
Unclassified.....09900		37,425
Current Expenses13000		1,856,184
Repairs and Alterations.....06400		158,500
Equipment.....07000		436,209
Other Assets.....69000		<u>10,000</u>
Total.....	\$	4,923,764

*127 - Department of Agriculture –**West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	78,251
Unclassified.....09900		10,476
Current Expenses13000		<u>963,404</u>
Total.....	\$	1,052,131

128 - Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	71,937
Unclassified.....09900		2,100
Current Expenses13000		89,500
Repairs and Alterations.....06400		36,400
Equipment.....07000		<u>15,000</u>
Total.....	\$	214,937

The above appropriations shall be expended in accordance with Article 26, Chapter 19 of the Code.

129 - Department of Agriculture –

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	868,492
Unclassified.....09900		15,173
Current Expenses13000		1,367,464
Repairs and Alterations.....06400		388,722
Equipment.....07000		399,393
Other Assets.....69000		<u>20,000</u>
Total.....	\$	3,059,244

*130 - Department of Agriculture –**Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	1,030,451
Unclassified.....09900		45,807
Current Expenses13000		3,410,542
Repairs and Alterations.....06400		128,500
Equipment.....07000		10,000
Other Assets.....69000		27,000
Land73000		<u>250,000</u>
Total.....	\$	4,902,300

*131 - Department of Agriculture –**Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2020 Org 1400

Current Expenses13000	\$	112,500
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*132 - Department of Agriculture –**West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2020 Org 1400

Current Expenses13000	\$	500,000
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*133 - Department of Agriculture –**Veterans and Warriors to Agriculture Fund*

(WV Code Chapter 19)

Fund 1483 FY 2020 Org 1400

Current Expenses	13000	\$	7,500
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*134 - Department of Agriculture –**State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2020 Org 1400

Personal Services and Employee Benefits00100		\$	1,218,564
Unclassified.....09900			17,000
Current Expenses	13000		1,143,306
Repairs and Alterations.....06400			82,500
Equipment.....07000			76,000
Buildings.....25800			1,000
Other Assets.....69000			10,000
Land.....73000			1,000
Total.....		\$	2,549,370

*135 - Attorney General –**Antitrust Enforcement Fund*

(WV Code Chapter 47)

Fund 1507 FY 2020 Org 1500

Personal Services and Employee Benefits00100		\$	363,466
Current Expenses	13000		148,803
Repairs and Alterations.....06400			1,000
Equipment.....07000			1,000
Total.....		\$	514,269

*136 - Attorney General –**Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2020 Org 1500

Personal Services and Employee Benefits00100	\$	222,569
Current Expenses13000		54,615
Repairs and Alterations.....06400		1,000
Equipment.....07000		<u>1,000</u>
Total.....	\$	279,184

137 - Attorney General –

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2020 Org 1500

Current Expenses13000	\$	901,135
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138 - Secretary of State –

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2020 Org 1600

Personal Services and Employee Benefits00100	\$	1,065,106
Unclassified.....09900		4,524
Current Expenses13000		<u>8,036</u>
Total.....	\$	1,077,666

139 - Secretary of State –

General Administrative Fees Account

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2020 Org 1600

Personal Services and Employee Benefits00100	\$	2,947,630
Unclassified.....09900		25,529
Current Expenses13000		976,716
Technology Improvements59900		<u>570,000</u>
Total.....	\$	4,519,875

DEPARTMENT OF ADMINISTRATION

140 - Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2020 Org 0201

Tobacco Settlement Securitization

Trustee Pass Thru	65000	\$ 80,000,000
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141 - Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2020 Org 0201

Current Expenses	13000	\$ 42,954,000
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The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – Teachers’ Accumulation Fund (fund 2600).

142 - Department of Administration –

Division of Finance –

Shared Services Section Fund

(WV Code Chapter 5A)

Fund 2020 FY 2020 Org 0209

Personal Services and Employee Benefits00100		\$ 1,500,000
Current Expenses	13000	<u>500,000</u>
Total		\$ 2,000,000

143 - Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2020 Org 0210

Personal Services and Employee Benefits00100	\$ 22,464,463
Unclassified.....09900	382,354
Current Expenses13000	13,378,766
Repairs and Alterations.....06400	1,000
Equipment.....07000	2,050,000
Other Assets.....69000	<u>1,045,000</u>
Total.....	\$ 39,321,583

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Division of Information Services and Communications as provided by law.

Each spending unit operating from the General Revenue Fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

*144 - Division of Purchasing –**Vendor Fee Fund*

(WV Code Chapter 5A)

Fund 2263 FY 2020 Org 0213

Personal Services and Employee Benefits00100	\$ 741,589
Unclassified.....09900	2,382
Current Expenses13000	208,115
Repairs and Alterations.....06400	5,000
Equipment.....07000	2,500
Other Assets.....69000	2,500
BRIM Premium.....91300	<u>810</u>
Total.....	\$ 962,896

*145 - Division of Purchasing –**Purchasing Improvement Fund*

(WV Code Chapter 5A)

Fund 2264 FY 2020 Org 0213

Personal Services and Employee Benefits00100	\$	778,176
Unclassified.....09900		5,562
Current Expenses13000		393,066
Repairs and Alterations.....06400		500
Equipment.....07000		500
Other Assets.....69000		500
BRIM Premium.....91300		850
Total.....	\$	1,179,154

*146 - Travel Management –**Aviation Fund*

(WV Code Chapter 5A)

Fund 2302 FY 2020 Org 0215

Unclassified.....09900	\$	1,000
Current Expenses13000		149,700
Repairs and Alterations.....06400		1,175,237
Equipment.....07000		1,000
Buildings.....25800		100
Other Assets.....69000		100
Land.....73000		100
Total.....	\$	1,327,237

147 - Fleet Management Division Fund

(WV Code Chapter 5A)

Fund 2301 FY 2020 Org 0216

Personal Services and Employee Benefits00100	\$	757,145
Unclassified.....09900		4,000

Current Expenses	13000	8,130,614
Repairs and Alterations	06400	12,000
Equipment	07000	800,000
Other Assets	69000	<u>2,000</u>
Total		\$ 9,705,759

148 - Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2020 Org 0222

Personal Services and Employee Benefits	00100	\$ 4,760,683
Unclassified.....	09900	51,418
Current Expenses	13000	1,262,813
Repairs and Alterations.....	06400	5,000
Equipment	07000	20,000
Other Assets	69000	<u>60,000</u>
Total		\$ 6,159,914

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Personnel.

149 - West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2020 Org 0228

Personal Services and Employee Benefits	00100	\$ 251,663
Unclassified.....	09900	4,023
Current Expenses	13000	297,528
Repairs and Alterations.....	06400	600
Equipment	07000	500
Other Assets	69000	<u>500</u>
Total		\$ 554,814

150 - Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2020 Org 0231

Personal Services and Employee Benefits00100	\$	414,722
Unclassified.....09900		6,949
Current Expenses13000		227,116
Repairs and Alterations.....06400		1,000
Equipment.....07000		50,000
Other Assets.....69000		<u>10,000</u>
Total.....	\$	709,787

From the above fund, the provisions of W.Va. Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE*151 - Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2020 Org 0305

Personal Services and Employee Benefits00100	\$	1,574,177
Current Expenses13000		282,202
Repairs and Alterations.....06400		53,000
Equipment.....07000		<u>300,000</u>
Total.....	\$	2,209,379

*152 - Division of Forestry –**Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2020 Org 0305

Personal Services and Employee Benefits00100	\$	239,244
Current Expenses13000		87,036
Repairs and Alterations.....06400		<u>11,250</u>
Total.....	\$	337,530

*153 - Division of Forestry –**Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2020 Org 0305

Personal Services and Employee Benefits00100	\$	859,626
Current Expenses	13000	<u>435,339</u>
Total	\$	1,294,965

*154 - Geological and Economic Survey –**Geological and Analytical Services Fund*

(WV Code Chapter 29)

Fund 3100 FY 2020 Org 0306

Personal Services and Employee Benefits00100	\$	37,966
Unclassified.....	09900	2,182
Current Expenses	13000	141,631
Repairs and Alterations.....	06400	50,000
Equipment.....	07000	20,000
Other Assets.....	69000	<u>10,000</u>
Total.....	\$	261,779

The above appropriations shall be used in accordance with W.Va. Code §29-2-4.

*155 - West Virginia Development Office –**Department of Commerce –**Marketing and Communications Operating Fund*

(WV Code Chapter 5B)

Fund 3002 FY 2020 Org 0307

Personal Services and Employee Benefits00100	\$	1,592,400
Equipment.....	07000	36,000

Unclassified.....	09900	30,000
Current Expenses	13000	<u>1,446,760</u>
Total.....		\$ 3,105,160

156 - West Virginia Development Office –

Office of Coalfield Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2020 Org 0307

Personal Services and Employee Benefits	00100	\$ 435,661
Unclassified.....	09900	8,300
Current Expenses	13000	<u>399,191</u>
Total.....		\$ 843,152

157 - West Virginia Development Office

Entrepreneurship and Innovation Investment Fund

(WV Code Chapter 5B)

Fund 3014 FY 2020 Org 0307

Entrepreneurship and Innovation Investment Fund	#####	\$ 500,000
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158 - Division of Labor –

HVAC Fund

(WV Code Chapter 21)

Fund 3186 FY 2020 Org 0308

Personal Services and Employee Benefits	00100	\$ 300,000
Unclassified.....	09900	4,000
Current Expenses	13000	85,000
Repairs and Alterations.....	06400	1,500
Buildings.....	25800	1,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....		\$ 400,000

*159 - Division of Labor –**Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	3,182,000
Unclassified.....09900		21,589
Current Expenses13000		597,995
Repairs and Alterations.....06400		15,000
Buildings25800		5,000
BRIM Premium.....91300		8,500
Total.....	\$	3,830,084

*160 - Division of Labor –**Elevator Safety Fund*

(WV Code Chapter 21)

Fund 3188 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	397,862
Unclassified.....09900		2,261
Current Expenses13000		44,112
Repairs and Alterations.....06400		2,000
Buildings25800		1,000
BRIM Premium.....91300		8,500
Total.....	\$	455,735

*161 - Division of Labor –**Steam Boiler Fund*

(WV Code Chapter 21)

Fund 3189 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	82,716
Unclassified.....09900		1,000

Current Expenses	13000	15,000
Repairs and Alterations	06400	2,000
Buildings	25800	1,000
BRIM Premium.....	91300	<u>1,000</u>
Total.....		\$ 102,716

162 - Division of Labor –

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	191,899
Unclassified.....09900		1,380
Current Expenses	13000	49,765
Repairs and Alterations.....06400		1,500
Buildings	25800	1,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....	\$	254,044

163 - Division of Labor –

Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	187,462
Unclassified.....09900		1,281
Current Expenses	13000	44,520
Repairs and Alterations.....06400		2,000
Buildings	25800	1,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....	\$	244,763

164 - Division of Labor –

State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3195 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	289,199
Unclassified.....09900		1,847
Current Expenses13000		43,700
Repairs and Alterations.....06400		1,000
Buildings25800		1,000
BRIM Premium.....91300		<u>3,404</u>
Total.....	\$	340,150

*165 - Division of Labor –**Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	1,500,000
Current Expenses13000		227,000
Repairs and Alterations.....06400		28,000
Equipment07000		15,000
BRIM Premium.....91300		<u>8,500</u>
Total.....	\$	1,778,500

*166 - Division of Labor –**Bedding and Upholstery Fund*

(WV Code Chapter 21)

Fund 3198 FY 2020 Org 0308

Personal Services and Employee Benefits00100	\$	150,000
Unclassified.....09900		2,000
Current Expenses13000		43,000
Repairs and Alterations.....06400		2,000
Buildings25800		1,000
BRIM Premium.....91300		<u>2,000</u>
Total.....	\$	200,000

*167 - Division of Labor –**Psychophysiological Examiners Fund*

(WV Code Chapter 21)

Fund 3199 FY 2020 Org 0308

Current Expenses 13000 \$ 4,000

*168 - Division of Natural Resources –**License Fund – Wildlife Resources*

(WV Code Chapter 20)

Fund 3200 FY 2020 Org 0310

Wildlife Resources.....	02300	\$ 7,090,036
Administration	15500	1,694,974
Capital Improvements		
and Land Purchase (R).....	24800	1,695,961
Law Enforcement.....	80600	<u>7,027,929</u>
Total.....		\$ 17,508,900

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Natural Resources.

Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, appropriation 24800) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

*169 - Division of Natural Resources –**Natural Resources Game Fish and Aquatic Life Fund*

(WV Code Chapter 22)

Fund 3202 FY 2020 Org 0310

Current Expenses 13000 \$ 125,000

*170 - Division of Natural Resources –**Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2020 Org 0310

Personal Services and Employee Benefits00100	\$	688,103
Current Expenses13000		201,810
Equipment07000		<u>106,615</u>
Total.....	\$	996,528

*171 - Division of Natural Resources –**Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2020 Org 0310

Personal Services and Employee Benefits00100	\$	457,738
Current Expenses13000		157,864
Repairs and Alterations06400		15,016
Equipment07000		8,300
Buildings25800		8,300
Other Assets69000		2,000,000
Land73000		<u>31,700</u>
Total.....	\$	2,678,918

*172 - Division of Natural Resources –**Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2020 Org 0310

Personal Services and Employee Benefits00100	\$	67,641
Current Expenses13000		64,778
Equipment07000		1,297
Buildings25800		<u>6,969</u>
Total.....	\$	140,685

*173 - Division of Natural Resources –**Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2020 Org 0310

Unclassified.....	09900	\$	200
Current Expenses	13000		<u>19,800</u>
Total.....		\$	20,000

*174 - Division of Miners' Health, Safety and Training –**Special Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2020 Org 0314

Personal Services and Employee Benefits	00100	\$	501,228
WV Mining Extension Service	02600		150,000
Unclassified.....	09900		40,985
Current Expenses	13000		1,954,557
Buildings	25800		481,358
Directed Transfer	70000		1,300,000
Land	73000		<u>1,000,000</u>
Total.....		\$	5,428,128

From the above appropriation for Directed Transfer (Fund 3355, appropriation 70000), \$1,100,000 shall be transferred to the State Rail Authority – Commuter Rail Access Fund (fund 8402) and \$200,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

*175 - Department of Commerce –**Office of the Secretary –**Broadband Enhancement Fund*

Fund 3013 FY 2020 Org 0327

Current Expenses	13000	\$	1,780,000
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*176 - Office of Energy –**Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2020 Org 0328

Energy Assistance – Total	64700	\$	7,211
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*177 - State Board of Rehabilitation –**Division of Rehabilitation Services –**West Virginia Rehabilitation Center Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2020 Org 0932

Personal Services and Employee Benefits00100	\$	119,738
Current Expenses	13000	2,180,122
Repairs and Alterations.....06400		85,500
Equipment.....07000		220,000
Buildings.....25800		150,000
Other Assets.....69000		<u>150,000</u>
Total.....	\$	2,905,360

DEPARTMENT OF EDUCATION*178 - State Board of Education –**Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$	134,000
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Unclassified.....	09900	1,000
Current Expenses	13000	<u>765,000</u>
Total.....		\$ 900,000

179 - State Board of Education –

School Construction Fund

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2020 Org 0402

SBA Construction Grants	24000	\$ 35,845,818
Directed Transfer	70000	<u>1,371,182</u>
Total.....		\$ 37,217,000

The above appropriation for Directed Transfer (fund 3951, appropriation 70000) shall be transferred to the School Building Authority Fund (3959) for the administrative expenses of the School Building Authority.

180 - School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2020 Org 0402

Personal Services and Employee Benefits	00100	\$ 1,134,522
Current Expenses	13000	244,100
Repairs and Alterations.....	06400	13,150
Equipment	07000	<u>26,000</u>
Total.....		\$ 1,417,772

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

181 - Division of Culture and History –

Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2020 Org 0432

Personal Services and Employee Benefits00100	\$	226,624
Current Expenses	13000	862,241
Equipment	07000	75,000
Buildings	25800	1,000
Other Assets	69000	52,328
Land	73000	<u>1,000</u>
Total.....	\$	1,218,193

DEPARTMENT OF ENVIRONMENTAL PROTECTION

182 - Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2020 Org 0312

Personal Services and Employee Benefits00100	\$	842,305
Current Expenses	13000	2,060,457
Repairs and Alterations.....	06400	1,000
Equipment	07000	5,000
Other Assets.....	69000	<u>4,403</u>
Total.....	\$	2,913,165

183 - Division of Environmental Protection –

Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	779,766
Current Expenses	13000	155,969
Repairs and Alterations.....	06400	500
Equipment	07000	1,505
Unclassified.....	09900	8,072
Other Assets.....	69000	<u>2,000</u>
Total.....	\$	947,812

184 - Division of Environmental Protection –

Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	950,135
Current Expenses	13000	1,026,863
Repairs and Alterations	06400	13,000
Equipment	07000	53,105
Unclassified.....	09900	14,647
Other Assets	69000	<u>20,000</u>
Total.....	\$	2,077,750

*185 - Division of Environmental Protection –**Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	1,627,573
Current Expenses	13000	16,185,006
Repairs and Alterations	06400	79,950
Equipment	07000	130,192
Other Assets	69000	<u>32,000</u>
Total.....	\$	18,054,721

*186 - Division of Environmental Protection –**Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	143,906
Current Expenses	13000	<u>356,094</u>
Total.....	\$	500,000

*187 - Division of Environmental Protection –**Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	3,498,896
Current Expenses	13000	1,237,758
Repairs and Alterations	06400	40,600
Equipment	07000	8,000
Unclassified.....	09900	44,700
Other Assets	69000	<u>15,000</u>
Total.....	\$	4,844,954

*188 - Division of Environmental Protection –**Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	3,566,280
Current Expenses	13000	2,202,231
Repairs and Alterations	06400	60,260
Equipment	07000	83,000
Unclassified.....	09900	920
Other Assets	69000	<u>57,500</u>
Total.....	\$	5,970,191

*189 - Division of Environmental Protection –**Underground Storage Tank**Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	476,417
Current Expenses	13000	318,420
Repairs and Alterations	06400	5,350
Equipment	07000	3,610

Unclassified.....	09900	7,520
Other Assets.....	69000	<u>3,500</u>
Total.....		\$ 814,817

190 - Division of Environmental Protection –

Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

Fund 3331 FY 2020 Org 0313

Personal Services and Employee Benefits	00100	\$ 598,154
Current Expenses	13000	767,905
Repairs and Alterations.....	06400	7,014
Equipment.....	07000	9,000
Unclassified.....	09900	10,616
Other Assets.....	69000	<u>3,500</u>
Total.....		\$ 1,396,189

191 - Division of Environmental Protection –

Solid Waste Reclamation and

Environmental Response Fund

(WV Code Chapter 22)

Fund 3332 FY 2020 Org 0313

Personal Services and Employee Benefits	00100	\$ 825,811
Current Expenses	13000	3,604,737
Repairs and Alterations.....	06400	25,000
Equipment.....	07000	31,500
Unclassified.....	09900	22,900
Buildings.....	25800	500
Other Assets.....	69000	<u>1,000</u>
Total.....		\$ 4,511,448

192 - Division of Environmental Protection –

Solid Waste Enforcement Fund

(WV Code Chapter 22)

Fund 3333 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	3,238,054
Current Expenses	13000	970,229
Repairs and Alterations	06400	30,930
Equipment	07000	23,356
Unclassified.....	09900	37,145
Other Assets	69000	<u>25,554</u>
Total.....	\$	4,325,268

*193 - Division of Environmental Protection –**Air Pollution Control Fund*

(WV Code Chapter 22)

Fund 3336 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	5,934,859
Current Expenses	13000	1,469,467
Repairs and Alterations	06400	84,045
Equipment	07000	103,601
Unclassified.....	09900	70,572
Other Assets	69000	<u>52,951</u>
Total.....	\$	7,715,495

*194 - Division of Environmental Protection –**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	344,792
Current Expenses	13000	208,188
Repairs and Alterations	06400	1,000
Equipment	07000	1,000

Unclassified.....09900	1,120
Other Assets.....69000	<u>163,000</u>
Total.....	\$ 719,100

195 - Division of Environmental Protection –

Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2020 Org 0313

Current Expenses	13000	\$ 5,182,076
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196 - Division of Environmental Protection –

Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2020 Org 0313

Current Expenses	13000	\$ 60,000
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197 - Division of Environmental Protection –

Recycling Assistance Fund

(WV Code Chapter 22)

Fund 3487 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$ 679,721
Current Expenses	13000 2,735,112
Repairs and Alterations.....06400	800
Equipment.....07000	500
Unclassified.....09900	400
Other Assets.....69000	<u>2,500</u>
Total.....	\$ 3,419,033

198 - Division of Environmental Protection –

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$	1,250,562
Current Expenses		642,934
Repairs and Alterations		30,112
Equipment		23,500
Unclassified.....		1,180
Other Assets		11,520
Total.....	\$	1,959,808

*199 - Oil and Gas Conservation Commission –**Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2020 Org 0315

Personal Services and Employee Benefits00100	\$	162,161
Current Expenses		161,225
Repairs and Alterations		1,000
Equipment		9,481
Other Assets		1,500
Total.....	\$	335,367

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*200 - Division of Health –**Ryan Brown Addiction Prevention and Recovery Fund*

(WV Code Chapter 19)

Fund 5111 FY 2020 Org 0506

Current Expenses	13000	\$	13,588,654
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*201 - Division of Health –**The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	938,484
Unclassified.....09900		15,500
Current Expenses13000		<u>2,757,788</u>
Total.....	\$	3,711,772

*202 - Division of Health –**Hospital Services Revenue Account**Special Fund**Capital Improvement, Renovation and Operations*

(WV Code Chapter 16)

Fund 5156 FY 2020 Org 0506

Institutional Facilities Operations33500	\$	35,555,221
Medical Services Trust Fund – Transfer.....51200		<u>27,800,000</u>
Total.....	\$	63,355,221

The total amount of these appropriations shall be paid from the Hospital Services Revenue Account Special Fund created by W.Va. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities.

Additional funds have been appropriated in fund 0525, fiscal year 2020, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this fund or in connection with the appropriation designated Institutional

Facilities Operations in the Consolidated Medical Service Fund
(fund 0525, organization 0506).

203 - Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	936,712
Unclassified.....09900		18,114
Current Expenses13000		<u>1,803,327</u>
Total.....	\$	2,758,153

204 - Division of Health –

The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	645,446
Unclassified.....09900		7,113
Current Expenses13000		<u>98,247</u>
Total.....	\$	750,806

205 - Division of Health –

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2020 Org 0506

Current Expenses13000	\$	9,740
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206 - Division of Health –

Lead Abatement Account

(WV Code Chapter 16)

Fund 5204 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	19,100
Unclassified.....09900		373
Current Expenses13000		<u>17,875</u>
Total.....	\$	37,348

*207 - Division of Health –**West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	691,978
Unclassified.....09900		223,999
Current Expenses13000		<u>28,053,549</u>
Total.....	\$	28,969,526

*208 - Division of Health –**Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2020 Org 0506

Current Expenses13000	\$	7,579
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*209 - Division of Health –**Medical Cannabis Program Fund*

(WV Code Chapter 16A)

Fund 5420 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	509,658
Current Expenses13000		1,151,040
Other Assets69000		<u>895,000</u>
Total.....	\$	2,555,698

*210 - West Virginia Health Care Authority –**Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2020 Org 0507

Personal Services and Employee Benefits00100	\$	1,345,380
Hospital Assistance02500		50,000
Unclassified.....09900		100
Current Expenses13000		754,645
Repairs and Alterations06400		500
Equipment07000		<u>300</u>
Total.....	\$	<u>2,150,925</u>

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.Va. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

*211 - West Virginia Health Care Authority –**Certificate of Need Program Fund*

(WV Code Chapter 16)

Fund 5377 FY 2020 Org 0507

Personal Services and Employee Benefits00100	\$	829,798
Current Expenses13000		<u>474,967</u>
Total.....	\$	<u>1,304,765</u>

*212 - Division of Human Services –**Health Care Provider Tax –**Medicaid State Share Fund*

(WV Code Chapter 11)

Fund 5090 FY 2020 Org 0511

Medical Services.....	18900	\$ 213,594,315
Medical Services Administrative Costs	78900	<u>242,287</u>
Total.....		\$ 213,836,602

The above appropriation for Medical Services Administrative Costs (fund 5090, appropriation 78900) shall be transferred to a special revenue account in the treasury for use by the Department of Health and Human Resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia Medical Services Fund (fund 5084).

213 - Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2020 Org 0511

Personal Services and Employee Benefits	00100	\$ 24,809,509
Unclassified.....	09900	380,000
Current Expenses	13000	<u>12,810,491</u>
Total.....		\$ 38,000,000

214 - Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2020 Org 0511

Medical Services.....	18900	\$ 82,227,707
Medical Services Administrative Costs	78900	<u>602,486</u>
Total.....		\$ 82,830,193

The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.Va. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state

match for Medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the Division of Human Services accounts.

215 - Division of Human Services –

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2020 Org 0511

Unclassified.....	09900	\$	7,000
Current Expenses	13000		<u>693,000</u>
Total.....		\$	700,000

216 - Division of Human Services –

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2020 Org 0511

Current Expenses	13000	\$	900,000
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217 - Division of Human Services –

West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2020 Org 0511

Current Expenses	13000	\$	500,000
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218 - Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2020 Org 0511

Current Expenses	13000	\$	1,500,000
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*219 - Division of Human Services –**Marriage Education Fund*

(WV Code Chapter 9)

Fund 5490 FY 2020 Org 0511

Personal Services and Employee Benefits00100	\$	10,000
Current Expenses	13000	<u>25,000</u>
Total.....	\$	35,000

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

*220 - Department of Military Affairs and Public Safety –**Office of the Secretary –**Law-Enforcement, Safety and Emergency Worker**Funeral Expense Payment Fund*

(WV Code Chapter 15)

Fund 6003 FY 2020 Org 0601

Current Expenses	13000	\$	32,000
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*221 - State Armory Board –**General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2020 Org 0603

Personal Services and Employee Benefits00100	\$	1,681,247
Current Expenses	13000	650,000
Repairs and Alterations.....06400		385,652
Equipment.....07000		250,000
Buildings.....25800		770,820
Other Assets.....69000		100,000

Land	73000	<u>200,000</u>
Total.....		\$ 4,037,719

From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).

222 - Division of Homeland Security

And Emergency Management –

Statewide Interoperable Radio Network Account

(WV Code Chapter 15)

Fund 6208 FY 2020 Org 0606

Current Expenses	13000	\$	80,000
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223 - Division of Homeland Security and

Emergency Management –

West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2020 Org 0606

Current Expenses	13000	\$	2,000,000
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Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 6295, appropriation 09600) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

224 - Division of Corrections and Rehabilitation –

Parolee Supervision Fees

(WV Code Chapter 15A)

Fund 6362 FY 2020 Org 0608

Personal Services and Employee Benefits00100	\$	1,087,848
Unclassified.....09900		9,804
Current Expenses13000		758,480
Equipment.....07000		30,000
Other Assets.....69000		<u>40,129</u>
Total.....	\$	1,926,261

*225 - Division of Corrections and Rehabilitation –**Regional Jail and Correctional Facility Authority*

(WV Code Chapter 15A)

Fund 6675 FY 2020 Org 0608

Personal Services and Employee Benefits00100	\$	506,450
Debt Service.....04000		9,000,000
Current Expenses13000		<u>245,852</u>
Total.....	\$	9,752,302

*226 - West Virginia State Police –**Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2020 Org 0612

Personal Services and Employee Benefits00100	\$	1,907,726
Current Expenses13000		1,488,211
Repairs and Alterations.....06400		204,500
Equipment.....07000		3,770,751
Buildings.....25800		534,000
Other Assets.....69000		5,000
BRIM Premium.....91300		<u>302,432</u>
Total.....	\$	8,212,620

The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

227 - West Virginia State Police –

Forensic Laboratory Fund

(WV Code Chapter 15)

Fund 6511 FY 2020 Org 0612

Personal Services and Employee Benefits00100	\$	600,000
Current Expenses13000		90,000
Repairs and Alterations06400		5,000
Equipment07000		<u>545,000</u>
Total.....	\$	1,240,000

228 - West Virginia State Police –

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2020 Org 0612

Current Expenses13000	\$	1,327,000
Equipment07000		3,491,895
BRIM Premium91300		<u>154,452</u>
Total.....	\$	4,973,347

The total amount of these appropriations shall be paid from the special revenue fund out of receipts collected pursuant to W.Va. Code §11-15-9a and 16 and paid into a revolving fund account in the State Treasury.

229 - West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2020 Org 0612

Buildings	25800	\$ 1,022,778
Land	73000	1,000
BRIM Premium.....	91300	<u>77,222</u>
Total.....		\$ 1,101,000

230 - West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2020 Org 0612

Current Expenses	13000	\$ 225,000
Repairs and Alterations.....	06400	20,000
Equipment.....	07000	250,000
Buildings	25800	40,000
Other Assets.....	69000	45,000
BRIM Premium.....	91300	<u>5,000</u>
Total.....		\$ 585,000

231 - West Virginia State Police –

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2020 Org 0612

Personal Services and Employee Benefits	00100	\$ 256,629
Current Expenses	13000	51,443
Repairs and Alterations.....	06400	500
Equipment.....	07000	300,500
Other Assets.....	69000	300,500
BRIM Premium.....	91300	<u>18,524</u>
Total.....		\$ 928,096

232 - West Virginia State Police –

Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2020 Org 0612

Current Expenses	13000	\$	8,300
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*233 - West Virginia State Police –**State Police Academy Post Exchange*

(WV Code Chapter 15)

Fund 6544 FY 2020 Org 0612

Current Expenses	13000	\$	160,000
Repairs and Alterations.....	06400		<u>40,000</u>
Total.....		\$	200,000

*234 - Fire Commission –**Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2020 Org 0619

Personal Services and Employee Benefits00100		\$	3,480,533
Unclassified.....09900			3,800
Current Expenses	13000		1,249,550
Repairs and Alterations.....06400			58,500
Equipment.....07000			140,800
BRIM Premium.....91300			<u>62,000</u>
Total.....		\$	4,995,183

*235 - Division of Justice and Community Services –**WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2020 Org 0620

Personal Services and Employee Benefits00100		\$	161,923
Unclassified.....09900			750
Current Expenses	13000		1,846,250

Repairs and Alterations.....06400	1,000
Total.....	\$ 2,009,923

236 - Division of Justice and Community Services –

Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2020 Org 0620

Personal Services and Employee Benefits00100	\$ 23,840
Current Expenses13000	<u>1,478,135</u>
Total.....	\$ 1,501,975

237 - Division of Justice and Community Services –

Second Chance Driver's License Program Account

(WV Code Chapter 17B)

Fund 6810 FY 2020 Org 0620

Current Expenses13000	\$ 25,000
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DEPARTMENT OF REVENUE

238 - Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2020 Org 0303

Personal Services and Employee Benefits00100	\$ 2,703,057
Current Expenses13000	614,775
Equipment.....07000	<u>44,200</u>
Total.....	\$ 3,362,032

239 - Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2020 Org 0701

Directed Transfer70000 \$ 20,000,000

The above appropriation for Directed Transfer shall be transferred to the Consolidated Public Retirement Board – West Virginia Public Employees Retirement System Employers Accumulation Fund (fund 2510).

240 - Tax Division –

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2020 Org 0702

Personal Services and Employee Benefits00100	\$	25,928
Current Expenses13000		<u>7,717</u>
Total.....	\$	33,645

241 - Tax Division –

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2020 Org 0702

Personal Services and Employee Benefits00100	\$	696,428
Unclassified.....09900		9,500
Current Expenses13000		273,297
Repairs and Alterations.....06400		7,000
Equipment.....07000		<u>5,000</u>
Total.....	\$	991,225

242 - Tax Division –

Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2020 Org 0702

Personal Services and Employee Benefits00100	\$	268,973
Current Expenses		<u>5,406</u>
Total.....	\$	274,379

243 - Tax Division –

Reduced Cigarette Ignition Propensity

Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

Fund 7092 FY 2020 Org 0702

Current Expenses	13000	\$	35,000
Equipment	07000		<u>15,000</u>
Total.....		\$	50,000

244 - Tax Division –

Local Sales Tax and Excise Tax

Administration Fund

(WV Code Chapter 11)

Fund 7099 FY 2020 Org 0702

Personal Services and Employee Benefits00100	\$	1,543,527
Unclassified.....09900		10,000
Current Expenses	13000	784,563
Repairs and Alterations.....06400		1,000
Equipment.....07000		<u>5,000</u>
Total.....	\$	2,344,090

245 - State Budget Office –

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2020 Org 0703

Public Employees

Insurance Reserve Fund – Transfer	90300	\$	6,800,000
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The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

*246 - State Budget Office –**Public Employees Insurance Agency Financial Stability Fund*

(WV Code Chapter 11B)

Fund 7401 FY 2020 Org 0703

Retiree Premium Offset	80101	\$	5,000,000
PEIA Reserve.....	80102		<u>10,000,000</u>
Total.....		\$	15,000,000

The above appropriation shall be transferred to special revenue funds to be utilized by the West Virginia Public Employees Insurance Agency for the purposes of permitting the PEIA Finance Board to offset \$5 million in retiree premium increases. Additionally, \$10 million will be put into a reserve fund to stabilize and preserve the future solvency of PEIA. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

*247 - Insurance Commissioner –**Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2020 Org 0704

Personal Services and Employee Benefits	00100	\$	748,764
Current Expenses	13000		1,357,201
Repairs and Alterations.....	06400		3,000
Equipment.....	07000		81,374
Buildings	25800		8,289
Other Assets.....	69000		<u>11,426</u>
Total.....		\$	2,210,054

248 - Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2020 Org 0704

Personal Services and Employee Benefits00100	\$	571,976
Current Expenses	13000	202,152
Repairs and Alterations	06400	5,000
Equipment	07000	34,225
Buildings	25800	4,865
Other Assets	69000	<u>19,460</u>
Total	\$	837,678

249 - Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2020 Org 0704

Personal Services and Employee Benefits00100	\$	24,169,021
Current Expenses	13000	8,797,758
Repairs and Alterations	06400	68,614
Equipment	07000	1,728,240
Buildings	25800	25,000
Other Assets	69000	<u>340,661</u>
Total	\$	35,129,294

250 - Insurance Commissioner –

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2020 Org 0704

Employee Benefits	01000	\$	50,000
Current Expenses	13000		<u>250,500,000</u>
Total		\$	250,550,000

251 - Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2020 Org 0704

Current Expenses 13000 \$ 15,000,000

252 - Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2020 Org 0704

Current Expenses 13000 \$ 9,000,000

253 - Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2020 Org 0704

Current Expenses 13000 \$ 14,000,000

254 - Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2020 Org 0706

Personal Services and Employee Benefits00100	\$	282,589
Current Expenses 13000		144,844
Equipment07000		<u>100</u>
Total.....	\$	427,533

255 - Racing Commission –

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2020 Org 0707

Medical Expenses – Total.....	24500	\$	57,000
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The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this fund except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

*256 - Racing Commission –**Administration and Promotion Account*

(WV Code Chapter 19)

Fund 7304 FY 2020 Org 0707

Personal Services and Employee Benefits00100	\$	264,564
Current Expenses	13000	93,335
Other Assets	69000	<u>5,000</u>
Total.....	\$	362,899

*257 - Racing Commission –**General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2020 Org 0707

Personal Services and Employee Benefits00100	\$	2,352,306
Current Expenses	13000	566,248
Repairs and Alterations.....	06400	7,000
Other Assets	69000	<u>50,000</u>
Total.....	\$	2,975,554

*258 - Racing Commission –**Administration, Promotion, Education, Capital Improvement**and Greyhound Adoption Programs**to include Spaying and Neutering Account*

(WV Code Chapter 19)

Fund 7307 FY 2020 Org 0707

Personal Services and Employee Benefits00100	\$	918,781
Current Expenses	13000	214,406
Other Assets	69000	<u>200,000</u>
Total	\$	1,333,187

*259 - Alcohol Beverage Control Administration –**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2020 Org 0708

Personal Services and Employee Benefits00100	\$	132,213
Current Expenses	13000	69,186
Repairs and Alterations	06400	7,263
Equipment	07000	10,000
Buildings	25800	100,000
Other Assets	69000	<u>100</u>
Total	\$	318,762

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

260 - Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2020 Org 0708

Personal Services and Employee Benefits00100	\$	5,790,574
Current Expenses	13000	2,890,577
Repairs and Alterations.....	06400	91,000
Equipment.....	07000	108,000
Buildings.....	25800	375,100
Purchase of Supplies for Resale.....	41900	72,500,000
Transfer Liquor Profits and Taxes	42500	20,800,000
Other Assets.....	69000	125,100
Land	73000	<u>100</u>
Total.....		\$ 102,680,451

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

261 - State Athletic Commission Fund

(WV Code Chapter 29)

Fund 7009 FY 2020 Org 0933

Personal Services and Employee Benefits00100	\$	2,900
Current Expenses	13000	<u>37,100</u>
Total.....	\$	40,000

DEPARTMENT OF TRANSPORTATION

262 - Division of Motor Vehicles –

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2020 Org 0802

Current Expenses 13000 \$ 189,000

*263 - Division of Motor Vehicles –**Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2020 Org 0802

Personal Services and Employee Benefits00100	\$ 3,733,074
Current Expenses 13000	4,362,975
Repairs and Alterations.....06400	16,000
Equipment07000	75,000
Other Assets69000	10,000
BRIM Premium.....91300	<u>84,737</u>
Total.....	\$ 8,281,786

*264 - Division of Highways –**A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2020 Org 0803

Current Expenses 13000 \$ 1,650,000

*265 - State Rail Authority –**West Virginia Commuter Rail Access Fund*

(WV Code Chapter 29)

Fund 8402 FY 2020 Org 0804

Current Expenses 13000 \$ 1,100,000

DEPARTMENT OF VETERANS' ASSISTANCE*266 - Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2020 Org 0613

Current Expenses	13000	\$ 1,654,234
Other Assets	69000	<u>10,000</u>
Total		\$ 1,664,234

*267 - Department of Veterans' Assistance –**WV Veterans' Home –**Special Revenue Operating Fund*

(WV Code Chapter 9A)

Fund 6754 FY 2020 Org 0618

Current Expenses	13000	\$ 700,000
Repairs and Alterations	06400	<u>50,000</u>
Total		\$ 750,000

BUREAU OF SENIOR SERVICES*268 - Bureau of Senior Services –**Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2020 Org 0508

Personal Services and Employee Benefits	00100	\$ 160,883
Current Expenses	13000	<u>10,348,710</u>
Total		\$ 10,509,593

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of

West Virginia to stay in their homes through the provision of home and community-based services.

HIGHER EDUCATION POLICY COMMISSION

269 - Higher Education Policy Commission –

System –

Tuition Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2020 Org 0442

Debt Service.....	04000	\$ 27,713,123
General Capital Expenditures	30600	5,000,000
Facilities Planning and Administration.....	38600	<u>441,111</u>
Total.....		\$ 33,154,234

The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

270 - Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2020 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.Va. Code §18-12B-8, which have since been refunded.

271 - Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2020 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908, appropriation 95800) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical College Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

272 - West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2020 Org 0463

Personal Services and Employee Benefits00100	\$ 10,764,347
Current Expenses13000	4,524,300
Repairs and Alterations06400	425,000
Equipment07000	512,000
Buildings25800	150,000
Other Assets69000	<u>50,000</u>
Total.....	\$ 16,425,647

MISCELLANEOUS BOARDS AND COMMISSIONS*273 - Board of Barbers and Cosmetologists –**Barbers and Beauticians Special Fund*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2020 Org 0505

Personal Services and Employee Benefits00100	\$	543,993
Current Expenses		<u>239,969</u>
Total	\$	783,962

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.

*274 - Hospital Finance Authority –**Hospital Finance Authority Fund*

(WV Code Chapter 16)

Fund 5475 FY 2020 Org 0509

Personal Services and Employee Benefits00100	\$	93,261
Unclassified.....09900		1,450
Current Expenses		<u>55,397</u>
Total	\$	150,108

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

*275 - WV State Board of Examiners for Licensed Practical Nurses –**Licensed Practical Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2020 Org 0906

Personal Services and Employee Benefits00100	\$	495,505
Current Expenses13000		<u>107,700</u>
Total.....	\$	603,205

276 - WV Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2020 Org 0907

Personal Services and Employee Benefits00100	\$	1,300,612
Current Expenses13000		312,655
Repairs and Alterations06400		3,000
Equipment07000		25,000
Other Assets69000		<u>4,500</u>
Total.....	\$	1,645,767

277 - Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2020 Org 0926

Personal Services and Employee Benefits00100	\$	12,481,921
Unclassified.....09900		147,643
Current Expenses13000		2,572,202
Repairs and Alterations06400		55,000
Equipment07000		160,000
Buildings25800		10
PSC Weight Enforcement34500		4,605,652
Debt Payment/Capital Outlay52000		350,000
Land73000		10
BRIM Premium.....91300		<u>172,216</u>
Total.....	\$	20,544,654

The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to transfer up to \$500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

278 - Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2020 Org 0926

Personal Services and Employee Benefits00100	\$	294,658
Unclassified.....09900		3,851
Current Expenses13000		93,115
Repairs and Alterations.....06400		<u>4,000</u>
Total.....	\$	395,624

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

279 - Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2020 Org 0926

Personal Services and Employee Benefits00100	\$	2,377,514
Unclassified.....09900		29,233
Current Expenses13000		577,557
Repairs and Alterations.....06400		23,000
Equipment.....07000		<u>50,000</u>
Total.....	\$	3,057,304

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

280 - Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2020 Org 0926

Personal Services and Employee Benefits00100	\$	772,994
Current Expenses13000		276,472
Equipment07000		9,872
BRIM Premium91300		<u>4,660</u>
Total	\$	1,063,998

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

281 - Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2020 Org 0927

Personal Services and Employee Benefits00100	\$	607,098
Current Expenses13000		293,122
Repairs and Alterations06400		2,500
Equipment07000		<u>5,000</u>
Total	\$	907,720

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

282 - WV Board of Examiners for Speech-Language

Pathology and Audiology –

Speech-Language Pathology and Audiology Operating Fund

(WV Code Chapter 30)

Fund 8646 FY 2020 Org 0930

Personal Services and Employee Benefits00100	\$	80,251
Current Expenses 13000		<u>63,499</u>
Total	\$	143,750

283 - WV Board of Respiratory Care –

Board of Respiratory Care Fund

(WV Code Chapter 30)

Fund 8676 FY 2020 Org 0935

Personal Services and Employee Benefits00100	\$	95,160
Current Expenses 13000		53,027
Repairs and Alterations.....06400		<u>400</u>
Total	\$	148,587

284 - WV Board of Licensed Dietitians –

Dietitians Licensure Board Fund

(WV Code Chapter 30)

Fund 8680 FY 2020 Org 0936

Personal Services and Employee Benefits00100	\$	20,219
Current Expenses 13000		<u>20,250</u>
Total	\$	40,469

285 - Massage Therapy Licensure Board –

Massage Therapist Board Fund

(WV Code Chapter 30)

Fund 8671 FY 2020 Org 0938

Personal Services and Employee Benefits00100	\$	109,355
Current Expenses13000		<u>42,648</u>
Total.....	\$	152,003

*286 - Board of Medicine –**Medical Licensing Board Fund*

(WV Code Chapter 30)

Fund 9070 FY 2020 Org 0945

Personal Services and Employee Benefits00100	\$	1,378,807
Current Expenses13000		1,108,789
Repairs and Alterations.....06400		<u>8,000</u>
Total.....	\$	2,495,596

*287 - West Virginia Enterprise Resource Planning Board –**Enterprise Resource Planning System Fund*

(WV Code Chapter 12)

Fund 9080 FY 2020 Org 0947

Personal Services and Employee Benefits00100	\$	6,856,239
Unclassified.....09900		232,000
Current Expenses13000		15,640,134
Repairs and Alterations.....06400		300
Equipment.....07000		2,213,000
Buildings25800		2,000
Other Assets69000		<u>199,500</u>
Total.....	\$	25,143,173

*288 - Board of Treasury Investments –**Board of Treasury Investments Fee Fund*

(WV Code Chapter 12)

Fund 9152 FY 2020 Org 0950

Personal Services and Employee Benefits00100	\$	782,889
Unclassified.....09900		14,850
Current Expenses		13000
.....650,714		
BRIM Premium.....91300		36,547
Fees of Custodians, Fund Advisors and Fund Managers.....93800		<u>3,500,000</u>
Total.....	\$	4,985,000

There is hereby appropriated from this fund, in addition to the above appropriation if needed, an amount of funds necessary for the Board of Treasury Investments to pay the fees and expenses of custodians, fund advisors and fund managers for the consolidated fund of the State as provided in Article 6C, Chapter 12 of the Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

Total TITLE II, Section 3 – Other Funds

(Including claims against the state) \$1,525,022,363

Sec. 4. Appropriations from lottery net profits. — Net profits of the lottery are to be deposited by the Director of the Lottery to the following accounts in the amounts indicated. The Director of the Lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the Director of the Lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 for that purpose. Upon receipt of reimbursement of amounts so transferred, the Director of

the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

289 - Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2020 Org 0211

	Appropriation	Lottery Funds
Debt Service – Total	31000	\$ 10,000,000

290 - West Virginia Development Office –

West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 3067 FY 2020 Org 0304

Tourism – Telemarketing Center	46300	\$ 82,080
Tourism – Advertising (R).....	61800	2,422,407
Tourism – Operations (R).....	66200	<u>4,227,938</u>
Total.....		\$ 6,732,425

Any unexpended balances remaining in the appropriations for Tourism – Advertising (fund 3067, appropriation 61800), and Tourism – Operations (fund 3067, appropriation 66200) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

291 - Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2020 Org 0310

Personal Services and Employee Benefits	00100	\$ 2,428,178
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Current Expenses	13000	26,900
Pricketts Fort State Park.....	32400	106,560
Non-Game Wildlife (R)	52700	386,935
State Parks and Recreation Advertising (R)	61900	<u>494,578</u>
Total.....		\$ 3,443,151

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, appropriation 09900), Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

292 - State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2020 Org 0402

FBI Checks.....	37200	\$ 116,548
Vocational Education		
Equipment Replacement.....	39300	800,000
Assessment Program (R).....	39600	3,016,444
Literacy Project.....	89900	350,000
21st Century Technology Infrastructure		
Network Tools and Support (R)	93300	<u>14,600,383</u>
Total.....		\$ 18,883,375

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, appropriation 09900), Current Expenses (fund 3951, appropriation 13000), Assessment Program (fund 3951, appropriation 39600), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, appropriation 93300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

293 - State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2020 Org 0402

Debt Service – Total	31000	\$ 15,320,363
Directed Transfer	70000	<u>2,679,637</u>
Total.....		\$ 18,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

*294 - Division of Culture and History –**Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2020 Org 0432

Huntington Symphony	02700	\$ 59,058
Preservation WV (R).....	09200	491,921
Fairs and Festivals (R)	12200	1,346,814
Commission for National and Community Service	19300	374,980
Archeological Curation/ Capital Improvements (R)	24600	36,276
Historic Preservation Grants (R).....	31100	368,428
West Virginia Public Theater.....	31200	120,019
Greenbrier Valley Theater	42300	115,000
Theater Arts of West Virginia.....	46400	90,000
Marshall Artists Series	51800	36,005
Grants for Competitive Arts Program (R).....	62400	726,000
West Virginia State Fair.....	65700	31,241
Save the Music	68000	24,000
Contemporary American Theater Festival....	81100	57,281
Independence Hall	81200	27,277
Mountain State Forest Festival	86400	38,187
WV Symphony.....	90700	59,058

Wheeling Symphony.....	90800	59,058
Appalachian Children's Chorus.....	91600	<u>54,554</u>
Total.....		\$ 4,115,157

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette) \$2,673, Aracoma Story (Logan) \$29,703, Arts Monongahela (Monongalia) \$11,881, Barbour County Arts and Humanities Council \$891, Beckley Main Street (Raleigh) \$2,970, Buffalo Creek Memorial (Logan) \$2,970, Carnegie Hall (Greenbrier) \$46,899, Ceredo Historical Society (Wayne) \$1,188, Ceredo Kenova Railroad Museum (Wayne) \$1,188, Ceredo Museum (Wayne) \$720, Children's Theatre of Charleston (Kanawha) \$3,127, Chuck Mathena Center (Mercer) \$62,532, Collis P. Huntington Railroad Historical Society (Cabell) \$5,941, Country Music Hall of Fame and Museum (Marion) \$4,159, First Stage Children's Theater Company \$1,188, Flannigan Murrell House (Summers) \$3,781, Fort Ashby Fort (Mineral) \$891, Fort New Salem (Harrison) \$2,198, Fort Randolph (Mason) \$2,970, General Adam Stephen Memorial Foundation (Berkeley) \$11,006, Grafton Mother's Day Shrine Committee (Taylor) \$5,049, Hardy County Tour and Crafts Association \$11,881, Heartwood in the Hills (Calhoun) \$5,040, Heritage Farm Museum & Village (Cabell) \$29,703, Historic Fayette Theater (Fayette) \$3,267, Historic Middleway Conservancy (Jefferson) \$594, Jefferson County Black History Preservation Society \$2,970, Jefferson County Historical Landmark Commission \$4,753, Maddie Carroll House (Cabell) \$4,455, Marshall County Historical Society \$5,049, McCoy Theater (Hardy) \$11,881, Morgantown Theater Company (Monongalia) \$11,881, Mountaineer Boys' State (Lewis) \$5,941, Nicholas Old Main Foundation (Nicholas) \$1,188, Norman Dillon Farm Museum (Berkeley) \$5,941, Old Opera House Theater Company (Jefferson) \$8,911, Parkersburg Arts Center (Wood) \$11,881, Pocahontas Historic Opera House \$3,564, Raleigh County All Wars Museum \$5,941, Rhododendron Girl's State (Ohio) \$5,941, Roane County 4-H and FFA Youth Livestock Program \$2,970, Scottish Heritage Society/N. Central WV (Harrison) \$2,970, Society for the Preservation of McGrew House

(Preston) \$2,079, Southern West Virginia Veterans' Museum \$3,393, Summers County Historic Landmark Commission \$2,970, Those Who Served War Museum (Mercer) \$2,376, Three Rivers Avian Center (Summers) \$5,311, Tug Valley Arts Council (Mingo) \$2,970, Tug Valley Chamber of Commerce Coal House (Mingo) \$1,188, Tunnelton Historical Society (Preston) \$1,188, Veterans Committee for Civic Improvement of Huntington (Wayne) \$2,970, West Virginia Museum of Glass (Lewis) \$2,970, West Virginia Music Hall of Fame (Kanawha) \$20,792, YMCA Camp Horseshoe (Tucker) \$59,406, Youth Museum of Southern West Virginia (Raleigh) \$7,129, Z.D. Ramsdell House (Wayne) \$720.

From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to the A Princeton 4th (Mercer) \$1,800, African-American Cultural Heritage Festival (Jefferson) \$2,970, Alderson 4th of July Celebration (Greenbrier) \$2,970, Allegheny Echo (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers Festival (Tucker) \$6,683, American Civil War (Grant) \$3,127, American Legion Post 8 Veterans Day Parade (McDowell) \$1,250, Angus Beef and Cattle Show (Lewis) \$891, Annual Birch River Days (Nicholas) \$1,296, Annual Don Redman Heritage Concert & Awards (Jefferson) \$938, Annual Ruddle Park Jamboree (Pendleton) \$4,690, Antique Market Fair (Lewis) \$1,188, Apollo Theater-Summer Program (Berkeley) \$1,188, Apple Butter Festival (Morgan) \$3,564, Arkansas Homemaker's Heritage Weekend (Hardy) \$2,079, Armed Forces Day-South Charleston (Kanawha) \$1,782, Arthurdale Heritage New Deal Festival (Preston) \$2,970, Athens Town Fair (Mercer) \$1,188, Augusta Fair (Randolph) \$2,970, Autumn Harvest Fest (Monroe) \$2,448, Barbour County Fair \$14,851, Barboursville Octoberfest (Cabell) \$2,970, Bass Festival (Pleasants) \$1,099, Battelle District Fair (Monongalia) \$2,970, Battle of Dry Creek (Greenbrier) \$891, Battle of Point Pleasant Memorial Committee (Mason) \$2,970, Belle Town Fair (Kanawha) \$2,673, Belleville Homecoming (Wood) \$11,881, Bergoo Down Home Days (Webster) \$1,485, Berkeley County Youth Fair \$10,990, Black Bear 4K Mountain Bike Race (Kanawha) \$684, Black Heritage Festival (Harrison) \$3,564,

Black Walnut Festival (Roane) \$5,940, Blast from the Past (Upshur) \$1,440, Blue-Gray Reunion (Barbour) \$2,079, Boone County Fair \$5,940, Boone County Labor Day Celebration \$2,376, Bradshaw Fall Festival (McDowell) \$1,188, Brandonville Heritage Day (Preston) \$1,048, Braxton County Fair \$6,832, Braxton County Monster Fest / West Virginia Autumn Festival \$1,485, Brooke County Fair \$2,079, Bruceton Mills Good Neighbor Days (Preston) \$1,188, Buckwheat Festival (Preston) \$5,050, Buffalo 4th of July Celebration (Putnam) \$400, Buffalo October Fest (Putnam) \$3,240, Burlington Apple Harvest Festival (Mineral) \$17,821, Burlington Pumpkin Harvest Festival (Raleigh) \$2,970, Burnsville Harvest Festival (Braxton) \$1,407, Cabell County Fair \$5,940, Calhoun County Wood Festival \$1,188, Campbell's Creek Community Fair (Kanawha) \$1,485, Cape Coalwood Festival Association (McDowell) \$1,485, Capon Bridge Founders Day Festival (Hampshire) \$1,188, Capon Springs Ruritan 4th of July (Hampshire) \$684, Cass Homecoming (Pocahontas) \$1,188, Cedarville Town Festival (Gilmer) \$684, Celebration in the Park (Wood) \$2,376, Celebration of America (Monongalia) \$3,564, Ceredo Freedom Festival (Wayne) \$700, Chapmanville Apple Butter Festival (Logan) \$684, Chapmanville Fire Department 4th of July (Logan) \$1,782, Charles Town Christmas Festival (Jefferson) \$2,970, Charles Town Heritage Festival (Jefferson) \$2,970, Cherry River Festival (Nicholas) \$3,861, Chester Fireworks (Hancock) \$891, Chester 4th of July Festivities (Hancock) \$2,970, Chief Logan State Park-Civil War Celebration (Logan) \$4,752, Chilifest West Virginia State Chili Championship (Cabell) \$1,563, Christmas In Our Town (Marion) \$3,127, Christmas in Shepherdstown (Jefferson) \$2,376, Christmas in the Park (Brooke) \$2,970, Christmas in the Park (Logan) \$14,851, City of Dunbar Critter Dinner (Kanawha) \$5,940, City of Logan Polar Express (Logan) \$4,456, City of New Martinsville Festival of Memories (Wetzel) \$6,534, Clay County Golden Delicious Apple Festival \$4,158, Clay District Fair (Monongalia) \$1,080, Coal Field Jamboree (Logan) \$20,792, Coalton Days Fair (Randolph) \$4,158, Country Roads Festival (Fayette) \$1,188, Cowen Railroad Festival (Webster) \$2,079, Craigsville Fall Festival (Nicholas) \$2,079, Cruise into Princeton (Mercer) \$2,160, Culturefest World Music & Arts Festival

(Mercer) \$4,690, Delbarton Homecoming (Mingo) \$2,079, Doddridge County Fair \$4,158, Dorcas Ice Cream Social (Grant) \$3,564, Durbin Days (Pocahontas) \$2,970, Elbert/Filbert Reunion Festival (McDowell) \$891, Elkins Randolph County 4th of July Car Show (Randolph) \$1,188, Fairview 4th of July Celebration (Marion) \$684, Farm Safety Day (Preston) \$1,188, Farmer's Day Festival (Monroe) \$2,330, Farmers' Day Parade (Wyoming) \$720, Fenwick Mountain Old Time Community Festival (Nicholas) \$2,880, FestivALL Charleston (Kanawha) \$11,881, Flatwoods Days (Braxton) \$700, Flemington Day Fair and Festival (Taylor) \$2,079, Follansbee Community Days (Brooke) \$4,900, Fort Gay Mountain Heritage Days (Wayne) \$2,970, Fort Henry Days (Ohio) \$3,148, Fort Henry Living History (Ohio) \$1,563, Fort New Salem Spirit of Christmas Festival (Harrison) \$2,432, Frankford Autumnfest (Greenbrier) \$2,970, Franklin Fishing Derby (Pendleton) \$4,456, Freshwater Folk Festival (Greenbrier) \$2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) \$2,970, Frontier Days (Harrison) \$1,782, Frontier Fest/Canaan Valley (Taylor) \$1,500, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) \$1,485, Gassaway Days Celebration (Braxton) \$2,970, Gilbert Elementary Fall Blast (Mingo) \$2,188, Gilbert Kiwanis Harvest Festival (Mingo) \$2,376, Gilbert Spring Fling (Mingo) \$3,595, Gilmer County Farm Show \$2,376, Grant County Arts Council \$1,188, Grape Stomping Wine Festival (Nicholas) \$1,188, Great Greenbrier River Race (Pocahontas) \$5,940, Greater Quinwood Days (Greenbrier) \$781, Guyandotte Civil War Days (Cabell) \$5,941, Hamlin 4th of July Celebration (Lincoln) \$2,970, Hampshire Civil War Celebration Days (Hampshire) \$684, Hampshire County 4th of July Celebration \$11,881, Hampshire County Fair \$5,002, Hampshire Heritage Days (Hampshire) \$2,376, Hancock County Oldtime Fair \$2,970, Hardy County Commission - 4th of July \$5,940, Hatfield McCoy Matewan Reunion Festival (Mingo) \$12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) \$2,970, Heat'n the Hills Chilifest (Lincoln) \$2,970, Heritage Craft Festival (Monroe) \$1,044, Heritage Days Festival (Roane) \$891, Hilltop Festival (Cabell) \$684, Hilltop Festival of Lights (McDowell) \$1,188, Hinton Railroad Days (Summers) \$4,347, Holly River Festival (Webster) \$891, Hometown Mountain Heritage Festival

(Fayette) \$2,432, Hundred 4th of July (Wetzel) \$4,307, Hundred American Legion Earl Kiger Post Bluegrass Festival (Wetzel) \$1,188, Hurricane 4th of July Celebration (Putnam) \$2,970, Jaeger Town Fair (McDowell) \$891, Irish Heritage Festival of West Virginia (Raleigh) \$2,970, Irish Spring Festival (Lewis) \$684, Italian Heritage Festival-Clarksburg (Harrison) \$17,821, Jackson County Fair \$2,970, Jamboree (Pocahontas) \$2,970, Jane Lew Arts and Crafts Fair (Lewis) \$684, Jefferson County Fair Association \$14,851, Jersey Mountain Ruritan Pioneer Days (Hampshire) \$684, John Henry Days Festival (Monroe) \$4,698, Johnnie Johnson Blues and Jazz Festival (Marion) \$2,970, Johnstown Community Fair (Harrison) \$1,485, Junior Heifer Preview Show (Lewis) \$1,188, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) \$2,970, Keeper of the Mountains-Kayford (Kanawha) \$1,485, Kenova Autumn Festival (Wayne) \$4,377, Kermit Fall Festival (Mingo) \$1,782, Keystone Reunion Gala (McDowell) \$1,563, King Coal Festival (Mingo) \$2,970, Kingwood Downtown Street Fair and Heritage Days (Preston) \$1,188, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) \$2,970, Lady of Agriculture (Preston) \$684, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) \$5,940, Larry Joe Harless Community Center Spring Middle School Event (Mingo) \$2,970, Last Blast of Summer (McDowell) \$2,970, Lewis County Fair Association \$2,079, Lewisburg Shanghai (Greenbrier) \$1,188, Lincoln County Fall Festival \$4,752, Lincoln County Winterfest \$2,970, Lindsie Veterans' Day Parade (Monroe) \$720, Little Levels Heritage Festival (Pocahontas) \$1,188, Lost Creek Community Festival (Harrison) \$4,158, Main Street Arts Festival (Upshur) \$3,127, Main Street Martinsburg Chocolate Fest and Book Fair (Berkeley) \$2,813, Mannington District Fair (Marion) \$3,564, Maple Syrup Festival (Randolph) \$684, Marion County FFA Farm Fest \$1,485, Marmet Labor Day Celebration (Kanawha) \$3,078, Marshall County Antique Power Show \$1,485, Marshall County Fair \$4,456, Mason County Fair \$2,970, Mason Dixon Festival (Monongalia) \$4,158, Matewan Massacre Reenactment (Mingo) \$5,004, Matewan-Magnolia Fair (Mingo) \$15,932, McARTS-McDowell County \$11,881, McDowell County Fair \$1,485, McGrew House History Day (Preston) \$1,188, McNeill's Rangers (Mineral)

\$4,752, Meadow Bridge Hometown Festival (Fayette) \$743, Meadow River Days Festival (Greenbrier) \$1,782, Mercer Bluestone Valley Fair (Mercer) \$1,188, Mercer County Fair \$1,188, Mercer County Heritage Festival \$3,474, Mid Ohio Valley Antique Engine Festival (Wood) \$1,782, Milton Christmas in the Park (Cabell) \$1,485, Milton 4th of July Celebration (Cabell) \$1,485, Mineral County Fair \$1,040, Mineral County Veterans Day Parade \$891, Molasses Festival (Calhoun) \$1,188, Monongahfest (Marion) \$3,752, Moon Over Mountwood Fishing Festival (Wood) \$1,782, Morgan County Fair-History Wagon \$891, Moundsville Bass Festival (Marshall) \$2,376, Moundsville July 4th Celebration (Marshall) \$2,970, Mount Liberty Fall Festival (Barbour) \$1,485, Mountain Fest (Monongalia) \$11,881, Mountain Festival (Mercer) \$2,747, Mountain Heritage Arts and Crafts Festival (Jefferson) \$2,970, Mountain Music Festival (McDowell) \$1,485, Mountain State Apple Harvest Festival (Berkeley) \$4,456, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) \$26,732, Mountaineer Hot Air Balloon Festival (Monongalia) \$2,376, Mullens Dogwood Festival (Wyoming) \$4,158, Multi-Cultural Festival of West Virginia (Kanawha) \$11,881, Music and Barbecue - Banks District VFD (Upshur) \$1,278, New Cumberland Christmas Parade (Hancock) \$1,782, New Cumberland 4th of July (Hancock) \$2,970, New River Bridge Day Festival (Fayette) \$23,762, Newburg Volunteer Fireman's Field Day (Preston) \$684, Nicholas County Fair \$2,970, Nicholas County Potato Festival \$2,079, Oak Leaf Festival (Fayette) \$6,253, Oceana Heritage Festival (Wyoming) \$3,564, Oglebay City Park - Festival of Lights (Ohio) \$47,524, Oglebay Festival (Ohio) \$5,940, Ohio County Country Fair \$5,346, Ohio River Fest (Jackson) \$4,320, Ohio Valley Beef Association (Wood) \$1,485, Ohio Valley Black Heritage Festival (Ohio) \$3,267, Old Central City Fair (Cabell) \$2,970, Old Century City Fair (Barbour) \$1,250, Old Tyme Christmas (Jefferson) \$1,425, Paden City Labor Day Festival (Wetzel) \$3,861, Parkersburg Homecoming (Wood) \$8,754, Patty Fest (Monongalia) \$1,188, Paw Paw District Fair (Marion) \$2,079, Pax Reunion Committee (Fayette) \$2,970, Pendleton County 4-H Weekend \$1,188, Pendleton County Committee for Arts \$8,910, Pendleton County Fair \$6,253, Pennsboro Country Road Festival (Ritchie) \$1,188, Petersburg 4th

of July Celebration (Grant) \$11,881, Petersburg HS Celebration (Grant) \$5,940, Piedmont-Annual Back Street Festival (Mineral) \$2,376, Pinch Reunion (Kanawha) \$891, Pine Bluff Fall Festival (Harrison) \$2,376, Pine Grove 4th of July Festival (Wetzel) \$4,158, Pineville Festival (Wyoming) \$3,564, Pleasants County Agriculture Youth Fair \$2,970, Poca Heritage Days (Putnam) \$1,782, Pocahontas County Pioneer Days \$4,159, Point Pleasant Stern Wheel Regatta (Mason) \$2,970, Pratt Fall Festival (Kanawha) \$1,485, Princeton Autumnfest (Mercer) \$1,563, Princeton Street Fair (Mercer) \$2,970, Putnam County Fair \$2,970, Quartets on Parade (Hardy) \$2,376, Rainelle Fall Festival (Greenbrier) \$3,127, Rand Community Center Festival (Kanawha) \$1,485, Randolph County Community Arts Council \$1,782, Randolph County Fair \$4,158, Randolph County Ramp and Rails \$1,188, Ranson Christmas Festival (Jefferson) \$2,970, Ranson Festival (Jefferson) \$2,970, Renick Liberty Festival (Greenbrier) \$684, Ripley 4th of July (Jackson) \$8,910, Ritchie County Fair and Exposition \$2,970, Ritchie County Pioneer Days \$684, River City Festival (Preston) \$684, Roane County Agriculture Field Day \$1,782, Rock the Park (Kanawha) \$3,240, Rocket Boys Festival (Raleigh) \$1,710, Romney Heritage Days (Hampshire) \$1,876, Ronceverte River Festival (Greenbrier) \$2,970, Rowlesburg Labor Day Festival (Preston) \$684, Rupert Country Fling (Greenbrier) \$1,876, Saint Spyridon Greek Festival (Harrison) \$1,485, Salem Apple Butter Festival (Harrison) \$2,376, Sistersville 4th of July (Tyler) \$3,267, Skirmish on the River (Mingo) \$1,250, Smoke on the Water (Wetzel) \$1,782, South Charleston Summerfest (Kanawha) \$5,940, Southern Wayne County Fall Festival \$684, Spirit of Grafton Celebration (Taylor) \$5,940, Springfield Peach Festival (Hampshire) \$738, St. Albans City of Lights - December (Kanawha) \$2,970, Sternwheel Festival (Wood) \$1,782, Stoco Reunion (Raleigh) \$1,485, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) \$6,534, Stonewall Jackson's Roundhouse Raid (Berkeley) \$7,200, Storytelling Festival (Lewis) \$400, Strawberry Festival (Upshur) \$17,821, Sylvester Big Coal River Festival (Boone) \$1,944, Tacy Fair (Barbour) \$684, Taste of Parkersburg (Wood) \$2,970, Taylor County Fair \$3,267, Terra Alta VFD 4th of July Celebration (Preston) \$684, The Gathering at Sweet Creek (Wood) \$1,782, Three Rivers Coal Festival

(Marion) \$4,604, Thunder on the Tygart - Mothers' Day Celebration (Taylor) \$7,000, Town of Delbarton 4th of July Celebration (Mingo) \$1,782, Town of Fayetteville Heritage Festival (Fayette) \$4,456, Town of Matoaka Hog Roast (Mercer) \$684, Town of Rivesville 4th of July Festival (Marion) \$3,127, Town of Winfield - Putnam County Homecoming \$3,240, St. Albans Train Fest (Kanawha) \$6,120, Treasure Mountain Festival (Pendleton) \$14,851, Tri-County Fair (Grant) \$22,548, Tucker County Arts Festival and Celebration \$10,692, Tucker County Fair \$2,821, Tucker County Health Fair \$1,188, Tunnelton Depot Days (Preston) \$684, Tunnelton Volunteer Fire Department Festival (Preston) \$684, Turkey Festival (Hardy) \$1,782, Tyler County Fair \$3,088, Tyler County 4th of July \$400, Tyler County OctoberFest \$720, Union Community Irish Festival (Barbour) \$648, Uniquely West Virginia Festival (Morgan) \$1,188, Upper Kanawha Valley Oktoberfest (Kanawha) \$1,485, Upper Ohio Valley Italian Festival (Ohio) \$7,128, Upshur County Youth Livestock Show \$1,440, Valley District Fair (Preston) \$2,079, Veterans Welcome Home Celebration (Cabell) \$938, Vietnam Veterans of America # 949 Christmas Party (Cabell) \$684, Volcano Days at Mountwood Park (Wood) \$2,970, War Homecoming Fall Festival (McDowell) \$891, Wardensville Fall Festival (Hardy) \$2,970, Wayne County Fair \$2,970, Wayne County Fall Festival \$2,970, Webster County Fair \$3,600, Webster County Wood Chopping Festival \$8,910, Webster Wild Water Weekend (Webster) \$1,188, Weirton July 4th Celebration (Hancock) \$11,881, Welcome Home Family Day (Wayne) \$1,900, Wellsburg 4th of July Celebration (Brooke) \$4,456, Wellsburg Apple Festival of Brooke County \$2,970, West Virginia Blackberry Festival (Harrison) \$2,970, West Virginia Chestnut Festival (Preston) \$684, West Virginia Coal Festival (Boone) \$5,940, West Virginia Coal Show (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis) \$5,940, West Virginia Dandelion Festival (Greenbrier) \$2,970, West Virginia Day at the Railroad Museum (Mercer) \$1,800, West Virginia Fair and Exposition (Wood) \$4,812, West Virginia Fireman's Rodeo (Fayette) \$1,485, West Virginia Oil and Gas Festival (Tyler) \$6,534, West Virginia Peach Festival (Hampshire) \$3,240, West Virginia Polled Hereford Association (Braxton) \$891, West

Virginia Poultry Festival (Hardy) \$2,970, West Virginia Pumpkin Festival (Cabell) \$5,940, West Virginia State Folk Festival (Gilmer) \$2,970, West Virginia Water Festival - City of Hinton (Summers) \$9,144, Weston VFD 4th of July Firemen Festival (Lewis) \$1,188, Wetzel County Autumnfest \$3,267, Wetzel County Town and Country Days \$10,098, Wheeling Celtic Festival (Ohio) \$1,166, Wheeling City of Lights (Ohio) \$4,752, Wheeling Sternwheel Regatta (Ohio) \$5,940, Wheeling Vintage Raceboat Regatta (Ohio) \$11,881, Whipple Community Action (Fayette) \$1,485, Wileyville Homecoming (Wetzel) \$2,376, Wine Festival and Mountain Music Event (Harrison) \$2,970, Winter Festival of the Waters (Berkeley) \$2,970, Wirt County Fair \$1,485, Wirt County Pioneer Days \$1,188, Wyoming County Civil War Days \$1,296, Youth Stockman Beef Expo (Lewis) \$1,188,

Any unexpended balances remaining in the appropriations for Preservation West Virginia (fund 3534, appropriation 09200), Fairs and Festivals (fund 3534, appropriation 12200), Archeological Curation/Capital Improvements (fund 3534, appropriation 24600), Historic Preservation Grants (fund 3534, appropriation 31100), Grants for Competitive Arts Program (fund 3534, appropriation 62400), and Project ACCESS (fund 3534, appropriation 86500) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Any Fairs & Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and the Cultural Grant Program allocations.

295 - Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2020 Org 0433

Books and Films	17900	\$	360,784
Services to Libraries	18000		550,000
Grants to Public Libraries	18200		9,439,571
Digital Resources	30900		219,992

Infomine Network.....	88400	<u>943,353</u>
Total.....		\$ 11,513,700

Any unexpended balance remaining in the appropriation for Libraries – Special Projects (fund 3559, appropriation 62500) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

296 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508

Personal Services and Employee Benefits	00100	\$ 209,640
Current Expenses	13000	332,284
Repairs and Alterations.....	06400	1,000
Local Programs Service Delivery Costs	20000	2,435,250
Silver Haired Legislature	20200	18,500
Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	4,615,503
Roger Tompkins Alzheimer's Respite Care	64300	2,302,016
WV Alzheimer's Hotline	72400	45,000
Regional Aged and Disabled Resource Center.....	76700	425,000
Senior Services Medicaid Transfer	87100	16,400,070
Legislative Initiatives for the Elderly.....	90400	9,671,239
Long Term Care Ombudsman.....	90500	297,226
BRIM Premium.....	91300	7,718
In-Home Services and Nutrition for Senior Citizens	91700	<u>6,095,941</u>
Total.....		\$ 42,856,387

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, appropriation 46200) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Included in the above appropriation for Current Expenses (fund 5405, appropriation 13000), is funding to support an in-home direct care workforce registry.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

297 - Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2020 Org 0441

RHI Program and Site Support (R).....03600	\$	1,912,491
RHI Program and Site Support –		
RHEP Program Administration03700		146,653
RHI Program and Site Support – Grad Med		
Ed and Fiscal Oversight (R)03800		88,913
Minority Doctoral Fellowship (R)16600		129,604
Health Sciences Scholarship (R).....17600		225,527
Vice Chancellor for Health Sciences –		
Rural Health Residency Program (R)60100		62,725
WV Engineering, Science, and		
Technology Scholarship Program.....86800		<u>452,831</u>
Total.....	\$	<u>3,018,744</u>

Any unexpended balances remaining in the appropriations for RHI Program and Site Support (fund 4925, appropriation 03600), RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (fund 4925, appropriation 03800), Minority Doctoral Fellowship (fund 4925, appropriation 16600), Health Sciences Scholarship (fund 4925, appropriation 17600), and Vice

Chancellor for Health Sciences – Rural Health Residency Program (fund 4925, appropriation 60100) at the close of fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (appropriation 86800) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

298 - Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2020 Org 0442

Debt Service – Total31000 \$ 5,000,000

Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

299 - Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2020 Org 0463

WVU Health Sciences –

RHI Program and Site Support (R).....	03500	\$ 1,181,728
MA Public Health Program and Health Science Technology (R).....	62300	52,445
Health Sciences Career Opportunities Program (R).....	86900	336,987

HSTA Program (R)	87000	1,761,948
Center for Excellence in Disabilities (R)	96700	<u>313,517</u>
Total		\$ 3,646,625

Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185, appropriation 96700) at the close of fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

300 - Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(WV Code Chapter 18B)

Fund 4896 FY 2020 Org 0471

Marshall Medical School –

RHI Program and Site Support (R).....	03300	\$ 427,075
Vice Chancellor for Health Sciences –		
Rural Health Residency Program (R)	60100	<u>171,361</u>
Total		<u>\$ 598,436</u>

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

Total TITLE II, Section 4 – Lottery Revenue..... \$ 127,808,000

Sec. 5. Appropriations from state excess lottery revenue fund. — In accordance with W.Va. Code §29-22-18a, §29-22A-

10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.

301 - Lottery Commission –

Refundable Credit

Fund 7207 FY 2020 Org 0705

	Appropriation	Excess Lottery Funds
Directed Transfer	70000	\$ 10,000,000

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner’s request.

302 - Lottery Commission –

General Purpose Account

Fund 7206 FY 2020 Org 0705

General Revenue Fund – Transfer	70011	\$ 65,000,000
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The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.Va. Code §29-22-18a.

303 - Higher Education Policy Commission –

Education Improvement Fund

Fund 4295 FY 2020 Org 0441

PROMISE Scholarship – Transfer.....80000 \$ 29,000,000

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

304 - Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2020 Org 0944

Debt Service – Total31000 \$ 19,000,000

Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

305 - Department of Education –

School Building Authority

Fund 3514 FY 2020 Org 0402

Debt Service – Total31000 \$ 19,000,000

*306 - West Virginia Infrastructure Council –**West Virginia Infrastructure Transfer Fund*Fund 3390 FY 2020 Org 0316

Directed Transfer70000 \$ 46,000,000

The above appropriation shall be allocated pursuant to W.Va. Code §29-22-18d and §31-15-9.

*307 - Higher Education Policy Commission –**Higher Education Improvement Fund*Fund 4297 FY 2020 Org 0441

Directed Transfer70000 \$ 15,000,000

The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

*308 - Division of Natural Resources –**State Park Improvement Fund*Fund 3277 FY 2020 Org 0310

Current Expenses (R).....	13000	\$	23,300
Repairs and Alterations (R)	06400		161,200
Equipment (R).....	07000		200,000
Buildings (R).....	25800		100,000
Other Assets (R).....	69000		<u>1,020,500</u>
Total.....		\$	1,505,000

Any unexpended balances remaining in the above appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Unclassified (fund 3277, appropriation 09900), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation

69000) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

309 - Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2020 Org 0944

Debt Service.....04000 \$ 2,032,000

310 - Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2020 Org 0944

Debt Service.....04000 \$ 4,395,000

311 - Racing Commission –

Fund 7308 FY 2020 Org 0707

Special Breeders Compensation

(WVC §29-22-18a, subsection (l))21800 \$ 2,000,000

312 - Lottery Commission –

Distributions to Statutory Funds and Purposes

Fund 7213 FY 2020 Org 0705

Parking Garage Fund – Transfer.....70001 \$ 500,000

2004 Capitol Complex Parking Garage Fund

– Transfer.....70002 216,478

Capitol Dome and Improvements Fund

– Transfer.....70003 1,796,256

Capitol Renovation and Improvement Fund

– Transfer.....70004 2,381,252

Development Office Promotion Fund

– Transfer.....70005 1,298,864

Research Challenge Fund – Transfer	70006	1,731,820
Tourism Promotion Fund – Transfer	70007	4,808,142
Cultural Facilities and Capitol Resources		
Matching Grant Program Fund		
– Transfer.....	70008	1,250,535
State Debt Reduction Fund – Transfer.....	70010	20,000,000
General Revenue Fund – Transfer	70011	1,167,799
West Virginia Racing Commission Racetrack		
Video Lottery Account	70012	3,463,637
Historic Resort Hotel Fund	70013	24,010
Licensed Racetrack Regular Purse Fund	70014	<u>22,383,247</u>
Total.....		\$ 61,022,040

313 - Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2020 Org 0100

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

314 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2020 Org 0307

Any unexpended balances remaining in the appropriations for Unclassified – Total (fund 3170, appropriation 09600), Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300), and Connectivity Research and Development – Lottery Surplus (fund 3170, appropriation 92300) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

*315 - Higher Education Policy Commission –**Administration –**Control Account*

(WV Code Chapter 18B)

Fund 4932 FY 2020 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

316 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2020 Org 0511

Medical Services.....18900 \$ 16,302,960

*317 - Division of Corrections and Rehabilitation –**Correctional Units*

(WV Code Chapters 15A)

Fund 6283 FY 2020 Org 0608

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

Total TITLE II, Section 5 – Excess Lottery Funds. \$ 290,257,000

Sec. 6. Appropriations of federal funds. — In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the

following amounts, as itemized, for expenditure during the fiscal year 2020.

LEGISLATIVE

318 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2020 Org 2300

	Appropriation	Federal Funds
Economic Loss Claim Payment Fund.....	33400	\$ 2,000,000

JUDICIAL

319 - Supreme Court

Fund 8867 FY 2020 Org 2400

Personal Services and Employee Benefits	00100	\$ 1,813,000
Current Expenses	13000	2,057,000
Repairs and Alterations.....	06400	100,000
Equipment.....	07000	250,000
Other Assets.....	69000	<u>280,000</u>
Total.....		\$ 4,500,000

EXECUTIVE

320 - Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2020 Org 1400

Personal Services and Employee Benefits	00100	\$ 2,628,780
Unclassified.....	09900	50,534
Current Expenses	13000	3,828,661
Repairs and Alterations.....	06400	650,000
Equipment.....	07000	910,500
Buildings.....	25800	1,000,000

Other Assets	69000	50,000
Land	73000	<u>500,000</u>
Total		\$ 9,618,475

321 - Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 8737 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	658,571
Unclassified.....09900		8,755
Current Expenses	13000	136,012
Repairs and Alterations.....06400		5,500
Equipment	07000	<u>114,478</u>
Total	\$	923,316

322 - Department of Agriculture –

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	97,250
Current Expenses	13000	<u>15,599,974</u>
Total	\$	15,697,224

323 - Department of Agriculture –

Land Protection Authority

Fund 8896 FY 2020 Org 1400

Personal Services and Employee Benefits00100	\$	46,526
Unclassified.....09900		5,004
Current Expenses	13000	<u>448,920</u>
Total	\$	500,450

*324 - Secretary of State –**State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2020 Org 1600

Personal Services and Employee Benefits00100	\$	210,240
Unclassified.....09900		7,484
Current Expenses13000		415,727
Repairs and Alterations.....06400		15,000
Other Assets.....69000		<u>100,000</u>
Total.....	\$	748,451

DEPARTMENT OF COMMERCE*325 - Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2020 Org 0305

Personal Services and Employee Benefits00100	\$	1,640,060
Unclassified.....09900		51,050
Current Expenses13000		5,232,560
Repairs and Alterations.....06400		155,795
Equipment.....07000		100,000
Other Assets.....69000		<u>1,808,300</u>
Total.....	\$	8,987,765

326 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2020 Org 0306

Personal Services and Employee Benefits00100	\$	54,432
Unclassified.....09900		2,803
Current Expenses13000		195,639
Repairs and Alterations.....06400		5,000
Equipment.....07000		7,500

Other Assets.....	69000	<u>15,000</u>
Total.....		\$ 280,374

327 - West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2020 Org 0307

Personal Services and Employee Benefits	00100	\$ 789,921
Unclassified.....	09900	50,000
Current Expenses	13000	<u>4,504,019</u>
Total.....		\$ 5,343,940

328 - West Virginia Development Office –

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8901 FY 2020 Org 0307

Personal Services and Employee Benefits	00100	\$ 497,289
Repairs and Alterations.....	06400	250
Equipment.....	07000	6,000
Unclassified.....	09900	106,795
Current Expenses	13000	<u>10,069,166</u>
Total.....		\$ 10,679,500

329 - Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2020 Org 0308

Personal Services and Employee Benefits	00100	\$ 409,251
Unclassified.....	09900	5,572
Current Expenses	13000	167,098
Repairs and Alterations.....	06400	<u>500</u>
Total.....		\$ 582,421

330 - Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2020 Org 0310

Personal Services and Employee Benefits00100	\$	8,237,073
Unclassified.....09900		107,693
Current Expenses13000		5,556,594
Repairs and Alterations06400		289,400
Equipment07000		1,815,182
Buildings25800		951,000
Other Assets69000		6,951,000
Land73000		<u>6,001,000</u>
Total.....	\$	29,908,942

*331 - Division of Miners' Health,**Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2020 Org 0314

Personal Services and Employee Benefits00100	\$	642,799
Current Expenses13000		<u>150,000</u>
Total.....	\$	792,799

332 - WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2020 Org 0323

Unclassified.....09900	\$	5,127
Current Expenses13000		507,530
Reed Act 2002 – Unemployment		
Compensation62200		2,850,000
Reed Act 2002 – Employment Services63000		<u>1,650,000</u>
Total.....	\$	5,012,657

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by WorkForce West Virginia for the specific purpose of administration of the state's unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

333 - Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2020 Org 0328

Personal Services and Employee Benefits00100	\$	426,385
Unclassified.....09900		7,350
Current Expenses13000		<u>2,816,076</u>
Total.....	\$	3,249,811

334 - State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2020 Org 0932

Personal Services and Employee Benefits00100	\$	11,863,244
Current Expenses13000		34,440,940
Repairs and Alterations.....06400		350,400
Equipment.....07000		<u>1,275,870</u>
Total.....	\$	47,930,454

335 - State Board of Rehabilitation –

Division of Rehabilitation Services –

Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2020 Org 0932

Personal Services and Employee Benefits00100	\$ 14,476,122
Current Expenses13000	11,383,206
Repairs and Alterations06400	1,100
Equipment07000	<u>83,350</u>
Total.....	\$ 25,943,778

DEPARTMENT OF EDUCATION336 - *State Board of Education* –*State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$ 5,785,359
Unclassified.....09900	2,000,000
Current Expenses13000	212,367,820
Repairs and Alterations06400	10,000
Equipment07000	10,000
Other Assets69000	<u>10,000</u>
Total.....	\$ 220,183,179

337 - *State Board of Education* –*School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$ 1,881,766
Unclassified.....09900	1,150,500
Current Expenses13000	148,281,265
Repairs and Alterations06400	20,000
Equipment07000	100,000
Other Assets69000	<u>25,000</u>
Total.....	\$ 151,458,531

*338 - State Board of Education –**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$	1,896,249
Unclassified.....09900		155,000
Current Expenses13000		14,820,081
Repairs and Alterations.....06400		10,000
Equipment.....07000		10,000
Other Assets.....69000		<u>10,000</u>
Total.....	\$	16,901,330

*339 - State Board of Education –**Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2020 Org 0402

Personal Services and Employee Benefits00100	\$	3,477,006
Unclassified.....09900		1,000,000
Current Expenses13000		113,346,390
Repairs and Alterations.....06400		10,000
Equipment.....07000		10,000
Other Assets.....69000		<u>10,000</u>
Total.....	\$	117,853,396

DEPARTMENT OF ARTS, CULTURE, AND HISTORY*340 - Commission for National and Community Service*

(WV Code Chapter 5F)

Fund 8841 FY 2020 Org 0432

Personal Services and Employee Benefits00100	\$	437,040
Current Expenses13000		5,587,325

Repairs and Alterations.....06400	1,000
Total.....	\$ 6,025,365

341 - Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2020 Org 0432

Personal Services and Employee Benefits00100	\$ 810,436
Current Expenses13000	1,947,372
Repairs and Alterations.....06400	1,000
Equipment.....07000	1,000
Buildings25800	1,000
Other Assets69000	1,000
Land73000	360
Total.....	\$ 2,762,168

342 - Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2020 Org 0433

Personal Services and Employee Benefits00100	\$ 353,396
Current Expenses13000	1,076,162
Equipment.....07000	543,406
Total.....	\$ 1,972,964

343 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2020 Org 0439

Equipment.....07000	\$ 200,000
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DEPARTMENT OF ENVIRONMENTAL PROTECTION*344 - Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2020 Org 0313

Personal Services and Employee Benefits00100	\$ 31,404,529
Current Expenses13000	154,302,118
Repairs and Alterations.....06400	738,283
Equipment07000	1,712,238
Unclassified.....09900	1,923,580
Other Assets69000	2,177,261
Land73000	<u>100,000</u>
Total.....	\$ 192,358,009

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*345 - Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$ 1,532,219
Unclassified.....09900	73,307
Current Expenses13000	<u>51,583,302</u>
Total.....	\$ 53,188,828

*346 - Division of Health –**Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$ 14,610,947
Unclassified.....09900	856,614
Current Expenses13000	69,201,885
Equipment07000	456,972
Buildings25800	155,000
Other Assets69000	<u>380,000</u>
Total.....	\$ 85,661,418

*347 - Division of Health –**West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2020 Org 0506

West Virginia Drinking Water Treatment

Revolving Fund – Transfer.....68900 \$ 16,000,000

348 - Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2020 Org 0510

Personal Services and Employee Benefits00100	\$	449,874
Unclassified.....09900		5,050
Current Expenses13000		<u>64,950</u>
Total.....	\$	519,874

349 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2020 Org 0511

Personal Services and Employee Benefits00100	\$	75,747,114
Unclassified.....09900		22,855,833
Current Expenses13000		112,085,005
Medical Services.....18900		3,539,265,405
Medical Services Administrative Costs78900		132,247,536
CHIP Administrative Costs.....85601		4,539,496
CHIP Services.....85602		47,422,974
Federal Economic Stimulus89100		<u>5,000,000</u>
Total.....	\$	3,939,163,363

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

350 - Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2020 Org 0601

Unclassified.....	09900	\$	30,000
Current Expenses	13000		<u>2,970,000</u>
Total.....		\$	3,000,000

*351 - Adjutant General –**State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2020 Org 0603

Unclassified.....	09900	\$	982,705
Mountaineer ChalleNGe Academy	70900		4,978,680
Martinsburg Starbase	74200		439,622
Charleston Starbase.....	74300		424,685
Military Authority	74800		<u>93,601,594</u>
Total.....		\$	100,427,286

The Adjutant General shall have the authority to transfer between appropriations.

*352 - Adjutant General –**West Virginia National Guard Counterdrug Forfeiture Fund*

(WV Code Chapter 15)

Fund 8785 FY 2020 Org 0603

Personal Services and Employee Benefits	00100	\$	1,350,000
Current Expenses	13000		300,000
Equipment.....	07000		<u>350,000</u>
Total.....		\$	2,000,000

*353 - Division of Homeland Security and**Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2020 Org 0606

Personal Services and Employee Benefits00100	\$	721,650
Current Expenses	13000	20,429,281
Repairs and Alterations	06400	5,000
Equipment	07000	<u>100,000</u>
Total	\$	21,255,931

354 - Division of Corrections and Rehabilitation

(WV Code Chapters 15A)

Fund 8836 FY 2020 Org 0608

Unclassified.....	09900	\$	1,100
Current Expenses	13000		<u>108,900</u>
Total		\$	110,000

355 - West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2020 Org 0612

Personal Services and Employee Benefits00100	\$	2,480,877
Current Expenses	13000	2,125,971
Repairs and Alterations	06400	42,000
Equipment	07000	2,502,285
Buildings	25800	750,500
Other Assets	69000	144,500
Land	73000	<u>500</u>
Total	\$	8,046,633

356 - Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2020 Org 0619

Current Expenses	13000	\$	80,000
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357 - Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2020 Org 0620

Personal Services and Employee Benefits00100	\$	1,222,258
Unclassified.....09900		25,185
Current Expenses13000		25,381,973
Repairs and Alterations06400		<u>1,750</u>
Total.....	\$	26,631,166

DEPARTMENT OF REVENUE*358 - Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2020 Org 0704

Current Expenses13000	\$	3,000,000
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DEPARTMENT OF TRANSPORTATION*359 - Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2020 Org 0802

Personal Services and Employee Benefits00100	\$	501,394
Current Expenses13000		6,498,106
Repairs and Alterations06400		<u>500</u>
Total.....	\$	7,000,000

360 - Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2020 Org 0805

Personal Services and Employee Benefits00100	\$	922,070
Current Expenses13000		9,163,149

Repairs and Alterations.....	06400	2,500
Equipment.....	07000	2,801,714
Buildings.....	25800	650,000
Other Assets.....	69000	<u>200,000</u>
Total.....		\$ 13,739,433

DEPARTMENT OF VETERANS' ASSISTANCE

361 - Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2020 Org 0613

Personal Services and Employee Benefits	00100	\$ 2,774,248
Current Expenses	13000	3,270,000
Equipment.....	07000	213,000
Buildings.....	25800	<u>600,000</u>
Total.....		\$ 6,857,248

362 - Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2020 Org 0618

Personal Services and Employee Benefits	00100	\$ 955,426
Current Expenses	13000	844,092
Repairs and Alterations.....	06400	220,000
Equipment.....	07000	198,000
Buildings.....	25800	296,000
Other Assets.....	69000	20,000
Land	73000	<u>10,000</u>
Total.....		\$ 2,543,518

BUREAU OF SENIOR SERVICES

363 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2020 Org 0508

Personal Services and Employee Benefits00100	\$	767,364
Current Expenses13000		13,811,853
Repairs and Alterations06400		<u>3,000</u>
Total.....	\$	14,582,217

MISCELLANEOUS BOARDS AND COMMISSIONS*364 - Public Service Commission –**Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2020 Org 0926

Personal Services and Employee Benefits00100	\$	1,352,576
Current Expenses13000		368,953
Repairs and Alterations06400		39,000
Equipment07000		<u>1,000</u>
Total.....	\$	1,761,529

*365 - Public Service Commission –**Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2020 Org 0926

Personal Services and Employee Benefits00100	\$	621,039
Current Expenses13000		124,628
Equipment07000		3,000
Unclassified.....09900		<u>4,072</u>
Total.....	\$	752,739

366 - National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2020 Org 0941

Personal Services and Employee Benefits00100	\$	163,315
Current Expenses		633,597
Repairs and Alterations.....06400		5,000
Equipment.....07000		3,000
Other Assets.....69000		<u>2,000</u>
Total.....	\$	<u>806,912</u>
Total TITLE II, Section 6 - Federal Funds		<u>\$5,189,543,394</u>

Sec. 7. Appropriations from federal block grants. — The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2020.

367 - West Virginia Development Office –

Community Development

Fund 8746 FY 2020 Org 0307

Personal Services and Employee Benefits00100	\$	10,658,978
Unclassified.....09900		2,375,000
Current Expenses		<u>224,476,883</u>
Total.....	\$	<u>237,510,861</u>

368 - Department of Commerce

West Virginia Development Office –

Office of Economic Opportunity –

Community Services

Fund 8902 FY 2020 Org 0307

Personal Services and Employee Benefits00100	\$	362,389
Unclassified.....09900		125,000
Current Expenses		12,002,111
Repairs and Alterations.....06400		1,500
Equipment.....07000		<u>9,000</u>
Total.....	\$	<u>12,500,000</u>

*369 - WorkForce West Virginia –**Workforce Investment Act*Fund 8749 FY 2020 Org 0323

Personal Services and Employee Benefits00100	\$	2,999,497
Unclassified.....09900		23,023
Current Expenses13000		39,263,511
Repairs and Alterations06400		1,600
Equipment07000		500
Buildings25800		<u>1,100</u>
Total.....	\$	42,289,231

*370 - Division of Health –**Maternal and Child Health*Fund 8750 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	2,268,209
Unclassified.....09900		81,439
Current Expenses13000		<u>5,794,267</u>
Total.....	\$	8,143,915

*371 - Division of Health –**Preventive Health*Fund 8753 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	268,337
Unclassified.....09900		22,457
Current Expenses13000		1,895,366
Equipment07000		<u>165,642</u>
Total.....	\$	2,351,802

*372 - Division of Health –**Substance Abuse Prevention and Treatment*Fund 8793 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	657,325
Unclassified.....09900		115,924
Current Expenses13000		<u>10,853,740</u>
Total.....	\$	11,626,989

373 - Division of Health –

Community Mental Health Services

Fund 8794 FY 2020 Org 0506

Personal Services and Employee Benefits00100	\$	551,368
Unclassified.....09900		33,533
Current Expenses13000		<u>4,883,307</u>
Total.....	\$	5,468,208

374 - Division of Human Services –

Energy Assistance

Fund 8755 FY 2020 Org 0511

Personal Services and Employee Benefits00100	\$	1,856,844
Unclassified.....09900		350,000
Current Expenses13000		<u>33,181,300</u>
Total.....	\$	35,388,144

375 - Division of Human Services –

Social Services

Fund 8757 FY 2020 Org 0511

Personal Services and Employee Benefits00100	\$	8,806,005
Unclassified.....09900		171,982
Current Expenses13000		<u>8,870,508</u>
Total.....	\$	17,848,495

376 - Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2020 Org 0511

Personal Services and Employee Benefits00100	\$ 19,913,598
Unclassified.....09900	1,250,000
Current Expenses13000	<u>105,847,136</u>
Total.....	\$ 127,010,734

377 - Division of Human Services –

Child Care and Development

Fund 8817 FY 2020 Org 0511

Personal Services and Employee Benefits00100	\$ 2,793,496
Unclassified.....09900	350,000
Current Expenses13000	<u>46,999,456</u>
Total.....	\$ 50,142,952

Total TITLE II, Section 7 – Federal Block Grants..... \$ 550,281,331

Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2020, from the fund as designated, in the amounts as specified, general revenue funds in the amount of \$642,817 special revenue funds in the amount of \$212,743 and state road funds in the amount of \$1,703,146 for payment of claims against the state.

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following item is hereby appropriated from the state fund, general revenue, and is to be available for expenditure during the fiscal year 2020 out of surplus funds only, accrued from the fiscal year ending June 30, 2019, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus as of July 31, 2019 from the fiscal year ending June 30, 2019, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2019, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this

section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

378 - Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2020 Org 1400

WV Food Banks – Surplus##### \$ 300,000

379 - State Board of Education

State Department of Education

(WV Code Chapter 18 & 18A)

Fund 0313 FY 2020 Org 0402

Directed Transfer – Surplus##### \$ 3,500,000

The above appropriation for Directed Transfer - Surplus (fund 0313, appropriation #####) shall be transferred to the Safe Schools Fund (fund XXXX, org 0402) established by W.Va. Code §18-5-48.

380 - Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2020 Org 0486

Shepherd University – Surplus##### \$ 500,000

381 - Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2020 Org 0477

Blue Ridge Community and Technical College
– Surplus##### \$ 500,000

382 - Eastern West Virginia community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2020 Org 0492

Eastern West Virginia Community and
Technical College – Surplus##### \$ 500,000

383 - West Virginia university at Parkersburg

(WV Code Chapter 18B)

Fund 0131 FY 2020 Org 0464

West Virginia University at Parkersburg
– Surplus##### \$ 500,000

384 - Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2020 Org 0485

Glenville State College – Surplus##### \$ 500,000

385 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

New Born Screening Testing – Surplus##### \$ 200,000

386 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

Sexual Assault Intervention and Prevention
 – Surplus##### \$ 125,000

387 - West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2020 Org 0304

Tourism – Brand Promotion – Surplus	#####	\$ 5,000,000
Tourism – Public Relations – Surplus.....	#####	750,000
Tourism – Events and Sponsorships		
– Surplus	#####	250,000
Tourism – Industry Development		
– Surplus	#####	250,000
State Parks and Recreation Adverstising		
– Surplus	#####	<u>750,000</u>
Total.....		\$ 7,000,000

388 - State Board of Education

Vocational Division

(WV Code Chapter 18 and 18A)

Fund 0390 FY 2020 Org 0402

Jim’s Dream – Surplus.....##### \$ 4,000,000

389- Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2020 Org 0506

Jim’s Dream – Surplus.....##### \$ 1,000,000

390 – Division of Human Services

(WV Code Chapter 9, 48, and 49)

Fund 0403 FY 2020 Org 0511

Medical Services – Surplus.....63300	\$ 53,000,000
Total TITLE II, Section 9 – Surplus Accrued	<u>\$ 71,625,000</u>

Sec. 10. Appropriations from lottery net profits surplus accrued. — The following item is hereby appropriated from the lottery net profits, and is to be available for expenditure during the fiscal year 2020 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2019, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2019.

In the event that surplus revenues available from the fiscal year ending June 30, 2019, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

391 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508

Senior Nutrition Vehicle Replacement	
– Lottery Surplus	##### \$ 1,000,000
In-Home Services and Nutrition for	
Senior Citizens – Lottery Surplus.....	##### 750,000
Senior Services Medicaid Transfer	
– Lottery Surplus	68199 <u>16,000,000</u>
Total.....	\$ <u>17,750,000</u>
Total TITLE II, Section 10 – Surplus Accrued ...	<u>\$ 17,750,000</u>

Sec. 11. Appropriations from state excess lottery revenue surplus accrued. — The following item is hereby appropriated from the state excess lottery revenue fund, and is to be available for expenditure during the fiscal year 2020 out of surplus funds

only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2019, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2019.

In the event that surplus revenues available from the fiscal year ending June 30, 2019, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

392 - Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2020 Org 0511

Medical Services – Lottery Surplus68100 \$ 17,000,000

Total TITLE II, Section 11 – Surplus Accrued ... \$ 17,000,000

Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2020 appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2: *Provided*, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2 and 3, and W.Va. Code §11B-2, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

During Fiscal Year 2020, the following funds are hereby available and are to be transferred to the appropriate funds as specified from available balances per the following:

393 -Attorney General

Consumer Protection Recovery Fund

(WV Code Chapter 46A)

Fund 1509 FY 2020 Org 1500

Directed Transfer70000 \$ 3,400,000

From the above appropriation for Directed Transfer (Fund 1509, appropriation 70000), \$1,000,000 shall be transferred to the West Virginia State Police – Forensic Laboratory Fund (Fund 6511) and \$2,400,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

394- Department of Administration

Premium Tax Savings Fund

(WV Code Chapter 29)

Fund 2367 FY 2020 Org 0218

Directed Transfer70000 \$ 6,149,802

The above appropriation for Directed Transfer (Fund 2367, appropriation 70000) shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

Total TITLE II, Section 12 – Special Revenue ... \$ 9,549,802

Sec. 13. State improvement fund appropriations. — Bequests or donations of nonpublic funds, received by the Governor on behalf of the state during the fiscal year 2020, for the purpose of making studies and recommendations relative to

improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2020 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 14. Specific funds and collection accounts. — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 15. Appropriations for refunding erroneous payment. — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 16. Sinking fund deficiencies. — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure

of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the Governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 17. Appropriations for local governments. — There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

- (a) For redemption of lands;
- (b) By public service corporations;
- (c) For tax forfeitures.

Sec. 18. Total appropriations. — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I – GENERAL PROVISIONS, Sec. 3.

Sec. 19. General school fund. — The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

TITLE III – ADMINISTRATION

Sec. 1. Appropriations conditional. — The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Constitutionality. — If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

Senator Takubo moved that the Senate concur in the foregoing House of Delegates amendment to the Senate amendment to the bill.

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

The question being on the adoption of Senator Takubo's aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for House Bill 2020, as amended, was then put upon its passage.

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

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—14.

Absent: Boley—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 H. B. 2020) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Blair, Boso, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—27.

The nays were: Beach, Facemire, Prezioso, Romano, Unger, and Woelfel—6.

Absent: Boley—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. 2020) 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 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 8th day of March, 2019, 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. 157), Authorizing Department of Administration promulgate legislative rules.

(S. B. 440), Relating to Antihazing Law.

(S. B. 453), Relating to background checks of certain financial institutions.

(S. B. 510), Relating to medical professional liability.

(Com. Sub. for S. B. 518), Restricting sale and trade of dextromethorphan.

(S. B. 545), Relating to HIV testing.

(S. B. 593), Permitting critical access hospital become community outpatient medical center.

(Com. Sub. for H. B. 2204), Prohibiting state licensing boards from hiring lobbyists.

(H. B. 2510), Relating to special funds of boards of examination or registration.

(H. B. 2608), Repealing the requirement of printing the date a consumer deposit account was opened on paper checks.

(Com. Sub. for H. B. 2703), Relating to refunds of excise taxes collected from dealers of petroleum products.

(Com. Sub. for H. B. 2737), Relating to training of State Tax Division employees.

(H. B. 2743), Eliminating reference to municipal policemen's pension and relief funds and firemen's pension and relief funds in section restricting investment.

(H. B. 2829), Relating to the termination of severance taxes on limestone and sandstone.

(Com. Sub. for H. B. 2848), Relating to the West Virginia ABLE Act.

And,

(H. B. 3093), Relating to standards for factory-built homes.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Moore Capito,
Chair, House Committee.

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

Eng. Com. Sub. for House Bill 2849, Establishing different classes of pharmacy technicians.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Blair and Boley—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. 2849) 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 2850, Relating to qualifications for commercial driver's 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: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Hamilton, Hardesty,

Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—31.

The nays were: Facemire and Plymale—2.

Absent: Boley—1.

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

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

Eng. House Bill 2926, Requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2926) passed with its title.

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

Eng. House Bill 2934, West Virginia Lottery Interactive Wagering Act.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Thursday, March 7, 2019, for amendments to be received on third reading, was reported by the Clerk.

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

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

ARTICLE 22E. WEST VIRGINIA LOTTERY INTERACTIVE WAGERING ACT.

§29-22E-1. Short title.

This article shall be known and may be cited as the West Virginia Lottery Interactive Wagering Act.

§29-22E-2. State authorization of interactive wagering at licensed racetrack facilities and historic resort hotel; legislative findings, and declarations.

(a) *Operation of West Virginia Lottery interactive wagering.* — Notwithstanding any provision of law to the contrary, the operation of interactive wagering and ancillary activities are only lawful when conducted in accordance with the provisions of this article and rules of the commission.

(b) *Legislative findings.* —

(1) The Legislature finds that the operation of the four racetracks and the historic resort hotel in this state play a critical role in the economy of this state, and such constitutional lotteries are rightfully authorized as state enterprises consistent with the rights and powers granted to the states under the Tenth Amendment of the United States Constitution. The federal government is a

government of limited and enumerated powers, and powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved for the states and its respective citizens.

(2) The Legislature finds that section 36, article VI of the Constitution of the State of West Virginia grants the state the exclusive right to lawfully own and operate a lottery in this state. Authorization of wagering on any constitutional lottery within West Virginia is within the state's sovereign rights as a state to act in the best interest of its citizens.

(3) The Legislature finds that it is in the best interests of the State of West Virginia for the state to operate a lottery in the form of interactive wagering and that it is the intent of the Legislature to authorize interactive wagering within the state and through compacts with other approved jurisdictions.

(4) The Legislature finds that illegal interactive wagering channels operating throughout the United States pose a critical threat to the safety and welfare of the citizens of West Virginia and that creating civil and criminal penalties to prosecute illegal operators, while transferring this black market demand into a secure and highly regulated environment, will protect the public and positively benefit state revenues and the state's economy.

(5) The Legislature finds that the most effective and efficient manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to limit the number of authorized operators to those who are licensed, pursuant to the provisions of §29-22A-1 *et seq.* of this code, and to facilities licensed to operate video lottery terminals, pursuant to the provisions of §29-25-1 *et seq.* of this code.

(6) The Legislature finds that the granting of licenses pursuant to the provisions of this article, while maintaining all ownership rights and exercising control through strict regulation of all West Virginia Lottery interactive wagering authorized by the provisions of this article, constitutes an appropriate exercise by the Legislature

of the power granted it by the provisions of section 36, article VI of the Constitution of the State of West Virginia.

(7) The Legislature finds that the operation of West Virginia Lottery interactive wagering at racetracks, licensed pursuant to the provisions of §29-22A-1 et seq. of this code, and at a historic resort hotel, licensed pursuant to the provisions of §29-25-1 et seq. of this code, serves to protect, preserve, promote, and enhance the tourism industry of the state as well as the general fiscal wellbeing of the state and its subdivisions.

§29-22E-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them in this section:

(1) “Adjusted gross interactive wagering receipts” means an operator’s gross interactive wagering receipts from West Virginia Lottery interactive wagering, less winnings paid to wagerers in such games.

(2) “Commission” or “State Lottery Commission” means the West Virginia Lottery Commission, created by §29-22-1 et seq. of this code.

(3) “Director” means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

(4) “Gaming” or “interactive gaming” means wagering on any authorized interactive game. Authorized interactive games are computerized or virtual versions of any game of chance or digital simulation thereof, including, but not limited to, casino themed slot simulations, table games, and other games approved by the commission.

(5) “Government” means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States Government.

(6) “Gross interactive wagering receipts” means the total gross receipts received by a licensed gaming facility from interactive wagering.

(7) “Interactive gaming operator” or “operator” means a licensed gaming facility which has elected to operate authorized West Virginia Lottery interactive wagering activities or an interactive gaming system on behalf of or in cooperation with an interactive gaming licensee.

(8) “Interactive gaming provider” or “management services provider” means an interactive gaming licensee or an interactive gaming operator with a valid permit acting on behalf of or in partnership with an interactive gaming licensee.

(9) “Interactive wagering account” means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for interactive wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

(10) “Interactive wagering agreement” means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments.

(11) “Interactive wagering fund” means the special fund in the State Treasury, created in §29-22E-17 of this code.

(12) “License” means any license, applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery interactive wagering at a licensed gaming facility (operator license or West Virginia Lottery interactive wagering license);

(B) A license to supply a gaming facility, licensed under this article, to operate interactive wagering with interactive wagering equipment or services necessary for the operation of interactive wagering (supplier license); or

(C) A license to be employed at a racetrack or gaming facility, licensed under this article, to operate West Virginia Lottery interactive wagering when the employee works in a designated gaming area that has interactive wagering or performs duties in furtherance of or associated with the operation of interactive wagering at the licensed gaming facility (occupational license).

(13) “Licensed gaming facility” or “gaming facility” means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code, licensed under this article, to conduct West Virginia Lottery interactive wagering.

(14) “Lottery” means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, and in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, §29-22D-1 *et seq.*, and §29-25-1 *et seq.* of this code.

(15) “National criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation, based on fingerprint identification or any other method of positive identification.

(16) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

(17) “West Virginia Lottery interactive wagering” or “interactive wagering” or “interactive gaming” means the placing of wagers remotely and in real time on any authorized interactive game with any interactive gaming provider, using any communications technology, by means of any electronic or mobile

device or other interface capable of providing a means of input and output. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races, authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery, authorized by §29-22-1 et seq. of this code;

(C) Racetrack video lottery, authorized by §29-22A-1 et seq. of this code;

(D) Limited video lottery, authorized by §29-22B-1 et seq. of this code;

(E) Racetrack table games, authorized by §29-22C-1 et seq. of this code;

(F) Video lottery and table games, authorized by §29-25-1 et seq. of this code;

(G) Sports wagering, authorized by §29-22D-1 et seq.; and

(H) Daily Fantasy Sports (DFS).

(18) “West Virginia Lottery interactive wagering license” means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 et seq. or §29-25-1 et seq. of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery interactive wagering on the grounds where video lottery is conducted by the licensee or through any other authorized interactive platform developed by the gaming facility. This term is synonymous with “operator’s license.”

§29-22E-4. Commission duties and powers.

(a) In addition to the duties set forth elsewhere in this article, and in §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code, the commission shall have the authority to regulate interactive wagering and the conduct of interactive gaming.

(b) The commission shall examine the regulations implemented in other states where interactive wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework through promulgation of rules.

(c) The commission has the authority, pursuant to §29A-1-1 et seq. and §29A-3-1 et seq. of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article. Rules proposed by the commission before December 1, 2019, may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

(1) Rules promulgated by the commission may include, but are not limited to, those governing the acceptance of wagers on interactive games; maximum wagers which may be accepted by an operator from any one patron on any one interactive game; method of accounting to be used by operators; types of records which shall be kept; use of credit and checks by patrons; type of system for wagering; protections for patrons placing wagers; and promotion of social responsibility, responsible gaming, and inclusion of the statement, "If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER", in every designated area approved for interactive wagering and on any mobile application or other digital platform used to place wagers.

(2) The commission shall establish minimum internal control standards (MICS) and approve minimum internal control standards proposed by licensed operators for administration of interactive wagering operations, interactive wagering equipment and systems, or other items used to conduct interactive wagering, as well as maintenance of financial records and other required records.

(d) The commission shall determine the eligibility of a person to hold or continue to hold a license, shall issue all licenses, and shall maintain a record of all licenses issued under this article. The commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses prior to

promulgation of emergency rules upon the effective date of this article.

(e) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts imposed by this article, and deposit all moneys into the interactive wagering fund, except as otherwise provided under this article.

(f) The commission may sue to enforce any provision of this article or any rule of the commission by civil action or petition for injunctive relief.

(g) The commission may hold hearings, administer oaths, and issue subpoenas or subpoenas duces tecum: *Provided*, That all hearings shall be conducted pursuant to the provisions of the State Administrative Procedures Act, §29A-2-1 *et seq.* of this code and the Lottery Administrative Appeal Procedures, W.Va. CSR §179-2-1 *et seq.*

(h) The commission may exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

§29-22E-5. Licenses required.

(a) No person may engage in any activity in connection with West Virginia Lottery interactive wagering in this state unless all necessary licenses have been obtained in accordance with this article and rules of the commission.

(b) The commission may not grant a license until it determines that each person who has control of the applicant meets all qualifications for licensure. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation; this does not include any

bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business;

(2) Each person associated with a noncorporate applicant who directly or indirectly holds a beneficial or proprietary interest in the applicant's business operation, or who the commission otherwise determines has the ability to control the applicant; and

(3) Key personnel of an applicant, including any executive, employee, or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

(c) License application requirements. — All applicants for any license issued under this article shall submit an application to the commission in the form the commission requires and submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require additional background checks on licensees when they apply for annual license renewal, and any applicant convicted of any disqualifying offense shall not be licensed.

(d) Each interactive wagering licensee, licensed supplier, or a licensed management services provider shall display the license conspicuously in its place of business or have the license available for inspection by any agent of the commission or any law-enforcement agency.

(e) Each holder of an occupational license shall carry the license and have some indicia of licensure prominently displayed on his or her person when present in a licensed gaming facility at all times, in accordance with the rules of the commission.

(f) Each person licensed under this article shall give the commission written notice within 30 days of any change to any

information provided in the licensee's application for a license or renewal.

(g) No commission employee may be an applicant for any license issued under this article nor may any employee of any such licensee directly or indirectly hold an ownership or a financial interest in any West Virginia Lottery interactive wagering license.

§29-22E-6. Operator license; West Virginia interactive wagering operators.

(a) In addition to the casino games permitted pursuant to the provisions of §29-22A-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code, a licensed gaming facility may operate West Virginia Lottery interactive wagering upon the approval of the commission, and the commission shall have the general responsibility for the implementation of this article and all other duties specified in §29-22-1 et seq., §29-22A-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code, the provisions of this article, and applicable rules.

(b) All interactive wagering authorized by this article shall be West Virginia Lottery games owned by the State of West Virginia. An operator license granted by the commission pursuant to this article grants licensees lawful authority to conduct West Virginia Lottery interactive wagering within the terms and conditions of the license and any rules promulgated under this article.

(c) Interactive wagering licenses. — The commission may issue up to five licenses to operate West Virginia Lottery interactive wagering in accordance with the provisions of this article. No more than five licenses to operate a gaming facility with West Virginia Lottery interactive wagering shall be permitted in this state.

(d) Grant of license. — Upon application by a gaming facility and payment of a \$250,000 application fee, the commission shall immediately grant a West Virginia Lottery interactive wagering license to an operator that provides for the right to conduct West Virginia Lottery interactive wagering: *Provided*, That the applicant

must hold a valid racetrack video lottery license issued by the commission, pursuant to §29-22A-1 et seq. of this code, or a valid license to operate a gaming facility, issued by the commission pursuant to §29-25-1 et seq. of this code, and otherwise meet the requirements for licensure under the provisions of this article and the rules of the commission. This license shall be issued for a five-year period, and may be renewed for five-year periods upon payment of a \$100,000 renewal fee, as long as an operator continues to meet all qualification requirements.

(e) Location. — A West Virginia Lottery interactive wagering license authorizes the operation of West Virginia Lottery interactive wagering at approved locations and through any mobile application or other digital platforms approved by the commission.

(f) Management service contracts. —

(1) Approval. — A West Virginia Lottery interactive wagering licensee may not enter into any management services contract that would permit any person other than the licensee to act as the commission's agent in operating West Virginia Lottery interactive wagering unless the management service contract: (A) Is with a person licensed under this article to provide management services; (B) is in writing; and (C) has been approved by the commission.

(2) Material change. — The West Virginia Lottery interactive wagering licensee shall submit any material change in a management services contract, previously approved by the commission, to the commission for its approval or rejection before the material change may take effect.

(3) Other commission approvals and licenses. — The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted, or transferred to a third party without the prior approval of the commission. Third parties must be licensed as a management services provider under this article before providing services.

(g) Expiration date and renewal. —

(1) A licensed operator shall submit to the commission such documentation or information as the commission may require demonstrating to the satisfaction of the director that the licensee continues to meet the requirements of the law and rules. Required documentation or information shall be submitted no later than five years after issuance of an operator license and every five years thereafter, or within lesser periods based on circumstances specified by the commission.

(2) If the licensee fails to apply to renew its license issued pursuant to §29-22A-1 et seq. or §29-25-1 et seq. of this code prior to expiration, the commission shall renew its license under this article at the time the expired license is renewed as long as the licensee was operating in compliance with applicable requirements in the preceding license year.

(h) Surety bond. — A West Virginia Lottery interactive wagering licensee shall execute a surety bond in an amount and in the form approved by the commission, to be given to the state, to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission.

(i) Audits. — Upon application for a license and annually thereafter, a West Virginia Lottery interactive wagering licensee shall submit to the commission an annual audit of the financial transactions and condition of the licensee's total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and applicable federal and state laws.

(j) Commission office space. — A West Virginia Lottery interactive wagering licensee shall provide suitable office space at the interactive wagering facility, at no cost, for the commission to perform the duties required of it by this article and the rules of the commission.

(k) Facility qualifications. — A West Virginia Lottery interactive wagering licensee shall demonstrate that its gaming facility with West Virginia Lottery interactive wagering will: (1)

Be accessible to disabled individuals, in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state, and local laws; and (3) meet any other qualifications specified in rules adopted by the commission. Notwithstanding any provision of this code or any rules promulgated by the Alcohol Beverage Control Commissioner to the contrary, vacation of the premises after service of beverages ceases is not required for any licensed gaming facility.

§29-22E-7. Management services providers; license requirements.

(a) *License.* — The holder of a license to operate West Virginia Lottery interactive wagering may contract with an entity to conduct that operation in accordance with the rules of the commission. That entity shall obtain a license as a management services provider prior to the execution of any such contract, and such license shall be issued pursuant to the provisions of this article and any rules promulgated by the commission.

(b) *License qualifications and fee.* — Each applicant for a management services provider license shall meet all requirements for licensure and pay a nonrefundable license and application fee of \$100,000. The commission may adopt rules establishing additional requirements for an authorized management services provider. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets authorized management services provider licensing requirements.

(c) *Renewal.* — Management services provider licenses shall be renewed annually to any licensee who continues to be in compliance with all requirements and who pays the annual renewal fee of \$100,000.

(d) Any entity or individual who shares in revenue, including any affiliate operating under a revenue share agreement, shall be licensed under this section.

§29-22E-8. Suppliers; license requirements.*(a) Supplier license. —*

(1) The commission may issue a supplier license to a person to sell or lease interactive wagering equipment, systems, or other gaming items necessary to conduct interactive wagering, and offer services related to such equipment or other gaming items to a West Virginia Lottery interactive wagering licensee while the license is active. The commission may establish the conditions under which the commission may issue provisional licenses, pending completion of final action on an application.

(2) The commission may adopt rules establishing additional requirements for a West Virginia Lottery interactive wagering supplier and any system or other equipment utilized for wagering. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets West Virginia Lottery interactive wagering supplier licensing requirements.

(b) Supplier specifications. — An applicant for a supplier license shall demonstrate that the equipment, system, or services that the applicant plans to offer to the interactive wagering licensee conform to standards established by the commission and applicable state law. The commission may accept approval by another jurisdiction, that it specifically determines have similar equipment standards, as evidence the applicant meets the standards established by the commission and applicable state law.

(c) License application and renewal fees. — Applicants shall pay to the commission a nonrefundable license and application fee in the amount of \$10,000. After the initial one-year term, the commission shall renew supplier licenses annually thereafter. Renewal of a supplier license will be granted to any renewal applicant who has continued to comply with all applicable statutory and regulatory requirements, upon submission of the commission issued renewal form and payment of a \$10,000 renewal fee.

(d) *Inventory.* — A licensed interactive wagering supplier shall submit to the commission a list of all interactive wagering equipment and services sold, delivered to, or offered to a West Virginia Lottery interactive wagering licensee in this state, as required by the commission, all of which must be tested and approved by an independent testing laboratory approved by the commission. An interactive wagering licensee may continue to use supplies acquired from a licensed interactive wagering supplier, even if a supplier’s license expires or is otherwise cancelled, unless the commission finds a defect in the supplies.

§29-22E-9. Occupational licenses.

(a) All persons employed to be engaged directly in interactive wagering-related activities, or otherwise conducting or operating interactive wagering, shall be licensed by the commission and maintain a valid occupational license at all times and the commission shall issue such license to be employed in the operation of interactive wagering to a person who meets the requirements of this section.

(b) An occupational license to be employed by a gaming facility with West Virginia Lottery interactive wagering permits the licensee to be employed in the capacity designated by the commission while the license is still active. The commission may establish, by rule, job classifications with different requirements to recognize the extent to which a particular job has the ability to impact the proper operation of West Virginia Lottery interactive wagering.

(c) *Application and fee.* — Applicants shall submit any required application forms established by the commission and pay a nonrefundable application fee of \$100. The fee may be paid on behalf of an applicant by the employer.

(d) *Renewal fee and form.* — Each licensed employee shall pay to the commission an annual license fee of \$100 by June 30 of each year. The fee may be paid on behalf of the licensed employee by the employer. In addition to a renewal fee, each licensed employee

shall annually submit a renewal application on the form required by the commission.

§29-22E-10. License prohibitions.

(a) The commission may not grant any license, pursuant to the provisions of this article, if evidence satisfactory to the commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any governmental authority responsible for regulation of gaming activities;

(3) Has been convicted of a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order; or

(4) Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black market wagers from individuals located in the United States.

(b) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee's voting stock, or more than five

percent of the voting stock of a corporation which controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for an interactive wagering license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if an applicant has not met the requirements of this section or any other provision of this article.

§29-22E-11. Interactive wagering house rules; posting of rules.

(a) Each operator shall adopt comprehensive house rules for game play governing interactive wagering transactions with its patrons. These comprehensive rules will be published as part of the minimum internal control standards. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. House rules shall be approved by the commission prior to implementation.

(b) The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed and included in the terms and conditions of the interactive wagering system. Copies shall be made readily available to patrons.

(c) The commission shall license and require the display of West Virginia Lottery game logos on interactive wagering platforms and any locations the commission considers appropriate.

§29-22E-12. Operator duties; interactive wagering operations at a licensed gaming facility.

(a) General. — All operators licensed under this article to conduct West Virginia Lottery interactive wagering shall:

(1) Employ an interactive gaming system and interactive gaming platform which manages, conducts, and records interactive games and the wagers associated with interactive games, as well as

any interactive gaming platforms authorized by the commission. System requirements and specifications shall be developed according to industry standards and implemented by the commission as part of the minimum internal control standards;

(2) Promptly report to the commission any facts or circumstances related to the operation of a West Virginia Lottery interactive wagering licensee which constitute a violation of state or federal law and immediately report any suspicious betting over a threshold set by the operator that has been approved by the commission to the appropriate state or federal authorities;

(3) Conduct all interactive wagering activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state and does not adversely affect the security or integrity of the West Virginia Lottery;

(4) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a licensee, the commission, the state, or employees thereof, arising from the licensee's actions or omission while acting as an agent of the commission operating West Virginia Lottery interactive wagering pursuant to this article;

(5) Assist the commission in maximizing interactive wagering revenues; and

(6) Keep current in all payments and obligations to the commission.

(b) Duties. — All West Virginia Lottery interactive wagering licensees shall:

(1) Acquire West Virginia Lottery interactive wagering equipment by purchase, lease, or other assignment and provide a secure location for the placement, operation, and play of interactive wagering gaming equipment;

(2) Prevent any person from tampering with or interfering with the operation of any West Virginia Lottery interactive wagering;

(3) Ensure that West Virginia Lottery interactive wagering conducted at a gaming facility is within the sight and control of designated employees of the licensee and such wagering at the facility or otherwise available by the licensee is conducted under continuous observation by security equipment in conformity with specifications and requirements of the commission;

(4) Ensure that West Virginia Lottery interactive wagering occurs only in the specific locations within designated gaming areas approved by the commission or using a commission approved mobile application or other digital platform that utilizes communications technology to accept wagers originating within this state, or on an interactive wagering device. West Virginia Lottery interactive wagering shall only be relocated or offered in additional authorized manners in accordance with the rules of the commission;

(5) Maintain sufficient cash and other supplies to conduct interactive wagering at all times; and

(6) Maintain daily records showing the gross interactive wagering receipts and adjusted gross interactive wagering receipts of the licensee from West Virginia Lottery interactive wagering and shall timely file with the commission any additional reports required by rule or by other provisions of this code.

§29-22E-13. Posting of betting limits.

An interactive wagering licensee shall conspicuously post a sign at each West Virginia Lottery interactive wagering location and on all interactive gaming platforms indicating the minimum and maximum wagers permitted at that location and shall comply with the same.

§29-22E-14. Interactive wagering agreements with other governments.

(a) On behalf of the State of West Virginia, the commission is authorized to:

(1) Enter into interactive wagering agreements with other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments; and

(2) Take all necessary actions to ensure that any interactive wagering agreement entered into, pursuant to this section, becomes effective.

(b) The rules adopted by the commission pursuant to this section may include provisions prescribing:

(1) The form, length, and terms of an agreement entered into by the commission and another government, including, but not limited to, provisions relating to how: Taxes are to be treated by this state and another government; revenues are to be shared and distributed; and disputes with patrons are to be resolved;

(2) The information to be furnished to the commission by a government that proposes to enter into an agreement with this state pursuant to this section;

(3) The information to be furnished to the commission to enable the commission and director to carry out the purposes of this section;

(4) The manner and procedure for hearings conducted by the commission pursuant to this section, including any special rules or notices; and

(5) The information required to be furnished to the commission to support any recommendations made to the commission, pursuant to this section.

(c) The commission may not enter into any interactive wagering agreement, pursuant to this section, unless the agreement includes provisions that:

(1) Account for the sharing of revenues by this state and another government;

(2) Permit the effective regulation of interactive wagering by this state, including provisions relating to licensing of persons, technical standards, resolution of disputes by patrons, requirements for bankrolls, enforcement, accounting, and maintenance of records;

(3) Require each government that is a signatory to the agreement to prohibit operators of interactive wagering, management or other service providers, or suppliers, manufacturers or distributors of interactive wagering systems from engaging in any activity permitted by the interactive wagering agreement unless they are licensed in this state or in a signatory jurisdiction with similar requirements approved by the commission;

(4) No variation from the requirements of the interactive wagering agreement is permitted for any signatory government without a lack of opposition by this state and all signatory governments;

(5) Prohibit any subordinate or side agreements among any subset of governments that are signatories to the agreement unless it relates exclusively to the sharing of revenues; and

(6) Require the government to establish and maintain regulatory requirements governing interactive wagering that are consistent with the requirements of this state in all material respects if the interactive wagering agreement allows persons physically located in this state to participate in interactive wagering conducted by another government or an operator licensed by another government.

§29-22E-15. Authorization of interactive wagering in this state; requirements.

(a) An operator shall accept wagers on interactive games authorized under this article from persons physically present in a licensed gaming facility where authorized interactive wagering occurs. A person placing a wager shall be at least 21 years of age.

(b) An operator may accept wagers from an individual physically located within this state using a mobile or other digital platform or an interactive wagering device, approved by the commission, through the patron's interactive wagering account. A person placing a wager shall be at least 21 years of age.

(c) An operator may accept wagers from an individual physically located in a state or jurisdiction with which the commission has entered into an interactive wagering agreement using a mobile or other digital platform or an interactive wagering device through the patron's interactive wagering account, so long as the device or platform is approved by the commission and all other requirements of the agreement are satisfied.

(d) The commission or operator may ban any person from entering a gaming area of a gaming facility conducting interactive wagering or the grounds of a gaming facility licensed under this article or from participating in the play or operation of any West Virginia Lottery interactive wagering. A log of all excluded players shall be kept by the commission and each licensee, and no player on the commission's exclusion list or the licensed operator's exclusion list shall wager on any West Virginia Lottery interactive wagering under this article.

(e) The commission shall promulgate rules implementing the provisions of §29-22E-15(a) and §29-22E-15(b) of this code by interpretive rule and minimum internal control standards.

(f) The commission shall conduct all interactive wagering pursuant to the provisions of this article, and such gaming activities shall be deemed to occur at the licensed gaming facilities authorized to conduct interactive wagering.

(g) No licensed gaming facility employee may place a wager on any interactive wagering at the employer's facility or through any other mobile application or digital platform of their employer.

(h) No commission employee may knowingly wager or be paid any prize from any wager placed at any licensed gaming facility with West Virginia Lottery interactive wagering within this state

or at any facility outside this jurisdiction that is directly or indirectly owned or operated by a West Virginia interactive wagering licensee.

§29-22E-16. Interactive wagering revenues; accounting for the state's share of revenue imposed for the privilege of offering West Virginia Lottery interactive wagering; limitation of other taxes; recoupment for improvements.

(a) Imposition and rate of assessment. — For the privilege of holding a license to operate interactive wagering under this article, the state shall impose and collect 15 percent of the licensee's adjusted gross interactive wagering receipts from the operation of West Virginia Lottery interactive wagering (hereinafter "privilege tax" or "tax"). The accrual method of accounting shall be used for purposes of calculating the amount of the tax owed by the licensee.

(b) Operator revenue reports and payment of privilege tax. —

(1) The tax levied and collected pursuant to §29-22E-16(a) of this code is due and payable to the commission in weekly installments on or before the Wednesday following the calendar week in which the adjusted gross interactive wagering receipts were received and the tax obligation was accrued.

(2) The licensed operator shall complete and submit the return for the preceding week by electronic communication to the commission, on or before Wednesday of each week, in the form prescribed by the commission that provides:

(A) The total gross interactive wagering receipts and adjusted gross interactive wagering receipts from operation of West Virginia Lottery interactive wagering during that week;

(B) The tax amount for which the interactive wagering licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax on adjusted gross interactive wagering receipts required by the commission.

(3) The tax amount shown to be due shall be remitted by electronic funds transfer simultaneously with the filing of the return. All moneys received by the commission pursuant to this section shall be deposited in the interactive wagering fund in accordance with the provisions of this article.

(c) *Privilege tax obligation imposed by this section is in lieu of other taxes.* — With the exception of the ad valorem property tax collected under chapter 11A of this code, the privilege tax on adjusted gross interactive wagering receipts imposed by this section is in lieu of all other state and local taxes and fees imposed on the operation of, or the proceeds from operation of, West Virginia Lottery interactive wagering, except as otherwise provided in this section. The consumers sales and services tax imposed pursuant to §11-15-1 *et seq.* of this code, the use tax imposed by §11-15A-1 *et seq.* of this code and any similar local tax imposed at the municipal or county level, shall not apply to the licensee’s gross receipts from any West Virginia Lottery interactive wagering or to the licensee’s purchase of interactive wagering equipment, supplies, or services directly used in operation of the interactive wagering authorized by this article.

(d) Acquisition of any system or wagering equipment and other items related to the operation of West Virginia interactive wagering shall be considered “facility modernization improvements” eligible for recoupment as defined in §29-22A-10(b)(2) and §29-25-22(c) of this code.

(e) *Prohibition on credits.* — Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the privilege tax obligation imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment or for any investment in or improvement to real property that is used in the operation of West Virginia Lottery interactive wagering.

§29-22E-17. West Virginia Lottery Interactive Wagering Fund; distribution of funds.

(a) The special fund in the State Treasury known as the West Virginia Lottery Interactive Wagering Fund is hereby created and all moneys collected under this article by the commission shall be

deposited with the State Treasurer to the West Virginia Lottery Interactive Wagering Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund. All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the interactive wagering fund pursuant to §29-22E-17(b) of this code.

(b) The commission shall deduct an amount sufficient to reimburse its actual costs and expenses incurred in administering interactive wagering at licensed gaming facilities from the gross deposits into the interactive wagering fund. The amount remaining after the deduction for administrative expenses is the net profit.

(1) *Administrative allowance.* — The commission shall retain up to 15 percent of gross deposits for the fund operation and its administrative expenses: *Provided*, That in the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate but may not exceed \$250,000. On a monthly basis, the director shall report any surplus in excess of \$250,000 to the Joint Committee on Government and Finance and remit the entire amount of those surplus funds in excess of \$250,000 to the State Treasurer which shall be allocated as net profit.

(2) *Distribution of net profit.* — In each fiscal year, net profit shall be deposited into the State Lottery Fund created by §29-22-18 of this code unless otherwise required by this code.

§29-22E-18. Law enforcement.

Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to interactive wagering, as such occurs at facilities of the type authorized by this article, that are necessary to enforce the provisions of this article that are not subject to federal jurisdiction: *Provided*, That the State Police shall only have exclusive jurisdiction over offenses committed on the grounds of a licensed gaming facility that are offenses relating to interactive wagering.

§29-22E-19. Civil penalties.

(a) The commission may impose, on any person who violates the provisions of this article, a civil penalty not to exceed \$50,000 for each violation. Such penalty shall be imposed on all individuals and is not limited to individuals licensed under this article.

(b) The provisions of §29A-5-1 et seq. of this code apply to any civil penalty imposed pursuant to the provisions of this section.

§29-22E-20. Crimes and penalties related to unauthorized interactive wagering operations.

(a) Any person, other than a licensee under this article, who engages in accepting, facilitating, or operating an interactive wagering operation is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or confined in jail for not more than 90 days, or both fined and confined.

(b) Notwithstanding the penalty provisions of §29-22E-20(a) of this code, any person convicted of a second violation of §29-22E-20(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$50,000, or confined in jail for not more than six months, or both fined and confined.

(c) Notwithstanding the penalty provisions of §29-22E-20(a) or §29-22E-20(b) of this code, any person convicted of a third or subsequent violation of §29-22E-20(a) of this code is guilty of a felony, and upon conviction thereof, shall be fined not less than \$25,000 nor more than \$100,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

§29-22E-21. Crimes and penalties related to authorized interactive wagering operation.

(a) An interactive wagering licensee is guilty of unlawful operation and is guilty of a misdemeanor when:

(1) The licensee operates West Virginia Lottery interactive wagering without authority of the commission to do so;

(2) The licensee operates West Virginia Lottery interactive wagering in any location or by any manner that is not approved by the commission;

(3) The licensee knowingly conducts, carries on, operates, or allows any interactive wagering to occur on premises or through any other device if equipment or material has been tampered with, or exposed to conditions in which it will be operated in a manner designed to deceive the public;

(4) The licensee employs an individual who does not hold a valid occupational license in a position for which a license is required or otherwise allows an individual to perform duties for which such license is required or continues to employ an individual after the employee's occupational license is no longer valid;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in West Virginia Lottery interactive wagering;

(6) The licensee knowingly permits an individual under the age of 21 to enter or remain in a designated gaming area or to engage in interactive wagering; or

(7) The licensee exchanges tokens, chips, electronic media, or other forms of credit used for wagering for anything of value except money or credits applied to an interactive wagering account at a gaming facility or through a digital or electronic platform authorized under this article.

(b) A person is guilty of a felony when:

(1) A person changes or alters the normal outcome of any game played on a mobile or other digital platform, including any interactive gaming system used to monitor the same or the way in which the outcome is reported to any participant in the game;

(2) The person manufactures, sells, or distributes any device that is intended by that person to be used to violate any provision of this article or the interactive wagering laws of any other state;

(3) The person claims, collects, or takes anything of value from a gaming facility offering West Virginia Lottery interactive wagering with intent to defraud or attempts such action without having made a wager in which such amount or value is legitimately won or owed;

(4) The person knowingly places a wager using counterfeit currency or other counterfeit form of credit for wagering at a gaming facility or through a digital or electronic platform offering West Virginia Lottery interactive wagering; or

(5) The person, not a licensed gaming facility under this article or an employee or agent of a gaming facility licensed under this article acting in furtherance of the licensee's interest, has in his or her possession on grounds owned by the gaming facility licensed under this article or on grounds contiguous to the licensed gaming facility, any device intended to be used to violate a provision of this article or any rule of the commission.

(c) Any person who violates any provision of §29-22E-21(a) of this code 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 six months, or both fined and confined, except any violation that is not committed by a natural person may result in a fine of not more than \$25,000.

(d) Any person who violates any provision of §29-22E-21(b) of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or confined in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

(e) With regard to §29-22E-21(b) of this code, each West Virginia interactive wagering licensee shall post notice of the prohibitions and penalties of this section in a manner determined by the rules of the commission.

§29-22E-22. Preemption.

No local law or rule providing any penalty, disability, restriction, regulation, or prohibition for operating a gaming facility with West Virginia Lottery interactive wagering or supplying a licensed gaming facility may be enacted, and the provisions of this article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict with this article.

§29-22E-23. Exemption from federal law.

Pursuant to Section 2 of Chapter 1194, 64 Stat. 1134, 15 U.S.C. § 1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from Chapter 1194, 64 Stat. 1134, 15 U.S.C. § 1171 to § 1178.

§29-22E-24. Shipment of gambling devices.

All shipments of gambling devices including any interactive wagering devices or related materials to licensed gaming facilities in this state are legal shipments of gambling devices into the State of West Virginia, as long as the registering, recording, and labeling of which have been completed by the supplier thereof in accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C. § 1171 to § 1178.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 2934) was reported by the Clerk and adopted:

On page six, section four, subsection (c), by striking out “December 1, 2019” and inserting in lieu thereof “July 1, 2020”.

On motion of Senator Lindsay, the following amendments to the Judiciary committee amendment to the bill (Eng. H. B. 2934) were next reported by the Clerk and considered simultaneously:

On page twenty-three, section seventeen, subsection (b), after subdivision (1), by inserting a new subdivision, designated subdivision (2), to read as follows:

(2) Distribution to pension plan for racing association employees. — In each fiscal year, the Lottery Commission shall deposit one-quarter of a percent of the net profit into each of the four special funds established by the Racing Commission, pursuant to §29-22A-10 and §29-22C-27 of this code, to be used for payment into the pension plan for the employees of the licensed racing associations in this state.;

By renumbering the remaining subdivision;

And,

On page twenty-three, section seventeen, after the word “year,” by inserting the word “remaining”.

Following discussion,

The question being on the adoption of Senator Lindsay’s amendments to the Judiciary committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Judiciary committee amendment, as amended, the same was put and prevailed.

Having been engrossed, the bill (Eng. H. B. 2934), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Romano, Rucker, Stollings, Swope, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—26.

The nays were: Azinger, Boso, Prezioso, Roberts, Smith, Sypolt, and Unger—7.

Absent: Boley—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2934) 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 2934—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-22E-1, §29-22E-2, §29-22E-3, §29-22E-4, §29-22E-5, §29-22E-6, §29-22E-7, §29-22E-8, §29-22E-9, §29-22E-10, §29-22E-11, §29-22E-12, §29-22E-13, §29-22E-14, §29-22E-15, §29-22E-16, §29-22E-17, §29-22E-18, §29-22E-19, §29-22E-20, §29-22E-21, §29-22E-22, §29-22E-23, and §29-22E-24, all relating to permitting interactive wagering authorized as West Virginia Lottery interactive wagering activities; providing legislative findings; defining terms; detailing duties and powers of the West Virginia Lottery Commission; providing rule-making authority and emergency rule-making authority; requiring commission to levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts and deposit them into the West Virginia Lottery Interactive Wagering Fund; limiting licensees who may offer interactive wagering to existing racetrack casinos and the casino in a historic resort hotel; providing for four types of licenses to be issued related to interactive wagering; establishing license requirements and prohibitions; authorizing licensing fees; requiring adoption and posting of house rules; defining duties of an operator conducting interactive wagering; requiring the posting of betting limits; authorizing interactive wagering agreements with other governments; providing powers and duties of commission and operators; limiting certain activities of employees; authorizing the West Virginia Lottery to levy and collect a privilege tax in the amount of 15 percent of adjusted gross interactive wagering receipts; requiring reports and submission of taxes; clarifying that tax is in lieu of certain other taxes; providing that certain expenditures related to interactive wagering are facility modernization improvements eligible for recoupment; providing that credits are not allowed against the privilege tax; creating the West Virginia Lottery Interactive Wagering Fund; authorizing the West Virginia Lottery to collect an administrative allowance from gross interactive wagering receipts; providing for distribution of

moneys deposited in the West Virginia Lottery Interactive Wagering Fund; authorizing certain agreements between the West Virginia Lottery and law enforcement; imposing civil penalties for certain violations, and exceptions thereto; prohibiting unauthorized interactive wagering in this state; establishing crimes related to unauthorized interactive wagering and imposing criminal penalties; establishing crimes related to authorized interactive wagering and imposing criminal penalties; preempting provisions from state and local law; and establishing certain exemptions from federal law.

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

Eng. Com. Sub. for House Bill 2982, Amending and updating the laws relating to auctioneers.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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. 2982) passed.

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

Eng. Com. Sub. for House Bill 2982—A Bill to amend and reenact §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6a, §19-2C-6c, §19-2C-8, §19-2C-8a, §19-2C-

9, and §19-2C-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-2C-5b, all relating to amending and updating the laws relating to auctioneers by providing for definitions; providing for certain exemptions to license requirements; providing for additional rulemaking authority; providing for June 30 as the date all licenses expire; establishing certain conditions for auctioneers to continue working after license expiration; providing for record retention requirements; providing for exams held a minimum of two times each year; providing for applicants for auctioneer licenses to submit to background checks; providing for authorization to conduct and use information relating to background checks; providing for confidentiality of background checks; establishing certain conditions for apprentice auctioneers to continue working after license expiration; adjusting residency requirements for members of the board of review; eliminating certain outdated language; providing for reciprocal licensure; increasing civil penalties for violations of this article; increasing penalties commissioner may be assessed against an unlicensed auctioneer; providing for additional circumstances to suspend, deny, or revoke a license; providing for written contracts with auctioneers and owners of property; providing for auction houses and business entities to enter into contracts with auctioneers and owners of property; and providing for certain unlawful advertising practices.

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 3016, Relating to the State Aeronautics 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: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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. 3016) 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 3057, Relating to the Adult Drug Court Participation Fund.

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

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 second reading calendar.

Eng. House Bill 3132, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment.

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 3132 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3132) passed with its title.

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

Eng. House Bill 3141, Requiring capitol building commission authorization for certain renovations.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3141) 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 3144, North Central Appalachian Coal Severance Tax Rebate Act.

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

On motion of Senator Takubo, the Senate reconsidered the vote by which it adopted the Finance committee amendment to the bill (*shown in the Senate Journal of Wednesday, March 6, 2019, pages 2018 through 2039, inclusive*).

The vote thereon having been reconsidered,

The question again being on the adoption of the Finance committee amendment to the bill.

Thereafter, at the request of Senator Blair, as chair of the Committee on Finance, and by unanimous consent, the Finance committee amendment to the bill was withdrawn.

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

Thereupon, on motion of Senator Blair, 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:

ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-1. Findings and purpose.

The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in the coal industry in this state and thereby increase economic development, there is hereby provided a coal severance tax rebate.

§11-13EE-2. Definitions.

(a) General. When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined.

(1) "Affiliated group" means one or more chains of corporations, limited liability entities, or partnerships, or any combination thereof, connected through the ownership of stock or

ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) “Business” means and is limited to the activity of producing coal for sale, profit or commercial use including coal preparation and processing.

(3) “Capital investment in new machinery, equipment, or improvements to real property” means:

(A) Tangible personal property in the form of machinery and equipment that is purchased on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the machinery or equipment commences in this state on or after the effective date of this article;

(B) Tangible personal property in the form of machinery and equipment that is leased by the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or after the effective date of this article, if the original or first use of the machinery or equipment commences in this state, with the taxpayer, on or after the effective date of this article and the machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes;

(C) Improvements to real property having a useful life of 5 or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service for direct use in the production of coal.

(4) “Coal mine” or “mine” includes:

(A) A “surface mine,” or “surface mining operation” which means:

(i) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(ii) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities: *Provided*, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not include any of the following:

(I) Coal extraction authorized pursuant to a government-financed reclamation contract;

(II) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract; and

(B) An “underground mine” which includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(5) “Coal mining operation” includes the mine and the coal preparation and processing plant.

(6) “Coal preparation and processing plant” means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(7) “Coal production” means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at a coal preparation and processing plant.

(8) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(9) “Controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50 percent of the voting power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or more of the corporations; and the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock of at least one of the other corporations.

(10) “Controlling interest” means:

(A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent

ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all classes of stock of the corporation;

(B) For a partnership, association, trust or other entity other than a limited liability company, more than 50 percent ownership, directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity;

(C) For a limited liability company, either more than 50 percent ownership, directly or indirectly, of the total membership interest of the limited liability company, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(11) “Corporation” means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(12) “Delegate” used in the phrase “or his delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(13) “Directly used or consumed in the production of coal” means used or consumed in those activities or operations which constitute an integral and essential part of the production of coal, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the production of coal.

(A) Uses of tangible personal property or improvements to real property which constitute direct use or consumption in the production of coal include only:

(i) New machinery, equipment, or improvements to real property that are depreciable, or amortizable, and have a useful life of five or more years for federal income tax purposes, and that are directly used in the production of coal in this state;

(ii) Transportation of coal within the coal mine from the coal face or coal deposit to the exterior of the mine or to a point where the extracted coal is transported away from the mine;

(iii) Directly and physically recording the flow of coal during the production of coal including those coal treatment processes specified in §11-13A-4 of this code;

(iv) Safety equipment and apparatus directly used in the production of coal, or to secure the safety of mine personnel in direct use in the production of coal;

(v) Controlling or otherwise regulating atmospheric conditions required for the production of coal;

(vi) Transformers, pumps, rock dusting equipment and other property used to supply electricity or water, or to supply or apply rock dust directly used in the production of coal;

(vii) Storing, removal or transportation of economic waste, including coal gob, resulting from the production of coal;

(viii) Engaging in pollution control or environmental quality or protection activity directly relating to the production of coal; or

(ix) Otherwise using as an integral and essential part of the production of coal.

(B) Uses of tangible personal property or improvements to real property which do not constitute direct use or consumption in the production of coal include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly used in the production of coal or to secure the safety of mine personnel is direct use in the production of coal when the tangible personal property is depreciable, or amortizable, for federal income tax purposes and has a useful life

of five or more years for federal income tax purposes when it is placed in service or use;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration;

(vi) Measuring or determining weight, and ash content, water content and other physical and chemical characteristics of the coal after production;

(vii) An activity or function incidental or convenient to the production of coal, rather than an integral and essential part of these activities.

(14) "Eligible taxpayer" means:

(A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of producing coal for sale, profit or commercial use for at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state; or

(B) A taxpayer that has experienced a change in business composition through merger, acquisition, split-up, spin-off or other ownership changes or changes in the form of the business organization from limited liability company to C corporation, or partnership, or from one form of business organization to a different form of business organization, may constitute an eligible taxpayer if the entity currently operating in this state was operating in a different form of business organization in this state at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state. In the case of business composition change through merger, acquisition, split-up, spin-off or other ownership changes the current business may constitute an eligible taxpayer if at least 50 percent of the business assets of such component were actively and directly used in coal production activity in this state for such two-year period. If less than 50 percent of the assets of the current entity

were not actively and directly used in coal production activity in this state for such two-year period, then the current entity resulting from a business composition change through merger, acquisition, split-up, spin-off or other ownership shall not constitute an eligible taxpayer.

(15) “Includes” and “including” when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the generally understood meaning of the term defined.

(16) “Original use” means the first use to which the property is put by anyone.

(17) “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, operation or venture is carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

(18) “Person” includes any natural person, corporation, partnership, limited liability company or other business entity.

(19) “Production of coal” means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at the coal preparation and processing plant.

(20) “Property” means new machinery, equipment, or improvements to real property that are depreciable or amortizable for federal income tax purposes and that have a useful life of five or more years for federal income tax purposes.

(21) “Property purchased or leased for business expansion” means:

(A) *Included property.* Except as provided in subparagraph (B), the term “property purchased or leased for business expansion” means tangible personal property, or improvements to real property but only if the property was purchased, or leased and placed in service or use by the taxpayer in West Virginia. This term includes only:

(i) Tangible personal property placed in service or use by the taxpayer on or after the effective date of this article, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful economic life at the time the property is placed in service or use in this state, of five or more years.

(ii) Tangible personal property acquired by written lease having a primary term of 5 years or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax purposes and that has a useful life of five or more years for federal income purposes when it is placed in service or use, and when the lease commences and was executed by the parties thereto on or after the effective date of this article, if used as a component part of a new or expanded coal mining operation in this state shall be included within this definition.

(iii) Improvements to real property having a useful life of five or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service as a component part of a new or expanded coal mining operation in this state.

(B) *Excluded property.* -The term “property purchased or leased for business expansion” shall not include:

(i) Machinery and equipment owned or leased by the taxpayer and improvements to real property owned by a taxpayer for which credit was taken or is claimed under any other article of this chapter;

(ii) Repair costs, including materials used in the repair, unless for federal income tax purposes, must be capitalized and not expensed;

(iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

(iv) Airplanes;

(v) Off-premise transportation equipment;

(vi) Machinery, equipment, or improvements to real property that are primarily used outside this state;

(vii) Machinery, equipment, or improvements to real property that are acquired incident to the purchase of the stock or assets of the seller; and

(viii) Used machinery, equipment, or improvements to real property.

(C) *Purchase date.* New machinery, equipment, or improvements to real property shall be deemed to have been purchased prior to a specified date only if:

(i) The machinery, equipment, or improvements to real property were owned by the taxpayer prior to the effective date of this article or were acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the effective date of this article; or

(ii) In the case of leased machinery and equipment, there was a binding written lease or contract to lease identifiable machinery or equipment in effect prior to the effective date of this article.

(22) “Purchase” means any acquisition of new machinery, equipment, or improvements to real property, but only if:

(A) The property or the improvement to the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267

or 707 (b) of the United States Internal Revenue Code, as defined in §11-24-3 of this code;

(B) The property or the improvement to the property is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the property or improvements to property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of the property or the improvements to property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014 (e) of the United States Internal Revenue Code.

(23) “Qualified coal mining activity” means any business or other activity subject to the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use including the treatment process described as mining in §11-13A-4(a)(1) of this code.

(24) “Qualified investment” means capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal in this state that is depreciable, or amortizable, for federal income tax purposes and has a useful life for federal income tax purposes of five or more years when it is placed in service or use in this state.

(25) “Rebate” means the amount of rebate allowable under §11-13EE-3 of this code.

(26) “Related person” means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association, or trust that is in control of the taxpayer;

(C) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, the term “control”, with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. “Control,” with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(27) “State portion of severance taxes paid” means the portion of severance taxes due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

(28) “Tangible personal property” means, and is limited to, new machinery and equipment that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes when it is placed in service or use in this state.

(29) “Taxpayer” means any person exercising the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use coal, which privilege is taxable under §11-13A-3 of this code.

(30) “This code” means the Code of West Virginia, 1931, as amended.

(31) “This state” means the State of West Virginia.

(32) “United States Internal Revenue Code” or “Internal Revenue Code” means the Internal Revenue Code as defined in §11-24-3 of this code.

§11-13EE-3. Rebate allowable.

(a) *Rebate allowable.* Eligible taxpayers shall be allowed a rebate for a portion of state severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit, or commercial use that is attributable to the increase in the production of coal that is attributable to and the consequence of the taxpayer’s capital investment in new machinery, equipment, or improvements to real property used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall be determined and applied as hereinafter provided in this article.

(b) *Amount of rebate.* The amount of rebate allowable is determined by multiplying the amount of the taxpayer’s capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal at a coal mining operation in this state by 35 percent. The product of this computation establishes the maximum amount of rebate allowable under this article for the capital investment in new machinery, equipment, or improvements to real property.

(c) *Application of rebate amount.* The amount of rebate allowable is determined by applying the rebate amount determined in subsection (b) of this section against 80 percent of the state portion of the severance tax paid on the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use that is directly attributable to the increased production of coal at the mine due to taxpayer’s capital investment in new machinery, equipment, or improvements to real property at the mine or coal processing and preparation plant.

(d) The amount of severance tax attributable to the increase in coal production at a mine due to the capital investment in new machinery, equipment, or improvements to real property shall be determined by comparing (1) the state portion of the severance tax

due under §11-13A-3 of this code on coal produced from the mine during calendar year 2018, or if the taxpayer has produced coal for five years at the mine at which its capital investment in new machinery, equipment, or improvements to real property are placed in service or use the average of the state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during the five year period ending on December 31, 2018, whichever is less, before allowance of any tax credits, except as provided in subsection (e) of §11-13-EE-3 of this code (2) with the state severance tax due on coal produced at the mine during the then current calendar year in which the rebate amount is claimed, before allowance for any tax credits. When the amount in (2) of this section is greater than the amount in (1) of this section, the difference is the amount of state severance tax due to the increase in coal production at the mine that is attributable to the capital investment in new machinery, equipment, or improvements to real property: *Provided*, That when the producer of the coal operates more than one mine in this state, or is a member of a controlled or affiliated group that operates one or more coal mines in this state, no credit shall be allowed unless the total coal production from all mines operated by the taxpayer or by members of the affiliated or controlled group in this state has increased: *Provided, however*, That in no case shall the severance tax attributable to any mine other than the specific mine at which capital investment in new machinery, equipment, or improvements to real property is directly used in a coal mining operation has been placed in service or use be offset by this rebate.

(e) When the eligible taxpayer is a new business that has produced coal in this state for two years before making the capital investment in new machinery, equipment, or improvements to real property then, for purposes of subdivision (1) in subsection (d) of this section, the base shall be the average amount of state severance tax due under §11-13A-3 of this code on coal produced in this state during this two-year period.

(f) No rebate shall be allowed under this article when credit is claimed under any other article of this chapter for capital investment in the new machinery, equipment, or improvements to

real property. No credit shall be allowed under any other article of this chapter when rebate is allowed under this article for the capital investment in new machinery, equipment, or improvements to real property.

§11-13EE-4. Information required to determine amount of rebate allowable.

(a) A taxpayer claiming rebate under this article who operates more than one coal mine in this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 et seq. of this code that shows, for each coal mine, the number of tons of coal produced and the gross value of the coal produced at each mine during the taxable year.

(b) When a taxpayer claiming rebate under this article is a member of an affiliated or controlled group, as the case may be, that operates more than one coal mine in this state the group shall provide a schedule with its annual severance tax return filed under §11-13A-1 et seq. of this code for the taxable year that shows for each coal mine operated in this state by the affiliated or controlled group, as the case may be, the number of tons of coal produced at each mine and the gross value of the coal produced at each mine during the taxable year.

§11-13EE-5. Claim for rebate.

(a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim under this article for rebate of up to 80 percent of the state portion of the additional severance taxes paid under §11-13A-3 of this code that are directly attributable to the taxpayer's capital investment in new machinery, equipment, or improvements on real property placed in service or use during that taxable year as set forth in §11-13EE-3 of this code.

(b) When the amount of rebate claimed exceeds 80 percent of the additional state severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate amount may be carried forward and rebated by the Tax Commissioner after severance taxes due in subsequent years are paid: *Provided, That*

the carryforward period may not exceed 10 years from the date the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state.

§11-13EE-6. Suspension of payment of rebate.

(a) No rebate may be paid under this article when the taxpayer, or any member of the taxpayer's combined or affiliated group, as the case may be, is delinquent in the payment of severance taxes imposed pursuant to §11-13A-3 of this code and any local, state, or federal tax or fee until such time as the delinquency is cured.

(b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting an assessment in the Office of Tax Appeals or in any court of this state or of the appropriate federal agency or court, or is complying with the terms of any payment plan agreement.

(c) In the case of a taxpayer that files a combined tax return as a member of a unitary group, no rebate under this article that is earned by one member of the combined group, but not fully used by or allowed to that member, may be claimed, in whole or in part, by another member of the group.

§11-13EE-7. Burden of proof; application required; failure to make timely application.

(a) *Burden of proof.* The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) *Application for rebate required.*

(1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid under this article for any capital investment in new machinery, equipment, or improvements to real property placed in service or use until the person asserting a claim for the allowance of rebate under this article makes written application to the Tax Commissioner for allowance of rebate as provided in this section.

(2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the severance tax return, determined by including any authorized extension of time for filing the return, for the taxable year in which the machinery, equipment, or improvements to which the rebate relates is placed in service or use and all information required by the form is provided.

(3) A separate application for rebate is required for each taxable year during which the taxpayer places new machinery, equipment, or improvements in service or use in a mine or coal preparation and processing facility in this state.

(c) *Failure to make timely application.* — The failure to timely apply for the rebate results in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This penalty applies annually until the application is filed.

§11-13EE-8. Identification of capital investment property.

Every taxpayer who claims a rebate pursuant to the provisions of this article shall maintain sufficient records to establish the following facts for each item of qualified investment property:

- (1) Its identity;
- (2) Its actual or reasonably determined cost;
- (3) Its useful life for federal income tax purposes;
- (4) The month and taxable year in which it was placed in service;
- (5) The amount of rebate claimed; and
- (6) The date it was disposed of or otherwise ceased to be qualified capital investment property.

§11-13EE-9. Failure to keep records of capital investment property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any machinery, equipment or improvements to real property that the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when capital investment in new machinery, equipment, or improvements to real property was reported for purposes of claiming this credit during the taxable year, or the machinery, equipment, or improvements to real property were placed in service or use, the taxpayer is treated as having placed it in service or use in the most recent prior taxable year in which similar machinery, equipment, or improvements to real property were placed in service or use, unless the taxpayer can establish that the machinery, equipment, or improvements to real property were placed in service or use in the most recent taxable year is still on hand. In that event, the taxpayer will be treated as having placed the returned machinery, equipment, or improvements to real property in service or use in the next most recent taxable year.

§11-13EE-10. Transfer of qualified investment property to successors.

(a) *Mere change in form of business.* Machinery, equipment, or improvements to real property may not be treated as disposed of under §11-13EE-9 of this code, by reason of a mere change in the form of conducting the business as long as the machinery, equipment, or improvements to real property is retained in the successor business in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the rebate amount of credit still available with respect to the machinery and equipment transferred, and the transferor business may not be required to redetermine the amount of rebate allowed in earlier years.

(b) *Transfer or sale to successor.* Machinery, equipment, or improvements to real property is not treated as disposed of under §11-13EE-11 of this code by reason of any transfer or sale to a successor business which continues to operate machinery, equipment, or improvements to real property at the mine in this

state at which the machinery, equipment, or improvements to real property were first placed in service or use. Upon transfer or sale, the successor shall acquire the amount of rebate, if any, that remains available under this article, and the transferor business is not required to redetermine the amount of rebate allowed in earlier years.

§11-13EE-11. Recapture of rebate; recapture tax imposed.

(a) When recapture tax applies.

(1) Any person who places machinery, equipment, or improvements to real property in service or use for purposes of this credit and who fails to use the machinery, equipment, or improvements to real property for at least five years in the production of coal in this state shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when §11-13EE-10 of this doce applies: *Provided*, That, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the machinery, equipment, or improvements to real property, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the machinery, equipment, or improvements to real property used to qualify for rebate under this article.

(b) Recapture tax imposed. The recapture tax imposed by this subsection is the amount determined as follows. If the taxpayer prematurely removes machinery, equipment, or improvements to real property placed in service when considered as a class from economic service in the taxpayer's coal production activity in this state, the taxpayer shall recapture the amount of rebate claimed under this article for the taxable year, and all preceding taxable years, attributable to the machinery, equipment, or improvements to real property which has been prematurely removed from service. The amount of tax due under this subsection is an amount equal to the amount of rebate that is recaptured pursuant to this subsection.

(c) *Payment of recapture tax.* The amount of tax recaptured under this section is due and payable on the day the person's annual return is due for the taxable year, in which this section applies, under §11-13A-1 *et seq.* of this code. When the employer is a partnership, limited liability company or an S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture tax is imposed under this section.

§11-13EE-12. Interpretation and construction.

(a) No inference, implication, or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision, or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection, or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in §11-13EE-1 of this code.

§11-13EE-13. Rebate report.

(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the amount of rebate claimed pursuant to this article. The report is to include the amount of rebate claimed against the severance tax imposed pursuant to §11-13A-2 of this code.

(b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner may require to prepare the report: *Provided*, That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

(c) The Tax Commissioner shall identify any issues he or she has in the administration and enforcement of this rebate and make any suggestions the Commissioner may have for improving the credit or the administration of the rebate.

§11-13EE-14. Rules.

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2020. All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

§11-13EE-15. Severability.

(a) If any provision of this article or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of this article or the application thereof is made invalid or inapplicable by reason of the repeal, or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13EE-17. Effective date.

The rebate allowed by this article is allowed for capital investment in new machinery, equipment, or improvements to real property placed in service or use in this state on or after the effective date of this article.

Following discussion,

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

Having been engrossed, the bill (Eng. H. B. 3144), as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed House Bill 3144 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Blair, Boso, Clements, Cline, Hamilton, Hardesty, Mann, Maroney, Maynard, Plymale, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—24.

The nays were: Beach, Facemire, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, and Unger—9.

Absent: Boley—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3144) passed.

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

Eng. House Bill 3144—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-13EE-14, §11-13EE-15, and §11-13EE-16, all relating generally to Coal Severance Tax Rebate; findings and purpose; defining terms; providing for rebate of severance tax when capital investment made in new machinery, equipment, or improvements to real property directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; imposing recapture tax in certain circumstance; providing rules for interpretation and construction;

requiring periodic rebate reports; authorizing rulemaking; and providing for severability and effective date.

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

On motion of Senator Takubo, at 6:07 p.m., the Senate recessed until 7 p.m. tonight.

The Senate reconvened at 7:11 p.m. and proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2049, Relating to a prime contractor's responsibility for wages and benefits.

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:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-4a. Safe Harbor.

(a) An employee, in bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment as contemplated by §21-5-4 of this code, is not entitled to seek liquidated damages or attorney's fees from an employer without first making a written demand, as defined in subsection (c) of this section, to the employer seeking the payment of any alleged underpayment or nonpayment as set forth in this section. The written demand shall be mailed or delivered to the employer's correct address or delivered to the employer's authorized representative. Upon receiving a written demand, the employer has seven calendar days from receipt to correct the alleged underpayment or nonpayment of the wages and fringe benefits due. If, after the seven calendar days, the employer

has not corrected the alleged underpayment or nonpayment, or otherwise disputes the allegation, the employee shall be allowed to seek liquidated damages and attorney's fees. Nothing in this section prohibits the employee from presenting a claim under this article without making a written demand to the employer.

(b) In a class action lawsuit brought under this article for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment, participation in the class shall be limited only to those individual employees who have made a written demand on the employer as required in subsection (a) of this section.

(c) For purposes of this section, a "written demand" means any writing, including email, from or on behalf of an employee stating only that the employer has not paid all of the wages or fringe benefits which the employee is owed.

(d) In order for the employer to be eligible for the protections of this section, the employer shall: (i) Inform its employees through a posted notice maintained in a place accessible to its employees in accordance with §21-5-9 of this code of the employee's obligation to make a written demand in order to preserve the right to seek liquidated damages, attorney's fees, or class action relief; and (ii) furnish to the employee with his or her last paycheck or pay stub a written notice of that obligation together with a mailing address and email address to which the notice may be delivered.

§21-5-7. Prime contractor's responsibility for wages and benefits.

(a) Whenever any person, firm, or corporation shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under ~~such~~ the contract for the payment of wages and fringe benefits relating to such work only, exclusive of attorney's fees, interest, liquidated damages, or any other damages of any kind, as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent that the employer of ~~such~~ the employee fails to pay ~~such~~ the wages and

fringe benefits: for work performed under the contract with the prime contractor. The employer, and its shareholders, owners, directors, and officers shall be personally and civilly liable to the prime contractor for any sums paid under this section, including attorney's fees.

(b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

(1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee; and

(2) Commence the action within one year of the date the employee delivered notice to the prime contractor pursuant to subdivision (1) of this subsection.

~~*Provided,* That such employees have exhausted all feasible remedies contained in this article against such employer, but if the prime contractor has failed to notify the commissioner as required by section sixteen of this article, then the employee shall not be required to exhaust any remedies against the employer: *Provided, however,* That such employer shall become civilly liable to such prime contractor for any sum of money paid by him under this section.~~

(c) The employer of the employee to whom wages and/or fringe benefits are owed, shall whenever feasible provide, immediately upon request by the employee or the prime contractor, complete payroll records relating to work performed under the contract with the prime contractor.

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union, the union shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor. Further, if the union or agents thereof, including, but not limited to, third party administrators,

trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

(e) A prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.

On motion of Senator Lindsay, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2049) were reported by the Clerk and considered simultaneously:

On page one, section four-a, by striking out all of subsection (b);

And,

Relettering the remaining subsections.

Following discussion,

The question being on the adoption of Senator Lindsay's amendments to the Judiciary committee amendment to the bill, the same was put and did not prevail.

On motion of Senator Hamilton, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2049) was next reported by the Clerk:

On page three, section seven, by striking out all of subsection (d), and inserting a new subsection, designated as (d), to read as follows:

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union or other plan administrator, the union or other plan administrator, shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work

performed under the contract with the prime contractor. Further, if the union or agents thereof or other plan administrator, including, but not limited to, third party administrators, trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

Following discussion,

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

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. 2049), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2079, Removing certain limitations on medical cannabis grower, processor and dispensary licenses.

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:

ARTICLE 2. DEFINITIONS.

§16A-2-1. Definitions.

(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) “Act” means the West Virginia Medical Cannabis Act and the provisions contained in §60A-1-101 *et seq.* of this code.

(2) “Advisory board” means the advisory board established under §16A-11-1 *et seq.* of this chapter.

(3) “Bureau” means the Bureau for Public Health within the West Virginia Department of Health and Human Resources.

(4) “Caregiver” means the individual designated by a patient or, if the patient is under 18 years of age, an individual authorized under §16A-5-1 *et seq.* of this code, to deliver medical cannabis.

(5) “Certified medical use” means the acquisition, possession, use, or transportation of medical cannabis by a patient, or the acquisition, possession, delivery, transportation, or administration of medical cannabis by a caregiver, for use as part of the treatment of the patient’s serious medical condition, as authorized in a certification under this act, including enabling the patient to tolerate treatment for the serious medical condition.

(6) “Change in control” means the acquisition by a person or group of persons acting in concert of a controlling interest in an applicant or permittee either all at one time or over the span of a 12-consecutive-month period.

(7) “Commissioner” means the Commissioner of the Bureau for Public Health.

(8) “Continuing care” means treating a patient ~~for at least six months~~, in the course of which the practitioner has completed a full assessment of the patient’s medical history and current medical condition, including an in-person consultation with the patient, and is able to document and make a medical diagnosis based upon the substantive treatment of the patient.

(9) “Controlling interest” means:

(A) For a publicly traded entity, voting rights that entitle a person to elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial

holding of five percent or more of the securities of the publicly traded entity.

(B) For a privately held entity, the ownership of any security in the entity.

(10) “Dispensary” means a person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which holds a permit issued by the bureau to dispense medical cannabis. The term does not include a health care medical cannabis organization ~~under~~ as defined in §16A-13-1 *et seq.* of this code.

(11) “Family or household member” means the same as defined in §48-27-204 of this code.

(12) “Financial backer” means an investor, mortgagee, bondholder, note holder, or other source of equity, capital, or other assets, other than a financial institution.

(13) “Financial institution” means a bank, a national banking association, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union, or a savings bank.

(14) “Form of medical cannabis” means the characteristics of the medical cannabis recommended or limited for a particular patient, including the method of consumption and any particular dosage, strain, variety and quantity, or percentage of medical cannabis or particular active ingredient.

(15) “Fund” means the Medical Cannabis Program Fund established in §16A-9-2 of this code.

(16) “Grower” means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the bureau under this act to grow medical cannabis. The term does not include a health care medical cannabis organization as defined in article thirteen this chapter.

(17) “Grower/processor” means either a grower or a processor.

(18) “Identification card” means a document issued under §16A-5-1 *et seq.* of this code that authorizes access to medical cannabis under this act.

(19) “Individual dose” means a single measure of medical cannabis.

(20) “Medical cannabis” means cannabis for certified medical use as set forth in this act.

(21) “Medical cannabis organization” means a dispensary, grower or processor. The term does not include a health care medical cannabis organization ~~under~~ as defined in §16A-13-1 *et seq.* of this code.

(22) “Patient” means an individual who:

(A) has a serious medical condition;

(B) has met the requirements for certification under this act; and

(C) is a resident of this state.

(23) “Permit” means an authorization issued by the bureau to a medical cannabis organization to conduct activities under this act.

(24) “Physician” or “practitioner” means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code to practice medicine and surgery in this state.

(25) “Post-traumatic stress disorder” means a diagnosis made as part of continuing care of a patient by a medical doctor, licensed counselor, or psychologist.

~~(26) “Practitioner” means a physician who is registered with the bureau under article four of this chapter.~~

~~(27)~~ (26) “Prescription drug monitoring program” means the West Virginia Controlled Substances Monitoring program under §60A-9-101 *et seq.* of this code.

~~(28)~~ (27) “Principal” means an officer, director, or person who directly owns a beneficial interest in or ownership of the securities of an applicant or permittee, a person who has a controlling interest in an applicant or permittee or who has the ability to elect the majority of the board of directors of an applicant or permittee or otherwise control an applicant or permittee, other than a financial institution.

~~(29)~~ (28) “Processor” means a person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which holds a permit from the bureau under this act to process medical cannabis. The term does not include a health care medical cannabis organization ~~under~~ as defined in §16A-13-1 *et seq.* of this chapter.

~~(30)~~ (29) “Registry” means the registry established by the bureau for practitioners.

~~(31)~~ (30) “Serious medical condition” means any of the following, as has been diagnosed as part of a patient’s continuing care:

(A) Cancer.

(B) Positive status for human immunodeficiency virus or acquired immune deficiency syndrome.

(C) Amyotrophic lateral sclerosis.

(D) Parkinson’s disease.

(E) Multiple sclerosis.

(F) Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity.

(G) Epilepsy.

(H) Neuropathies.

(I) Huntington's disease.

(J) Crohn's disease.

(K) Post-traumatic stress disorder.

(L) Intractable seizures.

(M) Sickle cell anemia.

(N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or has proved ineffective as determined as part of continuing care.

(O) Terminally ill.

(32) "Terminally ill" means a medical prognosis of life expectancy of approximately one year or less if the illness runs its normal course.

ARTICLE 4. PRACTITIONERS.

§16A-4-3. Issuance of certification.

(a) *Conditions for issuance.* — A certification to use medical cannabis may be issued by a practitioner to a patient if all of the following requirements are met:

(1) The practitioner has been approved by the bureau for inclusion in the registry and has a valid, unexpired, unrevoked, unsuspended license to practice medicine in this state at the time of the issuance of the certification.

(2) The practitioner has determined that the patient has a serious medical condition and has included the condition in the patient's health care record.

(3) The patient is under the practitioner's continuing care for the serious medical condition.

(4) In the practitioner's professional opinion and review of past treatments, the practitioner determines the patient is likely to receive therapeutic or palliative benefit from the use of medical cannabis, and other treatments, including treatments involving opioids, have proven ineffective or otherwise are contraindicated.

(5) The practitioner has determined that the patient has no past or current medical condition(s) or medication use that would constitute a contraindication for the use of cannabis.

(6) The practitioner has determined that the patient is experiencing serious pathophysiological discomfort, disability, or dysfunction that may be attributable to a serious medical condition and may possibly benefit from cannabis treatment when current medical research exhibits a moderate or higher probability of efficacy; and

(7) The practitioner has educated the patient about cannabis and its safe use.

(b) *Contents.* — The certification shall include:

(1) The patient's name, date of birth, and address.

(2) The specific serious medical condition of the patient.

(3) A statement by the practitioner that the patient has a serious medical condition and the patient is under the practitioner's continuing care for the serious medical condition.

(4) The date of issuance.

(5) The name, address, telephone number, and signature of the practitioner.

(6) Any requirement or limitation concerning the appropriate form of medical cannabis and limitation on the duration of use, if applicable, including whether the patient is terminally ill.

(7) A statement by the practitioner attesting that he or she has performed the requirements contained in subsection (a) of this

section on a form to be issued by the West Virginia Department of Health and Human Resources, Bureau for Public Health.

(c) *Consultation.* —

(1) A practitioner shall review the prescription drug monitoring program prior to:

(A) Issuing a certification to determine the controlled substance history of a patient.

(B) Recommending a change of amount or form of medical cannabis.

(2) The practitioner shall consider and give due consideration to other controlled substances the patient may be taking prior to certifying medical cannabis.

(d) *Other access by practitioner.* — A practitioner may access the prescription drug monitoring program to do any of the following:

(1) Determine whether a patient may be under treatment with a controlled substance by another physician or other person.

(2) Allow the practitioner to review the patient's controlled substance history as deemed necessary by the practitioner.

(3) Provide to the patient, or caregiver, on behalf of the patient if authorized by the patient, a copy of the patient's controlled substance history.

(e) *Duties of practitioner.* — The practitioner shall:

(1) Provide the certification to the patient.

(2) Provide a copy of the certification to the bureau, which shall place the information in the patient directory within the bureau's electronic database. The bureau shall permit electronic submission of the certification.

(3) File a copy of the certification in the patient's health care record.

(f) *Prohibition.* — A practitioner may not issue a certification for the practitioner's own use or for the use of a family or household member.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-3. Granting of permit.

(a) The bureau may grant or deny a permit to a grower, processor, or dispensary. In making a decision under this subsection, the bureau shall determine that:

(1) The applicant will maintain effective control of and prevent diversion of medical cannabis.

(2) The applicant will comply with all applicable laws of this state.

(3) The applicant is a resident of this state as defined in §29-22B-327 of this code or is organized under the law of this state. If the applicant is a business entity, majority ownership in the business entity must be held by a state resident or residents.

(4) The applicant is ready, willing, and able to properly carry on the activity for which a permit is sought.

(5) The applicant possesses the ability to obtain in an expeditious manner sufficient land, buildings, and equipment to properly grow, process, or dispense medical cannabis.

(6) It is in the public interest to grant the permit.

(7) The applicant, including the financial backer or principal, is of good moral character and has the financial fitness necessary to operate.

(8) The applicant is able to implement and maintain security, tracking, recordkeeping, and surveillance systems relating to the acquisition, possession, growth, manufacture, sale, delivery,

transportation, distribution, or the dispensing of medical cannabis as required by the bureau.

(9) The applicant satisfies any other conditions as determined by the bureau.

(b) *Nontransferability*. — A permit issued under this chapter shall be nontransferable.

(c) *Privilege*. — The issuance or renewal of a permit shall be a revocable privilege.

~~(d) *Regions*. — The bureau shall establish a minimum of three regions within this state for the purpose of granting permits to grower/processors and dispensaries and enforcing this act. The bureau shall approve permits for growers, processors and dispensaries in a manner which will provide an adequate amount of medical cannabis to patients and caregivers in all areas of this state. The bureau shall consider the following when issuing a permit:~~

(d) *Dispensary location*. — The bureau shall consider the following when issuing a dispensary permit:

(1) Geographic location;

~~(1)~~ (2) Regional population;

~~(2)~~ (3) The number of patients suffering from serious medical conditions;

~~(3)~~ (4) The types of serious medical conditions;

~~(4)~~ (5) Access to public transportation;

~~(5)~~ (6) Approval by local health departments;

~~(6)~~ (7) Whether the county has disallowed the location of a grower, processor or dispensary; and

~~(7)~~ (8) Any other factor the bureau deems relevant.

(e) Application procedure. — The bureau shall establish a procedure for the fair and objective evaluation of all applications for all medical cannabis organization permits. Such evaluations shall score each applicant numerically according to standards set forth in this chapter.

§16A-6-13. Limitations on permits.

(a) The following limitations apply to approval of permits for growers, processors, and dispensaries, subject to the limitations in subsection (b) of this section:

(1) The bureau may not issue permits to more than 10 growers: *Provided*, That each grower may have up to two locations per permit.

(2) The bureau may not issue permits to more than 10 processors.

(3) The bureau may not issue permits to more than ~~thirty~~ 100 dispensaries. ~~with no more than five in any region~~

(4) The bureau may not issue more than ~~two~~ 10 individual dispensary permits to one person.

(5) The bureau may not issue more than one individual grower permit to one person.

(6) The bureau may not issue more than one individual processor permit to one person.

(7) A dispensary may only obtain medical cannabis from a grower or processor holding a valid permit under this act.

(8) A grower or processor may only provide medical cannabis to a dispensary holding a valid permit under this act.

(9) ~~A grower or a processor may not be a dispensary~~ A person may hold a grower permit, a processor permit, and a dispensary permit, or any combination thereof, concurrently.

(b) Before a permit may be issued, the bureau shall obtain the following:

(1) A written approval from the board of health for the county in which the permit is to be located and operate business.

(2) A written statement from the county commission for the county in which the permit is to be located and conduct business that the county has not voted, pursuant to §16A-7-6 of this code, to disapprove a medical cannabis organization to be located or operate within the county.

ARTICLE 7. MEDICAL CANNABIS CONTROLS.

§16A-7-4. Laboratory.

~~A grower and processor shall contract with an independent laboratory to test the medical cannabis produced by the grower or processor. The bureau shall approve the laboratory and require that the laboratory report testing results in a manner as the bureau shall determine, including requiring a test at harvest and a test at final processing. The possession by a laboratory of medical cannabis shall be a lawful use.~~

(a) All medical cannabis produced pursuant to this chapter shall be subject to testing as directed by the bureau.

(b) The bureau shall ensure that there is sufficient testing capacity to meet patient demand.

(c) To the extent practicable, testing required by the provisions of subsection (a) of this section shall be conducted by the Commissioner of Agriculture. The commissioner shall, in consultation with the bureau, establish a fee schedule for such testing as is required by the bureau.

(d) Fees received pursuant to subsection (b) of this section, shall be deposited in the Agriculture Fees Fund established under §19-1-4c of this code.

(e) Should the bureau determine that the Commissioner is unable to provide the testing required by this section, it shall provide notice to the Commissioner and authorize growers and processors to contract with other laboratories certified by the Office of Laboratory Services.

ARTICLE 8. DISPENSARIES.

§16A-8-1. Dispensing to patients and caregivers.

(a) *General rule.* — A dispensary that has been issued a permit under §16A-6-1 *et seq.* of this code may lawfully dispense medical cannabis to a patient or caregiver upon presentation to the dispensary of a valid identification card for that patient or caregiver. The dispensary shall provide to the patient or caregiver a receipt, as appropriate. The receipt shall include all of the following:

(1) The name, address and any identification number assigned to the dispensary by the bureau.

(2) The name and address of the patient and caregiver.

(3) The date the medical cannabis was dispensed.

(4) Any requirement or limitation by the practitioner as to the form of medical cannabis for the patient.

(5) The form and the quantity of medical cannabis dispensed.

~~(b) Requirements. — A dispensary shall have a physician or a pharmacist onsite at all times during the hours the dispensary is open to receive patients and caregivers. A physician or a pharmacist shall, prior to assuming duties under this paragraph, successfully complete the course established in subsection (a), section one, article three of this chapter. A physician may not issue a certification to authorize patients to receive medical cannabis or otherwise treat patients at the dispensary.~~

(e) (b) Filing with bureau. — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall file the

receipt information with the bureau utilizing the electronic tracking system. When filing receipts under this subsection, the dispensary shall dispose of any electronically recorded certification information as provided by rule.

~~(d)~~ (c) *Limitations.* — No dispensary may dispense to a patient or caregiver:

(1) A quantity of medical cannabis greater than that which the patient or caregiver is permitted to possess under the certification; or

(2) A form of medical cannabis prohibited by this act.

~~(e)~~ (d) *Supply.* — When dispensing medical cannabis to a patient or caregiver, the dispensary may not dispense an amount greater than a 30-day supply until the patient has exhausted all but a seven-day supply provided pursuant to §16A-4-5 of this code.

~~(f)~~ (e) *Verification.* — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall verify the information in subsections (d) and (f) of this section by consulting the electronic tracking system included in the bureau's electronic database established under §16A-3-1 of this code and the dispensary tracking system under §16A-7-1 of this code.

~~(g)~~ (f) *Form of medical cannabis.* — Medical cannabis dispensed to a patient or caregiver by a dispensary shall conform to any requirement or limitation set by the practitioner as to the form of medical cannabis for the patient.

~~(h)~~ (g) *Safety insert.* — When a dispensary dispenses medical cannabis to a patient or caregiver, the dispensary shall provide to that patient or caregiver, as appropriate, a safety insert. The insert shall be developed and approved by the bureau. The insert shall provide the following information:

(1) Lawful methods for administering medical cannabis in individual doses.

(2) Any potential dangers stemming from the use of medical cannabis.

(3) How to recognize what may be problematic usage of medical cannabis and how to obtain appropriate services or treatment for problematic usage.

(4) How to prevent or deter the misuse of medical cannabis by minors or others.

(5) Any other information as determined by the bureau.

(i) (h) *Sealed and labeled package.* — Medical cannabis shall be dispensed by a dispensary to a patient or caregiver in a sealed, properly labeled, and child-resistant package. The labeling shall contain the following:

(1) The information required to be included in the receipt provided to the patient or caregiver, as appropriate, by the dispensary.

(2) The packaging date.

(3) Any applicable date by which the medical cannabis should be used.

(4) A warning stating:

“This product is for medicinal use only. Women should not consume during pregnancy or while breastfeeding except on the advice of the practitioner who issued the certification and, in the case of breastfeeding, the infant’s pediatrician. This product might impair the ability to drive or operate heavy machinery. Keep out of reach of children.”

(5) The amount of individual doses contained within the package and the species and percentage of tetrahydrocannabinol and cannabidiol.

(6) A warning that the medical cannabis must be kept in the original container in which it was dispensed.

(7) A warning that unauthorized use is unlawful and will subject the person to criminal penalties.

(8) Any other information required by the bureau.

ARTICLE 9. TAX ON MEDICAL CANNABIS.

§16A-9-1. Tax on medical cannabis.

~~(a) Tax imposed. — A tax is imposed on the gross receipts of a grower/processor received from the sale of medical cannabis by a grower/processor to a dispensary, to be paid by the grower/processor, at the rate of ten percent. The tax shall be charged against and be paid by the grower/processor and shall not be added as a separate charge or line item on any sales slip, invoice, receipt or other statement or memorandum of the price paid by a dispensary, patient or caregiver.~~

~~(b) Payment of tax and reports. — A grower/processor shall make quarterly payments under this section for each calendar quarter at the rate prescribed in subsection (a) on the gross receipts for the calendar quarter. The tax shall be due and payable on the 20th day of January, April, July and October for the preceding calendar quarter on a form prescribed by the Department of Revenue.~~

(a) Tax imposed. — Upon every person exercising the privilege of engaging or continuing within this state in the business of growing medical cannabis for sale to a processor of medical cannabis, purchasing, and processing medical cannabis for sale to a dispensary, growing, processing, and selling medical cannabis to a dispensary of medical cannabis, or engaging in any combination thereof, there is hereby imposed an annual privilege tax. The tax imposed by this article shall not be added as a separate charge or line item on any sales slip, invoice, receipt, other statement, or memorandum of the price paid by a dispensary, patient, or caregiver. Persons subject to this tax shall pay the tax at the rates specified in subsection (b) of this section based upon the taxable privilege specified, and no diminishment, offset, or deduction shall

be allowed for tax paid directly or as an embedded cost at any earlier point in the growth, sales, or distribution process.

(b) *Rate and measure of tax.* — The rate of tax imposed by this article shall be:

(1) In the case of a grower of medical cannabis who sells medical cannabis to an unrelated processor of medical cannabis, 10 percent of the gross receipts derived from the sale to the processor.

(2) In the case of a processor of medical cannabis who purchases medical cannabis from a grower of medical cannabis and after processing sells processed medical cannabis to an unrelated dispensary of medical cannabis, 10 percent of the gross receipts derived from the sale to the dispensary.

(3) In the case of an integrated grower or processor of medical cannabis who sells processed medical cannabis to an unrelated dispensary of medical cannabis, 10 percent of the gross receipts derived from the sale to the dispensary.

(4) When the same person is the grower, processor, and dispensary, or when the grower, processor, and dispensary are related parties, the tax shall be 5 percent of the gross receipts the dispensary derived from sale of medical cannabis product to the patient, or to a caregiver.

(c) *Definitions.* — For purposes of this article:

(1) “Gross receipts” means and includes the gross receipts, however denominated, derived from the sale, distribution, or transfer of medical cannabis, without any deduction on account of the cost of property sold; the cost of materials used to grow, process, or sell the medical cannabis; labor costs, taxes, royalties paid in cash or in kind, or otherwise; interest or discount paid; or any other expense, however denominated.

(2) “Person” includes any natural person, corporation, partnership, limited liability company, or other business entity as those terms are defined in §11-1-1 *et seq.* of this code.

(3) “Related person” means two or more persons that are related persons as defined in section 267 of the Internal Revenue Code, as defined in §11-24-3 of this code.

~~(b)~~ (d) *Payment of tax and reports.* — A grower/processor Every person subject to the tax imposed by this article shall make quarterly payments under this section for each calendar quarter at the rate prescribed in ~~subsection (a)~~ subsection (b) of this section on the gross receipts for the calendar quarter. The tax shall be due and payable on the 20th day of January, April, July, and October for the preceding calendar quarter and shall be filed with a tax return and such schedules as may be prescribed by the Tax Division of the Department of Revenue. The Tax Commissioner may require such forms, schedules, and returns and impose such filing and remittance requirements as may be necessary or convenient for the efficient administration of taxes imposed by this §16A-9-1 of this code and may prescribe such electronic filings and payments as the Tax Commissioner may deem appropriate. The Tax Commissioner may issue such procedural, interpretive, or legislative rules, including emergency rules, as the Tax Commissioner may deem necessary or convenient for the efficient administration of taxes imposed by this §16A-9-1 of this code.

(e) *Electronic filing and payment.* — As the Tax Commissioner may direct, taxes imposed by this article may be paid to the Tax Commissioner by electronic funds transfer unless electronic payment is prohibited by state or federal law. As the Tax Commissioner may direct, tax returns required by this article may be filed electronically with the Tax Commissioner.

~~(d)~~ (f) *Deposits of proceeds.* — All money received from the tax imposed under ~~subsection (a)~~ this article, including any interest and additions to tax paid under §11-10-1 *et seq.*, shall be deposited into the ~~fund~~ Medical Cannabis Program Fund.

~~(d)~~ (g) *Exemption.* — Medical Sales of medical cannabis shall not be subject to a sales tax, if gross receipts from the sale thereof are taxable under this article and the tax has been paid on gross receipts thereof under this article.

(e) *Information.* — ~~A grower/processor that sells medical cannabis shall provide to the Department of Revenue information required by the bureau.~~

(1) Persons subject to the tax imposed by this article of this code shall provide to the Tax Commissioner any information required by the Tax Commissioner to administer, collect, and enforce the taxes imposed by this article.

(2) Notwithstanding any provision of §11-10-1 et seq. of this code or of this article to the contrary, the Tax Commissioner, the bureau, and the Secretary of Health and Human Resources may enter into written agreements pursuant to which the Tax Commissioner will disclose to designated employees of the bureau and the Secretary of Health and Human Resources, whether a particular grower, processor, or dispensary is in good standing with the Tax Commissioner, and the bureau and the Secretary will disclose to designated employees of the Tax Commissioner information a grower, processor, or dispensary provides to the bureau and the Secretary pursuant to this code. Tax information disclosed pursuant to a written agreement shall remain confidential in the hands of the receiver and shall not be disclosable under §29B-1-1 et seq. of this code. To the extent feasible, this information should be shared or exchanged electronically.

§16A-9-3. Tax on medical cannabis crimes and penalties.

Notwithstanding any provision in §11-9-1 et seq. of this code to the contrary, each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in §11-9-1 et seq. of this code shall apply to the tax imposed by §16A-9-1 et seq. of this code with like effect as if said act were applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in extenso in §16A-9-1 et seq. of this code.

§16A-9-4. Procedure and administration of the tax on medical cannabis.

Notwithstanding any provision of §11-10-1 et seq. of this code or any other provision of this code to the contrary, each and every

provision of the “West Virginia Tax Procedure and Administration Act” set forth in §11-10-1 et seq. of this code, shall apply to the tax imposed by §16A-9-1 et seq. with like effect as if the said West Virginia Tax Procedure and Administration Act were applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in extenso in §16A-9-1 et seq. of this code.

ARTICLE 10. ADMINISTRATION.

§16A-10-6. Emergency rules.

(a) *Promulgation.* — In order to facilitate the prompt implementation of this act, the bureau may promulgate emergency rules that shall expire not later than two years following the publication of the emergency rule.

(b) *Expiration.* — The bureau’s authority to adopt emergency rules under subsection (a) of this section shall expire ~~two years after the effective date of this section~~ July 1, 2021. Rules adopted after this period shall be promulgated as provided by law.

(c) *Publication.* — The bureau shall begin publishing emergency rules in the State Register no later than six months after the effective date of this section.

ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.

§16A-11-1. Advisory board.

(a) The Medical Cannabis Advisory Board is established within the bureau. The advisory board shall consist of the following members:

(1) The commissioner or a designee.

(2) The Superintendent of the West Virginia State Police or a designee.

(3) Four physicians licensed to practice in the state to be appointed by the State Medical Association with one from each of the following specialized medicine:

(A) Family Practice/Neurologist/General Practitioner.

(B) Pain Management.

(C) Oncologist/Palliative Care.

(D) Psychiatrist.

(4) Two physicians who are licensed pursuant to §30-14-1 et seq. of this code appointed by the West Virginia Osteopathic Association.

~~(4)~~ (5) One pharmacist licensed to practice in the state, to be designated by the Board of Pharmacy.

~~(5)~~ (6) One pharmacologist who has experience in the science of cannabis and a knowledge of the uses, effects, and modes of actions of drugs, to be appointed by the Governor.

~~(6)~~ (7) One member who is a horticulturalist, to be designated by the West Virginia Commissioner of Agriculture.

~~(7)~~ (8) One member designated by the West Virginia Association of Alcoholism and Drug Counselors.

~~(8)~~ (8) An attorney licensed in the state who is knowledgeable about medical cannabis laws.

~~(9)~~ (10) One member appointed by the West Virginia Prosecuting Attorneys Institute.

~~(10)~~ (11) One member appointed by the Governor, who shall be a patient, a family or household member of a patient or a patient advocate.

(b) *Terms.* — Except as provided under subsection (g) of this section, the members shall serve a term of four years or until a successor has been appointed and qualified, but no longer than six months beyond the four-year period.

(c) *Chair.* — The commissioner, or a designee, shall serve as chair of the advisory board.

(d) *Voting; quorum.* — A majority of the members shall constitute a quorum for the purpose of organizing the advisory board, conducting its business and fulfilling its duties. A vote of the majority of the members present shall be sufficient for all actions of the advisory board unless the bylaws require a greater number.

(e) *Attendance.* — A member of the advisory board who fails to attend three consecutive meetings shall be deemed vacant, unless the commissioner, upon written request from the member, finds that the member should be excused from a meeting for good cause. A member who cannot be physically present may attend meetings via electronic means, including video conference.

(f) *Governance.* — The advisory board shall have the power to prescribe, amend and repeal bylaws governing the manner in which the business of the advisory board is conducted and the manner in which the duties granted to it are fulfilled. The advisory board may delegate supervision of the administration of advisory board activities to an administrative commissioner and other employees of the bureau as the commissioner shall appoint.

(g) *Initial terms.* — The initial terms of members appointed under subsection (a) of this section shall be for terms of one, two, three, or four years, the particular term of each member to be designated by the commissioner at the time of appointment. All other members shall serve for a term of four years.

(h) *Vacancy.* — In the event that any member appointed under subsection (a) of this section shall die or resign or otherwise become disqualified during the member's term of office, a successor shall be appointed in the same way and with the same qualifications as set forth in this section and shall hold office for the unexpired term. An appointed member of the advisory board shall be eligible for reappointment.

(i) *Expenses.* — A member shall receive the amount of reasonable travel, hotel, and other necessary expenses incurred in the performance of the duties of the member in accordance with

state rules but shall receive no other compensation for the member's service on the board.

(j) *Duties.* — The advisory board shall have the following duties:

(1) To examine and analyze the statutory and regulatory law relating to medical cannabis within this state.

(2) To examine and analyze the law and events in other states and the nation with respect to medical cannabis.

(3) To accept and review written comments from individuals and organizations about medical cannabis.

(4) To issue, two years after the effective date of this section, a written report to the Governor, the Senate, and the House of Delegates.

(5) The written report under subdivision (4) shall include recommendations and findings as to the following:

(A) Whether to change the types of medical professionals who can issue certifications to patients.

(B) Whether to change, add, or reduce the types of medical conditions which qualify as serious medical conditions under this act.

(C) Whether to change the form of medical cannabis permitted under this act.

(D) Whether to change, add, or reduce the number of growers, processors or dispensaries.

(E) How to ensure affordable patient access to medical cannabis.

(F) Whether to permit medical cannabis to be dispensed in dry leaf or plant form, for administration by vaporization.

(6) The final written report under this section shall be adopted at a public meeting.

ARTICLE 15. MISCELLANEOUS PROVISIONS.**§16A-15-10. State employee actions and federal law.**

(a) No cause of action exists against the state officers and employees in their personal capacities, while acting within the scope of duties contemplated by §16A-1-1 *et seq.* of this code. Any recovery for claims or actions arising from this section is limited solely to the proceeds of available insurance coverage.

(b) To the extent permitted by law, the State of West Virginia shall defend state officers and employees involved in implementing the provisions of §16A-1-1, *et seq.* of this code against any claims, charges, liabilities, or expenses and shall indemnify and hold harmless state officers and employees involved in implementing the provisions of §16A-1-1 *et seq.* of this code provided within the scope of their duties or employment in accordance with the Act, including without limitation, defense in any state, federal, or local court and payment of the amount of any judgment obtained, damages, legal fees, expenses, and any other expenses incurred.

ARTICLE 16. EFFECTIVE DATE.**§16A-16-1. Effective date.**

(a) Unless excepted in subsection (b) or (c), the provisions of this act shall be effective upon passage.

(b) The provisions of §16A-12-1 *et seq.* of this code, and any other criminal provisions or penalties contained in this act, shall not be effective until 90 days from passage of Senate Bill 386 during the 2017 regular session.

(c) Notwithstanding any provision of this chapter to the contrary, no identification cards may be issued to patients until July 1, 2019. The Bureau may take sufficient steps through rule to implement the preliminary provisions in preparation for implementation of the provisions of this act.

(d) Notwithstanding the prohibition contained in subsection (c) on the issuance of identification cards until July 1, 2019, the bureau may implement a process for the pre-registration of patients with a serious medical condition who have been issued a certification approved by the bureau and to a caregiver designated by the patient: *Provided*, That a patient who is pre-registered must nevertheless comply with the provisions of §16A-5-1 of this code and may not be issued an identification card necessary to obtain and use medical cannabis as authorized by this act until July 1, 2019.

On motion of Senator Takubo, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2079) were reported by the Clerk and considered simultaneously:

On page five, section one, subsection (a), subdivision (30), paragraph (N), after the word “pain” by striking out the remainder of the paragraph and inserting in lieu thereof a period;

And,

On page five, section three, subsection (a), subdivision (4), after the word “cannabis” by striking out the comma and the remainder of the subdivision and inserting in lieu thereof a period.

Following discussion,

The question being on the adoption of Senator Takubo’s amendments to the Judiciary committee amendment to the bill, the same was put and prevailed.

On motion of Senator Baldwin, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2079) was next reported by the Clerk:

On page ten, by striking out all of section four.

Following discussion,

The question being on the adoption of Senator Baldwin’s amendment to the Judiciary committee amendment to the bill, and on this question, Senator Ihlenfeld demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—16.

The nays were: Azinger, Blair, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—17.

Absent: Boley—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Baldwin's amendment to the bill rejected.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended.

Following discussion,

(Senator Weld in the Chair.)

Following discussion and a point of inquiry to the Chair, with resultant response thereto,

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

Following discussion and points of inquiry to the President, with resultant responses thereto,

Senator Plymale moved the previous question, which motion prevailed.

The previous question having been ordered, that 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. 2079), as amended, was then ordered to third reading.

On motion of Senator Takubo, 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: Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—29.

The nays were: Azinger, Maynard, Roberts, and Tarr—4.

Absent: Boley—1.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2079) was then read a third time and put upon its passage.

Pending discussion,

Senator Plymale moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for House Bill 2079.

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Trump, Unger, Woelfel, and Carmichael (Mr. President)—26.

The nays were: Azinger, Cline, Maynard, Roberts, Takubo, Tarr, and Weld—7.

Absent: Boley—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. 2079) 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 2079—A Bill to amend and reenact §16A-2-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §16A-4-3 of said code; to amend and reenact §16A-6-3 of this code; to amend and reenact §16A-6-13 of said code; to amend and reenact §16A-7-4 of said code; to amend and reenact §16A-8-1 of said code; to amend and reenact §16A-9-1 of said code; to amend said code by adding thereto two new sections, designated §16A-9-3 and §16A-9-4; to amend and reenact §16A-10-6 of said code; to amend and reenact §16A-11-1 of said code; to amend said code by adding thereto a new section, designated §16A-15-10; and to amend and reenact §16A-16-1 of said code, all relating generally to medical cannabis; defining terms; modifying certain definitions; modifying conditions for issuance of patient certifications; expanding practitioner reporting requirements; defining resident for purposes of the act; requiring that state residents own a majority of business entities applying for medical cannabis organization permits; removing regional distribution requirements for growers, processors, and dispensaries; establishing criteria for choosing the locations of dispensary permittees; requiring the Bureau for Public Health to adopt fair and objective evaluation procedures in choosing permittees; requiring numeric scoring of applications; increasing the maximum number of dispensary permits; increasing the number of dispensary permits a person or entity may hold; authorizing persons or entities to hold grower, processor and dispensary permits; authorizing the bureau to oversee testing of medical cannabis; granting a preference to the Department of Agriculture to perform medical cannabis testing; directing that fees for testing of medical cannabis received by the Department of Agriculture be deposited in the Agriculture Feed Fund; authorizing the bureau to contract with persons or entities other than the Department of Agriculture for testing of medical cannabis; removing the requirement that dispensaries have a physician or pharmacist onsite; modifying tax rates and tax procedures related to medical cannabis organizations; authorizing the electronic filing with the Tax Commissioner; directing tax proceeds to be deposited in the Medical Cannabis Program Fund; clarifying applicability of the West Virginia Tax Procedure and Administration Act and the West Virginia Tax Crimes and Penalties Act apply to medical cannabis operations; extending the

authority of the bureau to adopt emergency rules until July 1, 2021; adding two osteopathic physicians appointed by the West Virginia Osteopathic Association to the Medical Cannabis Advisory Board; immunizing state officials and employees from causes of action in their personal capacities for actions taken to implement the act; limiting any type of recovery to proceeds of available insurance; obligating the state to defend and indemnify state officials and employees against one type of action brought against them for implementing the act; authorizing pre-certification of patients; maintaining restriction that patient certificates may not be issued until July 1, 2019; and incorporating certain tax offenses and penalties by reference.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Baldwin, Beach, Blair, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Trump, Unger, Woelfel, and Carmichael (Mr. President)—26.

The nays were: Azinger, Cline, Maynard, Roberts, Takubo, Tarr, and Weld—7.

Absent: Boley—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. 2079) 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 2474, Relating to a reserving methodology for health insurance and annuity contracts.

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:

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-9. Standard Valuation Law.

(a) This section shall be known as the standard valuation law. For the purposes of this section, the following definitions apply on or after the operative date of the valuation manual:

(1) The term “accident and health insurance” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) The term “appointed actuary” means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subdivision (2), subsection (c) of this section.

(3) The term “company” means an entity that has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one such policy in force or on claim, or has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.

(4) The term “deposit-type contract” means contracts that do not incorporate mortality or morbidity risks, and as may be specified in the valuation manual.

(5) The term “life insurance” means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(6) The term “NAIC” means the National Association of Insurance Commissioners.

(7) The term “policyholder behavior” means any action a policyholder, contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(8) The term “principle-based valuation” means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (o) of this section as specified in the valuation manual.

(9) The term “qualified actuary” means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(10) The term “tail risk” means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(11) The term “valuation manual” means the manual of valuation instructions adopted by the commissioner in accordance with subsection (n) of this section.

(b) *Reserve valuation.* —

(1) *Policies and Contracts Issued Prior to the Operative Date of the Valuation Manual.* —

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state issued on or after January 1, 1958 and prior to

the operative date of the valuation manual. In calculating reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(B) Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) of this section apply to all policies and contracts, as appropriate, subject to this section issued on or after January 1, 1958 and prior to the operative date of the valuation manual, and subsections (n) and (o) of this section do not apply to any such policies and contracts.

(C) The minimum standard for the valuation of policies and contracts issued prior to January 1, 1958 shall be that provided by the laws in effect immediately prior to that date.

(2) Policies and contracts issued on or after the operative date of the valuation manual. —

(A) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(B) Subsection (n) and (o) of this section apply to all policies and contracts issued on or after the operative date of the valuation manual.

(c) Actuarial opinion of reserves. —

(1) *Actuarial Opinion Prior to the Operative Date of the Valuation Manual.* —

(A) *General.* — Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(B) *Actuarial analysis of reserves and assets supporting the reserves.* —

(i) Every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by paragraph (A) of this subdivision an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(ii) The commissioner may provide, by rule, for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this subdivision.

(C) *Requirement for opinion under paragraph (B) of this subdivision.* — Each opinion required by paragraph (B) of this subdivision shall be governed by the following provisions:

(i) A memorandum in form and substance acceptable to the commissioner as specified by rule shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(D) *Requirement for all opinions subject to this subdivision.* — Every opinion ~~subject to~~ required by this subdivision is governed by the following:

(i) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(ii) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(iii) The opinion shall be based on standards adopted, from time to time, by the actuarial standards board and on such additional standards as the commissioner may by rule prescribe.

(iv) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(v) For the purposes of this ~~section~~ subsection, “qualified actuary” means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in such regulations.

(vi) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(vii) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in rules by the commissioner.

(viii) Except as provided in subparagraphs (xii), (xiii), and (xiv) of this paragraph, documents, materials or other information in the possession or control of the commissioner that are a memorandum in support of the opinion and any other material provided by the company to the commissioner in connection therewith are confidential by law and privileged, exempt from disclosure under §29A-1-1 *et seq.* of this code and are not to be subject to subpoena and, additionally, are not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(ix) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subparagraph (viii) of this paragraph.

(x) In order to assist in the performance of the commissioner's duties, the commissioner:

(I) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subparagraph (viii) of this paragraph with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law-enforcement authorities, provided that the

recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(II) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(III) May enter into agreements governing sharing and use of information consistent with this subparagraph and subparagraphs (viii) and (ix) ~~and this subparagraph of this paragraph.~~

(xi) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the commissioner under this ~~section~~ subsection or as a result of sharing as authorized in subparagraph ~~(ix)~~ (x) of this paragraph.

(xii) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this subsection or by rules.

(xiii) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(xiv) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a

governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(2) *Actuarial Opinion of Reserves after the Operative Date of the Valuation Manual.* —

(A) *General.* — Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to rule of the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(B) *Actuarial Analysis of Reserves and Assets Supporting Reserves.* — Every company with outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and subject to rule of the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by paragraph (A) of this subdivision, an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

~~(C) Requirements for Opinions Subject to paragraph (B), subdivision (2), subsection (e)~~ *Requirement for opinion under paragraph (B) of this subdivision.* — Each opinion required by

~~subdivision (2), subsection (e) of this section~~ paragraph (B) of this subdivision shall be governed by the following:

(i) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

~~(D) Requirement for All Opinions Subject to subdivision (2), subsection (e) of this section~~ Requirement for all opinions subject to this subdivision. — Every opinion required by this subdivision is governed by the following:

(i) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner.

(ii) The opinion shall be submitted with the annual statement reflecting the valuation of ~~such~~ the reserve liabilities for each year ending on or after the operative date of the valuation manual.

(iii) The opinion shall apply to all policies and contracts subject to paragraph (B) ~~subdivision (2), subsection (e) of this section~~ of this subdivision, plus other actuarial liabilities as may be specified in the valuation manual.

(iv) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual.

(v) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vi) Except in cases of fraud or willful misconduct, the appointed actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion.

(vii) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in rules.

(d) *Computation of minimum standards.* — Except as otherwise provided in subsections (e), (f), and (m) of this section, the minimum standard for the valuation of all policies and contracts issued prior to January 1, 1958 shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in subsections (e), (f), and (m) of this section, the minimum standard for the valuation of all policies and contracts issued on or after January 1, 1958 of this section shall be the commissioner's reserve valuation methods defined in subsections (g), (h), (k), and (m) of this section, three and one-half percent interest or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1974, four percent interest for policies issued prior to April 6, 1977, five and one-half percent interest for single premium life insurance policies, and four and one-half percent interest for all other policies issued on and after April 6, 1977, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(A) The commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of §33-13-30(e) of this code;

(B) The commissioner's 1958 standard ordinary mortality table for policies issued on or after the operative date of §33-13-30(e) of this code and prior to the operative date of §33-13-30(g) of this code: *Provided*, That for any category of policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and

(C) For policies issued on or after the operative date of §33-13-30(g) of this code:

(i) The commissioner's 1980 standard ordinary mortality table;

(ii) At the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10 year select mortality factors; or

(iii) Any ordinary mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: the 1941 standard industrial mortality table for policies issued prior to the operative date of §33-13-30(f) of this code and for policies issued on or after the operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in policies: the 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: The group annuity mortality table for 1951, any

modification of the table approved by the commissioner or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that are approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to January 1, 1961, the Class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rules promulgated by the commissioner for use in determining the minimum standard of valuation for ~~such~~ the policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis, and other special benefits: Tables as may be approved by the commissioner.

(e) *Computation of minimum standard for annuities.* — Except as provided in subsection (f) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections (g) and (h) of this section and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to April 6, 1977, excluding any disability and accidental death benefits in the contracts: The 1971 individual annuity mortality table or any modification of this table approved by the commissioner and six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after April 6, 1977, excluding any disability and accidental death benefits in ~~such the~~ contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and seven and one-half percent interest;

(3) For individual annuity and pure endowment contracts issued on or after April 6, 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and five and one-half percent interest for single premium deferred annuity and pure endowment

contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts;

(4) For all annuities and pure endowments purchased prior to April 6, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: The 1971 group annuity mortality table or any modification of this table approved by the commissioner and six percent interest;

(5) For all annuities and pure endowments purchased on or after April 6, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts: The 1971 group annuity mortality table or any group annuity mortality table adopted after the year 1980 by the ~~national association of Insurance Commissioners~~ NAIC that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments or any modification of these tables approved by the commissioner and seven and one-half percent interest.

After June 3, 1974, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for the company provided, if a company makes no election, the operative date of this section for the company shall be January 1, 1979.

(f) *Computation of minimum standard by calendar year of issue.* —

(1) The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of §33-13-30(g) of this code, as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(C) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(2) *Calendar year statutory valuation interest rates.* —

(A) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one quarter of one percent:

(i) For life insurance: $I = .03 + W(R1 - .03) + W/2(R2 - .09)$;

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options: ~~$I = .03 + W(R1 - .03)$~~ $I = .03 + W(R - .03)$

Where R1 is the lesser of R and .09; R2 is the greater of R and .09; R is the reference interest rate defined in this subsection; and W is the weighting factor defined in this ~~section~~ subsection;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply.

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent, the calendar year statutory valuation interest rate for ~~such~~ the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for the year 1980 (using the reference interest rate defined for the year 1979) and shall be determined for each subsequent calendar year regardless of when §33-13-30(g) of this code, as amended, becomes operative.

(3) *Weighting factors.* —

(A) The weighting factors referred to in the formulas stated above are given in the following tables:

(i) Weighting factors for life insurance:

~~Guarantee~~

~~Duration Weighting~~

~~(Years) Factors~~

~~10 or less .50~~

~~More than 10, but not more than 20: .45~~

~~More than 20: .35~~

Guarantee duration of 10 years or less: .50

Guarantee duration of more than 10 years but not more than 20 years: .45

Guarantee duration of more than 20 years: .35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (ii) of this paragraph, shall be as specified in clauses (I), (II), and (III) of this subparagraph, according to the rules and definitions in clauses (IV), (V), and (VI) of this subparagraph:

(I) For annuities and guaranteed interest contracts valued on an issue year basis, the following weighting factors shall apply:

~~Guarantee Weighting Factor~~

~~Duration for Plan Type~~

~~(Years) A B C~~

~~5 or less: .80 60 50~~

~~More than 5, but not more than 10: .75 60 50~~

~~More than 10, but not more than 20: .65 50 45~~

~~More than 20: .45 .35 .35~~

Guarantee duration of five years or less: Plan Type A - .80;
Plan Type B - .60; Plan Type C - .50

Guarantee duration of more than five years but not more than
10 years: Plan Type A - .75; Plan Type B - .60; Plan Type C - .50

Guarantee duration of more than 10 years but not more than 20
years: Plan Type A - .65; Plan Type B - .50; Plan Type C - .45

Guarantee duration of more than 20 years: Plan Type A - .45;
Plan Type B - .35; Plan Type C - .35

(II) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in clause (I) of this subparagraph increased by:

~~Weighting Factor~~

~~for Plan Type~~

~~A B C1~~

~~.15 .25 .05~~

Plan Type A - .15; Plan Type B - .25; Plan Type C - .05

(III) For annuities and guaranteed interest contracts valued on an issue-year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in clause (I) of this subparagraph or derived in clause (II) of this subparagraph increased by:

~~Weighting Factor~~

~~for Plan Type~~

~~A B C~~

~~.05 .05 .05~~

Plan Type A - .05; Plan Type B - .05; Plan Type C - .05

(IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(V) Plan type as used in the above tables is defined as follows:

Plan Type A:

At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue-year basis. As used in this section, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) *The reference interest rate.* —

(A) Reference interest rate referred to in subdivision (2) of this subsection is defined as follows:

(i) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase,

of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.;

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.; and

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.

(5) *Alternative method for determining reference interest rates.* —

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's

Investors Service, Inc., or in the event that the ~~national association of Insurance Commissioners~~ NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the ~~national association of Insurance Commissioners~~ NAIC and approved by rule promulgated by the commissioner, may be substituted.

(g) *Reserve valuation method: Life insurance and endowment benefits.* —

(1) Except as otherwise provided in subsections (h), (k), and (m) of this section, reserves according to the commissioner's reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided by the policy and the excess of ~~subdivision (1) paragraph (A) of this subsection~~ subdivision over ~~subdivision (2) paragraph (B) of this subsection~~ subdivision, as follows:

(1) (A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: *Provided*, That such net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

~~(2)~~ (B) A net one-year term premium for such benefits provided for in the first policy year.

~~Provided, That for~~ (2) For any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the ~~commissioners'~~ commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in ~~the preceding paragraph~~ subdivision (1) of this subsection and the reserve as of the policy anniversary calculated as described in ~~that paragraph~~ subdivision, but with: (i) The value defined in subdivision (1) of ~~that paragraph~~ this subsection being reduced by ~~fifteen~~ 15 percent of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided by the policy after the assumed ending date; (iii) the policy being assumed to mature on the date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

(3) Reserves according to the ~~commissioners'~~ commissioner's reserve valuation method shall be calculated by a method consistent with the principles of ~~the preceding paragraphs~~ subdivisions (1) and (2) of this section subsection for:

~~(i)~~ (A) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

~~(ii)~~ (B) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred

compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U.S.C. § 408) as now or hereafter amended;

~~(iii)~~ (C) Disability and accidental death benefits in all policies and contracts; and

~~(iv)~~ (D) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts. ~~shall be calculated by a method consistent with the principles of the preceding paragraphs of this section~~

(h) *Reserve valuation method: Annuity and pure endowment benefits.* —

(1) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U.S.C. § 408) as now or hereafter amended.

(2) Reserves according to the ~~commissioners'~~ commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in ~~such~~ the contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided by ~~such~~ the contracts at the end of each respective contract year over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of ~~such~~ the contract, that become payable prior to the end of the respective

contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of ~~such~~ the contracts to determine nonforfeiture values.

(i) *Minimum reserves.* —

(1) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after January 1, 1958 be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k), and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(2) In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (c) of this section.

(j) *Optional reserve calculation.* —

(1) Reserves for all policies and contracts issued prior to ~~the effective date of this section~~ January 1, 1958 may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

(2) Reserves for any category of policies, contracts or benefits as established by the commissioner issued on or after January 1, 1958 may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

(3) Any ~~such~~ company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided: *Provided*, That for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by subsection (c) of this section shall not be considered to be the adoption of a higher standard of valuation.

(k) *Reserve calculation: Valuation net premium exceeding the gross premium charged.* —

(1) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for ~~such the~~ policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for ~~such the~~ policy or contract or the reserve calculated by the method actually used for ~~such the~~ policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (d) and (f) of this section: *Provided*, That for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than ~~such the~~ excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for ~~such the~~ policy were the method described in subsection (g) of this section, ignoring ~~the second paragraph subdivision (2)~~ of said subsection.

(2) The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (g) of this section, including ~~the second paragraph~~ subdivision (2) of said section, and the minimum reserve calculated in accordance with this subsection.

(1) *Reserve calculation: Indeterminate premium plans.* —

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (g), (h), and (k) of this section, the reserves which are held under any such plan must:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method which is consistent with the principles of this standard valuation law as determined by rules promulgated by the commissioner.

~~(m) The commissioner may, by rule, establish alternative methods of calculating reserve liabilities, which methods shall be used to calculate reserve liabilities for the types of policies, annuities or other contracts identified in the rule: *Provided*, That the method specified in the rule shall be one which, in the opinion of the commissioner and in light of the methods applied to the contracts by the insurance regulators of other states, is appropriate to the contracts. This power shall be in addition to, and in no way diminish, rule making power granted to the commissioner elsewhere in this code Minimum standard for accident and health insurance contracts. —~~

For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subdivision (2), subsection (b) of this section. For

accident and sickness insurance contracts issued on or after January 1, 1958 and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by rule.

(n) *Valuation manual for policies issued on or after the operative date of the valuation manual. —*

(1) The commissioner shall promulgate emergency rules adopting a valuation manual that is substantially similar to the valuation manual approved by the ~~National Association of Insurance Commissioners~~ NAIC and any amendments to ~~such the~~ the manual as may be subsequently approved by the ~~National Association of Insurance Commissioners~~ NAIC, and ~~such the~~ the rules shall be effective in accordance with subdivisions (2) and (3) of this subsection.

(2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(A) The valuation manual has been adopted by the ~~National Association of Insurance Commissioners~~ NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater;

(B) The Standard Valuation Law, as amended by the ~~National Association of Insurance Commissioners~~ NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008: Life, accident, and health annual statements; health annual statements; and fraternal annual statements; and

(C) The Standard Valuation Law, as amended by the ~~National Association of Insurance Commissioners~~ NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions: The

50 states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when ~~such the~~ changes have been adopted by the ~~National Association of Insurance Commissioners~~ NAIC by an affirmative vote representing:

(A) At least three-fourths of the members of the ~~National Association of Insurance Commissioners~~ NAIC voting, but not less than a majority of the total membership; and

(B) Members of the ~~National Association of Insurance Commissioners~~ NAIC representing jurisdictions totaling greater than 75 percent of the direct premiums written, as reported in the following annual statements most recently available prior to the vote in paragraph (A) of this subdivision: Life, accident, and health annual statements, health annual statements, or fraternal annual statements.

(4) The valuation manual must specify all of the following:

(A) Minimum valuation standards for and definitions of the policies or contracts subject to subdivision (2), subsection (b) of this section. ~~Such The~~ minimum valuation standards shall be:

(i) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subdivision (2), subsection (b) of this section;

(ii) The commissioner's annuity reserve valuation method for annuity contracts subject to subdivision (2), subsection (b) of this section; and

(iii) Minimum reserves for all other policies or contracts subject to subdivision (2), subsection (b) of this section.

(B) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation

in subdivision (1), subsection (o) of this section and the minimum valuation standards consistent with those requirements.

(C) For policies and contracts subject to a principle-based valuation under subsection (o) of this section:

(i) Requirements for the format of reports to the commissioner under paragraph (C), subdivision (2), subsection (o) of this section and which shall include information necessary to determine if the valuation is appropriate and in compliance with this section;

(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(iii) Procedures for corporate governance and oversight of the actuarial function and a process for appropriate waiver or modification of ~~such~~ the procedures.

(D) For policies not subject to a principle-based valuation under subsection (o), the minimum valuation standard shall either:

(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(E) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memoranda, transition rules and internal controls; and

(F) The data and form of the data required under subsection (p) of this section, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(5) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subdivision (2), subsection (b) of this section, except as provided under subdivision (6) or (8) of this subsection.

(6) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this section, then the company shall, with respect to ~~such~~ the requirements, comply with minimum valuation standards prescribed by rule.

(7) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The commissioner may rely upon the opinion, regarding provisions contained within this section, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this subdivision, term "engage" includes employment and contracting.

(8) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this section, and the company shall adjust the reserves as required by the commissioner.

(o) *Requirements of a Principle-Based Valuation.* —

(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(A) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant

tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(B) Incorporate assumptions, risk analysis methods and financial models, and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(C) Incorporate assumptions that are derived in one of the following manners:

(i) The assumption is prescribed in the valuation manual; or

(ii) For assumptions that are not prescribed, the assumptions shall either:

(I) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

(II) To the extent that company data is not available, relevant or statistically credible, be established utilizing other relevant, statistically credible experience.

(D) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(A) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(B) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. ~~Such~~ The controls shall be designed to assure that all material risks inherent in the

liabilities and associated assets subject to ~~such~~ the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

(C) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

(p) *Experience reporting for policies in force on or after the operative date of the valuation manual.* — A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(q) *Confidentiality.* —

(1) For purposes of this subsection, “confidential information” means:

(A) A memorandum in support of an opinion submitted under subsection (c) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the memorandum;

(B) All documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in the course of an examination made under subdivision (7), subsection (n) of this section, but only to the same extent as ~~such~~ the documents, materials, and other information would be held confidential were they created, produced or obtained in connection with an examination made under the general examination law set forth in §33-2-9 of this code;

(C) Any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under paragraph (B), subdivision (2), subsection (o) of this section evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the reports, documents, materials, and other information;

(D) Any principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the report; and

(E) Any documents, materials, data, and other information submitted by a company under subsection (p) of this section (collectively, "experience data") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with ~~such~~ the experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any "experience data", the "experience materials") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by, or disclosed to the commissioner or any other person in connection with ~~such~~ the experience materials.

(2) *Privilege for, and Confidentiality of, Confidential Information.* —

(A) Except as otherwise provided in this subsection, a company's confidential information is confidential by law and privileged, is exempt from disclosure under §29A-1-1 *et seq.* of this code, is not subject to subpoena, and is not subject to discovery

or admissible in evidence in any private civil action: *Provided*, That the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(B) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential information.

(C) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information:

(i) With other state, federal, and international regulatory agencies and with the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries;

(ii) In the case of confidential information specified in paragraphs (A) and (D), subdivision (1) of this subsection only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law-enforcement officials; and

(iii) In the case of subparagraphs (i) and (ii) of this paragraph, provided that ~~such~~ the recipient agrees and has the legal authority to agree, to maintain the confidentiality and privileged status of ~~such~~ the documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(D) The commissioner may receive documents, materials, data, and other information, including otherwise confidential and privileged documents, materials, data, or information, from the ~~National Association of Insurance Commissioners~~ NAIC and its affiliates and subsidiaries, from regulatory or law-enforcement officials of other foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and Discipline or its successor, and he or she shall maintain as confidential or privileged any document, material, data,

or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(E) The commissioner may enter into agreements governing sharing and use of information consistent with this subdivision.

(F) No waiver of any applicable privilege or claim of confidentiality in the confidential information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (C) of this subdivision.

(G) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subdivision is available and may ~~been forced~~ be enforced in any proceeding in, and in any court of, this state.

(H) In this subsection “regulatory agency”, “law-enforcement agency”, and the “NAIC” include, but are not limited to, their employees, agents, consultants, and contractors.

(3) Notwithstanding subdivision (2) of this subsection, any confidential information specified in paragraphs (A) and (D), subdivision (1) of this subsection:

(A) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection (c) of this section or principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section by reason of an action required by this section or by rules promulgated hereunder;

(B) May otherwise be released by the commissioner with the written consent of the company; and

(C) Once any portion of a memorandum in support of an opinion submitted under subsection (c) of this section or a principle-based valuation report developed under paragraph (C), subdivision (2), subsection (o) of this section is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is

released by the company to the news media, all portions of ~~such~~ the memorandum or report are no longer ~~be~~ confidential.

The bill (Eng. H. B. 2474), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2479, Corporate Governance Annual Disclosure 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 2490, Preventing proposing or enforcing rules that prevent recreational water facilities from making necessary upgrades.

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

Eng. Com. Sub. for House Bill 2503, Relating to court 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:

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

ARTICLE 4. COURT ACTIONS.

PART VI.

PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

(a) *Petitioner and venue.* — If the department or a reputable person believes that a child is neglected or abused, the department

or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the department, in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

(b) *Contents of Petition.* — The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how the conduct comes within the statutory definition of neglect or abuse with references ~~thereto~~ to the statute, any supportive services provided by the department to remedy the alleged circumstances, and the relief sought. Each petition shall name as a party each parent, guardian, custodian, other person standing in loco parentis of or to the child allegedly neglected or abused and state with specificity whether each parent, guardian, custodian, or person standing in loco parentis is alleged to have abused or neglected the child.

(c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to this article, the preliminary hearing shall be held within 10 days of the order continuing or transferring custody, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(d) *Department action upon filing of the petition.* — At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

(e) *Notice of hearing.* —

(1) The petition and notice of the hearing shall be served upon both parents and any other guardian, custodian, or person standing in loco parentis, giving to ~~the parents or custodian~~ those persons at

least five days' actual notice of a preliminary hearing and at least ten days' notice of any other hearing.

(2) Notice shall be given to the department, any foster or pre-adoptive parent, and any relative providing care for the child.

(3) In cases where personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to the person by certified mail, addressee only, return receipt requested, to the last known address of the person. If the person signs the certificate, service ~~shall be~~ is complete and the certificate shall be filed as proof of the service with the clerk of the circuit court.

(4) If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code.

(5) A notice of hearing shall specify the time and place of the hearing hearings, the right to counsel of the child, ~~and parents, or~~ and other guardians, custodians, at every stage of the proceedings, and other persons standing in loco parentis with the child and the fact that the proceedings can result in the permanent termination of the parental rights.

(6) Failure to object to defects in the petition and notice may not be construed as a waiver.

(f) *Right to counsel.* —

~~(1) In any proceeding under this article, the child, his or her parents, and his or her legally established custodian or other persons standing in loco parentis to him or her has the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed.~~

(1) In any proceeding under this article, the child shall have counsel to represent his or her interests at all stages of the proceedings.

~~(2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other persons standing in *loco parentis*, the representation may only continue after the first appearance the parent or other persons standing in *loco parentis* cannot pay for the services of counsel.~~

(2) The court's initial order shall appoint counsel for the child and for any parent, guardian, custodian, or other person standing in *loco parentis* with the child if such person is without retained counsel.

~~(3) Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties.~~

(3) The court shall, at the initial hearing in the matter, determine whether persons other than the child for whom counsel has been appointed:

(A) Have retained counsel; and

(B) Are financially able to retain counsel.

(4) A parent, guardian, custodian, or other person standing in *loco parentis* with the child who is alleged to have neglected or abused the child and who has not retained counsel and is financially unable to retain counsel beyond the initial hearing, shall be afforded appointed counsel at every stage of the proceedings.

(5) A parent, guardian, custodian, or other person standing in *loco parentis* with the child who is not alleged to have abused or neglected the child, has not retained counsel and who is financially unable to retain counsel, may request the court to continue to have appointed counsel. The court shall, upon a finding that the interests

of justice will be served, afford that person appointed counsel at every stage of the proceedings.

(4) ~~(6)~~ Under no circumstances may the same attorney represent both the child and another party ~~the other party or parties., nor may the~~ The same attorney may not represent both parents or custodians more than one parent or custodian: However, Provided, That one attorney may represent both parents or custodians where both parents or ~~guardians~~ custodians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney ~~assures~~ advises the court that she or he is able to represent each client without impairing her or his professional judgment.; ~~however, if~~ If more than one child from a family is involved in the proceeding, one attorney may represent all the children.

~~(5)~~ (7) A parent who is a co-petitioner is entitled to his or her own attorney.

(8) The court may allow to each attorney ~~se~~ appointed pursuant to this section a fee in the same amount which appointed counsel can receive in felony cases.

~~(6)~~ (9) The court shall, sua sponte or upon motion, appoint counsel to any unrepresented party if, at any stage of the proceedings, the court determines doing so is necessary to satisfy the requirements of fundamental fairness.

(g) *Continuing education for counsel.* — Any attorney representing a party under this article shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval and certification of training required under this section. Where no attorney has completed the training required by this subsection, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the

parent or child. Any attorney appointed pursuant to this section shall perform all duties required of an attorney licensed to practice law in the State of West Virginia.

(h) *Right to be heard.* — In any proceeding pursuant to this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. Foster parents, pre-adoptive parents, and relative caregivers shall also have a meaningful opportunity to be heard.

(i) *Findings of the court.* — Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.

(j) *Priority of proceedings.* — Any petition filed and any proceeding held under this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under §48-27-309 of this code and actions in which trial is in progress. Any petition filed under this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under this article shall be held as nearly as practicable on successive days and, with respect to the hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of the improvement period and shall be held within 30 days of the termination of the improvement period.

(k) *Procedural safeguards.* — The petition may not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The

rules of evidence shall apply. Following the court's determination, it shall ~~be inquired of~~ ask the parents or custodians whether or not appeal is desired and the response transcribed. A negative response may not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the ~~same~~ transcript is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay for the transcript ~~therefor~~.

PART VI.

JUVENILE PROCEEDINGS

§49-4-722. Conviction for offense while in custody.

(a) Notwithstanding any other provision of law to the contrary, any person who is 18 years of age or older who is convicted as an adult of an offense that he or she committed while in the custody of the ~~Division~~ Bureau of Juvenile Services and who is ~~therefor~~ sentenced for the conviction to a regional jail or state correctional facility for the offense may not be returned to the custody of the ~~division~~ bureau upon the completion of his or her adult sentence.

(b) Upon the incarceration in a regional jail or state correctional facility of any person 18 years of age or older who remains subject to the juvenile jurisdiction of the circuit court for crimes committed in a juvenile facility, the Bureau of Juvenile Services shall provide written notification to both the circuit court with juvenile jurisdiction over the person and the judicial authority in the county where the criminal charges are pending that the person is being detained, remains in the jurisdiction of a circuit court, and is pending a sentence as an adult offender. Prior to the imposition of a sentence on the criminal charges, the juvenile facility in which the adult crime occurred shall inform the judicial authority in the county with jurisdiction over the criminal offense which circuit court has juvenile jurisdiction over the person. The judicial authority in the county with jurisdiction over the criminal offense shall then notify the circuit court with juvenile jurisdiction over the

person. The person may not be released from custody on the criminal offense until the judicial authority in the county where the criminal charges are pending has been notified by the circuit court with juvenile jurisdiction over the person that it has conducted the hearing required in §49-4-722(c) of this code.

~~(b)~~(c) Prior to completion of the adult sentence specified in subsection (a) of this section, the circuit court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether the person who has turned 18 years of age shall remain in the regional jail during pendency of the underlying juvenile matter or if another disposition or pretrial placement is appropriate and available: Provided, That the court may not remand a child who reached the age of 18 years to a juvenile facility or placement during the pendency of the underlying juvenile matter.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2503) was reported by the Clerk and adopted:

On page seven, section seven hundred twenty-two, subsection (c), after the word “matter” by inserting the following proviso: Provided, however, That the Commissioner of the Division of Corrections and Rehabilitation is authorized to designate a unit in one or more of the institutions under his or her management to ensure that the detention of any person 18 years of age or older who is subject to subsection (a) of this section and who remains subject to the juvenile jurisdiction of a Circuit Court, may be placed in by the Commissioner, so that the person does not have contact with or come within sight or sound of any adult incarcerated persons.

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. 2503), as amended, was then ordered to third reading.

On motion of Senator Takubo, 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: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—30.

The nays were: Facemire and Prezioso—2.

Absent: Boley and Woelfel—2.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2503) was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2503 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Boley 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. 2503) 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 2503— A Bill to amend and reenact §49-4-601 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to court actions in abuse and neglect proceedings; counsel appointment procedures in child neglect or abuse cases; requiring a petition to include the names of all parents, guardians, custodians, or other persons standing *in loco parentis* with the child and an express statement as to whether each parent, guardian, custodian, or person standing *in loco parentis* is alleged to have neglected or abused the child; requiring the court to appoint counsel for the child, parents, guardians, custodians, and persons standing *in loco parentis* prior to the initial hearing; clarifying when a court may and may not appoint counsel; requiring a court to appoint counsel to an unrepresented person if necessary to satisfy the requirements of fundamental fairness; directing notice to various courts in actions involving certain adults held in juvenile custody when charged or convicted of adult crimes; requiring the Bureau of Juvenile Services to provide written notification to court as to such defendants during various stages of the criminal process in cases of adults in the juvenile jurisdiction of the circuit court; requiring notice generally; requiring that notice to be given by courts that a hearing required by subsection (a) of this section has been held; and authorizing the Commissioner of Corrections and Rehabilitation to establish one or more facilities to house adult offenders who remain under the juvenile jurisdiction of the circuit court to comply with federal sight and sound restrictions.

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 2583, Family Planning Access 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:

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

ARTICLE 57. FAMILY PLANNING ACCESS ACT.

§16-57-1. Definitions.

As used in this article:

“Dispense” means the same as that term is defined in §30-5-4 of this code.

“Patient counseling” means the same as that term is defined in §30-5-4 of this code.

“Pharmacist” means the same as that term is defined in §30-5-4 of this code.

“Self-administered hormonal contraceptive” means a self-administered hormonal contraceptive that is approved by the United States Food and Drug Administration to prevent pregnancy and does not include the class of emergency contraceptives commonly known as the “morning after pill” or “Plan B”.

§16-57-2. Voluntary participation.

This article does not create a duty or standard of care for a person to prescribe or dispense a self-administered hormonal contraceptive.

§16-57-3. Authorization to dispense self-administered hormonal contraceptives.

(a) A pharmacist licensed under §30-5-1 *et seq.* of this code may dispense a self-administered hormonal contraceptive: (1) pursuant to a standing prescription drug order made in accordance with §16-57-4 of this code without any other prescription drug order from a person licensed to prescribe a self-administered hormonal contraceptive; and (2) in accordance with the dispensing guidelines in §16-57-6 of this code.

(b) All state and federal laws governing insurance coverage of contraceptive drugs, devices, products, and services shall apply to self-administered contraceptives dispensed by a pharmacist under a standing order pursuant to this section.

§16-57-4. Standing prescription drug orders for a self-administered hormonal contraceptive.

The state health officer may prescribe on a statewide basis a self-administered hormonal contraceptive by one or more standing orders in accordance with a protocol consistent with the United States Medical Eligibility Criteria for Contraceptive Use (MEC) Centers for Disease Control and Prevention, that requires:

(1) Use of the self-screening risk assessment questionnaire described below;

(2) Written and oral education;

(3) The timeline for renewing and updating the standing order;

(4) Who is eligible to utilize the standing order;

(5) The pharmacist to make and retain a record of each person to whom the self-administered hormonal contraceptive is dispensed, including:

(A) The name of the person;

(B) The drug dispensed; and

(C) Other relevant information.

§16-57-5. Pharmacist education and training required.

(a) The Board of Pharmacy, in collaboration with the Bureau for Public Health, shall approve a training program or programs to be eligible to participate in the utilization of the standing prescription drug order for self-administered hormonal contraceptives by a pharmacist.

(b) Documentation of training shall be provided to the Board of Pharmacy upon request.

§16-57-6. Guidelines for dispensing a self-administered hormonal contraceptive.

(a) A pharmacist who dispenses a self-administered hormonal contraceptive under this article:

(1) Shall obtain a completed self-screening risk assessment questionnaire that has been approved by the state health officer in collaboration with the Board of Pharmacy, the Board of Osteopathic Medicine, and the Board of Medicine from the patient before dispensing the self-administered hormonal contraceptive;

(2) Shall notify the patient's primary care provider, if provided;

(3) If when dispensing within the guidelines it is unsafe to dispense a self-administered hormonal contraceptive to a patient then the pharmacist:

(A) May not dispense a self-administered hormonal contraceptive to the patient; and

(B) Shall refer the patient to a health care practitioner or local health department;

(4) May not continue to dispense a self-administered hormonal contraceptive to the patient for more than 12 months after the date of the initial prescription without evidence that the patient has consulted with a health care practitioner during the preceding 12 months; and

(5) Shall provide the patient with:

(A) Written and verbal information regarding:

(i) The importance of seeing the patient's health care practitioner to obtain recommended tests and screening; and

(ii) The effectiveness and availability of long-acting reversible contraceptives and other effective contraceptives as an alternative to self-administered hormonal contraceptives; and

(B) A copy of the record of the encounter with the patient that includes:

(i) The patient's completed self-assessment tool; and

(ii) A description of the contraceptives dispensed, or the basis for not dispensing a contraceptive.

(b) If a pharmacist dispenses a self-administered hormonal contraceptive to a patient, the pharmacist shall, at a minimum, provide the patient counseling regarding:

(1) The appropriate administration and storage of the self-administered hormonal contraceptive;

(2) Potential side effects and risks of the self-administered hormonal contraceptive;

(3) The need for backup contraception;

(4) When to seek emergency medical attention;

(5) The risk of contracting a sexually transmitted infection or disease, and ways to reduce the risk of contraction; and

(6) Any additional counseling outlined in the protocol as prescribed in §16-57-4 of this code.

(c) The Board of Pharmacy regulates a pharmacist who dispenses a self-administered hormonal contraceptive under this article.

On motion of Senator Rucker, the following amendments to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 2583) were reported by the Clerk and considered simultaneously:

On page one, section three, subsection (a), line four, by striking out the word "and";

And,

On page one, section three, subsection (a) line five after the word “code” by inserting the words “and (3) to a patient who is 18 years old or older.”

Following discussion,

The question being on the adoption of Senator Rucker’s amendments to the Health and Human Resources committee amendment to the bill, the same was put and prevailed.

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.

The bill (Eng. Com. Sub. for H. B. 2583), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2618, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

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:

ARTICLE 7J. FINANCIAL EXPLOITATION OF AN ELDERLY PERSON, PROTECTED PERSON, OR INCAPACITATED ADULT.

§55-7J-1. Action for financial exploitation of an elderly person, protected person or incapacitated adult; definitions.

(a) Any elderly person, protected person, or incapacitated adult against whom an act of financial exploitation has been committed may bring an action under this article against any person who has committed an act of financial exploitation against him or her.

(b) For the purposes of this article:

(1) “Incapacitated adult” has the same meaning as prescribed under §61-2-29 of this code;

(2) “Elderly person” means a person who is 65 years or older;

(3) “Financial exploitation” or “financially exploit” means the intentional misappropriation or misuse of funds or assets or the diminishment of assets due to undue influence of an elderly person, protected person, or incapacitated adult, but ~~shall~~ may not apply to a transaction or disposition of funds or assets where the defendant made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) “Protected person” means any person who is defined as a “protected person” in §44A-1-4 of this code and who is subject to the protections of §44A-1-1 *et seq.* or §44C-1-1 *et seq.* of this code.

(c) Any person who believes that an elderly person, protected person, or incapacitated adult is suffering financial exploitation due to the intentional misappropriation or misuse of funds or undue influence may bring an action for a protective order pursuant to this section in the magistrate court or circuit court in the county in which the elderly person, protected person, or incapacitated adult resides: *Provided*, That an action for relief brought in the magistrate court of the county of residence of the elderly person, protected person, or incapacitated adult believed to be the victim of financial exploitation to stay further diminution of the persons assets shall be temporary in nature.

(d) An action under this section is commenced by the filing of a verified petition. Temporary relief may be granted without notice to the person alleged to be engaging in financial exploitation and without that person being present.

(e) If a magistrate court grants the petition and issues a temporary protective order, the magistrate court shall immediately transfer the matter to the circuit court of the county in which the petition was filed. Upon receipt of the notice of transfer from the

magistrate court, the circuit court shall set the matter for a review hearing within 20 days. After a hearing, the circuit court may issue a permanent protective order containing any relief the circuit court determines necessary to protect the alleged victim if the court finds by a preponderance of the evidence that:

(1) The respondent has committed an act against the victim that constitutes financial exploitation; and

(2) There is reasonable cause to believe continued financial exploitation will occur unless relief is granted; or

(3) The respondent consents to entry of the permanent protective order.

The bill (Eng. Com. Sub. for H. B. 2618), as amended, was then ordered to third reading.

Eng. House Bill 2665, Supplemental appropriation for PEIA Rainy Day Fee.

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, lines sixteen and seventeen, by striking out “and §5-16-28”.

The bill (Eng. H. B. 2665), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2670, Relating to damages for medical monitoring.

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:

ARTICLE 7. ACTIONS FOR INURIES.

§55-7-32. Limitations on medical monitoring damages.

(a) Increased risk of disease, whether or not accompanied by physiological or other changes in the human body, is not compensable through damages or any other form of relief under the law of this state, regardless of the legal theory being asserted. In any civil action a defendant cannot be required to pay as damages or provide any other type of legal, injunctive, or equitable relief for a plaintiff's future medical surveillance, screening tests, or monitoring procedures unless the plaintiff proves in addition to the other requirements for the underlying cause of action: (1) That the future medical surveillance, screening tests, or monitoring procedures are directly related to a presently existing and diagnosable physical disease of the plaintiff; and (2) that the plaintiff's presently existing physical disease was caused by the defendant's conduct.

(b) In any civil action in which a court orders a defendant to pay for a plaintiff's future medical surveillance, screening tests, or monitoring procedures, a plaintiff shall not be awarded or paid any moneys to cover the cost of his or her future medical surveillance, screening tests, or monitoring procedures until they have been completed. The court shall order that the liable defendant make periodic payments into a fund established to pay the cost of future medical surveillance, screening tests, or monitoring procedures that are required by the judgment of the court. The court shall determine how the fund will be administered. The court shall also determine the date after which the future medical surveillance, screening tests, or monitoring procedures are no longer required, and after that date any moneys remaining in the fund that are not needed to pay for medical surveillance, screening tests, or monitoring procedures completed prior to the termination date shall be repaid to the liable defendant who paid such amounts in the fund. If there are multiple defendants, then repayments shall

be made in proportion to the total contributions of each defendant into the fund.

Following discussion,

(Senator Weld in the Chair.)

Following extended discussion,

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

Following discussion,

Senator Weld moved the previous question.

The question being on the adoption of Senator Weld's aforestated motion, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boso, Clements, Cline, Ihlenfeld, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, and Unger—13.

Absent: Boley, Mann, and Woelfel—3.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Weld's aforestated motion had prevailed.

The previous question having been ordered, that being on the adoption of the Judiciary committee amendment to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—17.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, and Unger—14.

Absent: Boley, Mann, and Woelfel—3.

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

The bill (Eng. Com. Sub. for H. B. 2670), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2673, Creating the Oil and Gas Abandoned Well Plugging Fund.

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

At the request of Senator Sypolt, as vice chair of the Committee on Energy, Industry, and Mining, and by unanimous consent, the unreported Energy, Industry, and Mining 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:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; ~~Tax Commissioner to develop a uniform reporting form.~~

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and

shall be collected from every person exercising ~~such~~ the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section ~~shall be~~ is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That effective for taxable periods beginning on or after January 1, 2019:

(1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable year, and for oil produced from any well which produced an average in excess of 10 barrels of oil per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is 5% of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer; and

(2) For all natural gas produced from any well which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well which produced an average

between 1/2 barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is 2.5% of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer.

(c) *Tax in addition to other taxes.* — The tax imposed by this section ~~shall apply~~ applies to all persons severing gas or oil in this state, and ~~shall be~~ is in addition to all other taxes imposed by law.

~~(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.~~

~~(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.~~

~~(3) Effective July 1, 2006, this subsection shall have no force or effect~~

(d) For purposes of this section, in determining the average amount of production of gas and oil in any given calendar year, a taxpayer must calculate the actual production of such well in the calendar year and divide the same by the number of days the well was in operation and producing gas or oil in such calendar year.

(e) The proceeds of the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: *Provided*, That if on June 1, 2021, or on June 1 of any year thereafter there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$4 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant to this subsection.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.

§22-6-29a. Oil and Gas Abandoned Well Plugging Fund.

(a)(1) This section may be referred to as the Oil and Gas Abandoned Well Plugging Fund Act. There is established within the Treasury of the State of West Virginia the special use fund known as the Oil and Gas Abandoned Well Plugging Fund.

(2) The Oil and Gas Abandoned Well Plugging Fund shall be administered by the secretary solely for the purposes of carrying out the provisions of this section.

(3) Any balance remaining in the Oil and Gas Abandoned Well Plugging Fund at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account and may be used only as provided in this section. The revenues deposited in the Oil and Gas Abandoned Well Plugging Fund may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

(b)(1) Using funds from the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund, the secretary shall plug and reclaim abandoned oil and gas wells without a

responsible operator all in accordance with plans and specifications developed pursuant to the provisions of this article relating to the plugging and reclamation of wells, and the rules establishing well plugging standards adopted thereunder.

(2) Funds from the Oil and Gas Abandoned Well Plugging Fund may only be used to plug abandoned oil and gas wells without a responsible operator and to reclaim the property disturbed from the plugging.

(3) On or before July 1 of each year, the secretary shall make an annual report to the Governor and the Legislature as to the use of the Oil and Gas Abandoned Well Plugging Fund and the Oil and Gas Reclamation Fund. The report shall include the balance in both funds on June 1 of each year. The secretary's annual report shall set forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund in the previous year. The report shall identify each reclamation and plugging project, state the number of wells plugged thereby, show the county in which the wells are located, and make a detailed accounting of all expenditures from the Oil and Gas Reclamation Fund and from the Oil and Gas Abandoned Well Plugging Fund. The annual report shall also include a 5-year plan detailing current and future projects and activities to plug and reclaim wells.

(4) Wells shall be plugged, and plugged wells reclaimed by contract entered into by the secretary on a competitive bid basis as provided for under the provisions of §5A-3-1 et seq. of this code and the rules promulgated thereunder.

The bill (Eng. Com. Sub. for H. B. 2673), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2674, Creating a student loan repayment program for a mental health provider.

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:

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

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-3. Health Sciences Service Program; establishment; administration; eligibility.

(a) *Legislative findings.* — The Legislature finds that there is a critical need for additional practicing health care professionals in West Virginia. Therefore, there is created a Health Sciences Service Program to be administered by the Vice Chancellor for Health Sciences. The purpose of this program is to provide an incentive for health professional students to complete their training and provide primary care and emergency medical care in underserved areas of West Virginia.

(b) *Special account.* — There is continued a special revolving fund account under the Higher Education Policy Commission in the State Treasury formerly known as the Health Sciences Scholarship Fund, ~~and hereafter designated the Health Sciences Service Program Fund.~~ The fund shall be used to accomplish the purposes of this section. The fund consists of any of the following:

(1) All unexpended health sciences scholarship funds on deposit in the State Treasury on the effective date of this section;

(2) Appropriations as may be provided by the Legislature;

(3) Repayments, including interest as set by the Vice Chancellor for Health Sciences, collected from program award recipients who fail to practice or teach in West Virginia under the terms of an award agreement or the health sciences scholarship program previously established by this section; and

(4) Amounts that may become available from other sources.

Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section shall be paid from the Health Sciences Service Program Fund under the direction of the Vice Chancellor for Health Sciences.

(c) *Eligibility requirements.* — Award preference is given to West Virginia residents. An individual is eligible for consideration for a Health Sciences Service Program award if the individual:

(1) Either:

(A) Is a fourth-year medical student at the Marshall University School of Medicine, West Virginia School of Osteopathic Medicine or West Virginia University School of Medicine who has been accepted in a primary care or emergency medicine internship/residency program in West Virginia; or

(B) Is enrolled in an approved education program at a West Virginia institution leading to a degree or certification in the field of nurse practitioner, nurse educator, nurse midwife, physician assistant, dentist, pharmacist, physical therapist, doctoral clinical psychologist, licensed independent clinical social worker or other disciplines identified as shortage fields by the Vice Chancellor for Health Sciences; and

(2) Signs an agreement to practice for at least two years in an underserved area of West Virginia or, if pursuing a Master's Degree in nursing, signs an agreement to teach at least two years for a school of nursing located in West Virginia, as may be determined by the Vice Chancellor for Health Sciences, after receiving the master's degree.

(d) *Program awards.* — Program awards shall be in an amount set by the Higher Education Policy Commission of at least \$20,000 for medical and dental students and at least \$10,000 for all others and may be awarded by the Vice Chancellor for Health Sciences, with the advice of an advisory panel, from the pool of all applicants with a commitment to practice in an underserved area of West

Virginia. This section does not grant or guarantee any applicant any right to a program award.

(e) *Repayment provisions.* — A program award recipient who fails to practice in an underserved area of West Virginia within six months of the completion of his or her training, or who fails to complete his or her training or required teaching, is in breach of contract and is liable for repayment of the program award and any accrued interest. The granting or renewal of a license to practice in West Virginia or to reciprocal licensure in another state based upon licensure in West Virginia is contingent upon beginning payment and continuing payment until complete repayment of the award and any accrued interest. A license, renewal or reciprocity may not be granted to any person whose repayment is in arrears. The appropriate regulatory board shall inform all other states where a recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in West Virginia as a result of failure to repay the award. This provision shall be explained in bold type in the award contract. Repayment terms, not inconsistent with this section, shall be established by the Vice Chancellor for Health Sciences pursuant to the rule required by this section.

(f) *Loan repayment program.* —

(1) There is created a student loan repayment program to be administered by the Higher Education Policy Commission. The loan repayment program shall help repay the student loans for mental health providers who provide therapy and counseling services and who reside in West Virginia and work in an underserved area of West Virginia for up to three years beginning January 1, 2020. Individuals participating in the loan repayment program may be eligible to receive up to \$30,000 to be dispersed as follows:

(A) A participant may receive a loan repayment program award of up to \$10,000 each year in exchange for the participant completing one year of practice in an underserved area.

(B) A participant may not receive a program award for more than three years of practice.

(C) A participant must direct each award received toward the repayment of his or her educational loans.

(2) There is created a special revenue fund account under the Higher Education Policy Commission in the State Treasury known as the “Mental Health Provider Student Loan Repayment Fund”. The fund shall be used to accomplish the purposes of this subsection. The fund shall consist of appropriations as may be provided by the Legislature. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.

(3) The Higher Education Policy Commission shall promulgate a rule to implement the provisions of this subsection pursuant to §29A-3A-1.

~~(f)~~ (g) *Rule.* — The Higher Education Policy Commission shall promulgate a rule pursuant to §29A-3A-1 *et seq.* of this code to implement and administer this section.

~~(g)~~ (h) *Definitions.* — As used in this section:

(1) “Training” means:

(A) The entire degree program or certification program for nurse midwives, nurse practitioners, nurse educators, physician assistants, dentists, pharmacists, physical therapists, doctoral clinical psychologists, licensed independent clinical social workers and other disciplines identified as shortage fields by the Vice Chancellor for Health Sciences; or

(B) Completion of a degree program and an approved residency/internship program for students pursuing a degree in medicine or osteopathy, or as otherwise may be designated for such students in the rule required by this section.

(2) “Underserved area” means any primary care health professional shortage area located in the state as determined by the Bureau for Public Health or any additional health professional shortage area, including an emergency medicine professional determined by the Vice Chancellor for Health Sciences.

§18C-3-5. Non-resident Medical Student Tuition Regularization Program.

(a) Findings. — The Legislature finds as follows:

(1) There is a critical need for additional primary care physicians practicing in West Virginia;

(2) West Virginia has an aging population, and an increasing need for recruiting primary care physicians and placing primary care physicians in rural areas of the state;

(3) West Virginia has a historically low retention rate of state resident medical students following graduation;

(4) Efforts by the medical schools in West Virginia to increase class sizes as a means of increasing the number of physicians practicing in the state have been largely ineffective;

(5) The primary care field of practice yields a lower wage than other medical specialties and maintains an extreme shortage of practicing physicians, particularly in rural areas of the state;

(6) The high cost of nonresident medical education tuition, and resulting high level of debt incurred by students, often prohibit nonresident graduates who remain in the state from entering a primary care practice;

(7) Many nonresident medical students in West Virginia have indicated that they would be willing to remain in the state as a practicing physician if it was affordable;

(8) A waiver of the state resident to nonresident tuition rate differential would offset the significant student debt load incurred by nonresident medical school graduates;

(9) Beginning a medical practice with up to four years committed to practicing medicine in a specific area has a strong likelihood of influencing a nonresident medical school graduate to remain in that area following the service commitment;

(10) Investing resources, developing professional networks, and creating community ties all serve to create permanent connections to an area for an individual who is not originally from that area; and

(11) Attracting practicing physicians to rural and medically under-served areas of the state will further attract related health-care professionals that support a medical practice or facility and will expand the economic and job-growth potential of such areas.

(b) Purpose. – It is the purpose of this section to offer nonresident medical students a partial tuition waiver as a means of recruiting practicing physicians to under-served areas, and to primary care and practitioner shortage fields in West Virginia.

(c) Program established. – There is created the Nonresident Medical Student Tuition Regularization Program to be administered by the Vice Chancellor for Health Sciences in cooperation with the deans of the three medical schools in the state.

(1) Two nonresident medical students from each medical school in the state are selected annually to participate in the program subject to the exception provided in subsection (f) of this section.

(2) Each student selected is charged the state resident tuition rate for each academic year he or she is enrolled in the program, and has the cost differential between the resident and nonresident rates waived by the institution at which he or she is enrolled.

(3) For each academic year that a medical student participates in the program, he or she shall commit to render services for one calendar year as a medical doctor or a doctor of osteopathy in this state in a medically under-served area or in a primary care or specialty practice or field in which there is a shortage of physicians, as determined by the Division of Health at the time the application for the program is submitted. The service commitment begins within six months after graduation from an accredited residency program.

(4) Once selected to participate in the program, a student may continue in the program for as long as he or she continues to meet the eligibility criteria in subsection (d) of this section, for a maximum of four academic years.

(d) Eligibility. — An individual is eligible for enrollment or continuation in the program if he or she meets the following criteria:

(1) Is enrolled or accepted for enrollment at the West Virginia University School of Medicine, the Marshall University School of Medicine, or the West Virginia School of Osteopathic Medicine in a program leading to the degree of medical doctor (M.D.) or doctor of osteopathy (D.O.);

(2) Has not yet received one of the degrees provided in subdivision (1) of this subsection;

(3) Satisfies the academic standards established by the program rule;

(4) Is not in default of any previous student loan;

(5) Is a nonresident student who is charged nonresident tuition rates;

(6) Commits to render services for one calendar year as a medical doctor or a doctor of osteopathy in this state in a medically under-served area or in a primary care or specialty practice or field in which there is a shortage of physicians for each academic year for which he or she participates in the program;

(7) Submits to the commission:

(A) An application for enrollment in the program as provided by the commission; and

(B) A sworn statement of commitment to service on a form provided by the commission for that purpose; and

(8) Other criteria as established by the program rule.

(e) Penalty for failure to satisfy service commitment. —

(1) A program participant violates the service commitment if he or she:

(A) Fails to render services as a medical doctor or doctor of osteopathy in accordance with the sworn statement he or she submitted to the commission. This includes failure to begin serving within six months of completing an accredited residency program, or failure to complete each one-year term to which he or she committed to serve; or

(B) Fails to complete or remain enrolled in the medical education program for which he or she obtained the tuition waiver.

(2) A program participant who violates the service commitment is subject to the following:

(A) He or she shall repay the amount of nonresident tuition charges waived plus interest at a rate of five percent per annum;

(B) The granting or renewal of a license to practice medicine in West Virginia or to reciprocal licensure in another state based upon licensure in West Virginia is contingent upon commencing payment and continuing payment until full repayment of the obligation if the recipient fails to complete the required practice commitment. A license, renewal or reciprocity may not be granted to an individual whose repayments are in arrears. The West Virginia Board of Medicine shall inform all other states where a recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in West Virginia as a result of failure to repay the tuition amount.

(f) Rule. — The commission shall promulgate a rule in accordance with §18B-1-6 of this code to implement this section. The rule shall provide for:

(1) A method for selecting annually the six new students to be enrolled in the program, with priority consideration to applicants in the earliest academic years of the medical education program;

(2) A method for selecting greater or fewer than two participants from a single medical school in any year where two suitable applicants are not available at each school;

(3) A method for the applicant to select the service area or specialty to which he or she commits to practice medicine;

(4) A method for developing a mutually agreeable modification to the terms of a participant's service commitment regarding the medically under-served area or primary care or specialty practice or field in which he or she committed to serve under circumstances where the Division of Health determines at the time the participant's service commitment is scheduled to commence that the area is no longer medically under-served or that primary care or service specialty is no longer experiencing a physician shortage;

(5) Provisions for enforcing sanctions against a participant who fails to satisfy the service commitment; and

(6) Such other provisions as the commission considers necessary to administer the program.

(g) There is created in the State Treasury a special revenue account to be designated the "Nonresident Medical Student Tuition Regularization Fund" which is an interest-bearing account that may be invested and retain all earnings. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with §11B-2-1 *et seq.* of this code.

The bill (Eng. Com. Sub. for H. B. 2674), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2694, Relating to the state's ability to regulate hemp.

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:

ARTICLE 19. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-3. Definitions.

As used in this article:

(a) “Cannabidiol” or “CBD” means the compound by the same name derived from the hemp variety of the cannabis sativa L. plant;

(b) “Commercial sales” means the sale of products in the stream of commerce, at retail, wholesale, and online;

(4) (c) “Commissioner” means the Commissioner of Agriculture or his or her designee;

(d) “Cultivating” means planting, watering, growing, and harvesting a plant or crop;

(e) “Department” means the West Virginia Department of Agriculture and its employees;

(f) “Handling” means possessing or storing hemp plants for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process hemp. “Handling” also includes possessing or storing hemp plants in a vehicle for any period of time other than during its actual transport from the premises of one licensed person to cultivate or process industrial hemp to the premises of another licensed person. “Handling” does not mean possessing or storing finished hemp products;

(2)(g) “Hemp” or “~~Industrial~~ industrial hemp” means all parts and varieties of the plant Cannabis sativa L. ~~containing~~ and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, ~~whether growing or not with~~ no greater than ~~one percent~~ 0.3% tetrahydrocannabinol, or the THC concentration for hemp defined in 7 U.S.C. § 5940, whichever is greater; ~~and~~

(h) “Hemp products” means all products derived from, or made by, processing hemp plants or plant parts, that are prepared in a form available for commercial sale;

(i) “Licensee” means an individual or business entity possessing a license issued by the Department to grow, handle, cultivate, or process hemp;

~~(j)~~ (j) “Marijuana” means all plant material from the genus cannabis containing more than one percent tetrahydrocannabinol or seeds of the genus capable of germination;

(k) “Processing” means converting an agricultural commodity into a marketable form; and

(l) “THC” means tetrahydrocannabinol. Notwithstanding any other provision of this code to the contrary, the THC found in industrial hemp shall not be considered to be THC for the purposes of qualifying as a controlled substance.

§19-12E-4. Industrial hemp authorized as agricultural crop; license required.

(a) Industrial hemp that has not more than one percent tetrahydrocannabinol is considered an agricultural crop in this state if grown for the purposes authorized by the provisions of this article. Upon meeting the requirements of section three §19-12E-5 of this article code, an individual in this state may plant, grow, harvest, possess, process, sell or buy industrial hemp.

(b) A person shall not cultivate, handle, or process industrial hemp in this state unless the person holds an industrial hemp license issued by the department.

§19-12E-5. Industrial hemp – licensing.

(a) A person growing industrial hemp for commercial purposes shall apply to the commissioner for a license on a form prescribed by the commissioner.

(b) The application for a license must include the name and address of the applicant and the legal description and global positioning coordinates of the land area to be used for the production of industrial hemp.

~~(c) The commissioner shall require each first-time applicant, and may establish requirements for other persons involved with the industrial hemp program, to submit to a for a license to file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the criminal investigation bureau of the department of justice for state processing and with the Federal Bureau of Investigation for federal processing. All of the costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential. The commissioner may use the records only to determine if an applicant is eligible to receive a license for the production of industrial hemp.~~ state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(1) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints; and

(B) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(2) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(3) The criminal history record check and related records are not public records for the purposes of §29B-1-1 et seq. of this code.

(4) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(d) If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid until December 31 of the year of application; *Provided*, That an individual applying to renew a current license may continue to operate under an existing license, as long as his or her completed renewal application has been submitted to the department on or before the deadline established by the department. An individual licensed under this section is presumed to be growing industrial hemp for commercial purposes.

~~(e) Notwithstanding any provision of this article, rule or the provisions of chapter sixty a 60A of this code to the contrary, the Commissioner of Agriculture may license qualified persons and state institutions of higher learning to lawfully grow or cultivate industrial hemp in this state, but institutions of higher learning may only lawfully grow industrial hemp for research and educational purposes.~~

(e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the Department prior written consent allowing the Department, State Police, and other state and local law enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated, processed, or stored to conduct physical inspections or otherwise ensure compliance with the requirements of this code and the legislative rules promulgated pursuant to this code.

(f) Sale of industrial hemp products —

(1) Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD.

(2) Hemp-derived cannabinoids, including CBD, are not controlled substances or adulterants.

(3) Products containing one or more hemp-derived cannabinoids, such as CBD, intended for ingestion are to be considered foods, not controlled substances or adulterated products.

(4) Applicable state agencies shall make available any and all customary registrations to the processors and manufacturers of hemp products.

(5) Retail sales of hemp products may be conducted when the products and the hemp used in the products were grown and cultivated legally in another state or jurisdiction and meet the same or substantially the same requirements for processing hemp products or growing hemp under this article and rules promulgated under §19-2E-7 of this code.

(6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp, including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and products intended for animal or human consumption, and the addition is not considered an adulteration of the products.

(7) Hemp and hemp products may be legally transported across state lines, and exported to foreign nations, consistent with U. S. federal law and laws of respective foreign nations.

§19-12E-6. Industrial hemp production – notification.

(a) Every licensee shall file with the commissioner:

(1) Documentation showing that the seeds planted are of a type and variety certified to contain no more than ~~one percent~~ 0.3% tetrahydrocannabinol; ~~and~~

(2) A copy of any contract to grow industrial hemp; and

(3) Any other document required to be submitted by the commissioner.

(b) Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, including, but not limited to, the name and address of the person or entity receiving the industrial hemp and the amount of industrial hemp sold.

§19-12E-7. Rule-making authority.

The commissioner shall ~~promulgate legislative rules~~ propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code that include, but are not limited to:

(1) Licensing persons who wish to grow, cultivate, handle, or process industrial hemp;

(2) Sampling and Testing testing of the industrial hemp ~~during growth~~ to determine tetrahydrocannabinol levels;

~~(2)~~ (3) Supervision of the industrial hemp during its growth and harvest;

~~(3)~~ (4) Assessment of a fee fees that is are commensurate with the costs of the commissioner's activities in licensing, testing, and supervising industrial hemp production;

~~(4) Promulgate rules relating to the~~ (5) The production and sale of industrial hemp which are consistent with the rules of the United States Department of Justice, Drug Enforcement Administration for the production, distribution and sale of industrial hemp;

(6) The production, sale, possession, handling, or transport of hemp products and extracts, including those containing one or more hemp-derived cannabinoids, including CBD; and

~~(5)~~ (7) Any other rules and procedures necessary to carry out the purposes of this article.

§19-12E-8. Disposition of fees.

All fees assessed as provided for in ~~section five~~ §19-12E-5 of this ~~article~~ code must be deposited with the state treasurer to the credit of the "Agricultural Fees Fund" established by the provisions

of ~~section four e, §19-1-4c~~ article one of this ~~chapter~~ code for the use of the commissioner for administering and enforcing the provisions of this article.

§19-12E-9. Defense for possession or cultivation of marijuana.

(a) It is a complete defense to a prosecution for the possession or cultivation of marijuana pursuant to the provisions of ~~article four, §60A-4-401 et seq. chapter sixty a~~ of this code that defendant was growing industrial hemp pursuant to the provisions of this article.

(b) This section is not a defense to a charge of criminal sale or distribution of marijuana as defined in §60A-1-101 *et seq.* of this code which does not meet the definition of industrial hemp.

§19-12E-10. State regulation of industrial hemp.

(a) The commissioner may submit to the Secretary of the United States Department of Agriculture, for his or her approval, a plan under which this state monitors and regulates the production of industrial hemp. The plan shall comply with the requirements of 7 U.S.C. § 1621 et seq. and any other requirements established by the United States Department of Agriculture.

(b) Nothing in this section prohibits the production of industrial hemp in this state if the commissioner declines to submit a plan, or if a submitted plan is not approved by the United States Department of Agriculture in accordance with other federal laws and regulations.

§19-12E-11. Violations; negligent violations; notice.

(a) A licensee in this state that does not comply with any approved plan is subject to §19-12E-11(b) of this code if the department determines the licensee has negligently violated the state plan by:

(1) Failing to provide a legal description of the land on which the licensee produces hemp;

(2) Failing to obtain a license or other required authorization from the West Virginia Department of Agriculture; or

(3) Producing industrial hemp containing more than 0.3% of tetrahydrocannabinol.

(b) A licensee described in subsection (a) of this section shall comply with any requirements established by the department to correct any negligent violation, including:

(1) A reasonable date by which the hemp producer shall correct the negligent violation; and

(2) In the discretion of the commissioner, any requirement that the licensee shall periodically report to the department the licensee's compliance with the state plan for at least two calendar years from the date of the negligent violation.

(c) A licensee that negligently violates the provisions of this article, legislative rules promulgated pursuant to this article, or this state's approved plan authorized pursuant to §19-12E-10 of this code three times in a five-year period, is ineligible to produce hemp in this state for a period of five years beginning on the date of the third violation.

(d) If the department determines that a licensee in this state has intentionally violated the provisions of this article, legislative rules promulgated pursuant to this article, or this state's approved plan authorized pursuant to §19-12E-10 of this code, the provisions of §19-12E-11(b) of this code shall not apply to the violation and the department shall report the licensee to:

(1) The attorney general;

(2) The sheriff of the county in which the hemp is being grown; and

(3) The local detachment of the West Virginia State Police.

(e) Absent a notification pursuant to subsection (d) of this section, a licensee that negligently violates state laws or rules is not

subject to any criminal or civil enforcement action by any state, county, or municipal government.

The bill (Eng. Com. Sub. for H. B. 2694), as amended, was then ordered to third reading.

Eng. House Bill 2709, Relating to hunting licenses.

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:

CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.

ARTICLE 7. THE PROTECT OUR RIGHT TO UNITE ACT.

§1-7-1. Legislative purpose.

(a) The purpose of this article is to protect an individual's right to support nonprofit organizations that represent their beliefs and the nonprofit organization's right to keep the names and addresses of its supporters confidential by codifying the landmark United States Supreme Court decision in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). If a public agency actor violates this protection by making an individual's name, address, and support for nonprofit groups public, either by publication on a public website or other type of broadcast, this article gives the citizen a right to bring suit for relief.

(b) It is the intent of this article to recognize that compelled disclosure of membership lists by a public agency actor is a trespass upon fundamental freedoms protected by the Due Process Clause of the Fourteenth Amendment, as held by the United States Supreme Court in *NAACP v. Alabama ex rel. Patterson*. Therefore, this article should be liberally construed in favor of the individual right to association to ensure that private association is not

discouraged or suppressed by any actions of the public servants of this state.

§1-7-2. Definitions.

For the purposes of this article:

“Citizen” means an individual who is a United States citizen and any entity domiciled in the United States, but does not include any foreign agent, foreign government, or noncitizen.

“Donor information” means any record which identifies the association of a citizen with an entity, including information that does not directly identify the citizen but which, in combination with other information, would allow a reasonable person to identify the citizen involved. Donor information includes, but is not limited to, a citizen’s name, address, occupation, employer, or any electronic or technical data, including social media accounts, email accounts, location data, or other identifying information.

“Public agency” means any department, office, commission, board, or division of state government; and any county, city, district, or other political subdivision or municipal corporation or any department, office, commission, court, or board or any other state or local government unit, however designated.

§1-7-3. Protecting privacy of association.

(a) Except as otherwise provided in chapters 3 and 6B of this code, or as specified in subsection (c) or subsection (d) of this section, no public agency may require any entity organized under Section 501(c) of the Internal Revenue Code to provide it with donor information: *Provided*, That where the state or a public agency nevertheless obtains donor information, it may not be released unless otherwise permitted in chapters 3 and 6B of this code or as otherwise permitted under this section.

(1) The state or public agency may not release, allow to be released, nor be required to release any record which identifies the association of a citizen with an entity organized under Section 501(c) of the Internal Revenue Code, or which identifies the type

or level of financial or nonfinancial support of a citizen for such an entity, without the express written permission of the entity or citizen or at the request of the citizen.

(2) All donor information is exempt from production under the state's Freedom of Information Act, §29B-1-1 et seq. of this code.

(b) The state or a public agency may satisfy subsection (a) of this section by redacting from a record any donor information that would tend to show association of citizens, including nonspecific information that would allow a reasonable person to identify the citizen or citizens involved.

(c) This section does not preclude any lawful order or request for information issued by a court of competent jurisdiction.

(d) This section does not preclude any lawful request for discovery by a public agency in litigation: *Provided*, That both of the following qualifications are met:

(1) The requesting party demonstrates a compelling need for the donor information; and

(2) The donor information is subject to a protective order barring distribution of the donor information to any individual not directly involved in the litigation.

§1-7-4. Enforcement by state or private citizen action.

(a) A citizen has a cause of action to enjoin any violation of this article and to recover any actual damages incurred by him or her as a result of the violation.

(b) If the plaintiff prevails, he or she is entitled to be reimbursed by the state or public agency for costs and attorneys' fees he or she has incurred. If the defendant state or public agency prevails, each party is responsible for their own attorneys' fees and costs, except as determined by any applicable statutes or common law rule concerning frivolous cases.

(c) If the judge or jury finds that the violation by the state or public agency was intentional, the amount of the judgment, which for this purpose includes costs and attorneys' fees, may be trebled as punitive damages.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-27. Necessity for license.

(a) Except as otherwise provided by law, no resident who has reached his or her 15th birthday and who has not reached his or her 65th birthday before January 1, 2012, and no nonresident shall at any time take, hunt, pursue, trap for, kill, or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians, or aquatic life of any kind whatsoever in this state without first having secured a license or permit and then only during the respective open seasons, except that a nonresident who has not reached his or her 15th birthday may fish for, take, kill, or catch any fish, amphibians, or aquatic life of any kind whatsoever in this state without first having secured a license or permit. A person under the age of 15 years shall not hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.

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

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

(d) The list of names, addresses, and other contact information of all licensees compiled and maintained by the division as a result of the sale and issuance of any resident or nonresident licenses or stamps under this chapter is exempt from disclosure under the Freedom of Information Act, §29B-1-1 et seq. of this code: Provided, That the records specified in this section shall be available to all law-enforcement agencies and other governmental entities authorized to request or receive such records.

The bill (Eng. H. B. 2709), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2761, Modernizing the self-service storage lien law.

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:

ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

§38-14-2. Definitions.

As used in this article, unless the context clearly requires otherwise:

(1) “Default” means the failure by the occupant to perform on time any obligation or duty set forth in the rental agreement or this article;

(2) ~~“Late fee” means a fee or charge assessed for a default;~~

(3) ~~“Leased space” means the individual storage space at the self service facility which is leased or rented to an occupant pursuant to a rental agreement;~~

~~(4) "Occupant" means a person entitled to the use of a leased space at a self-service storage facility under a rental agreement, or the person's sublessee, successor or assign;~~

~~(5) "Owner" means the owner, operator, lessor or sublessor of a self-service storage facility or the person's agent or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement. The owner of a self-service storage facility is not a warehouseman as defined in section one hundred two, article seven, chapter forty six of this code unless the owner issues a warehouse receipt, bill of lading or other document of title for the personal property stored, in which event the owner and the occupant are subject to the provisions of article seven, chapter forty six of this code dealing with warehousemen;~~

~~(6) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, motor vehicles and household items and furnishings;~~

~~(7) "Primary address" means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent notice of a change of address;~~

~~(8) "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions or rules concerning the lawful and reasonable use and occupancy of a self-service storage facility;~~

~~(9) "Secondary address" means any address provided on the rental agreement and is in addition to the primary address;~~

~~(10) "Self-service storage facility" means any real property used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants have access for storing or removing their personal property; and~~

~~(11) "Self-service storage lien" means a lien imposed on the personal property of an occupant by the owner of a self-service storage facility~~

(2) “Last known address” means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address;

(3) “Leased space” means the individual storage space at the self-service storage facility which is rented to an occupant pursuant to a rental agreement;

(4) “Occupant” means a person, a sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement;

(5) “Operator” means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent, or any other person authorized to manage the facility. The operator is not a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;

(6) “Personal property” means movable property, not affixed to land. Personal property includes goods, wares, merchandise, motor vehicles, trailers, watercraft, and household items and furnishings;

(7) “Rental agreement” means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of leased space at a self-service storage facility;

(8) “Self-service storage facility” means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a “self-service” basis; and

(9) “Verified mail” means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

§38-14-3. Self-service storage lien.

(a) The ~~owner operator~~ has a ~~self-service storage~~ lien on all personal property stored within each leased space for agreed rent, labor, ~~or late fees, and~~ other charges and for expenses reasonably incurred in its sale or ~~destruction~~ disposition pursuant to this article. The ~~self-service storage~~ lien attaches as of the date the personal property is stored within each leased space and remains a lien until the occupant has satisfied the terms of the rental agreement.

(b) In the case of any motor vehicle or watercraft which is subject to a lien previously recorded on the certificate of title, the ~~owner operator~~ has a ~~self-service storage~~ lien on the vehicle or watercraft ~~so~~ as long as the motor vehicle or watercraft remains stored within the leased space.

(c) The rental agreement ~~must~~ shall contain:

(1) A statement ~~in bold type~~ advising the occupant of the existence of the ~~self-service storage~~ lien and that the personal property stored within the leased space may be sold to satisfy the ~~self-service storage lien or destroyed if the value of the property would not reasonably discharge the costs of the sale and self-service storage lien if the occupant is in default;~~

~~(2) A space for a secondary address immediately following the space provided for the primary address; and~~

~~(3) A statement that the occupant may not store hazardous waste or contraband in the leased space.~~

(2) A statement advising the occupant that personal property stored in the leased space may be towed or removed from the self-service storage facility if the personal property is a motor vehicle, trailer, or watercraft and the occupant is in default for more than 60 days; and

(3) A statement advising the occupant that a sale of personal property stored in the leased space to satisfy the lien if the occupant is in default may be advertised;

(A) In a newspaper of general circulation in the jurisdiction where the sale is to be held or where the self-service storage facility is located;

(B) By electronic mail or text; or

(C) On an online website.

§38-14-4. Late fees.

The ~~owner~~ operator may charge a late fee not to exceed ~~\$10 or ten~~ \$20 or 20 percent of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of ~~fifteen~~ five days or more.

§38-14-5. Enforcement of self-service storage lien.

~~(a) (1) If an occupant is in default under a rental agreement and the owner wishes to enforce the lien, the owner shall notify the occupant of the default in a form as prescribed by subsection (c) of this section. If the default is not cured within sixty days after the service of the notice, the owner may:~~

~~(A) Proceed to enforce the self-service storage lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the self-service storage lien, with the surplus, if any, to be disbursed as provided in this article; or~~

~~(B) Destroy the personal property if he or she can demonstrate by photographs or other images and affidavit of a knowledgeable and credible person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien;~~

~~(2) In the case of personal property having a fair market value in excess of \$1,000 and against which a secured party has filed a financing statement in the name of the occupant with the Secretary of State or in the office of the clerk of the county commission in the county where the self-service storage facility is located or in the county in West Virginia shown as the last known address of the~~

occupant or if the personal property is a motor vehicle or watercraft required by the laws of this state to be registered and the Division of Motor Vehicles shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, of the time and place of the proposed public auction, at least thirty days prior to the auction. At any time prior to the public sale or destruction, a secured party may pay the reasonable fees and costs due to the person possessing the self service storage lien and take possession of the personal property which is subject to the lien;

(3) If a lienholder of record of the personal property cannot be ascertained, the name of "Jane Doe" shall be substituted in the proceedings brought under this article and no written notice is required except as prescribed by subsection (c) of this section. Whenever a motor vehicle or watercraft is sold under the provisions of this article, the Division of Motor Vehicles shall issue a certificate of title and registration to the purchaser upon the purchaser's application containing the serial or motor number of the vehicle or watercraft purchased, together with an affidavit by the person conducting the public auction, evidencing compliance with the provisions of this article.

(b) The owner may, without judicial process, deny the occupant access to the personal property stored at the self service storage facility if the occupant has been in default for fifteen days: *Provided*, That the owner clearly states in the rental agreement that he or she may deny the occupant access to the personal property stored in the rental space after a default lasting fifteen or more days and the owner maintains a conspicuous sign on the premises of the self service storage facility stating the name, street address and telephone number of the owner or the owner's designated agent who the occupant may contact to redeem his or her personal property and upon redemption, the occupant or lienholder be permitted access to his or her personal property at a time not later than the close of business on the next following business day.

(c) Anytime after the occupant has been in default and before the owner can sell or destroy the occupant's personal property in accordance with the terms of this article, the owner shall send a

~~notice of default, by regular mail, and registered or certified mail, postage prepaid, to the occupant at the occupant's last known primary address and secondary address, if any. The notice of default shall include:~~

~~(1) An itemized statement of the owner's claim, indicating the charges due on the date of the notice, the date when the charges became due and those charges that will accrue through the date of sale or destruction of the occupant's personal property;~~

~~(2) A demand for payment of the charges due to the owner with an address where payment can be made;~~

~~(3) A statement that the contents of the occupant's leased space are subject to the owner's self-service storage lien;~~

~~(4) A conspicuous statement that unless the claim is paid prior to the enforcement of the self-storage lien:~~

~~(A) The personal property contained in the occupant's space will be sold at public auction at a specified time and place which may not be less than sixty days from the date of the service; or~~

~~(B) The personal property contained in the occupant's space will be disposed of at a commercially reasonable cost to the occupant at a specified time and place which may not be less than sixty days from the date of the service; and~~

~~(d) At any time prior to the public auction or destruction of the personal property pursuant to this section the occupant may pay the full amount necessary to satisfy the self-service storage lien. A lienholder of record may pay an amount not to exceed \$175 for incurred rental fees, late fees and safekeeping of the property in addition to an amount not to exceed \$75 for notice and redeem only the personal property subject to the lien.~~

~~(e)(1) Any owner who conducts a public auction pursuant to this section may satisfy the self-service storage lien from the proceeds of the public auction and hold the balance, if any, for delivery on demand to the occupant. If an owner complies with the provisions of this article, his or her liability to the occupant is~~

~~limited to the net proceeds less the amount of the self-service storage lien and costs received at the public auction;~~

~~(2) If an owner conducts a public auction pursuant to this section, the owner's liability to a lienholder is limited to the proceeds received at the public auction, less the amount of the self-service storage lien and costs. If an owner complies with the provisions of this article, the owner is not liable to a lienholder who fails to claim an interest in the net proceeds within thirty days after the public auction.~~

~~(f) Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the county or municipality in which the public auction is to be held not less than twenty days prior to the public auction. The advertisement must state the:~~

~~(1) Fact that it is a public auction;~~

~~(2) Date, time and location of the public auction;~~

~~(3) Date, time and location which the property may be inspected; and~~

~~(4) Form of payment acceptable.~~

~~(g) A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this article takes the property free and clear of any rights of persons against whom the lien was valid.~~

~~(h) Any notice made pursuant to this section is presumed delivered when it is deposited with the United States postal service and properly addressed with postage prepaid.~~

(a)(1) If the occupant is in default for a period of more than 60 days, the operator may enforce the lien by selling the personal property stored in the leased space at a public sale or dispose of the personal property if the operator can demonstrate by photographs or other images and affidavit of a knowledgeable and credible

person that the personal property lacks a value sufficient to cover the reasonable expense of a public auction plus the amount of the self-service storage lien.

(2) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be disbursed as provided in subsection (e) of this section.

(b)(1) Before conducting a sale under subsection (a) of this section, the operator shall, subject to subdivision (2) of this subsection, notify the occupant of the default by hand delivery, verified mail, electronic mail, or text at the occupant's last known address.

(2)(A) The operator may not notify the occupant of the default by electronic mail unless:

(i) The rental agreement specifies, in bold type, that notice may be given by electronic mail or text; and

(ii) The occupant provides the occupant's initials next to the statement in the rental agreement specifying that notice of default may be given by electronic mail or text.

(B) If the operator notifies the occupant of the default by electronic mail or text at the occupant's last known address and does not receive a response, return receipt, or a confirmation of delivery, the operator shall send the notice of default to the occupant by hand delivery or by verified mail to the occupant's last known postal address.

(C) Additional requirements for members of the military apply under the Soldiers and Sailors Relief Act, 50 U.S.C. §§3901-4043.

(3) The notice shall include:

(A) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(B) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges

which will become due before the date of sale, and the date those additional charges will become due;

(C) A demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed;

(D) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and

(E) The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice.

(4) (A) Subject to paragraph (B) of this subdivision, at least three days before conducting a sale under this section, the operator shall advertise the time, place, and terms of the sale:

(i) In a newspaper of general circulation in the jurisdiction where the sale is to be held;

(ii) By electronic mail; or

(iii) On an online website.

(B) The operator may not advertise the sale in the manner provided under subparagraph (ii) or (iii) of this paragraph unless the occupant provides the occupant's initials next to the statement in the rental agreement required under this article.

(c) The operator may dispose of the personal property if the operator has complied with subsection (b) of this section and the property has not been purchased.

(d) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

(e) A sale under this section shall be held at the self-service storage facility where the personal property is stored, on an online auction website, or at any other location reasonably determined by the operator.

(f)(1) If a sale is held under this section, the operator shall:

(A) Satisfy the lien from the proceeds of the sale; and

(B) Mail the balance, if any, by certified mail to the occupant at the occupant's last known address of the occupant.

(2) (A) If the balance is returned to the operator after the operator mailed the balance in the manner required under paragraph (B), subdivision (1) of this subsection, the operator shall hold the balance for one year after the date of sale for delivery on demand to the.

(B) After expiration of the one-year period, the balance is presumed abandoned.

(g) A purchaser in good faith of any personal property sold under this article takes the property free and clear of any rights of persons against whom the lien was valid.

(h) If the operator complies with the provisions of this article, the operator's liability to the occupant is limited to the net proceeds received from the sale of the personal property less the amount of the operator's lien.

(i) If an occupant is in default, the operator may deny the occupant access to the leased space.

(j)(1)(A) Notices sent to the operator shall be sent to the self-service storage facility where the occupant's personal property is stored by hand delivery or verified mail.

(B) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(2) Notices shall be considered delivered when:

(A) Deposited with the United States Postal Service or a private delivery service, properly addressed as provided in subsection (b) of this section, with postage prepaid; or

(B) Sent by electronic mail to the occupant's last known address.

(k)(1) If the occupant is in default for more than 60 days and the personal property stored in the leased space is a motor vehicle, trailer, or watercraft, the operator may have the personal property towed or removed from the self-service storage facility in lieu of a sale authorized under subsection (a) of this section.

(2) The operator is immune from civil liability for any damage to the personal property towed or removed from the self-service storage facility under subdivision (1) of this subsection that occurs after the person that undertakes the towing or removal of the personal property takes possession of the personal property.

(l) If a rental agreement specifies a limit on the value of personal property that may be stored in the occupant's leased space, the limit is the maximum value of the stored personal property.

(m) Nothing in this article impairs or affects the rights of the parties to create additional rights, duties, and obligations in and by virtue of the rental agreement.

§38-14-7. Duties; care, custody, and control of property.

(a) ~~The owner~~ operator shall use reasonable care in maintaining the self-service storage facility for the purposes of storage of personal property. ~~and may not offer to sell insurance to the occupant to cover the owner's risk or lack of care~~

~~(b) Prior to the sale or destruction of personal property pursuant to this section, the owner shall prepare a detailed inventory of all personal property to be sold or destroyed and shall maintain the inventory listing for a period of two years from the date of the sale or destruction of the property. The occupant shall have access to the inventory listing for the period during which it is maintained by the owner~~

(e) (b) Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in the leased space remains vested in the occupant.

~~(d)~~ (c) An occupant may not use a self-service storage facility for residential purposes.

(e) (d) An occupant may not store hazardous waste or contraband in the leased space. ~~An owner who discovers hazardous waste or contraband in a leased space shall promptly notify the appropriate law enforcement agency and is authorized to deliver the hazardous waste or contraband to the appropriate law enforcement agency~~

§38-14-8. Savings clause.

All rental agreements entered into prior to July 1, ~~2004~~ 2019, which have not been extended or renewed after that date remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

§38-14-9. Effective date and application of article.

The provisions of this article apply to all rental agreements entered into or extended or renewed after July 1, ~~2004~~ 2019.

Senators Azinger and Tarr respectively requested a ruling from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Azinger and Tarr would be as members of a class of persons and that they would be required to vote.

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2761), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2770, Fairness in Cost-Sharing Calculation 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:

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

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq* of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section

applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3ee. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq* of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

§33-24-7t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8q. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8t. Fairness in Cost-Sharing Calculation.

(a) As used in this section:

“Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf of an insured in order to receive a specific health care item or service covered by a health plan.

“Drug” means the same as the term is defined in §30-5-4(19).

“Person” means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit corporation, unincorporated organization, or government or governmental subdivision or agency.

“Pharmacy benefits manager” means the same as that term is defined in §33-51-3 of this code.

(b) When calculating an insured’s contribution to any applicable cost sharing requirement, including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c) and 42 U.S.C. § 300gg-6(b):

(1) An insurer shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person; and

(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person.

(c) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 et seq of this code, to implement the provisions of this section.

(d) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section

The bill (Eng. Com. Sub. for H. B. 2770), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2779, Providing that proceeds from certain oil and gas wells to persons whose name or address are unknown are to be kept in a special fund.

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:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 10. ABANDONED WELL ACT.

§22-10-6. Establishment of priorities for plugging expenditures.

(a) Within one year of the effective date of this article, the director shall promulgate legislative rules establishing a priority system by which available funds from the Oil and Gas Reclamation Fund, established pursuant to §22-6-29 of this code, will be expended to plug abandoned wells. The rules shall, at a minimum, establish three primary classifications to be as follows:

(1) Wells which are an immediate threat to the environment or which may hinder or impede the development of mineral resources of this state so as to require immediate plugging;

(2) Wells which are not an immediate threat to the environment or which do not hinder or impede the development of mineral resources of this state, but which should be plugged consistent with available resources; and

(3) Wells which are not a threat to the environment and which do not hinder or impede the development of mineral resources of this state and for which plugging may be deferred for an indefinite period.

(b) ~~Such~~ The classifications shall, among other things, take into consideration the following factors, as appropriate:

(1) The age of the well;

(2) The length of time the well has been abandoned;

(3) The casing remaining in the well;

(4) The presence of any leaks either at the surface or underground;

(5) The possibility or existence of groundwater contamination;

(6) Whether the well is located in an area to be developed for enhanced recovery;

(7) Whether the well hinders or impedes mineral development; and

(8) Whether the well is located in close proximity to population.

(c) Notwithstanding the other provisions of this section, the bond posted for a specific well shall first be used to plug the well or correct or mitigate problems or issues on the land where the well is located if:

(1) The bond is forfeited as a result of failure to plug an abandoned well or repair a well that is causing immediate threat to the environment or which hinders or impedes the development of mineral resources of this state;

(2) The operator was cited for and then failed to correct an immediate threat to the environment or hinderance or impediment to the development of mineral resources of this state with the well or the well site; or

(3) The operator failed to reclaim surface disturbance causing immediate threat to the environment or which hinders or impedes the development of mineral resources of this state.

CHAPTER 37. REAL PROPERTY.

ARTICLE 4. PARTITION.

§37-4-9. Disposition of funds due to unknown or unlocatable interest owners; rule-making.

Notwithstanding the requirements of §36-8-1 *et seq.* of this code, all funds and proceeds due under this article to owners of severed oil and natural gas interests with their appurtenant rights, whose name or location is unknown and who does not make a claim for those funds for seven years after the date of the order of the court authorizing the distribution of the funds, shall be paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code. The funds shall be paid by the special or general receiver or other person or entity holding the funds on or before November 1 of each year for all funds that became payable before July 1 of that year. The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to carry out the provisions of this section.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.

§55-12A-7. When special commissioner may convey title in mineral interest to surface owner; form of deed; payment to surface owner; final report of special commissioner; unknown owners; transfer of funds; rule-making.

(a) (1) If an owner of any mineral interest leased under section six of this article remains unknown or missing, or does not disavow the abandonment, for a period of seven years from the date of the special commissioner's lease, the special receiver shall report the same to the court, whereupon the court shall enter an order naming those who then appear to be surface owners as additional parties and giving notice to them, pursuant to the West Virginia rules of civil procedure, of an opportunity to appear and present proof of ownership in fee of the surface estate. Upon a finding by the court of the present ownership in fee of the surface estate, the court shall (i) order the special commissioner to convey to the proven surface owner, subject to the special commissioner's lease, the mineral interest specified in the motion, by a deed substantially in the form specified in subsection (b) of this section and (ii) order the special receiver to pay to the ~~surface owner~~ Oil and Gas Reclamation Fund established pursuant to §22-6-29 the funds which have accrued to the credit of the mineral interests specified in the motion to the date of his or her report after payment of all allowable fees, expenses and court costs, including special commissioner's fees paid or to be paid in amounts determined by the court. After the date of the special commissioner's deed, the surface owner grantee shall be entitled to receive all proceeds under the lease attributable to the mineral interests specified in the deed.

(2) If the boundaries of the mineral tract subject to the special commissioner's lease encompass two or more surface tracts, a separate deed shall be made for the mineral interest underlying each surface tract. If a surface tract is ~~owner~~ owned by more than one person, the deed respecting that surface tract shall convey the mineral interest according to the surface estate and interest of each surface owner.

(b) The special commissioner's deed may be made in the following form, or to the same effect:

This deed, made the ____ day of _____, 19____, between _____, special commissioner, grantor, and _____, grantee,

Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by an order of the circuit court of _____ county, West Virginia, entered on the ____ day of _____, 19____, in civil action no. _____ therein pending, to convey the mineral interest more particularly described below to the grantee,

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the special commissioner's lease mentioned below, and further subject to all other liens and encumbrances of record, that certain mineral interest in _____ county, West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order); and being (here specify "all" or "a portion") of the mineral interest described in that certain special commissioner's lease dated _____, 19____, of record in the office of the clerk of _____ county, in _____ book _____, at page ____.

Witness the following signature.

Special Commissioner

(c) Upon the delivery of the deed or deeds and the payment or payments as directed in subsection (a) of this section, the special commissioner shall make a final report to the court; and upon approval thereof, the court shall order the discharge of the special commissioner's bond.

(d) Prior to the delivery of the special commissioner's deed, no deed from a surface owner to another shall sever ownership of the surface as such from ownership of any benefits under this article.

~~Any~~ The provisions of any deed granting or reserving an interest purporting to create such a severance shall be void.

(e) The amendments to this section made during the 2019 regular session of the Legislature which provided for certain accumulated proceeds to be payable to the Oil and Gas Reclamation Fund, shall take effect July 1, 2019, and any funds shall be transferred that have been unclaimed for seven years or more after the date of the special commissioner's lease whether or not the special commissioner's lease was signed before or after the effective date of the amendments.

(f) The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to carry out the provisions of this section relating to transfer of funds to the Oil and Gas Reclamation Fund.

The bill (Eng. Com. Sub. for H. B. 2779), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2807, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking.

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

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

On page one, section twelve-j, line eleven, by striking out the word "obligation's" and inserting in lieu thereof the word "obligations";

On page one, section twelve-j, line twelve, by striking out "1120S" and by inserting in lieu thereof "1120S";

On page two, section twelve-j, line thirty-three, by striking out the words “by the adjustment authorized under §11-24-6 of this code or §11-21-37c(f) of this code”;

On page three, section twelve-j, line forty-six, after “§11-24-3a(a)(14)” by inserting the words “of this code”;

And,

On page three, section twelve-j, line forty-nine, after “§11-24-3a(a)(14)” by inserting the words “of this code”.

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

On page two, section twelve-j, line forty, by striking out “§11-24-6” and inserting in lieu thereof “§11-21-12j(a)”;

On page three, section twelve-j, lines forty-one through forty-three, after the word “section.” by striking out the remainder of the subsection;

And,

On page three, section twelve-j, line fifty-one, by striking out “§11-24-6(f)(1)(A), (B), (C) and (D)” and inserting in lieu thereof “§11-21-12j(a)”.

The bill (Eng. Com. Sub. for H. B. 2807), as amended, was then ordered to third reading.

Eng. House Bill 2828, Relating to Qualified Opportunity Zones.

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:

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

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12j. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.

(a) General. – In addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, a modification reducing federal adjusted gross income is hereby authorized for taxable years beginning on and after January 1, 2020:

(1) For individuals: in an amount equal to and limited to that portion of net income included in federal adjusted gross income by a taxpayer in the taxable year that is directly derived from a qualified opportunity zone business located in a qualified opportunity zone which is located in West Virginia;

(2) For partners or members of limited liability companies that are treated as partnerships for federal income tax purposes, and other pass-through entities: in an amount equal to and limited to that portion of the distributive share of the partner or member that is attributable to the flow through income directly derived from the qualified opportunity zone business located in West Virginia. A similar rule applies to shareholders in corporations taxed under subchapter S of the Internal Revenue Code.

(b) Eligibility. — To be entitled to modification provided for in subsection (a) of this section, the qualified opportunity zone business must be a newly registered business in West Virginia registered on or after January 1, 2020, or an existing West Virginia business that has qualified as a qualified opportunity zone business in West Virginia on or after that date. Limited liability companies that are treated as corporations for purposes of the federal income tax and West Virginia corporation net income tax and which otherwise qualify in accordance with the requirements and

limitations of this section may qualify for the modification authorized under this section.

(c) *Duration.* – The modification provided for in subsection (a) of this section shall apply with respect to a taxpayer for a 10-year period beginning with the first full taxable year during which the qualified opportunity zone business first qualifies as a qualified opportunity zone business, or the first year in which the qualified opportunity zone business reports net income: *Provided*, That the qualified opportunity zone business first qualifies as such on or after January 1, 2020.

(d) The following definitions apply to this section:

(1) “Qualified Opportunity Zone Business” means “Qualified Opportunity Zone Business” as that term is defined in 26 U.S.C. §1400Z-2.

(2) “Qualified Opportunity Zone” means “Qualified Opportunity Zone” as that term is defined in 26 U.S.C. §1400Z-1.

(e) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section, all in accordance with the provisions of §29A-3-1 *et seq.* of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6b. Decreasing modification reducing federal taxable income for the income of Qualified Opportunity Zone Businesses; effective date.

(a) *General.* - In addition to the amounts authorized to be subtracted from federal taxable income pursuant to §11-24-6(c) of this article, there shall be subtracted from federal taxable income, an amount equal to net income included in federal taxable income by a corporate taxpayer in a taxable year that is ordinary income derived from a qualified opportunity zone business located in a qualified opportunity zone located in West Virginia: *Provided*, That In any case in which a consolidated or combined return is

filed, or required to be filed, the amount subtracted from federal taxable income under this section may not exceed that member's proportionate share of the affiliated, combined or unitary group's tax liability under this article, that is ordinary income derived from a qualified opportunity zone business located in a qualified opportunity zone located in West Virginia for the taxable year. The provisions of this section are effective for taxable years beginning on and after January 1, 2020.

(b) *Eligibility.* - To be entitled to modification provided for in subsection (a), the qualified opportunity zone business must be a newly registered business in West Virginia registered on or after January 1, 2020, or an existing West Virginia business that has qualified as a qualified opportunity zone business in West Virginia on or after that date. Limited liability companies that are treated as corporations for purposes of the federal income tax and West Virginia corporation net income tax and which otherwise qualify in accordance with the requirements and limitations of this section may qualify for the modification authorized under this section.

(c) *Duration.* - The modification provided for in subsection (a) of this section shall apply with respect to a taxpayer during the 10-year period beginning with the first full taxable year during which the qualified opportunity zone business first qualifies as a qualified opportunity zone business, or the first year in which the qualified opportunity zone business reports net income: *Provided*, That the qualified opportunity zone business first qualifies as such on or after January 1, 2020.

(d) The following definitions apply to this section:

(1) "Qualified Opportunity Zone Business" means "Qualified Opportunity Zone Business" as that term is defined in 26 U.S.C. §1400Z-2.

(2) "Qualified Opportunity Zone" means "Qualified Opportunity Zone" as that term is defined in 26 U.S.C. §1400Z-1.

(e) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines

and requirements to ensure uniform administrative practices statewide to carry out the intent of this section, all in accordance with the provisions of §29A-3-1 et seq. of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 15D. WEST VIRGINIA BUSINESS GROWTH IN LOW-INCOME COMMUNITIES TAX CREDIT.

§31-15D-1. Title.

The provisions of this article shall be known as, and may be cited as, the “West Virginia New Markets Jobs Act”.

§31-15D-2. Definitions.

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) “Affiliate” means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the entity specified;

(2) “Aggregate offset” shall mean the sum of the West Virginia New Market Jobs offset reported in each annual report to the authority pursuant to § 31-15D-6(a)(10).

(3) “Annual jobs retained” means the number of full-time equivalent employees that existed before the initial qualified low-income community investment in the qualified active low-income community business that are paid a high wage and for which:

(A) The qualified active low-income community business’s chief executive officer or similar officer certifies that the full-time equivalent employee positions would have been eliminated but for the initial qualified low-income community investment; and

(B) The qualified community development entity receives approval from the authority of the satisfaction of this definition;

(4) “Applicable percentage” means zero percent for the first three credit allowance dates and 15 percent of the qualified equity investment for the next four credit allowance dates;

(5) “Authority” means the West Virginia Economic Development Authority as provided in §31-15-4 of this code;

(6) “Credit allowance date” means with respect to any qualified equity investment:

(A) The date on which the investment is initially made; and

(B) Each of the six anniversary dates of such date thereafter;

(7) “Full-time equivalent employee” means the quotient obtained by dividing the total number of hours for which employees were compensated for employment over the preceding 12 month period by 2,080;

(8) “High wage” means an hourly wage rate of at least 150 percent of the federal minimum wage;

(9) “Insurance Commissioner” means the Insurance Commissioner of West Virginia or his or her designee as provided in §33-2-1 of this code;

(10) “Investor allocation” means the allocation of tax credits to insurance companies pursuant to §31-15D-3.

(11) “Long-term debt security” means any debt instrument issued by a qualified community development entity with an original maturity date of at least seven years from the date of its issuance, with no repayment, amortization or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified community development entity for that period prior to giving effect to the interest expense of the long-

term debt security. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this 26 U. S. C. § 45D, as amended;

(12) "New annual jobs" means the difference, provided that if such difference is less than zero, the new annual jobs shall be zero, between:

(A)(i) The monthly average of full-time equivalent employees that are paid a high wage at a qualified low-income community business for the preceding calendar year; or

(ii) If the preceding calendar year contains the initial low-income community investment, the monthly average of full-time employees that are paid a high-wage at a qualified active low-income community investment, the monthly average of full-time employees that are paid a high wage at a qualified low-income community business for the months including and after the initial low-income community investment and before the end of the preceding calendar year;

(B) The number of full-time equivalent employees at the qualified active low-income community business on the day of the initial qualified low-income community investment;

(13) "Opportunity zone" means the low-income census tracts located in West Virginia receiving such designation from the U.S. Treasury Department;

(14) "Principal business operations" of business is the location or locations where at least 60 percent of the business's employees work or where the employees who are paid at least 60 percent of the business's payroll are located. A business that agrees to relocate or hire new employees using the proceeds of a qualified low-income community investment to establish its principal business operations at a location is deemed to have its principal business operations in the new location provided it satisfies this definition

within 180 days after receiving the qualified low-income community investment, unless the authority agrees to a later date;

(15) “Purchase price” means the amount paid to the qualified community development entity for a qualified equity investment, which may not exceed the amount of qualified equity investment authority certified pursuant to §31-15D-4 of this code;

(16) “Qualified active low-income community business” has the meaning given the term in 26 U. S. C. § 45D, as amended, and 26 C. F. R. § 1.45D-1 (2012). Any business that is nonprofit or derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low-income community business. The real estate exception does not apply to a business that is controlled by or under common control with another business if the second business: (A) Does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (B) is the primary tenant of the real estate leased from the initial business. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity’s investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements of being a qualified active low-income community business, other than the size and net income standards, throughout the entire period of the investment or loan;

(17) “Qualified community development entity” has the meaning given the term in 26 U. S. C. § 45D, as amended: *Provided*, That the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U. S. Treasury Department with respect to credits authorized by 26 U. S. C. § 45D, as amended, which includes the State of West Virginia within the service area set forth in the allocation agreement. An entity may not be deemed to be controlled by another entity solely as a result of the entity having made a direct or indirect equity investment in the other entity that earns tax credits under 26 U.S.C. § 45D, as amended, or similar state program. The term shall include subsidiary qualified community

development entities of any qualified community development entity and transferees of qualified equity investment authority pursuant to §31-15D-4 of this code;

(18) “Qualified equity investment” means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(A) Is acquired after the effective date of this act at its original issuance solely in exchange for cash;

(B) Has 100 percent of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and

(C) Is designated by the qualified community development entity as a qualified equity investment hereunder and is certified by the authority pursuant to §31-15D-4 of this code. This term shall include any qualified equity investment that does not meet the provisions of paragraph (A) of this subdivision if the investment was a qualified equity investment in the hands of a prior holder;

(19) “Qualified low-income community investment” means any capital or equity investment in, or loan to, any qualified active low-income community business: *Provided*, That with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in the business, on a collective basis with all of the businesses’ affiliates, with the proceeds of qualified equity investments certified under §31-15D-4 of this code, shall be \$5 million, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized thereon;

(20) “State premium tax liability” means any liability incurred by any entity under §33-3-14, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability imposed under these sections is eliminated or reduced, the term “state

premium tax liability” shall also include any tax liability imposed by this state on an insurance company or other person that had premium tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes imposed under these sections: *Provided, however,* That the issuance of tax credits pursuant to §33-3-14e of this code shall in no way affect the funding of any fire department or volunteer fire department that receives any moneys from revenues generated by any of the taxes for which credits are issued pursuant to §33-3-14e of this code.

(21) “State reimbursement amount” means the difference, provided that if such difference is less than zero, the state reimbursement amount shall be zero, between:

(A) The product of the amount of qualified equity investment authority certified and 60 percent; and

(B) The aggregate offset;

(22) “Tier One Job” means a new annual job held by an employee who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable, suffers from a disability, was found guilty of a crime and sentenced by a court to a prison term, or was a non-West Virginia resident within the prior 12 months;

(23) “Tier Two Job” means a new annual job held by an employee who received or had a family member receive, with neither still receiving, benefits under West Virginia Medicaid, West Virginia Unemployment Insurance, the West Virginia Supplemental Nutrition Assistance Program, the West Virginia Children’s Health Insurance Program, and West Virginia Head Start;

(24) “Tier Three Job” means all new annual jobs that are not Tier One Jobs or Two Tier Jobs.

§31-15D-3. Transferability.

No tax credit earned under this article is transferrable to another entity other than an affiliate subject to state premium tax liability

or saleable on the open market: *Provided*, That tax credits earned by or allocated to a partnership, limited liability company or S-corporation may be further allocated to the partners, members or shareholders of the entity in accordance with the provisions of any agreement among the partners, members or shareholders. The allocation shall not be considered a sale for purposes of this article.

§31-15D-4. Certification of qualified equity investments.

(a) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this article shall first file a credit application with the authority. The authority shall begin accepting applications on July 1, 2019. The application filed by the qualified community development entity shall include the following:

(1) The amount of qualified equity investment authority requested;

(2) The amount of qualified equity investment authority requested that the applicant agrees to designate as a federal qualified equity investment with the Community Development Financial Institutions Fund;

(3) Evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the entity that includes this state;

(4) A copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

(5) A certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

(6) A business plan that includes a revenue impact assessment projecting state and local tax revenue to be generated by the applicant's proposed qualified low-income community

investments prepared by a nationally recognized third-party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant's business plan over the 10 years following the date the application is submitted to the authority; and

(7) A signed affidavit from each insurance company stating the amount of investor allocation the insurance company commits to receiving;

(8) A nonrefundable application fee of \$10,000. This fee shall be paid to the authority and shall be required of each application submitted.

(b) Within 30 days of receipt of a completed application containing the information set forth in subsection (a) of this section, the authority shall grant or deny the application in full or in part. The authority shall deny an application if the business plan submitted with the application does not project revenue neutrality against the proposed tax credit utilization or if the applicant does not submit affidavits committing to the allocations equal to 60 percent of the amount of qualified equity authority requested. If the authority denies any part of the application, the authority shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the authority or otherwise completes its application within days of the notice of denial, the application shall be considered complete as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15 day period, the application remains denied and must be resubmitted in full with a new submission date.

(c) If the application is complete, the authority shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this article, subject to the limitations contained in subsection (f) of this section. The Tax Commissioner shall provide written notice of the certification to the qualified community development entity.

(d) The authority shall certify qualified equity investments in the order applications are received by the authority. Applications received on the same day shall be deemed to have been received simultaneously.

(e) For applications that are complete and received on the same day, the authority shall first certify applications by applicants that agree to designate qualified equity investments as federal qualified equity investments in proportionate percentages based on the ratio of the amount of qualified equity investments requested in an application to be designated as a federal qualified equity investment to the total amount of qualified equity investments to be designated as federal qualified equity investments in all applications in which applicants agree to designate qualified equity investments. Thereafter, the authority shall certify the qualified equity investments of all other applicants, including the remaining qualified equity investment authority requested by applicants not designated as federal qualified equity investments, in proportionate percentages based on the ratio of the amount of qualified equity investments not requested in an application to be designated as a federal qualified equity investment to the total amount of qualified equity investments not requested in applications to be designated as federal qualified equity investments.

(f) The authority shall certify no more than \$60 million in qualified equity investments pursuant to this article.

(g) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity: *Provided*, That the applicant and the transferee notify the authority of the transfer with the notice set forth in §31-15D-4(h) of this code and include the information required in the application with respect to such transferee with such notice.

(h) Within one calendar year of the applicant receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount and, if applicable, designate the

required amount of qualified equity investment authority as a federal qualified equity investment. The qualified community development entity must provide the authority with evidence of the receipt of the cash investment and designation as a federal qualified equity investment, if applicable and the allocation of tax credits to insurance companies that submitted affidavits in the qualified community development entity's application at least equal to 60 percent of the amount of qualified equity investment authority certified by the authority, within one calendar year and five days of the applicant receiving notice of certification. If the qualified community development entity does not receive the cash investment, issue the qualified equity investment and, if applicable, designate the qualified equity investment as a federal qualified equity investment and make such allocation of tax credits to insurance companies within such time period following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the authority for certification.

(i) Lapsed certifications revert to the authority and shall be reissued:

(1) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to §31-15D-4(e) of this code with a preference to applicants who have agreed to designate qualified equity investments as federal qualified equity investments; and

(2) Thereafter, in accordance with the provisions of this article.

(j) Recaptured tax credits and the related qualified equity investment authority are eligible for reissuance to qualified community development entities under the provisions of this article and recaptured tax credits shall be reissued:

(1) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to §31-15D-4(e) of this code, with a preference to applicants who agreed to designate qualified equity investments as federal qualified equity investments; and

(2) Thereafter, in accordance with the provisions of this article.

(k) The authority must notify the Insurance Commissioner of the names of the entities that are eligible to use tax credits provided under §31-15D-3 of this code, pursuant to an allocation of tax credits or change in allocation of tax credits or due to a transfer of a qualified equity investment upon the allocation, change or transfer.

§31-15D-5. New capital requirement.

No qualified active low-income community business that receives a qualified low-income community investment from a qualified community development entity that issues qualified equity investments under this article, or any affiliates of such a qualified active low-income community business, may directly or indirectly: (1) Own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by the qualified community development entity; or (2) loan to or invest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by a qualified community development entity, where the proceeds of such loan or investment are directly or indirectly used to fund or refinance the purchase of a qualified equity investment hereunder. For purposes of this section, a qualified community development entity shall not be considered an affiliate of a qualified active low-income community business solely as a result of its qualified low-income community investment in such business.

§31-15D-6. Reporting.

Qualified community development entities shall submit a report to the authority within the first five business days after each anniversary of the initial credit allowance date. The report due for the second anniversary of the credit allowance date shall provide documentation as to the investment of 100 percent of the purchase

price of the qualified equity investment in qualified low-income community investments in qualified active low-income community businesses located in West Virginia. Each report shall include:

(1) The location of the qualified active low-income community business;

(2) A bank statement of the qualified community development entity evidencing each qualified low-income community investment if such qualified low-income community investment occurred after the prior annual report;

(3) Evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment if evidence was not submitted in a prior annual report;

(4) Any information regarding the recapture under 26 U. S. C. § 45D, as amended, of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this article;

(5) Any information regarding the qualified community development entity redeeming or making principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment;

(6) Any information that the qualified community development entity failed to invest an amount equal to 100 percent of the purchase price of the qualified equity investment in qualified low-income community investments in West Virginia within 24 months of the issuance of the qualified equity investment and maintain the level of investment in qualified low-income community investments in West Virginia until the last credit allowance date for the qualified equity investment. For purposes of this article, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid, if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified

community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of the capital. Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance;

(7) Number of new annual jobs and annual jobs retained as a result of qualified low-income community investments;

(8) Average annual salary of employment positions described in this subsection;

(9) In the event the authority is provided any information required by subdivision (4), (5) or (6) of this subsection, the authority shall provide that information to the insurance commissioner; and

(10) A qualified community development entity shall calculate the West Virginia New Market Jobs offset annually and include such amount in its annual report. A qualified community development entity may include new annual jobs and annual jobs retained at qualified active low-income community businesses that have repaid or redeemed their qualified low-income community investment. The West Virginia New Markets Job offset shall equal the sum of the following:

(A) The product of the number of new annual jobs that are Tier 1 Jobs and \$50,000;

(B) The product of the number of new annual jobs that are Tier 2 Jobs and \$40,000;

(C) The product of the number of new annual jobs that are Tier 3 Jobs and \$25,000;

(D) The product of the number of annual jobs retained and \$10,000; and

(E) A \$10,000 bonus added to the West Virginia New Markets offset of each of the following:

(I) Each new annual job at qualified active low-income community businesses whose principal business operations are in an opportunity zone; and

(II) Each new annual job held by an employee who has received workforce training either internally or externally, provided such training is verified by the president or similar officer of the qualified low-income community business and approved by the authority.

§ 31-15D-7. Penalty for Job Creation Underperformance.

(a) At any time after the seventh anniversary of the initial credit allowance date and prior to making any distributions or payments that exceed the qualified community development entity's qualified equity investment authority, the qualified community development entity shall calculate the state reimbursement amount and submit such calculation to the authority.

(b) Thereafter, prior to any distribution or payment, the qualified community development entity must remit the state reimbursement amount to the authority.

(c) All amounts received by the authority under this section shall be submitted to the general revenue fund.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14e. Credits against premium tax for investment pursuant to the West Virginia New Market Jobs Acts.

(a) For the purpose of this section, the term:

(1) “Applicable percentage” means zero percent for the first three credit allowance dates and 15 percent of the qualified equity investment for the next four credit allowance dates;

(2) “Credit allowance date” means with respect to any qualified equity investment:

(A) The date on which the investment is initially made; and

(B) Each of the six anniversary dates of the date thereafter;

(3) “Insurance Commissioner” means the Insurance Commissioner of West Virginia or his or her designee as provided in §33-2-1 of this code;

(4) “Long-term debt security” means any debt instrument issued by a qualified community development entity with an original maturity date of at least seven years from the date of its issuance, with no repayment, amortization or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified community development entity for that period prior to giving effect to the interest expense of the long-term debt security. The foregoing shall in no way limit the holder’s

ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with 26 U. S. C. § 45D, as amended;

(5) “Purchase price” means the amount paid to the qualified community development entity for a qualified equity investment, which may not exceed the amount of qualified equity investment authority certified pursuant to §31-15D-4 of this code;

(6) “Qualified active low-income community business” has the meaning given the term in 26 U. S. C. § 45D, as amended, and 26 C. F. R. § 1.45D-1 (2012). Any business that is a nonprofit or derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low-income community business. The real estate exception does not apply to a business that is controlled by or under common control with another business if the second business: (A) Does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (B) is the primary tenant of the real estate leased from the initial business. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity’s investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the size and net income standards, throughout the entire period of the investment or loan;

(7) “Qualified community development entity” has the meaning given the term in Section 26 U. S. C § 45D, as amended: *Provided*, That the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U. S. Treasury Department with respect to credits authorized by 26 U. S. C § 45D, as amended, which includes the State of West Virginia within the service area set forth in the allocation agreement. An entity may not be deemed to be controlled by another entity solely as a result of the entity having made a direct or indirect equity investment in the other entity that earns tax

credits under 26 U. S. C § 45D, as amended, or similar state program. The term shall include subsidiary community development entities of any such qualified community development entity and transferees of qualified equity investment authority pursuant to §31-15D-4 of this code;

(8) “Qualified Equity Investment” means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(A) Is acquired after the effective date of this act at its original issuance solely in exchange for cash;

(B) Has 100 percent of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and

(C) Is designated by the qualified community development entity as a qualified equity investment hereunder and is certified by the Economic Development Authority pursuant to §31-15D-4 of this code. This term shall include any qualified equity investment that does not meet the provisions of §33-3-14e(a)(9) of this code if the investment was a qualified equity investment in the hands of a prior holder;

(9) “Qualified low-income community investment” means any capital or equity investment in, or loan to, any qualified active low-income community business: *Provided*, That with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in the business, on a collective basis with all of the businesses’ affiliates, with the proceeds of qualified equity investments certified under §31-15D-4 of this code, shall be \$5 million, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized thereon;

(10) “State premium tax liability” means any liability incurred by any entity under §33-3-14, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, that if the tax liability imposed under these sections is eliminated or reduced, the term “state premium tax liability” shall also include any tax liability imposed by this state on an insurance company or other person that had premium tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes imposed under said sections.

(b) Any entity that makes a qualified equity investment pursuant to §31-15D-4 of this code shall be allowed an earned and vested tax credit against the entity’s state premium tax liability that may be used as follows:

(1) The amount of tax credit allowable on each credit allowance date to an entity that makes a qualified equity investment, or to a subsequent holder of the qualified equity investment, shall be annually computed by multiplying the purchase price paid to the qualified community development entity for the qualified equity investment by the applicable percentage for the credit allowance date;

(2) The annual credit allowance, computed pursuant to §33-3-14e(a)(1) of this code, may be used to offset the entity’s state premium tax liability for tax periods ending on or after the credit allowance date; and

(3) The amount of the credit claimed by an entity shall not exceed the amount of the entity’s state premium tax liability for the tax year for which the credit is claimed. Any amount of tax credit remaining, after the credit is used as provided in this section, may be carried forward for use in any subsequent taxable year.

(c) The Insurance Commissioner may recapture, from the entity that claimed the credit on a return, the tax credit allowed under this article if:

(1) Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this

article is recaptured under 26 U. S. C. § 45D, as amended. In such case the Insurance Commissioner's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment;

(2) The qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of the qualified equity investment. In such case the Insurance Commissioner's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment;

(3) The qualified community development entity fails to invest an amount equal to 100 percent of the purchase price of the qualified equity investment in qualified low-income community investments in West Virginia within 24 months of the issuance of the qualified equity investment and maintain that level of investment in qualified low-income community investments in West Virginia until the last credit allowance date for the qualified equity investment. For purposes of this article, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid, if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of such capital. Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity may not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified

community development entity through the seventh anniversary of the qualified equity investment's issuance; or

(4) As a result of any violation of §31-15D-5 of this code.

(d) Recaptured tax credits and the related qualified equity investment authority are eligible for reissuance to qualified community development entities under the provisions of this article and recaptured tax credits shall be reissued:

(1) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to §31-15D-4(e) of this code, with a preference to applicants who agreed to designate qualified equity investments as federal qualified equity investments; and

(2) Thereafter, in accordance with the provisions of this article.

(e) Enforcement of the recapture provisions set forth in this section shall be subject to a six-month cure period. No recapture shall occur until the qualified community development entity shall have been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

(f) In rendering letter rulings and making other determinations under this section, to the extent applicable, the Insurance Commissioner shall look for guidance in 26 U. S. C. § 45D, as amended, and the rules and regulations issued thereunder.

On motion of Senator Blair, the following amendments to the Finance committee amendment to the bill (Eng. H. B. 2828), were reported by the Clerk, considered simultaneously, and adopted:

On page five, section two, subsection (b), by striking out all of subdivision (4) and inserting in lieu thereof the following:

“(4) “Applicable percentage” means zero percent of the qualified equity investment for the first two credit allowance dates, five percent of the qualified equity investment for the third credit allowance date, and ten percent of the qualified equity investment for each of the final four credit allowance dates;”;

On page nine, section two, subsection (b), subdivision (21), paragraph (A), by striking out “60” and inserting in lieu thereof “45”;

On page eleven, section four, subsection (b), by striking out “60” and inserting in lieu thereof “45”;

On page twelve, section four, subsection (h), by striking out “60” and inserting in lieu thereof “45”;

And,

On page seventeen, section fourteen-e, subsection (a), by striking out all of subdivision (1) and inserting in lieu thereof the following:

“(1) “Applicable percentage” means zero percent of the qualified equity investment for the first two credit allowance dates, five percent of the qualified equity investment for the third credit allowance date, and ten percent of the qualified equity investment for each of the final four credit allowance dates;”.

The question now being on the adoption of the Finance committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 2828), as amended, was then ordered to third reading.

Eng. House Bill 2856, Relating to the administration of the operating fund of the securities division of the Auditor’s office.

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

Eng. Com. Sub. for House Bill 2933, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury.

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:

ARTICLE 8D. CHILD ABUSE.

§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.

(a) If ~~any~~ a parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such~~ the abuse ~~cause such~~ causes the child bodily injury as ~~such~~ the term is defined in §61-8B-1 of this code, then ~~such~~ the parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less than ~~one~~ two nor more than ~~five~~ 10 years, or in the discretion of the court, be confined in jail for not more than one year.

(b) If ~~any~~ a parent, guardian, or custodian ~~shall abuse~~ abuses a child and by ~~such~~ the abuse ~~cause said~~ causes the child serious bodily injury as ~~such~~ the term is defined in §61-8B-1 of this code, then ~~such~~ the parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the custody of the Division of Corrections and Rehabilitation not less than ~~two~~ five nor more than ~~ten~~ 15 years.

(c) ~~Any~~ A parent, guardian or custodian who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than ~~one~~ two nor more than ~~five~~ ten years, or both fined and imprisoned.

~~(d)(1) If a parent, guardian or custodian who has not previously been convicted under this section, section four of this article or a law of another state or the federal government with the same~~

~~essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in section one, article eight b of this chapter, to the child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.~~

~~(2) For a second offense under this subsection or for a person with one prior conviction under this section, section four of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than thirty days nor more than one year, or both.~~

~~(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, section four of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both~~

(d) A person convicted of any offense under this section with any prior conviction under this section, §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements is subject to the following increased penalties:

(1) A person with one prior conviction is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than three nor more than 15 years, or both fined and imprisoned. *Provided, however,* That a person convicted of a crime under subsection (b) of this section is subject to the higher penalty in that subsection.

(2) A person with two or more prior convictions is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility for not less than five years nor more than 15 years, or both fined and imprisoned.

(e) Any person convicted of a ~~misdemeanor~~ an offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) ~~Shall not be~~ Is not required to register pursuant to §15-13-1 *et seq.* of this code; and

(3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

(f) ~~Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian, or custodian from providing reasonable discipline to a child.

§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.

(a) If a parent, guardian, or custodian neglects a child and by such neglect causes the child bodily injury, as bodily injury is defined in §61-8B-1 of this code, then the parent, guardian, or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both fined and confined.

(b) If a parent, guardian, or custodian neglects a child and by such neglect ~~cause~~ causes the child serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, then the parent, guardian, or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$300 nor more than \$3,000 ~~dollars~~ or imprisoned in a state correctional facility for not less than one nor more than 10 years, or both fined and imprisoned.

(c) If a parent, guardian, or custodian ~~grossly~~ neglects a child and by that ~~gross~~ neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code, of the child, then the parent, guardian, or custodian is guilty of a felony and, upon conviction thereof, ~~shall be fined not less than \$1,000 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five years, or both. shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than two years, or both fined and confined.~~

~~(d)(1) If a parent, guardian or custodian who has not been previously convicted under this section, section three of this article or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in section one, article eight b of this chapter, to the child, then the parent, guardian or custodian, is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and confined.~~

~~(2) For a second offense under this subsection or for a person with one prior conviction under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than thirty days nor more than one year, or both.~~

~~(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned.~~

(d) A person convicted of any offense under this section with any prior conviction is subject to the following increased penalties. A prior conviction includes any offense under this section, §61-8D-3 of this code, or a law of another state or the federal government with the same essential elements:

(1) A person with one prior conviction shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than three nor more than 15 years, or both fined and imprisoned.

(2) A person with two or more prior convictions is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than five years nor more than 15 years, or both fined and imprisoned.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian, or custodian is due primarily to a lack of financial means on the part of such parent, guardian, or custodian.

(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to the requirements of §15-13-1 *et seq.* of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation, or parental rights automatically restricted.

The bill (Eng. Com. Sub. for H. B. 2933), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2945, Relating to vendors paying a single annual fee for a permit issued by a local health department.

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

Eng. Com. Sub. for House Bill 2947, Relating generally to telemedicine prescription practice requirements and exceptions.

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

At the request of Senator Maroney, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the bill was withdrawn.

On motion of Senator Maroney, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page five, section thirteen-a, line ninety-eight, after the word “do not apply” by inserting “to a hospital, excluding the emergency department,”;

And,

On page ten, section twelve-d, line ninety-five, after the words “do not apply” by inserting “to a hospital, excluding the emergency department,”.

The bill (Eng. Com. Sub. for H. B. 2947), as amended, was then ordered to third reading.

Eng. House Bill 2968, Adding remote service unit to the definition of customer bank communications terminals.

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 and considered simultaneously:

On page two, section twelve-b, lines thirty-nine and forty, by striking out the words “That the operator of an RSU shall maintain a physical location in this state: *Provided, however,*”;

And,

On page two, section twelve-b, line forty, after “ATM” by inserting “or RSU”.

Senator Trump requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Trump would be as a member of a class of persons and that he would be required to vote.

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. H. B. 2968), as amended, was then ordered to third reading.

Eng. House Bill 3020, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions.

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 one, section three, lines ten through seventeen, by striking out all of subsection (b) and inserting in lieu thereof the following:

(b) When a governing board, the commission, or the council determines that a contract for financial services is necessary and proper, it may enter into such a contract with an affiliated nonprofit corporation under such financial terms as the governing board,

commission, or council determines are reasonable and proper in the sound administration of their financial responsibilities to the state. In so doing, the affiliated nonprofit corporation shall be deemed a sole source in respect to any applicable law or regulation relating to expenditures of public funds.

The bill (Eng. H. B. 3020), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3024, West Virginia Business Ready Sites Program.

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 one-n, line seventy-six, after the word "section" by changing the period to a colon and inserting the following proviso: Provided further, That if the number of congressional districts is reduced to two, that no more than five Industrial Development Sites shall be located in any one congressional district.

The bill (Eng. Com. Sub. for H. B. 3024), as amended, was then ordered to third reading.

Eng. House Bill 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

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

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

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

ARTICLE 30. ALLOCATION OF FUNDS.**§17-30-1. Findings.**

The Legislature finds that:

(1) According to an independent audit report submitted to the Joint Committee on Government and Finance on January 10, 2016, the West Virginia Division of Highways currently has no formula in place to allocate and distribute road funds among districts and counties. The audit report recommended that in order to more effectively distribute funds, the division should create a framework to allocate and distribute road funds to each of the districts and county organizations; that a baseline maintenance capital plan should be reexamined and revised periodically; and that metrics for the allocation process should be transparent.

(2) A transparent process to develop an official formula for allocating road funds among districts in the state is crucial to ensure that funds are distributed in an effective and efficient manner, based on the needs of the counties within the districts.

§17-30-2. Definitions.

For the purposes of this article:

“Commissioner” means the West Virginia Commissioner of Highways.

“District” means one of the management areas of the state, which include one or more counties, established by the West Virginia Division of Highways, with each district headed by a separate district engineer or manager.

“Heavy truck” means an on-road vehicle with a gross vehicle weight rating of 50,000 pounds or more.

“Road funds” means state funds appropriated or otherwise available to the West Virginia Division of Highways for the purpose of:

(A) New construction;

(B) Maintenance; or

(C) New capacity improvements.

§17-30-3. Formula for allocation of funds.

(a) Prior to the beginning of the regular legislative session in 2020, the commissioner shall develop and propose a formula for the effective and efficient allocation of state road funds among the districts and counties in this state, to be promulgated as a legislative rule.

(b) The commissioner shall include, but not be limited to, the following factors in the formula developed pursuant to this section:

(1) The amount of population growth in each county according to the most recent United States Census projection;

(2) The number of total lane miles in a county;

(3) The approximate number of vehicle miles travelled within a county;

(4) The approximate number of heavy truck miles travelled within a county; and

(5) The number of bridges in a county and their condition.

(c) Before developing the formula required by this section, the commissioner shall review and consider all public comments submitted to the commissioner pursuant to §17-30-4 of this code.

§17-30-4. Public comment period.

(a) On or before October 1, 2019, the commissioner shall develop and implement a mechanism to proactively seek public comments and recommendations regarding the division's current allocation of road funds.

(b) In developing and implementing a mechanism to seek public comments, the commissioner shall, at a minimum:

(1) Use multimedia resources to publicize the public comment period;

(2) Allow a period of six weeks for members of the public to submit comments to the commissioner through written and electronic forms of communication; and

(3) Make all public comments received by the commissioner available for the public to view on the department's website.

(c) The commissioner shall issue targeted communications to the following entities to encourage representatives of those entities to participate in the public comment period required by this subsection:

(1) Division of Highways district offices;

(2) County commissions; and

(3) Metropolitan planning organizations.

§17-30-5. Legislative rule.

(a) For approval during the regular legislative session of 2021, the commissioner shall propose rules for legislative approval in accordance with the requirements of §29A-3-1 *et seq.* of this code, including the formula developed pursuant to this section.

(b) The proposed legislative rule shall allow districts to exercise discretion over how to distribute funds among counties within the district over a period of five years: *Provided*, That at the end of the five-year period, all counties within the district shall have received the funds apportioned to them by the formula developed pursuant to this article.

(c) On or before June 30, 2020, the commissioner shall present the proposed legislative rule containing the formula developed pursuant to this section to the Joint Legislative Oversight Commission on Department of Transportation Accountability.

The bill (Eng. H. B. 3044), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3131, Relating to providing salary adjustments to employees of the Department of Health and Human Resources.

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:

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

§5-5-4a. Psychiatrists, nurses and aides Department of Health and Human Resources facility employee classifications.

(a) The Legislature finds that ~~Mildred Mitchell Bateman Hospital and William R. Sharpe, Jr. Hospital~~ state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities have extreme difficulty in recruiting and retaining physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, ~~health service associates~~ and other employees who assist in the direct ~~or indirect~~ provision of medical care to patients in those facilities.

(b) The ~~West Virginia Division of Personnel and the~~ Department of Health and Human Resources ~~jointly~~ shall develop ~~pay rates and employment requirements to support the recruitment and retention of~~ a special merit-based system, including an application and appointment procedure for physicians, physician specialists, nurses, nursing directors, health service workers, health service assistants, ~~health service associates or other positions~~ at Mildred Mitchell Bateman Hospital and William R. Sharpe, Jr. Hospital and other employees who assist in the direct provision of medical care to patients at state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities. ~~Pay rates shall reflect the regional market rates for relevant positions. The procedure shall include classification specifications, and may include compensation adjustments, retention incentives, and hiring~~

approval by the secretary. The secretary shall have the full authority to evaluate applicants for employment or promotion or make classification determinations for positions within the special merit-based system. The special merit-based system shall be approved by the State Personnel Board. The pay rates and employment requirements shall be put into effect by July 1, 2009, no sooner than January 1, 2020, and no later than July 1, 2020.

(c) Funding for the pay rates and employment requirements shall be provided from the appropriation to the Department of Health and Human Resources. ~~Due to the limits of funding, the implementation of the pay rates and employment requirements shall not be subject to the provisions of §6C-2-1 et seq. of this code.~~ The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

(d) The provisions of §6C-2-1 et seq. of this code shall be applicable to the employees of the special merit-based system: Provided, That the Division of Personnel shall not be a mandatory party to any public employee grievance filed by any employee in the special merit-based system.

(e) The department may conduct periodic wage and compensation analysis of identified market rates for the above positions as determined necessary by the secretary.

(f) The secretary may promulgate emergency rules and shall propose legislative rules pursuant to the provisions of §29A-3-1 et seq. of this code as may be necessary to implement and comply with the provisions of this section.

The bill (Eng. Com. Sub. for H. B. 3131), as amended, was then ordered to third reading.

Eng. House Bill 3139, Relating to funding of the Public Employees Health Insurance 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:

By striking out everything after the enacting clause and inserting in lieu thereof 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 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.**

§5-16-25. Reserve fund.

Upon the effective date of this section, the finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year. Beginning with the fiscal year 2002 plan and for each succeeding fiscal year plan, the finance board shall ~~transfer~~ maintain the actuarially recommended reserve in an amount no less than 10 percent of the projected total plan costs for that fiscal year ~~into~~ in the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature in accordance with the provisions of this article. ~~Any moneys saved in a plan year shall be transferred into the reserve fund. At the close of any fiscal year in which the balance in the reserve fund exceeds the recommended reserve amount by fifteen percent, the executive director shall transfer that amount to the West Virginia Retiree Health Benefit Trust Fund created in section two, article sixteen-d of this chapter~~

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15a. PEIA Rainy Day Fund.

(a) There is hereby created in the State Treasury a special account, designated the PEIA Rainy Day Fund, which is an interest-bearing account administered by the Secretary of Revenue in accordance with the provisions of this section.

(b) The PEIA Rainy Day Fund shall consist of moneys collected from income from investment of moneys held in the special revenue account, and all other sums available for deposit to the account, public or private. Any balance remaining in the special revenue account at the end of the fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and may be used in a manner consistent with this article.

(c) The Secretary of Revenue, upon the written approval of the Governor, may transfer moneys from the PEIA Rainy Day Fund to the Public Employees Insurance Agency only to (1) reduce or prevent benefit cuts, (2) reduce premium increases, or (3) any combination thereof. The amount of moneys transferred may be included in the calculation of any plan year aggregate premium cost-sharing percentages between employers and employees.

(d) The Secretary of Revenue may contract with the West Virginia Investment Management Board, or the West Virginia Board of Treasury Investments, for any services with respect to fund investments which the secretary considers necessary.

(e) The Secretary of Revenue may promulgate legislative rules, and emergency rules as provided in §29A-3-15 of this code, as the secretary considers necessary to implement and administer the provisions of this section.

The bill (Eng. H. B. 3139), as amended, was then ordered to third reading.

Eng. House Bill 3142, Relating to reducing the severance tax on thermal or steam coal.

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 one, section three, lines ten through fourteen, by striking out the provisos and inserting in lieu thereof a new proviso to read as follows: *Provided*, That effective July 1, 2019, the tax rate imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced incrementally over the next three tax years for a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent of the two percent reduction.;

On page three, section three, after line sixty-one, by inserting the following:

(i) *Termination and expiration of the privilege tax on limestone or sandstone.* — The taxes imposed under this section for persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of the termination.;

And,

On pages ten and eleven, section six-a, lines fifty-one through eighty, by striking out all of subsection (f) and inserting in lieu thereof a new subsection (f) to read as follows:

(f) (1) No distribution made to a county under this section may be deposited into the county's general revenue fund. The county commission of each county receiving a distribution under this section shall establish a special account to be known as the "(Name

of County) Coal County Reallocated Severance Tax Fund” into which all distributions made to that county under this section shall be deposited.

(2) Moneys in the county’s coal county reallocated severance tax fund shall be expended by the county commission solely for economic development projects and infrastructure projects.

(3) For purposes of this section:

(A) “Economic development project” means a project in the state which is likely to foster economic growth and development in the area in which the project is developed for commercial, industrial, community improvement or preservation or other proper purposes.

(B) “Infrastructure project” means a project in the state which is likely to foster infrastructure improvements including, but not limited to, post-mining land use, any water or wastewater facilities or any part thereof, storm water systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development or buildings that promote job creation and retention.

(4) A county commission may not expend any of the funds available in its coal county reallocated severance tax fund for personal services, for the costs of issuing bonds, or for the payment of bond debt service, and shall direct the total funds available in its coal county reallocated severance tax fund to project development, which may include the costs of architectural and engineering plans, site assessments, site remediation, specifications and surveys, and any other expenses necessary or incidental to determining the feasibility or practicability of any economic development project or infrastructure project.

(5) On or before December 31, 2013, and December 1 of each year thereafter, the county commission of each county receiving a distribution of funds under this section shall deliver to the Joint Committee on Government and Finance a written report setting

forth the specific projects for which those funds were expended during the next preceding fiscal year, a detailed account of those expenditures, and a showing that the expenditures were made for the purposes required by this section.

On motion of Senator Ihlenfeld, the following amendment to the bill (Eng. H. B. 3142) was next reported by the Clerk:

On page two, section three, lines thirty-six through forty-three, by striking all of subdivision (1), and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

(1) For coal mined by underground methods from seams with an average thickness of 37 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced: Provided, That effective July 1, 2019, the tax rate imposed by this subsection on coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches shall be three percent of the gross value of the coal produced: Provided, however, That effective July 1, 2020, the tax rate imposed by this subsection on coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches shall be four percent of the gross value of the coal produced: Provided, further, That effective July 1, 2021, the tax rate imposed by this subsection on coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches shall be five percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced: Provided, That effective July 1, 2019, the tax rate imposed by this subsection on coal mined by underground methods from seams with an average thickness of less than thirty-seven inches shall be three percent of the gross value of the coal produced: Provided, however, That effective July 1, 2020, the tax rate imposed by this subsection on coal mined by underground methods from seams with an average thickness of less than thirty-seven inches shall be four percent of the gross value of the coal produced: Provided, however, That effective July 1, 2021 the tax rate imposed by this subsection on

coal mined by underground methods from seams with an average thickness of less than thirty-seven inches shall be five percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

Following discussion,

Senator Takubo moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the adoption of Senator Ihlenfeld's amendment to the bill, the same was put and did not prevail.

The bill (Eng. H. B. 3142), as amended, was then ordered to third reading.

On motion of Senator Takubo, 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: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Boley, Mann, and Woelfel—3.

Having been engrossed, the bill (Eng. H. B. 3142) was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed House Bill 3142 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boso, Clements, Cline, Hardesty, Maroney, Maynard, Plymale, Roberts, Rucker, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—19.

The nays were: Baldwin, Beach, Facemire, Hamilton, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Smith, and Unger—12.

Absent: Boley, Mann, and Woelfel—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3142) passed.

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

Eng. House Bill 3142—A Bill to amend and reenact §11-13A-3, §11-13A-6 and §11-13A-6a of the Code of West Virginia, 1931, as amended, all relating to severance taxes; reducing the severance tax on thermal or steam coal to incrementally over three years; providing for a total reduction of two percent of the coal severance tax at the conclusion of the three year period; providing for a reduction of thirty-five percent of the two percent reduction in the first year; providing for a reduction of sixty-five percent of the two percent reduction in the second year; providing for a the full two percent reduction in the third year; providing for an elimination of the severance tax on limestone or sandstone; and establishing minimum amounts of distribution of portion of severance taxes on coal dedicated for use and benefit of coal-producing counties.

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

Eng. House Bill 3143, Relating to requirements for consumer loans 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 the Judiciary, was reported by the Clerk and adopted:

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

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-107. Loan finance charge for regulated consumer lenders.

(1) With respect to a regulated consumer loan, including a revolving loan account, a regulated consumer lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) On a loan of ~~\$2,000~~ \$3,500 or less which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 31 percent per year on the unpaid balance of the principal amount.

(3) On a loan greater than ~~\$2,000~~ \$3,500 but less than or equal to \$15,000, or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 27 percent per year on the unpaid balance of the principal amount: *Provided*, That the loan finance charge on any loan greater than ~~\$10,000~~ \$15,000 may not exceed 18 percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than ~~\$2,000~~ \$3,500, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee: *Provided*, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of the amount financed for any origination fee, points, or investigation fee. In any loan secured by real estate, the charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within 24 months

thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method or the total of the earlier and proposed charges does not exceed five percent of the amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of the charges ~~may be~~ is permissible and ~~may~~ does not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended ~~shall~~ is, for purposes of this subsection, ~~constitute~~ the amount financed. Other than herein provided, no points, origination fee, investigation fee, or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by §46A-3-109 of this code, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing, or consolidation is governed by the provisions on rebate upon prepayment, refinancing, or consolidation contained in §46A-3-111 of this code.

(5) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) With respect to a revolving loan account:

(a) A charge may be made by a regulated consumer lender in each monthly billing cycle which is one-twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during the billing cycle.

For the purpose of this subdivision, a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a regulated consumer lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to 30.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding 50 cents if the billing cycle is monthly or longer or the pro rata part of 50 cents which bears the same relation to 50 cents as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this section, a regulated consumer lender may on a loan not secured by real estate of ~~\$2,000~~ \$3,500 or less contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed: *Provided*, That no other finance charges

are imposed on the loan. The processing fee permitted under this subsection shall be included in the calculation of the loan finance charge and the financing of the fee shall be permissible and may not constitute charging interest on interest.

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive, and enforce the loan finance charge and other charges, including late fees, provided in the contract under the laws of the state where executed: *Provided*, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges may not be considered to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

The bill (Eng. H. B. 3143), as amended, was then ordered to third reading.

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

Eng. Com. Sub. for House Bill 3057, Relating to the Adult Drug Court Participation Fund.

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

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

Thereupon, on motion of Senator Trump, 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:

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.**§62-15-9a. Adult Drug Court Participation Fund created.**

(a) ~~There is created within the State Treasury a~~ The special revenue fund created within the State Treasury designated the Adult Drug Court Participation Fund to be administered by the West Virginia Supreme Court of Appeals is hereby continued. The fund shall consist of moneys received from individuals participating in an adult drug court program.

(b) ~~The fund shall consist of moneys received from individuals participating in an adult drug court program. All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court's adult drug court program shall be deposited into the Adult Drug Court Participation 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.~~

(c) All moneys deposited into the State Treasury and credited to the Adult Drug Court Participation Fund shall be used to pay the costs associated with maintaining and administering the court's adult drug court programs.

~~(d) All moneys collected by the Administrator of the Supreme Court of Appeals for participation in the court's adult drug court program shall be deposited into the Adult Drug Court Participation Fund. Expenditures from the fund shall be for the purpose set forth in subsection (e) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with article three, chapter twelve of this code and upon fulfillment of the requirements of article two, chapter eleven b of this code: *Provided, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature*~~

ARTICLE 15B. FAMILY DRUG TREATMENT COURT ACT**§62-15B-1. Oversight and implementation of family drug treatment courts.**

(a) The Supreme Court of Appeals of West Virginia may implement a Family Drug Treatment Court pilot program in at least four circuits.

(b) Family drug treatment courts are specialized court dockets within the existing structure of West Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of individuals with substance use disorder involved in a child abuse and neglect case pursuant to §49-4-601, et. seq.

(c) The Supreme Court of Appeals of West Virginia may:

(1) Provide oversight for the distribution of funds for family drug treatment courts;

(2) Provide technical assistance to family drug treatment courts;

(3) Provide training for judges who preside over family drug treatment courts;

(4) Provide training to the providers of administrative, case management, and treatment services to family drug treatment courts; and

(5) Monitor the completion of evaluations of the effectiveness and efficiency of family drug treatment courts in the state.

(d) A state family drug treatment court advisory committee shall be established to

(1) evaluate and recommend standards for the planning and implementation of family drug treatment courts;

(2) assist in the evaluation of their effectiveness and efficiency;

(3) encourage and enhance cooperation among agencies that participate in their planning and implementation; and,

(4) report by January 1, annually, to the Legislative Oversight Commission on Health and Human Resources Accountability regarding legislation to enhance family drug treatment courts.

(e) The committee shall be chaired by the Chief Justice of the Supreme Court of Appeals of West Virginia or his or her designee and shall include a circuit court judge who presides over a family drug treatment court; the Director of the Office of Drug Control Policy or the executive assistant to the director; Cabinet Secretary of the Department of Health and Human Resources or his or her designee; the commissioners or their designee of the following bureaus: the Bureau for Children and Families; the Bureau for Public Health; and the Bureau for Behavioral Health; the Executive Director of the West Virginia Prosecuting Attorneys Institute or his or her designee; the Executive Director of the West Virginia Public Defender Services or his or her designee; and the Executive Director of West Virginia CASA Association or his or her designee.

(f) Each circuit selected to establish a family drug treatment court shall establish and maintain a local family drug treatment court advisory committee. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the family drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees:

(1) the family drug treatment court judge;

(2) the prosecuting attorney of the county;

(3) the public defender or a member of the county bar who represents individuals in child abuse and neglect cases;

(4) the Community Service Manager of the Bureau of Children and Families of the Department of Health and Human Resources;

(5) a court appointed special advocate, as applicable; and

(6) any other individuals selected by the family drug treatment court advisory committee.

§62-15B-2. Establish eligibility and policies procedures.

(a) Each local family drug treatment court advisory committee shall establish criteria for the eligibility and participation of adult respondents who have been adjudicated an abusing or neglecting parent pursuant to § 49-4-601(i) and who have been granted a post-adjudicatory improvement period pursuant to § 49-4-610(2) and who have a substance use disorder. Adult respondents who have been adjudicated for such abuse that the department is not required to make reasonable efforts to preserve the family as defined in § 49-4-604(b)(7) shall not be eligible for participation in any family drug treatment court.

(b) Participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement into by and between the adult respondent and the department with concurrence of the court.

Following discussion,

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 3057), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Boley, Mann, and Woelfel—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3057) 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 3057—A Bill to amend and reenact §62-15-9a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §62-15B-1 and §62-15B-2, all relating generally to drug courts; removing certain restrictions on Drug Court Participation Fund expenditures; providing for disposition of moneys from said fund at the end of a fiscal year; permitting the Supreme Court of Appeals of West Virginia to create a family drug treatment court pilot program; permitting the implementation of a family drug treatment court pilot program in at least four circuits; restricting family drug treatment courts to individuals with substance use disorders who are involved in a child abuse and neglect case; permitting the Supreme Court of Appeals of West Virginia provide oversight, technical assistance and training; establishing a state family drug treatment court advisory committee; establishing a local family drug treatment court advisory committee; requiring each local family drug treatment court advisory committee to establish criteria for the eligibility and participation of adult responders who have been adjudicated to be an abusive or neglectful parent and who have been granted a post-adjudicatory improvement period and who have a substance use disorder; prohibiting certain respondents from being eligible for participation in a family drug treatment court; and providing that participation by an adult respondent in a family drug treatment court shall be voluntary and made pursuant only to a written agreement by and between the adult respondent and the department with the concurrence of the court.

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

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 10:53 p.m. tonight:

Eng. Com. Sub. for Senate Bill 295, Relating to crimes against public justice.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Azinger, Prezioso, and Smith.

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

At the request of Senator Beach, unanimous consent being granted, the remarks by Senator Prezioso were ordered printed in the Appendix to the Journal.

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 on yesterday, Thursday, March 7, 2019, he would have voted “yea” on the passage of Engrossed Committee Substitute for Committee Substitute for Senate Bill 1, Engrossed Committee Substitute for Committee Substitute for Senate Bill 285, Engrossed Committee Substitute for Senate Bill 546, Engrossed Senate Bill 617, Engrossed Committee Substitute for Senate Bill 653, Engrossed Senate Bill 677, Engrossed Senate Bill 678, Engrossed Senate Bill 679, Engrossed Senate Bill 680, Engrossed Senate Bill 681, Engrossed Committee Substitute for House Bill 2001, Engrossed House Bill 2009, Engrossed Committee Substitute for House Bill 2363, Engrossed Committee Substitute for House Bill 2452, Engrossed House Bill 2480, Engrossed Committee Substitute for House Bill 2579, Engrossed House Bill 2667, Engrossed Committee Substitute for House Bill 2703, Engrossed House Bill 2853, Engrossed House Bill 2954, Engrossed House Bill 2992, and Engrossed House Bill 3135.

At the request of Senator Lindsay, unanimous consent being granted, the Senate returned to the eleventh order of business and the introduction of guests.

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 11:00 p.m., the Senate adjourned until tomorrow, Saturday, March 9, 2019, at 10 a.m.

SATURDAY, MARCH 9, 2019

The Senate met at 10:51 a.m.

(Senator Carmichael, 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 Gregory L. Boso, a senator from the eleventh district.

Deborah Thomas, Nondenominational Fellowship Pentecostal Ministries, Charleston, West Virginia, then proceeded in the singing of “I Called on the Lord and Got an Answer” and “There’s A Blessing in This House”.

On motion of Senator Takubo, the special order of business set for this position on the calendar (*consideration of executive nominations*) was postponed and made a special order of business at 3 p.m. today.

Pending the reading of the Journal of Friday, March 8, 2019,

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

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

At the request of Senator Sypolt, unanimous consent being granted, Senator Sypolt addressed the Senate regarding resolutions urging Congress to provide exceptions to weight limits on interstates that were introduced in the Senate but not acted upon by the House of Delegates.

At the request of Senator Baldwin, and by unanimous consent, the Senate stood in observance of a moment of silence recognizing the Honorable Jesse O. Guills, former senator from the tenth district who is hospitalized in critical condition, and Adam DeBoard, a miner who was killed in a Greenbrier County mining accident on Thursday, March 7, 2019.

The Clerk presented the following communications from various state agencies as required by the provisions of law:

Children's Health Insurance Program (§5-16B-3)

Development Office (Governor's Guaranteed Work Force Program) (§5B-2D-6)

Development Office (Tax Increment Financing) (§7-11B-15)

Environmental Protection, Department of (Special Reclamation Fund Advisory Council) (§22-1-17)

Ethics Commission (Advisory Opinions and Exemptions) (§6B-2-3)

Health and Human Resources, Department of (Driving Under the Influence Safety and Treatment Program) (§17C-5A-3a)

Medicine, Board of (§30-1-12)

Motor Vehicles, Division of (Motor Vehicle Alcohol Test and Lock Program)

Motor Vehicles, Division of (Motorcycle Safety and Awareness Program Board) (§17B-1D-8)

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, 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 352, Relating to Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities.

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

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

On page eight, section fourteen, after subdivision (l), by inserting a new subdivision, designated subdivision (m), to read as follows:

(m) Notwithstanding any other provision of this code to the contrary, any records obtained in response to solicitations for bids from the division shall not be subject to disclosure pursuant to §29B-1-1 et seq. of this code, until and unless the time frame for submission of bids has closed: *Provided*, That once bids close, the records may be exempt from disclosure pursuant to §29B-1-4 of this code. Any record relating to any solicitation for, or purchase of, any item related to the safe and secure running of any facility under the jurisdiction of the Commissioner of the Division is not subject to disclosure pursuant to §29B-1-1 et seq. of this code.

On motion of Senator Boso, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 352) 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 Senate Bill 352—A Bill to amend and reenact §15A-3-14 of the Code of West Virginia, 1931, as amended;

and to amend said code by adding thereto a new section, designated §15A-3-14a, all relating to the Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities; clarifying notice requirements; allowing the division to require surety; expanding acceptable forms of surety; allowing the division to utilize best value procurement; providing exception; establishing procedure for best value procurement; allowing for direct award procurement; establishing procedure for direct award procurement; allowing the division to run criminal background checks, financial background checks, licensing background checks, and credit checks to determine eligibility for award of contract; enumerating grounds upon which division shall disqualify vendors from being awarded a contract or having contract renewed; limiting disclosure under Freedom of Information Act of records obtained in response to solicitations for bids and records relating to solicitations for, or purchases of, items related to safe and secure running of any facility under jurisdiction of commissioner of division; creating special revenue fund; and providing for methods of disposition of surplus property owned by the division.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 352, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 352) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 352) 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 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 40, Establishing Military Service Members Court program.

On motion of Senator Takubo, 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:

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-1. Short title.

This may be cited as the Military Service Members Court Act.

§62-16-2. Legislative findings.

The Legislature recognizes that while most veterans are strengthened by their military service, the combat experiences of many veterans have unfortunately left a growing number of veterans who suffer from issues such as Post Traumatic Stress Disorder and traumatic brain injury. A growing body of research shows that one in five veterans will have symptoms of a mental illness, mental health disorder or cognitive impairment. One in six veterans who served in either Operation Enduring Freedom or Operation Iraqi Freedom suffer from substance abuse and related issues. As a result, many veterans have found themselves in the criminal court system charged with crimes which may be directly attributable to these service-related issues.

The Legislature further recognizes that a Military Service Members Court is necessary to link veterans with the programs, benefits, and services that are necessary to help them overcome these issues and provide them with rehabilitation services instead of incarceration.

Given the context of veteran life, especially given their past training and experiences in the Armed Forces, it is reasonably anticipated and likely that military service members would respond favorably to a structured environment. The Military Service Members Court is a professional, structured and monitored program which mandates and provides participant accountability and responsibility, including mandatory court appearances, treatment and counseling sessions, as well as frequent and random testing for drug and alcohol use. However, the Legislature also finds that some may still struggle. Those are the veterans who need the structure and support of a Military Service Members Court program such the most. Without the structure of a Military Service Members Court program mentally ill and challenged veterans may well reoffend, remain in the criminal court system and suffer under the emotional, physical and mental yoke of substance abuse.

The Legislature creates the Military Service Members Court to ensure that these veterans in need are able meet their obligations to themselves, their family, their loved ones, the court, and their community.

§62-16-3. Definitions.

For the purposes of this article:

“Assessment” means an evaluation to determine whether a criminal defendant is a military service member as defined by this section, that the offense(s) he or she has been charged with are attributable to their military service, and if the offender would benefit from the provisions set forth in this article.

“Court” means a Military Service Members Court.

“Department” means the West Virginia Department of Veterans’ Assistance.

“Mentally ill” means a person who suffers from a manifestation of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion or physical well-being.

“Military Service Members Court team” or “team” is a group of veterans and other professionals which assesses offenders and follows and reports to a court on an offender’s progress.

“Military Service Members Court program” or “program” is a program that includes pre-adjudicatory and post-adjudicatory treatment for military service members.

“Military service member” means a person who is currently serving on active duty in the Army, Air Force, Marines, Navy, or Coast Guard, reserve status, or the National Guard, or a person who once served in the active military and then retired, voluntarily separated, or was discharged dishonorably or under other than honorable conditions.

“Offender” means a criminal defendant who qualifies as a military service member under this article.

“Post-adjudicatory program” means a program in which the offender has admitted guilt or has been found guilty and agrees, with the prosecutor’s consent, to enter a court program as part of his or her sentence.

“Pre-adjudication order” means a court order requiring a military service member to participate in a program as set forth in this article.

“Pre-adjudicatory program” means a program that allows the offender, with the consent of the prosecutor, team, and the court to expedite the offender’s criminal case before conviction or before filing of a criminal case and requires the offender to agree to and successfully complete the court program as part of the written agreement.

“Post adjudication order” means a court order requiring a military service member who has entered a plea of either guilty or *nolo contendere* to a crime identified in §62-16-7 to participate in a court program set forth herein.

“Split sentencing” means a sentence which includes a period of incarceration followed by a period of supervised release.

“Staffing” means the meeting before a military service member offender’s appearance in court, in which the team discusses a coordinated response to the military service member offender’s behavior.

“VA” means the United States Department of Veterans’ Affairs.

“VJO” means the VA Veterans Justice Outreach Program.

“Written agreement” means the agreement executed to allow a military service member to participate in a court program, as referred to in §62-16-5.

§62-16-4. Court authorization and structure.

(a) The Supreme Court of Appeals shall establish a Military Service Members Court Program, under the oversight of the Office of the Administrative Director. Each Military Service Members Court is a separate court, tasked to administer a program providing an immediate and highly structured judicial intervention process for substance abuse treatment, mental health treatment or, other

assessed treatment needs of eligible military service member offenders. Each court shall identify and assemble substance abuse professionals, mental health professionals, department professionals, local social programs and intensive judicial monitoring to address the purposes of this article.

(b) The courts shall be established in the areas of the state with the highest need, as determined by the Office of the Administrative Director. The Supreme Court of Appeals shall establish two courts on or before July 1, 2019. The Supreme Court of Appeals shall establish two additional courts each July 1st for the next four years, resulting in a total of ten courts operating by July 1, 2023. At the discretion of the Office of the Administrative Director, the court program may be operated in one county in the circuit and allow military service member offenders from all counties within the circuit to participate.

(c) A court may offer pre-adjudication or post-adjudication programs for adult offenders.

(d) Nothing contained in this article confers a right or an expectation of a right to participate in a court program nor does it obligate a court to accept every military service member offender.

(e) Neither the establishment of a Military Service Members Court nor anything in this article may be construed as limiting the discretion of the jurisdiction's prosecutor to act on any criminal case which he or she determines advisable to prosecute.

(f) Each program judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals. The Supreme Court of Appeals shall provide uniform referral, procedure, and order forms that shall be used in all Military Service Members Courts in this state.

§62-16-5. Written agreements.

(a) Participation in a Military Service Members Court program shall be pursuant to a written agreement with the consent of the prosecutor, team, and the court. The written agreement shall set

forth all agreed upon provisions which allow the military service member to proceed in the program. The offender shall execute a written agreement with the court to memorialize agreed participation in the program, and all the terms and conditions of the program, including, but not limited to, the possibility of sanctions or incarceration for failure to comply with the terms of the program, orders of the court, and written agreement.

(b) A court may grant reasonable incentives to, or impose reasonable sanctions on, anyone who fails to comply with the written agreement. At the discretion of the court, sanctions may include incarceration, expulsion from the program, depending on recommendations of the team, and the following factors:

(1) performance in the court program;

(2) participation and progress related to education, treatment and rehabilitation;

(3) criminal conduct during the court program;

(4) violation of the terms and conditions of the agreement; and

(5) other participation in the court program.

(c) When the court program is successfully completed, the judge shall dispose of an offender's case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court. Disposition may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, and a reduced period of incarceration.

§62-16-6. Military Service Members Court teams.

(a) The goal of each team shall be to fill its positions with as many veterans as possible. A team shall include, but is not limited to the following members:

(1) A circuit court judge;

(2) A magistrate;

(3) The prosecuting attorney to which the case has been assigned to;

(4) Counsel for the offender, or if the offender does not have counsel, then a public defender or member of the criminal defense bar;

(5) A representative from a circuit court probation office;

(6) A case coordinator;

(7) Volunteer veteran mentors, with the goal of no mentor mentoring more than two offenders at the same time;

(8) VA Veteran Justice Outreach Specialist;

(9) Director of the Day Report Center for that circuit; and

(10) Any other persons selected by the team

(b) The team shall conduct a staffing prior to each court session to discuss and provide updated information regarding the military service member offender. After determining the offender's progress or lack thereof, the court team shall recommend the appropriate incentive, sanction or other action deemed appropriate. If the team cannot agree on the appropriate action, the court shall make the decision based on information presented at the staffing.

§62-16-7. Eligibility.

(a) A military service member offender, who is eligible for probation based upon the nature of the offense(s) for which he or she has been charged with, and in consideration of his or her criminal background, if any, may, upon application, be admitted into a court program only upon the agreement of the prosecutor and the offender. Additionally, the team must also determine that the offense(s) are in any way attributable to the offender's military service.

(b) A military service member offender may not participate in the court program if he or she has been charged with any of the following offenses:

(1) A sexual offense, including, but not limited to, a violation of the felony provisions of articles eight, eight-b, eight-c, or eight-d of chapter sixty-one, or a criminal offense where the judge has made a written finding that the offense was sexually motivated;

(2) A felony violation of the provisions of sections two, two-a, or three-a, article eight-d of chapter sixty-one;

(3) A felony violation of the provisions of sections three or four, article fourteen, of chapter sixty-one;

(4) A felony violation of sections nine-b or fourteen, article two, of chapter sixty-one;

(5) A felony violation of subsection b, section two, article five, of chapter seventeen-c; or

(6) If he or she has previously been convicted in this state, another state, or in a federal court for any of the offenses enumerated above.

§62-16-8. Procedure.

(a) Upon application, the court shall order the offender to submit to an eligibility screening, a mental health and drug/alcohol screening, and an assessment by the VA JVO to provide information on the offender's mental health or military service member status. The assessment shall include a risks assessment and be based, in part, upon the known availability of treatment resources available to the court. The assessment shall also include recommendations for treatment of the conditions which are indicating a need for treatment under the monitoring of the court and reflect a level of risk assessed for the individual seeking admission. The court is not required to order an assessment if a valid screening or assessment related to the present charge(s) pending against the offender has been completed within the previous sixty days.

(b) Upon completion, the assessment shall be presented to the team for evaluation. After the team has done so, it may request the

offender to appear with counsel, if represented, to answer any outstanding questions it may have.

(c) Subsequently, the team shall privately discuss the offender's assessment and vote on his or her eligibility for the program.

(d) If determined by majority vote that the veteran offender is accepted, the veteran shall be assigned a mentor and the team shall determine an individual course of action for the veteran offender. The team shall then present their plan to the veteran and introduce the veteran to his or her mentor.

(e) If the veteran offender is not accepted the team shall present to the veteran offender explanation as to why he or she has not been accepted.

(f) When considering treatment, the team shall first utilize benefits available to the offender through the VA. The court may order the offender to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to complete mental health counseling in an inpatient or outpatient basis, comply with all physicians' recommendations regarding medications and complete all follow up treatment. The mental health issues for which treatment may be provided, include, but are not limited to, post-traumatic stress disorder, traumatic brain injury and depression.

(g) The judge shall inform the offender that if he or she fails to meet the conditions of the court, eligibility to participate in the program may be revoked and the offender shall be subject to the sanctions set forth in section ten of this article.

§62-16-9. Mental health and substance abuse treatment.

(a) The court may maintain a network of mental health treatment programs and substance abuse treatment programs representing a continuum of graduated mental health and substance abuse treatment options commensurate with the needs of offenders; these shall include programs with the VA, the department, this state, and community-based programs.

(b) The court may, in its discretion, employ additional services or interventions, as it determines necessary, on a case-by-case basis.

(c) The court may maintain or collaborate with a network of mental health treatment programs and, if it is a cooccurring mental health and substance abuse court program, a network of mental health treatment programs and substance abuse treatment programs representing a continuum of treatment options commensurate with the needs of the offender and available resources including programs with the VA, the department, and this state

§62-16-10. Violation; termination; discharge.

(a) The court may impose reasonable sanctions under the offender's written agreement, including, but not limited to, imprisonment or dismissal of the offender from the program. The court may reinstate criminal proceedings against him or her for a violation of probation, conditional discharge, or supervision hearing, if the court finds from the evidence presented, including, but not limited to, the reports or proffers of proof from the court's professionals that:

(1) The offender is not performing satisfactorily in the assigned program;

(2) The offender is not benefitting from educational treatment or rehabilitation;

(3) The offender has engaged in criminal conduct rendering him or her unsuitable for the program; or

(4) The offender has otherwise violated the terms and conditions of the program or his or her sentence or is for any reason unable to participate.

(b) Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the offender, successfully terminate the offender's sentence, permit the offender to enter into a plea agreement to a lesser offense, or

otherwise discharge him or her from any further proceedings against him or her in the original prosecution.

(c) Upon successful completion of the terms and conditions of the program or if the presiding judge determines the lack of the ability to drive is preventing program success, the court may expunge any driving offences that currently prevent the veteran offender from obtaining a West Virginia driver's license.

§62-16-11. Governance.

The Supreme Court of Appeals is responsible for court funding, administration, and continuance of Military Service Members Courts. The Administrator of the Supreme Court of Appeals, or his or her designee, shall oversee the planning, implementation, and development of these courts as the administrative arm of the Supreme Court of Appeals.

§62-16-12. Program integrity and offender accountability.

(a) The courts shall collect and maintain the following information and any other information on participants as required by the Supreme Court of Appeals or its administrative office:

(1) The participants' prior criminal history;

(2) The participants' prior substance abuse and mental health treatment history;

(3) The participants' employment, education, and income histories;

(4) The participants' gender, race, ethnicity, marital and family status, and any child custody and support obligations;

(5) Instances of participants' recidivism occurring during and after participation in a court program. Recidivism shall be measured at intervals of six months, one year, two years, and five years after successful graduation from Military Service Members Court;

(6) The number of offenders screened for eligibility, the number of eligible offenders who were and were not admitted, and their case dispositions; and

(7) The costs of operation and sources of funding.

(b) An offender may be required, as a condition of pretrial diversion, probation, or parole, to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect an offenders' privacy in accordance with federal and state confidentiality laws, a court shall keep treatment records in a secure environment, separated from the court records to which the public has access.

§62-16-13. Funding.

(a) Each Military Service Members Court, with the guidance of the Supreme Court of Appeals, may establish a schedule for the payment of reasonable fees and costs to be paid by participants necessary to conduct the program.

(b) Nothing in this article shall prohibit court teams from obtaining supplemental funds or exploring grants to support the Military Service Members Courts.

§62-16-14. Immunity from Liability.

Any individual who, in good faith, provides services pursuant to this article is not liable in any civil action, unless his or her actions were the result of the gross negligence or willful misconduct. The grant of immunity provided in this section extends to all employees and administrative personnel of a court.;

And,

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

Eng. Com. Sub. for Senate Bill 40—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, §62-16-7, §62-16-8, §62-16-9, §62-16-10, §62-16-11, §62-16-12, §62-16-13 and §62-16-14, all relating to establishing a Military Service Members Court program within Supreme Court of Appeals; providing legislative findings; defining terms; granting authority to oversee court to Administrator of Supreme Court of Appeals; setting forth structure of court; providing for written agreement to participate in court; setting forth incentives for successful participation; providing for sanctions for violation of provisions of court; setting out disposition on successful completion; providing for teams to function within court; setting forth eligibility requirements for participation; setting forth procedure to participate in court; allowing for mental health and drug treatment services for participants; providing for governance of court by Supreme Court of Appeals; setting forth information to be maintained on participants; providing for funding mechanisms which may include court fees; and providing for limitation of liability.

On motion of Senator Weld, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 40) were reported by the Clerk, considered simultaneously, and adopted:

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

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-1. Short title.

This may be cited as the Military Service Members Court Act.

§62-16-2. Legislative findings.

(a)(1) The Legislature recognizes that while most veterans are strengthened by their military service, the combat experiences of many veterans have unfortunately left a growing number of

veterans who suffer from issues such as Post Traumatic Stress Disorder and traumatic brain injury. A growing body of research shows that one in five veterans will have symptoms of a mental illness, mental health disorder, or cognitive impairment. One in six veterans who served in either Operation Enduring Freedom or Operation Iraqi Freedom suffer from substance abuse and related issues. As a result, many veterans have found themselves in the criminal court system charged with crimes which may be directly attributable to these service-related issues.

(2) The Legislature further recognizes that a Military Service Members Court is necessary to link veterans with the programs, benefits, and services that are necessary to help them overcome these issues and provide them with rehabilitation services instead of incarceration.

(3) Given the context of veteran life, especially given their past training and experiences in the Armed Forces, it is reasonably anticipated and likely that military service members would respond favorably to a structured environment. The Military Service Members Court is a professional, structured, and monitored program which mandates and provides participant accountability and responsibility, including mandatory court appearances, treatment, and counseling sessions, as well as frequent and random testing for drug and alcohol use. However, the Legislature also finds that some may still struggle. Those are the veterans who need the structure and support of a Military Service Members Court program the most. Without the structure of a Military Service Members Court program mentally ill and challenged veterans may well reoffend, remain in the criminal court system, and suffer under the emotional, physical, and mental yoke of substance abuse.

(4) The Legislature creates the Military Service Members Court to ensure that these veterans in need are able meet their obligations to themselves, their family, their loved ones, the court, and their community.

§62-16-3. Definitions.

For the purposes of this article:

“Assessment” means an evaluation to determine whether a criminal defendant is a military service member as defined by this section, that the offense he or she has been charged with are attributable to their military service, and if the offender would benefit from the provisions set forth in this article.

“Court” means a Military Service Members Court.

“Department” means the West Virginia Department of Veterans Assistance.

“Military Service Members Court program” or “program” is a program that includes pre-adjudicatory and post-adjudicatory treatment for military service members.

“Military service member” means a person who is currently serving in the Army, Air Force, Marines, Navy, or Coast Guard on active duty, reserve status, or in the National Guard, or a person who served in the active military, or who was discharged or released under conditions other than dishonorable.

“Offender” means a criminal defendant who qualifies as a military service member under this article.

“Post-adjudicatory program” means a program in which the offender has admitted guilt or has been found guilty and agrees, with the prosecutor’s consent, to enter a court program as part of his or her sentence.

“Pre-adjudicatory program” means a program that allows the offender, with the consent of the prosecutor, team, and the court to expedite the offender’s criminal case before conviction or before filing of a criminal case and requires the offender to agree to and successfully complete the court program as part of the written agreement.

“VA” means the United States Department of Veterans Affairs.

“VJO” means the Veterans Justice Outreach program of the United States Department of Veterans Affairs.

“Written agreement” means the agreement executed to allow a military service member to participate in a court program.

§62-16-4. Court authorization; funding; immunity from liability.

(a) Court authorization. — The Supreme Court of Appeals is hereby authorized to establish a Military Service Members Court program, under the oversight of its administrator. Each Military Service Members Court may be a stand-alone court or operated in conjunction with an existing drug court or other specialty court program. The Supreme Court is further encouraged to give deference to circuits or regions in the operation of those programs to maximize flexibility, and to take into account regional and other differences and circumstance.

(b) Once a program is established, termination of any program may not take place until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court administrator to the Speaker of the House of Delegates and the President of the Senate.

(c) Each court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of this article.

(d) A court may offer pre-adjudication or post-adjudication programs for adult offenders.

(e) Nothing contained in this article confers a right or an expectation of a right to participate in a court program nor does it obligate a court to accept every military service member offender.

(f) Neither the establishment of a Military Service Members Court nor anything in this article may be construed as limiting the discretion of the prosecuting attorney to act on any criminal case which he or she determines advisable to prosecute.

(g) Funding. — Each Military Service Members Court, with the guidance of the Supreme Court of Appeals, may establish a

schedule for the payment of reasonable fees and costs to be paid by participants necessary to conduct the program.

(h) Nothing in this article prohibits Military Service Members Courts from obtaining supplemental funds or exploring grants to support the courts.

(i) Immunity from liability. — Any person who, in good faith, provides services pursuant to this article is not liable in any civil action, unless his or her actions were the result of gross negligence or willful misconduct. The grant of immunity provided in this section extends to all employees and administrative personnel of a court.

§62-16-5. Eligibility; written agreement.

(a) Eligibility. — A military service member offender, who is eligible for probation based upon the nature of the offense for which he or she has been charged, and in consideration of his or her criminal background, if any, may, upon application, be admitted into a court program only upon the agreement of the prosecutor and the offender. Additionally, the court must also determine whether the offense is in any way attributable to the offender's military service.

(b) A military service member offender may not participate in the court program if he or she has been charged with any of the following offenses:

(1) A sexual offense, including, but not limited to, a violation of the felony provisions of §61-8-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., or §61-8D-1 et seq. of this code, or a criminal offense where the judge has made a written finding that the offense was sexually motivated;

(2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

(3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

(4) A felony violation of §61-2-9b or §61-2-14 of this code;

(5) A felony violation of §61-2-28 of this code;

(6) A felony violation of §17C-5-2(b) of this code; or

(7) If he or she has previously been convicted in this state, another state, or in a federal court for any of the offenses enumerated above.

(c) *Written agreement.* — Participation in a Military Service Members Court program, with the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This written agreement shall set forth all of the agreed upon provisions to allow the military service member offender to proceed in the court. The offender shall execute a written agreement with the court as to his or her participation in the program and shall agree to all of the terms and conditions of the program, including, but not limited to, the possibility of sanctions or incarceration for failing to comply with the terms of the program.

(d) Upon successful completion of a court program, the judge shall dispose of an offender's case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court. Disposition may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration.

§62-16-6. Procedure; mental health and substance abuse treatment; violation; termination.

(a) *Procedure.* — Upon application, the court shall order the offender to submit to an eligibility screening, a mental health and drug/alcohol screening, and an assessment by the VA VJO to provide information on the offender's mental health or military service member status. The assessment shall include a risks assessment and be based, in part, upon the known availability of treatment resources available to the court. The assessment shall also include recommendations for treatment of the conditions which are indicating a need for treatment under the monitoring of

the court and reflect a level of risk assessed for the individual seeking admission. The court is not required to order an assessment if a valid screening or assessment related to the present charge(s) pending against the offender has been completed within the previous 60 days.

(b) The court may order the offender to complete substance abuse treatment in an outpatient, inpatient, residential, or jail-based custodial treatment program, order the offender to complete mental health counseling in an inpatient or outpatient basis, comply with all physician recommendations regarding medications, and complete all follow-up treatment. The mental health issues for which treatment may be provided include, but are not limited to, post-traumatic stress disorder, traumatic brain injury, and depression.

(c) *Mental health and substance abuse treatment.* — The court may maintain a network of mental health treatment programs and substance abuse treatment programs representing a continuum of graduated mental health and substance abuse treatment options commensurate with the needs of offenders; these shall include programs with the VA, the department, this state, and community-based programs.

(d) *Violation.* — The court may impose reasonable sanctions under the offender's written agreement, including, but not limited to, imprisonment or dismissal of the offender from the program. The court may reinstate criminal proceedings against him or her for a violation of probation, conditional discharge, or supervision hearing, if the court finds from the evidence presented, including, but not limited to, the reports or proffers of proof from the court's professionals that:

(1) The offender is not performing satisfactorily in the assigned program;

(2) The offender is not benefitting from educational treatment or rehabilitation;

(3) The offender has engaged in criminal conduct rendering him or her unsuitable for the program; or

(4) The offender has otherwise violated the terms and conditions of the program or his or her sentence or is for any reason unable to participate.

(e) Termination. — Upon successful completion of the terms and conditions of the program, the court may dismiss the original charges against the offender, successfully terminate the offender's sentence, permit the offender to enter into a plea agreement to a lesser offense, or otherwise discharge him or her from any further proceedings against him or her in the original prosecution.

(f) Notwithstanding any provision of this code to the contrary, upon successful completion of the terms and conditions of the program or if the presiding judge determines the lack of the ability to operate a motor vehicle is preventing program success, the court may expunge any driving offenses that prevent the veteran offender from obtaining a West Virginia driver's license.

§62-16-7. Program integrity and offender accountability.

(a) If deemed appropriate by the Supreme Court of Appeals or its administrative office, the courts shall collect and maintain information on participants which may include, but is not limited to, the following:

(1) The participants' prior criminal history;

(2) The participants' prior substance abuse and mental health treatment history;

(3) The participants' employment, education, and income histories;

(4) The participants' gender, race, ethnicity, marital and family status, and any child custody and support obligations;

(5) Instances of participants' recidivism occurring during and after participation in a court program. Recidivism may be measured at intervals of six months, one year, two years, and five years after successful graduation from Military Service Members Court;

(6) The number of offenders screened for eligibility, the number of eligible offenders who were and were not admitted, and their case dispositions; and

(7) The costs of operation and sources of funding.

(b) An offender may be required, as a condition of pretrial diversion, probation, or parole, to provide the information described in this section. The collection and maintenance of information under this section shall be collected in a standardized format according to applicable guidelines set forth by the Supreme Court of Appeals.

(c) To protect an offenders' privacy in accordance with federal and state confidentiality laws, a court shall keep treatment records in a secure environment, separated from the court records to which the public has access.;

And,

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

Eng. Com. Sub. for Senate Bill 40—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, §62-16-5, §62-16-6, and §62-16-7, all relating to establishing a Military Service Members Court program within the Supreme Court of Appeals; providing legislative findings establishing the need for creation of a Military Service Members Court program; defining terms; granting authority to the Supreme Court of Appeals to establish a Military Service Members Court program under the oversight of its administrator; providing for no termination of any program until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court of Appeals Administrator to the Speaker of the House of Delegates and the President of the Senate; providing that a Military Service Members Court judge may establish rules and make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals to effectuate the purposes of the

program; providing for funding mechanisms which may include court fees; providing for limitation of liability; setting forth eligibility requirements for participation; providing for written agreement to participate in the court; setting forth procedure to participate in court; allowing for mental health and drug treatment services for participants; providing for sanctions for violation of provisions of the court; setting forth incentives for successful participation; setting out disposition on successful completion; providing that Military Service Members Courts shall if deemed appropriate by the Supreme Court of Appeals collect and maintain information on program participants; setting forth that offenders may be required to provide certain information to Military Service Members Courts; and requiring Military Service Members Courts to keep offender treatment records in a secure environment separated from the court records to which the public has access.

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

Engrossed Committee Substitute for Senate Bill 40, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 40) 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.

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 398, Relating to compensation for senior judges.

On motion of Senator Takubo, 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:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE, AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

**§5-10-48. Reemployment after retirement; options for holder
of elected public office.**

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further

finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) “Regularly employed on a full-time basis” means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) “temporary full-time employment” or “temporary part-time employment” means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) “former employee of the Legislature” means any person who has retired from employment with the Legislature and who has at least 10 years’ contributing service with the Legislature; and (4) “reemployed by the Legislature” means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) ~~In the event~~ If a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment

be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. A retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of \$20,000.

(d) Senior judges, justices, and magistrates. –

(1) Notwithstanding the provisions of subsection (c) of this section, a retired judge or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-9-10 of this code while continuing to receive his or her annuity.

(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity.

~~(d)~~ (e) ~~In the event~~ If a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of

this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided*, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however*, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

~~(e)~~ (f) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

~~(f)~~ (g) Notwithstanding the provisions of §5-10-27b of this Code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided, however*, That the member

elects to stop actively contributing to the system while receiving the in-service distributions.

~~(g)~~ (h) The provisions of §5-10-22h of this code are not applicable to the amendments made to this section during the 2006 regular session.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-6a. Temporary appointment of retired magistrates.

(a) The West Virginia Supreme Court of Appeals is authorized and empowered to create a panel of senior magistrates to consist of, and to utilize the talent and experience of, retired magistrates of this state. ~~The Supreme Court of Appeals shall promulgate rules providing for such senior magistrates to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing for replacement of magistrates who are unavailable. *Provided*, That reasonable payment shall be made to said senior magistrates on a per diem basis: *Provided, however*, That the per diem and retirement compensation of a senior magistrate shall not exceed the salary of a sitting magistrate and allowances shall also be made for necessary expenses pursuant to the travel regulations of the Supreme Court of Appeals.~~

(b) Senior magistrates recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$200 for each day actually served: *Provided*, That the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate, except as set forth in subsection (c) of this section.

(c) Notwithstanding subsection (b) of this section, for purposes of maintaining magisterial efficacy and continuity of magisterial decision-making, a senior magistrate may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior magistrate during that calendar year exceeds the annual salary of a sitting

magistrate if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting magistrate because of a protracted, but temporary, illness or medical condition or a lengthy suspension which necessitate the extended assignment of the senior magistrate. Immediately upon entering such an order, the chief justice shall submit copies of the order to the State Auditor and the State Treasurer.

(d) In addition to the compensation authorized by this section, senior magistrates recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-10. Services of senior judges and justices.

(a) The Legislature finds that:

(1) Section seven, article VIII of the Constitution of West Virginia expressly requires the Legislature to fix judicial salaries by statute, providing that: “[j]ustices, judges and magistrates shall receive the salaries fixed by law”.

(2) When originally enacted in 1949, this section of the code required any retired judge receiving retirement benefits to serve as a special judge, when assigned to temporary service, “without charge or compensation, per diem or otherwise to him”.

(3) In 1974, the Judicial Reorganization Amendment to the Constitution of West Virginia was ratified. Among other matters, in section eight, article VIII, the amendment addressed the ongoing practice of recalling retired judicial officers to service by empowering the Chief Justice of the Supreme Court of Appeals to recall a retired judge or justice to service, “with his permission and with the approval of the supreme court of appeals”, for temporary assignment.

(4) Absent from the Judicial Reorganization Amendment and article VIII of the Constitution of West Virginia is any provision authorizing the Supreme Court of Appeals to fix compensation for recalled judges or justices. Indeed, the Judicial Reorganization Amendment added language to section seven, article VIII of the Constitution of West Virginia, unequivocally stating that “[j]ustices, judges and magistrates shall receive the salaries fixed by law”.

(5) In 1975, the Legislature amended and reenacted this section of the code, which still then required any retired judge receiving retirement benefits to serve as a special judge, when assigned to temporary service “without charge or compensation, per diem or otherwise to him”.

(6) In 1991, the Legislature amended and reenacted this section of the code again, authorizing and empowering the Supreme Court of Appeals to create a panel of senior judges and justices “to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing speedier trials to litigants throughout the State”.

(7) The 1991 reenactment of this section of the code statutorily authorized, for the first time, “reasonable payment” to senior judges and justices “on a per diem basis”, and provided that “the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge”.

(8) In 2018, the West Virginia House of Delegates adopted and communicated Articles of Impeachment to the West Virginia Senate, naming justices of the Supreme Court of Appeals serving at that time as respondents. Several of the articles alleged that certain justices, each while serving as Chief Justice of the Supreme Court of Appeals, had intentionally signed contracts agreeing to pay retired judges recalled to service above the compensation limitations of this section of the code.

(9) In a petition to the Supreme Court of Appeals, styled *State ex. rel. Workman v. Carmichael*, one justice named as respondent in the 2018 impeachment proceedings challenged the

constitutionality of the Articles of Impeachment in which she was named, including the articles alleging payment of senior judges above the limitations of this section of the code.

(10) In ruling on the petition in *State ex. rel. Workman v. Carmichael*, the Supreme Court of Appeals, at that time composed of five circuit judges temporarily assigned to sit as justices for that case, issued a writ of prohibition staying impeachment proceedings.

(11) In direct contradiction of section seven, article VIII of the Constitution of West Virginia, the decision in *State ex. rel. Workman v. Carmichael* held, in part, that this section of the code, providing for and limiting the compensation of senior judges, is “unconstitutional and unenforceable”.

(12) The majority opinion in *State ex. rel. Workman v. Carmichael* ignored the plain language of section seven, article VIII of the Constitution of West Virginia, which explicitly provides that “[j]ustices, judges and magistrates shall receive the salaries fixed by law”.

(13) Syllabus point four of the majority opinion in *State ex. rel. Workman v. Carmichael* mischaracterizes what the Legislature had done in enacting this section of the code, by providing that: “West Virginia Code §51-9-10 (1991) violates the Separation of Powers Clause of Article V, § 1 of the West Virginia Constitution, insofar as that statute seeks to regulate judicial appointment matters that are regulated exclusively by this Court pursuant to Article VIII, § 3 and § 8 of the West Virginia Constitution. Consequently, W.Va. Code §51-9-10, in its entirety, is unconstitutional and unenforceable”.

(14) Occasionally, circumstances may require the extended assignment of senior judges and justices, necessitating the Legislature to prescribe such circumstances when the limitations on compensation of senior judges and justices receiving retirement benefits may be exceeded.

~~(b) The West Virginia Supreme Court of Appeals is authorized and empowered to~~ The Legislature recognizes and acknowledges the authority of the West Virginia Supreme Court of Appeals to recall retired judges and justices for temporary assignment and to create a panel of senior judges and justices to utilize the talent and experience of former circuit court judges and supreme court justices of this state; *Provided*, That extended assignment of retired judges and justices must not be utilized in such a way as to threaten the qualified status of the Judges Retirement System under applicable provisions of the Internal Revenue Code, including Treasury Regulation section 1.401(a)-1(b)(1) requiring that a qualified plan must be established primarily to provide payment of definitely determinable benefits to its employees after retirement or attainment of normal retirement age. The Supreme Court of Appeals shall promulgate rules providing for said judges and justices to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing speedier trials to litigants throughout the state. *Provided*, That Reasonable payment shall be made to said judges and justices on a per diem basis; *Provided*, however, That the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge and allowances shall also be made for necessary expenses as provided for special judges under §51-2-1 et seq. and §51-9-1 et seq. of this Code

(c) Senior judges and justices recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$430 for each day actually served; *Provided*, That the combined total of per diem compensation and retirement benefits paid to a senior judge or justice during a single calendar year may not exceed the annual salary of a sitting circuit judge, except as set forth in subsection (d) of this section.

(d) Notwithstanding subsection (c) of this section, for purposes of maintaining judicial efficacy and continuity in judicial decision-making, a senior judge or justice may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior judge or justice during that calendar year exceeds the annual salary of a sitting circuit

judge if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting judicial officer because of a protracted, but temporary, illness or medical condition or a lengthy suspension which necessitate the extended assignment of the senior judge or justice. Immediately upon entering such an order, the Chief Justice shall submit copies of the order to the State Auditor and the State Treasurer.

(e) In addition to the per diem compensation authorized by this section, senior judges and justices recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(f) Within 90 days after the effective date of this section, the Treasurer, as the chief custodian of public funds, shall petition the West Virginia Supreme Court of Appeals for a writ of prohibition pursuant to the court's original jurisdiction, naming as respondent the State Auditor and petitioning the court to prohibit the State Auditor from issuing any warrant for the payment of per diem compensation to senior judges and justices in excess of the limitation on the daily rate of per diem compensation in subsection (c) of this section.;

And,

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

Eng. Com. Sub. for Senate Bill 398—A Bill to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-6a of said code; and to amend and reenact §51-9-10 of said code, all relating to compensation for senior judicial officers; providing that senior judges, justices, and magistrates may receive per diem compensation for temporary assignments while receiving retirement benefits, subject to certain limitations; setting forth legislative findings; limiting the per diem rate of compensation that may be paid to senior judges and justices for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior judge or

justice during a single calendar year may not exceed the annual salary of a sitting circuit judge; limiting the per diem rate of compensation that may be paid to senior magistrates for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate; providing an exception to the limitation on the combined total of per diem compensation and retirement benefits paid to a senior magistrate, judge or justice in a calendar year, if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying that certain circumstances necessitate extended assignment of such judge or justice; requiring that administrative orders regarding extended assignment of a senior judge or justice be submitted to the State Auditor and the State Treasurer; providing that senior judges and justices may be reimbursed for actual and necessary expenses incurred in the performance of their duties; and requiring the State Treasurer to petition the West Virginia Supreme Court of Appeals for a writ of prohibition prohibiting the State Auditor from issuing warrants to authorize payment of compensation to senior judges and justices above statutory limitations.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 398) 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 Senate Bill 398—A Bill to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-6a of said code; and to amend and reenact §51-9-10 of said code, all relating to compensation for senior judicial officers; providing that senior judges, justices, and magistrates may receive per diem compensation for temporary assignments while receiving retirement benefits, subject to certain limitations; setting forth legislative findings; limiting the per diem rate of compensation that may be paid to senior judges and justices for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior judge or

justice during a single calendar year may not exceed the annual salary of a sitting circuit judge; limiting the per diem rate of compensation that may be paid to senior magistrates for each day served; providing that the combined total of per diem compensation and retirement benefits paid to a senior magistrate during a single calendar year may not exceed the annual salary of a sitting magistrate; providing an exception to the limitation on the combined total of per diem compensation and retirement benefits paid to a senior judge, justice, or magistrate in a calendar year, if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying that certain circumstances necessitate extended assignment of such judge, justice, or magistrate; providing that extended assignment of senior judges or justices must not be utilized in a manner to threaten the qualified status of the Judges' Retirement System under certain provisions of the Internal Revenue Code; requiring that administrative orders regarding extended assignment of a senior judge, justice, or magistrate be submitted to the State Auditor and the State Treasurer; providing that senior judges, justices, and magistrates may be reimbursed for actual and necessary expenses incurred in the performance of their duties; and requiring the State Treasurer to petition the West Virginia Supreme Court of Appeals for a writ of prohibition prohibiting the State Auditor from issuing warrants to authorize payment of compensation to senior judges and justices above statutory limitations.

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

Engrossed Committee Substitute for Senate Bill 398, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 398) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 398) 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 that that body had refused to recede from its amendment, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Com. Sub. for Senate Bill 241, Permitting county court clerks scan certain documents in electronic form.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates C. Martin, Worrell, and Hicks.

On motion of Senator Takubo, the Senate agreed to the appointment of a conference committee on the bill.

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

Senators Sypolt, Swope, and Facemire.

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

A message from the Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 317, Authorizing three or more adjacent counties form multicounty trail network authority.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Howell, Hott, and Hansen.

On motion of Senator Takubo, the Senate agreed to the appointment of a conference committee on the bill.

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

Senators Maynard, Smith, and Beach.

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 16, Authorizing expenditure of surplus funds by Wyoming County Commission.

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 264, Requiring courts to order restitution to crime victims where economically practicable.

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 329, Relating to agricultural education in high schools.

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 340, Repealing obsolete provisions of code relating to WV Physicians Mutual Insurance Company.

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 369, Relating to generic drug products.

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 396, Waiving occupational licensing fees for low-income individuals and military families.

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 461, Relating generally to lottery prizes.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect July 1, 2019, of

Eng. Com. Sub. for Senate Bill 502, Exempting sales of investment metal bullion and coins.

A message from the Clerk of the House of Delegates announced that that body had receded from its amendment to, and the passage as amended by deletion, of

Eng. Senate Bill 566, Relating to compensation for State Athletic Commission members.

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 601, Relating to mandatory supervision of adult inmates.

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

Eng. Senate Bill 605, Permitting Secondary Schools Athletic Commission discipline schools for not following protocol for concussions and head injuries.

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 627, Relating generally to Rural Rehabilitation Loan Program.

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 640, Regulating sudden cardiac arrest prevention.

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

Eng. Senate Bill 670, Relating to WV College Prepaid Tuition and Savings Program.

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

Senate Concurrent Resolution 9, US Army PFC Winten L. Ways 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 12, US Army CPL Lee Roy Young 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 20, US Air Force SSGT Ryan David Hammond Memorial Bridge.

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 2004, Providing for a program of instruction in workforce preparedness.

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 2396, West Virginia Fresh Food Act.

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 2412, Relating to criminal acts concerning government procurement of commodities and services.

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 2480, Relating to the regulation of an internationally active insurance group.

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 2524, Permitting a pharmacist to convert prescriptions authorizing refills under certain circumstances.

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 2541, Requiring certain safety measures be taken at public schools.

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 2600, Relating to publication of sample ballots.

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 2813, Relating generally to collection of use tax.

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, of

Eng. Com. Sub. for House Bill 2831, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

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 2846, Designating a “Back the Blue” plate in support of law-enforcement personnel.

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 11:21 a.m. today:

Eng. Com. Sub. for Senate Bill 481, Relating to Judicial Vacancy Advisory Commission.

At the request of Senator Takubo, unanimous consent being granted, the Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2049, Relating to a prime contractor’s responsibility for wages and benefits.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2049 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Hamilton, Mann, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—20.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—14.

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. 2049) 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 2049—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-5-4a; and to amend and reenact §21-5-7 of said code, all relating to actions brought to recover wages and fringe benefits; providing a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to separated employees prior to the filing of a lawsuit; prohibiting an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and benefits due upon the employee's separation of employment without first making a written demand on the employer; permitting only those employees who have made a written demand on the employer may be included in a class action lawsuit brought for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment; defining the term "written demand"; and requiring employers to notify employees of their obligations through a posted notice and written notice in the employee's last paycheck or paystub; requiring notice to prime contractor by certified mail within 100 days of the missing wages becoming payable to the employee; instituting a one-year statute of limitations; requiring the employer of the employee to whom wages and fringe benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor; requiring when an employee to whom wages and fringe benefits are due is represented by a union that the union must whenever feasible immediately upon notice of a claim cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor; providing that if the union or its agents become aware that an employer is not timely in the payment of wages and fringe benefits the union must immediately notify the affected employee and the prime contractor for whom the affected employee provided work; and providing that a prime contractor must notify the owner and the architect prior to

the completion of the contract if any subcontractor has not been paid in full.

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 2583, Family Planning Access Act.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2583 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2583) 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 2670, Relating to damages for medical monitoring.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2670 pass?”

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

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

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. 2670) 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 2670—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-32, relating to damages for medical monitoring; establishing requirements for an order for payment of medical monitoring expenses; providing that an increased risk of disease is not a compensable basis for damages in any civil action; requiring proof that future medical surveillance, screening tests, or monitoring procedures are directly related to a presently existing and diagnosable physical disease caused by the defendant’s conduct; prohibiting payment for cost of future medical surveillance, screening tests, or monitoring procedures until they are completed; allowing court to order defendant to make periodic payments into a fund to pay future costs; and authorizing court to determine when future medical surveillance, screening tests, or monitoring procedures are no longer required and providing for disbursement of any moneys remaining in the fund.

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

Eng. House Bill 3143, Relating to requirements for consumer loans in West Virginia.

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

Senator Smith requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Smith would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Mann, Maroney, Maynard, Palumbo, Plymale, Roberts, Rucker, Smith, Stollings, Swope, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—24.

The nays were: Baldwin, Beach, Facemire, Ihlenfeld, Jeffries, Lindsay, Prezioso, Romano, Sypolt, and Unger—10.

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. 3143) 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 2828, Relating to Qualified Opportunity Zones.

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

Senator Plymale requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he is the secretary-treasurer for a 501(c)(3) that has two properties in opportunity zones.

The Chair replied that any impact on Senator Plymale would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2828) passed.

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

Eng. House Bill 2828—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §11-21-12j; and to amend said code by adding thereto a new section, designated §11-24-6b; and to amend said code by adding thereto a new article, designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, and §31-15D-7; and to amend said code by adding thereto a new section, designated §33-3-14e; all relating to promoting investment and business growth in low-income communities in West Virginia; providing title; defining terms; providing for transferability; certification of qualified equity investment; providing for recapture of tax credits; requiring notice of noncompliance; letter rulings; new capital requirement; reporting; providing penalty for job creation underperformance; establishing amount of credit allowed; providing mechanism to exempt corporate net income tax and personal income tax for new businesses in Qualified Opportunity Zones located in West Virginia; providing effective date; authorizing rulemaking in Commissioner.

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 adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 14—Requesting the Division of Highways name bridge number 50-64-2.67 EB & WB (50A208, 50A209), locally known as Hubbards Branch Bridges, carrying Interstate 64 (EB & WB) over County Route 5/1 in Wayne County, the “U. S. Army CPT Benjamin Ronk Memorial Bridge”.

At the request of Senator Plymale, and by unanimous consent, reference of the resolution to a committee was dispensed with, and it 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.

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 6—Requesting the Division of Highways name bridge number 20-60-36.23 (20A160), locally known as US 60 Cedar Grove Overpass 3565 Bridge, carrying U. S. 60 over County Route 81, Kanawha County, the “U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders Jr. Memorial Bridge”.

At the request of Senator Palumbo, and by unanimous consent, reference of the resolution to a committee was dispensed with, and it 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.

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 17— Requesting the Division of Highways name bridge number 20-73/5-0.55, locally known as Point Lick Bridge, carrying Route 73/5 over Campbells Creek in Kanawha County, the “U. S. Marine Corps CPL Larry Scott Kennedy Memorial Bridge”.

At the request of Senator Palumbo, and by unanimous consent, reference of the resolution to a committee was dispensed with, and it 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.

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

The Senate again proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2694, Relating to the state’s ability to regulate hemp.

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

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: Azinger—1.

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. 2694) 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 2694—A Bill to amend and reenact §19-12E-3, §19-12E-4, §19-12E-5, §19-12E-6, §19-12E-7, §19-12E-8, and §19-12E-9 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §19-12E-10 and §19-12E-11, all relating generally to the Industrial Hemp Development Act; adding and modifying definitions; updating code to reflect changes in federal law; clarifying that no person may grow, cultivate, possess, or process industrial hemp without a license from the Department of Agriculture; requiring certain documentation requested by the commissioner to be submitted by licensees; authorizing commissioner to submit plan for state regulation of industrial hemp to United States Department of Agriculture; requiring licensee to provide prior written consent for law enforcement to enter the premises; providing that a license is not necessary to possess, handle, transport, or sell hemp products and extracts; setting standards regarding sale of industrial hemp products; requiring plan to comply with federal law; providing for continued legality of hemp production in absence of submitted plan; providing for handling negligent violations; addressing handling of non-negligent violations; requiring notification of attorney general and law enforcement under certain circumstances; and making technical corrections.

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

Eng. House Bill 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3044) 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 3020, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions.

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

Pending discussion,

The question being “Shall Engrossed House Bill 3020 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: Baldwin—1.

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. 3020) passed.

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

Eng. House Bill 3020—A Bill to amend and reenact §18B-5-3 of the Code of West Virginia, 1931, as amended, relating to the authority of the Higher Education Policy Commission, the Council for Community and Technical College Education, and institutional governing boards to enter into contracts for financial services; and providing for specified flexibility entering into agreements with certain affiliated nonprofit corporations.

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 3024, West Virginia Business Ready Sites Program.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3024) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3024) 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 2709, Relating to hunting licenses.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—26.

The nays were: Baldwin, Beach, Facemire, Ihlenfeld, Jeffries, Lindsay, Romano, and Woelfel—8.

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. 2709) 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 2709—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §1-7-1, §1-7-2, §1-7-3, and §1-7-4; and to amend and reenact §20-2-27 of said code, all relating generally to protecting the right to privacy and association of the citizens of West Virginia; creating the Protect Our Right to Unite Act; declaring legislative purpose; defining terms; providing that no public agency may require nonprofit entities to disclose donor information, subject to certain exceptions; providing that where the state or a public agency obtains donor information it may not be released, subject to certain exceptions; providing exemption from Freedom of Information Act requests; providing for redaction of donor information; providing exception for court orders; providing exception for discovery requests under certain conditions; providing civil remedies; providing for the payment of attorneys' fees and costs, and in certain circumstances, treble damages; and providing that the name, address, and other contact information of persons having obtained certain fishing and wildlife authorizations from the Division of Natural resources are exempt from the Freedom of Information Act.

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

On motion of Senator Takubo, at 12:17 p.m., the Senate recessed for 30 minutes.

The Senate reconvened at 1:12 p.m. and, at the request of Senator Lindsay, and by unanimous consent, returned to the second order of business and the introduction of guests.

At the request Senator Maynard, unanimous consent being granted, Senator Maynard announced a meeting of the committee of conference as to Engrossed Committee Substitute for Committee Substitute for Senate Bill 317 (*Authorizing three or more adjacent counties form multicounty trail network authority*).

Senator Sypolt announced a meeting of the committee of conference as to Engrossed Committee Substitute for Senate Bill 241 (*Permitting county court clerks scan certain documents in electronic form*).

The Senate again proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 622, Relating generally to regulation and control of financing elections.

On motion of Senator Takubo, 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:

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 §3-5-7 of this code or a municipal charter;

(B) Has filed a declaration of candidacy under §3-5-23 of this code;

(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” 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) “Caucus campaign committee” means a West Virginia House of Delegates or Senate political party caucus campaign committee that receives contributions and makes expenditures to support or oppose one or more specific candidates or slates of candidates for nomination, election, or committee membership.

~~(6)~~ (7) “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”.

~~(7)~~ (8) “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.

(A) A coordinated expenditure is a contribution for the purposes of this article.

(B) 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.

(9) “Coordinated expenditure” is an expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate’s committee and meeting the criteria provided in §3-8-9a of this code.

~~(8)~~ (10) “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)~~ (11) “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)~~ (12) “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)~~ (13) “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)~~ (14) (A) “Electioneering communication” means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or ~~published~~ publication 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~~ in which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election ~~at~~ in 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 a~~ caucus campaign 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 §3-8-5 of this code 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 ~~§3-8-2(b)~~ §3-8-2 of this code 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)~~ (15) "Expressly advocating" means any communication that:

(A) Uses phrases such as "vote for the Governor", "re-elect your Senator", "support the ~~Democratic~~ incumbent nominee 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, "reject the incumbent";

(B) ~~Communications of~~ Communicates 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)~~ (16) “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.

(17) “Financial transactions” means all 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.

(18) “Firewall” means a policy designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for a communication and those employees or consultants currently or previously providing services to a candidate, or to a committee supporting or opposing a candidate, clearly identified in the communication.

(19) “Foreign national” means the following:

(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.

(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).

~~(15) (20) “Fund-raising event” or “fundraiser” 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.~~

(21) “In concert or cooperation with or at the request or suggestion of” means that a candidate or his or her agent consulted with:

(A) The sender regarding the content, timing, place, nature, or volume of a particular communication or communication to be made; or

(B) A person making an expenditure that would otherwise offset the necessity for an expenditure of the candidate or candidate’s committee.

~~(16) (22) “Independent expenditure” means an expenditure by a person:~~

~~(A) Expressly advocating the election or defeat of a clearly identified candidate, including supporting or opposing the candidates of a political party; 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.

(23) “Local” refers to the election of candidates to a city, county, or municipal office and any issue to be voted on by only the residents of a particular political subdivision.

~~(17)~~ (24) “Mass mailing” means a mailing by United States mail, facsimile, or electronic mail of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30 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)~~ (25) “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.

~~(19)~~ (26) “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)~~ (27) “Person” means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

~~(21)~~ (28) “Political action committee” means a committee organized by one or more persons, ~~for the purpose of supporting or opposing~~ the primary purpose of which is to support or oppose 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) of~~ in this section;

(B) A membership organization, as that term is defined ~~by subdivision (18) of~~ in this section; and

(C) An unaffiliated political action committee, as that term is defined ~~by subdivision (29) of~~ in this section.

~~(22)~~ (29) “Political committee” means any candidate committee, political action committee, or political party committee.

~~(23)~~ (30) “Political party” means a political party as that term is defined by §3-1-8 of this code 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)~~ (31) “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)~~ (32) “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)~~ (33) “Targeted to the relevant electorate” means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more individuals in the district in the

case of a candidacy for the State Senate, and 2,410 or more individuals in the district in the case of a candidacy for the House of Delegates.

~~(27)~~ (34) “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)~~ (35) “Unaffiliated political action committee” means a political action committee that is not affiliated with a corporation or a membership organization.

~~§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, 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. 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)~~ (a) 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, according to the requirements of §3-8-5 of this code, on a form prescribed by

~~the Secretary of State~~, that contains all of the following information:

(1) The name of ~~(i)~~ the person making the expenditure;

~~(ii)~~ (2) The name of any person sharing or exercising direction or control over the activities of the person making the expenditure; ~~and~~

~~(iii)~~ (3) The name of the custodian of the books and accounts of the person making the expenditure;

~~(B)~~ (4) If the person making the expenditure is ~~not an individual~~ an entity, the principal place of business of the partnership, corporation, committee, association, organization, or group which made the expenditure;

~~(C)~~ (5) The amount of each independent 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)~~ (6) 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)~~ subdivision (5) of this subsection spent to support or oppose each of the identified candidates;

~~(E)~~ (7) 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 contributions were made for the purpose of furthering the expenditure;

~~(F)~~ (8) With regard to the contributors required to be listed pursuant to ~~paragraph (E)~~ subsection (7) of this subdivision the statement shall also include:

~~(i)~~ (A) The month, day, and year that the contributions of any single contributor exceeded \$250;

(ii) (B) 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) (C) 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) (D) A description of the contribution, if other than money; and

(v) (E) The value in dollars and cents of the contribution; and

~~(G)(1)~~ (9) A certification that such independent expenditure was not made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

~~(2)~~ (b) 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)~~ (c) 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~~ shall periodically ~~publishing~~ publish such indices on a timely pre-election basis.

~~(e)~~ (d)(1) ~~A person, including a political committee, who~~ Any person or political committee that makes or contracts to make independent expenditures aggregating ~~\$1,000~~ \$5,000 or more for any statewide, legislative, or multicounty judicial candidate or \$500 or more for any county office candidate, 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 15th day, but more than 12 hours, before the date of an election, shall file a report on a form prescribed by the Secretary of State, describing the expenditures within 24 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 15th day but more than 12 hours before the day of any election meeting the criteria of this section, but which are subject to the disclosure requirements of §3-8-2b of this code, shall report such expenditures in accordance with the requirements of §3-8-2b of this code and shall ~~may not file an additional report as provided herein~~ the report otherwise required by this subsection.

(2) Any person who files a report under subdivision (1) of this subsection, shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating ~~\$1,000~~ an additional \$5,000 or more for any statewide, legislative, or multicounty judicial candidate or 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)~~ (e) (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 15th day before the date of an election, shall file a report on a form prescribed by the Secretary of State, describing the expenditures within 48 hours.

(2) ~~A~~ Any person who files a report under subdivision (1) of this subsection ~~the person~~ shall file an additional report within 48 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)~~ (f) 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: *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)~~ (g) 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~~ five years following the filing of a disclosure pursuant to ~~subsection (a) of this section §3-8-2b of this code~~ 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 §3-8-7 of this code.

~~(g)~~ (h) 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)~~ (i)(1) Any person or political committee who is required to file a statement under this section ~~may~~ shall file the statement ~~by facsimile device or electronic mail~~ electronically 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 24 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) (j) This section does not apply to candidates for federal office.

(j) (k) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter 29A of this code, to establish guidelines for the administration of this section.

§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 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), 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 committee for a 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, or any circuit judgeship, unless a written statement of organization 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 political committee ~~or as financial agent for any candidate~~ advocating for candidates to be nominated or elected by the voters of a county or a district therein, except legislative and circuit judge candidates, ~~or as the financial agent for a candidate for the nomination or election to any other office~~, unless a written statement of organization designating him or her as the treasurer ~~or financial agent~~ is filed with the clerk of the county commission ~~or the Secretary of State~~, ~~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) Prior to engaging in any activity, a political committee shall file a statement of organization required by subsection (a) of this section. A statement of organization form required by this section shall be certified as accurate and true and signed by the treasurer and the chairman of the committee, and shall include the following information:

(1) The name of the political committee;

(2) The name of the treasurer;

(3) The mailing address, telephone number, and e-mail address of the committee;

(4) The mailing address, telephone number, and e-mail address of the treasurer, if different from the committee information;

(5) The name of the chairman of the committee;

(6) The affiliate organization, if any;

(7) The type of political committee, as determined by the description of types of committees included in the definitions of “political committee” and “political action committee” in §3-8-1a of this code; and

(8) Whether the committee will participate in statewide or local elections.

~~(d)~~ (e) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a filing designating a treasurer for a state, ~~or~~ county, or municipal political ~~executive~~ committee may be made any time before the committee either accepts or spends funds. Once a designation is made by a state, ~~or~~ county, or municipal political ~~executive~~ committee, no additional designations are required under this section until a successor treasurer is designated.

(f) A state, ~~or~~ county, or municipal political ~~executive~~ committee may terminate a designation made pursuant to this section by making a written request to terminate the designation on a form prescribed by the Secretary of State and by stating in the request filing a report of financial information required in §3-8-5 of this code, indicating that the political committee has no funds or debts 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.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Record-keeping requirements. —

(1) Except for candidates for party committeeman and committeewoman, all candidates for nomination or election to state or local offices and all persons supporting, aiding, or opposing the nomination, election, or defeat of any such candidate shall keep, for a period of two years, records of receipts and expenditures which are made for political purposes.

(2) Every candidate, or treasurer, ~~person and association of persons, organization of any kind, including every corporation,~~

~~directly, or by an independent expenditure, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), 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, or 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.~~

(3) A person that is not a political committee and makes independent expenditures or electioneering communications must keep detailed accounts of every sum of money or other thing of value received by him or her for the purpose of furthering any independent expenditure or electioneering communication and of all disbursements made for independent expenditures or electioneering communications.

(b) *Financial reporting requirements.* —

~~(1) Every person or association of persons 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 exceeds \$500;~~

~~(2) Of all financial transactions which have taken place before the fifteenth 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 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. required to keep detailed accounts under subsection (a) of this section shall file a detailed, itemized sworn statement, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:~~

(A) On April 1 of each year, the person shall file a statement of all financial transactions dating from January 1 to March 31 of the same year, to be filed within six days thereafter;

(B) On July 1 of each year, the person shall file a statement of all financial transactions dating from April 1 to June 30 of the same year, to be filed within six days thereafter;

(C) On October 1 of each year, the person shall file a statement of all financial transactions dating from July 1 to September 30 of the same year, to be filed within six days thereafter; and

(D) On January 1 of each year, the person shall file a statement of all financial transactions dating from October 1 to December 31 of the previous year, to be filed within six days thereafter.

(2) In addition to the statements required in subdivision (1) of this section, a candidate or candidate's committee shall file detailed itemized sworn statements, as prescribed in §3-8-5a and §3-8-5b of this code, according to the following schedule:

(A) On the 15th day preceding the primary election in which a candidate is on the ballot, the candidate or committee shall file a statement of all financial transactions subsequent to the previous statement, if any, to be filed within four business days after the 15th day; and

(B) On the 15th day preceding the general election in which a candidate, including an official write-in candidate, is on the ballot, the candidate or committee shall file a statement of all financial transactions subsequent to the previous statement, if any, to be filed within four business days after the 15th day.

(c) A person required to file reports pursuant to 52 U.S.C. §30104 is exempt from the requirements of subsection (b) of this section but is not exempt from the state-level electioneering communication reports requirements in §3-8-2b of this code or the independent expenditure reporting requirements in §3-8-2 of this code.

(d) Every person who ~~announces as a~~ is qualified as an official write-in candidate for any elective office ~~and his or her financial agent or election organization of any kind~~ shall individually, or by candidate committee, comply with all of the applicable 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 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.~~

~~(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of ~~article twenty one a, chapter nineteen §19-21A-1 et seq.~~ of this code are required to file only the reports required by ~~subdivisions (2) and (3), paragraph (A), subdivision (2),~~ 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~~ applicable general election that is held concurrently with the state's primary election.~~

§3-8-5b. Where financial statements and reports 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, and 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 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 statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, and Supreme Court of Appeals, shall be filed electronically by the means of an Internet program that has been established by the Secretary of State on forms or in a format prescribed by the Secretary of State: *Provided*, That after January 1, 2018, unless a committee has been granted an exemption in case of hardship pursuant to subsection (c) of this section, all such statements required to be filed with the Secretary of State, on or behalf of a candidate for any elective office, shall be filed electronically by means of the internet program that has been established by the Secretary of State.~~

(1) The following statements or reports shall be filed electronically, in a manner prescribed by the Secretary of State:

(A) Financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, State Senate, House of Delegates, Supreme Court of Appeals, circuit judge, or family court judge;

(B) Financial statements filed by political committees;

(C) Electioneering communication reports; and

(D) Independent expenditure reports.

(2) If through or by no fault of the candidate, the candidate is unable to file the campaign financial statement, the candidate shall then file said statement in person, via facsimile or other electronic means of transmission, or by certified mail postmarked at the first reasonable opportunity.

(e) (3) 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.

(c) Candidates for all offices not identified in subsection (b) of this section, may file financial statements by mail, in person, by facsimile, or by 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 that office.

(e) (d) 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 10 business days from the date the financial statement is filed.

§3-8-5c. Contribution limitations.

(a) (1) A person, political party, or political action committee may not, in an election cycle:

(A) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking nomination, including by making contributions to the candidate's committee; or

(B) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking election, including

by making contributions to the candidate's committee: *Provided, That a candidate may receive contributions for the general election prior to nomination, however, such funds may not be expended until after the date of the nomination is declared.*

(2) The contribution limits 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.

(b) A person may not, directly or indirectly, make contributions to a state party executive committee, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee which, in the aggregate, exceed \$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 subsection 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 may not be binding on the entity that receives the contribution.**

(c) A person may not, directly or indirectly, make contributions to a political action committee, related to a particular election, which, in the aggregate, exceed \$5,000.

§3-8-5e. Precandidacy financing and expenditures.

(a) Notwithstanding any other provisions of this code, it is lawful for a person, otherwise qualified to be a candidate for any public office or position to be determined by public election, to receive contributions or make expenditures, or both personally or by another individual acting as a treasurer, to determine the advisability of becoming such a candidate or preparing to be such a candidate: *Provided, That such contributions may be received and such expenditures made only during the four years immediately preceding the term for which such person may be a candidate or during the term of office immediately preceding the term for which such person may be a candidate, whichever is less: *Provided, however, That no person is disqualified from receiving contributions or making expenditures as permitted under the**

provisions of this section solely because such person then holds a public office or position.

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, ~~shall name~~ shall designate himself or another individual to act as a treasurer and shall file a designation of treasurer in the manner provided in §3-8-4 of this code before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of treasurer shall be reported in accordance with the provisions of ~~this section~~ §3-8-5 of this code, regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or herself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of value received by him or her, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by §3-8-5 of this code. ~~for the period prior to the date of filing for candidacy for the office he is considering seeking. Any person who has received contributions or made expenditures subject to the provisions of this section shall file annually on the last Saturday in March or within six days thereafter preceding the election at which the names of candidates would appear on the ballot for the public office or position which the person originally considered seeking, a detailed itemized statement setting forth all contributions received and expenditures made pursuant to the provisions of this section concerning the candidacy of that person. If the person on whose behalf such contributions are received or expenditures are made becomes a candidate for any office or position to be decided at such election then the itemized statement shall be included within the first statement required to be filed by the provisions of section five of this article. If such person does not become a candidate for any office or position to be decided at such election, then the detailed itemized statements required by this subsection shall be the only statements required to be filed by such person.~~

(d) Regardless of whether such person becomes a candidate as originally intended, ~~or~~ becomes a candidate for some office other than the office or position originally intended, or does not become a candidate, all limits on campaign contributions and campaign expenditures applicable to the candidacy of or advocacy of the candidacy of such person for the office he or she actually seeks, shall be applicable to and inclusive of the receipts had and expenditures made during such precandidacy period as well as after the person becomes a candidate.

§3-8-5g. Prohibition on political contributions and expenditures by foreign nationals.

(a) A foreign national may not, directly or indirectly, make:

(1) A contribution or donation, or an express or implied promise to make a contribution or donation, to a candidate's committee, a political committee, or a political party; or

(2) An independent expenditure or any disbursement for an electioneering communication related to a state or local election.

(b) A person may not solicit, accept, or receive a contribution or donation described in subsection (a) of this section.

§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 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. Sixty days after any primary or other election, the Secretary of State, 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 collectable 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 persons required to file statements with the Secretary of State who file statements after the deadline in an election cycle. This list shall be maintained and be publicly available online to include late activity for, at a minimum, the previous five years up 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 §29A-3-1 *et seq.* of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) (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 84th day before the general election, is disqualified and may not have his or her name appear on the general election ballot. The provisions of §3-8-5b(d) of this code notwithstanding, any sworn statement filed after the deadline required by §3-8-5 of this code must be received in the office indicated by §3-8-5b(a) of this code by the close of business on the 84th 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 any sworn statement 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 the statement.

(3) The vacancy on the ballot created by the disqualification in this subsection is subject to §3-5-19 of this code.

(d) As used in this section, “grossly” means substantive and material, and specifically includes false or misleading representations and acts of omissions.

(e) The Secretary of State shall provide by rule protocols for written notice via certified mail, return receipt requested, to the person, candidate, financial agent, or treasurer of a political party committee that is not in compliance with the requirements of this section. With respect to a violation of subsection (c) of this section, the notice shall be provided 60 days after any primary or other election.

§3-8-8. Corporation 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 committee 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 any 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 committee 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 member ~~and members of their families or their family members~~ 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 a 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~~ or its 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 §3-8-5c of this code 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; or

(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)~~ (e) 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 §29A-3-1 et seq.~~ 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~~ 52 U.S.C. §30118.

(f) In addition to the powers and duties set forth in §3-1A-1 et seq. of this code, 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, upon determining that a reason to believe that a violation has occurred, 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 the Legislature, 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.~~

§3-8-9. 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 actually employed therein~~ employees;

(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 actually employed~~ employees;

(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~~ may 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~~ may 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 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) For the purchase of memorials, flowers, or citations by political party executive committees or political action committees representing a political party;

(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within 30 days thereafter;

(14) For the payment of dues or subscriptions to any national, state, or local committee of any political party;

(15) For contributions to a county party executive committee, state party executive committee, or a ~~state party legislative caucus political committee~~ caucus campaign committee; ~~and~~

(16) 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 may involve any coordination between the candidate and the political party committee without being considered as a contribution;

(17) 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;

(18) For payment for food and drink for campaign-related purposes;

(19) For the payment of any required filing 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; and

~~(16)~~ (20) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by §3-8-10 of this code.

(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 §3-8-5a of this code, the financial statements required by §3-8-5 of this code 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~~ §3-8-4 of this code.

§3-8-9a. Coordinated expenditures.

(a) Except as provided in §3-8-9b of this code, a coordinated expenditure is considered to be a contribution and is subject to all requirements for contributions contained in this article.

(b) An expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate's committee is a coordinated expenditure if the communication resulting from the expenditure is paid for, in whole or in part, by a person other than the candidate, candidate committee, or party committee, and one of the following circumstances exists:

(1) The communication is created, produced, distributed, or undertaken at the request or suggestion of a candidate, candidate committee, or party committee.

(2) The candidate, candidate committee, or party committee is involved in the creation, production, or distribution of the communication, or has had discussions about the communication with any person or the agents of a person who has paid for or played a role in the creation, production, or distribution of the communication: *Provided*, That this paragraph does not apply if the information or materials used in the creation, production, distribution, or undertaking of the communication was obtained from a publicly available source.

(3) Any person involved in the creation, production, or distribution of the communication has, in the four months preceding the date on which the expenditure is made, been an employee or vendor of campaign services for the candidate, candidate committee, or party committee.

(c) An expenditure is not a coordinated expenditure, based solely on any of the following circumstances:

(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) A candidate endorses another candidate;

(3) 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; or

(4) 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.

(d)(1) An expenditure otherwise meeting the description of a coordinated expenditure contained in subdivision (3), subsection (b) of this section, is not a coordinated expenditure if the commercial vendor, former employee, or political committee at issue has established and implemented a firewall that meets the following requirements:

(A) The firewall is 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 a committee supporting or opposing a candidate, clearly identified in the communication; and

(B) The firewall is described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy.

(2) A communication does not qualify for the exemption contained in this subsection if, despite the firewall, information subject to the firewall concerning a candidate, candidate's committees, or a party committee's campaign plans, projects, activities, or needs that are material to the creation, production, or distribution of the communication is used or conveyed to the person paying for the communication.

(e) Any communication that results from a coordinated expenditure must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate, the candidate committee, or the party committee with which it was coordinated.

§3-8-9b. Coordinated expenditures by political party committees and political party caucuses in connection with certain statewide candidates.

(a) Notwithstanding the provisions of §3-8-9a of this code, the state committee of a political party and caucus campaign committee may make coordinated expenditures in an amount not to exceed \$5,000 in connection with the general election campaign of the candidate for each of the following offices: Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate, and House of Delegates.

(b) Any communication that results from a political expenditure and is made in coordination with a state committee of a political party and caucus campaign committee must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate or candidate's committee with whom it was coordinated.

§3-8-9c. Joint fundraising.

(a) Political committees may engage in joint fundraising efforts with other political committees or with committees registered with

the Federal Election Commission pursuant to a written joint fundraising agreement.

(b) A written joint fundraising agreement must be filed with the Secretary of State and must provide terms for the allocation of fundraising proceeds between or among political committees engaging in the joint fundraising effort. The Secretary of State shall post all joint fundraising agreements on the Internet within 10 business days from the date the agreement is filed.

(c) Any person soliciting funds for a joint fundraising effort shall disclose, in making or publishing solicitations, the name of all political committees involved in the joint fundraising effort and how any proceeds, including any contributions, will be allocated between or among such committees.

(d) A person, not otherwise prohibited by this article from making contributions, may make a contribution to a joint fundraising effort subject to the contribution limits in §3-8-5c of this code.

(e) The State Election Commission shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, to provide requirements for written joint fundraising agreements and to implement the provisions of this section consistently, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission in 11 C.F.R. §102.17.

§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; limitations on contributions; 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 §3-8-8 of this code, 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 §3-8-8 of this code,~~ A person may not, directly or indirectly, make any contribution in excess of the ~~value of \$1,000~~ amounts permitted by §3-8-5c of this code, 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) (g)~~ 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)~~ committee with the intent to avoid or evade the contribution limitations contained in ~~subsection (g) of this section~~ this article.

(i) ~~(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~~ campaign committee which, in the aggregate, ~~exceed the value of \$1,000 in any calendar year~~ are in excess of the amounts permitted by §3-8-5c of this code 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 a caucus~~ political campaign committee, ~~from and a~~ 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 or refraining from 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) (k) 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)~~ (l) 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 subdivision 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)~~ (m) 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) 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) 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.~~

On motion of Senator Takubo, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 622) 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 Senate Bill 622—A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-9, and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §3-8-5c, 3-8-5g, §3-8-9a, §3-8-9b, and

§3-8-9c, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying requirements for information to be included in independent expenditure reports; providing that persons or committees required to file federal expenditure reports are not exempt from requirement to file state-level expenditure and electioneering disclosure reports; raising the threshold amounts for required disclosure of independent expenditures occurring within a certain time frame preceding elections; requiring electronic filing of certain financial disclosure statements; requiring that certain records and receipts related to expenditures for electioneering communications be maintained for five years; removing the deadline before an election for a political action committee or political party committee to file a statement of organization; clarifying that a political committee must file a statement of organization before engaging in any activity; specifying information to be included in a statement or organization; modifying record-keeping requirements for certain receipts and expenditures made for political purposes and requiring that records be maintained for a period of two years; modifying deadlines for financial disclosure reports; providing that candidates for certain offices must file financial disclosure statements electronically and candidates for other offices may file by mail, facsimile, or electronic means; modifying limits on contributions to candidates and candidate committees; modifying limits on contributions to state party executive committees and legislative caucus campaign committees; modifying limits on contributions to political action committees; providing that precandidates may accept contributions for a general election campaign prior to nomination, but may not expend such funds until after nomination is declared; providing that persons receiving precandidacy contributions are subject to certain expenditure reporting requirements; prohibiting foreign nationals from making contributions or donations to candidates, committees, and parties, and prohibiting receipt of a contribution or donation by a foreign national; modifying daily rate of civil penalty for persons filing late, inaccurate, or incomplete financial statements and making such penalty mandatory; requiring the Secretary of State to publish an online list of persons filing late financial statements; providing that membership organizations are subject to certain limitations

applying to corporate contributions and solicitation of contributions by corporations; adding certain expenses to the list of permissible expenses of political committees; providing that coordinated expenditures are treated as contributions; providing criteria for whether an expenditure is coordinated and exceptions thereto; permitting political party committees and legislative caucus campaign committees to make coordinated expenditures up to certain limits in connection with certain state-level candidates; permitting political committees to engage in joint fundraising efforts pursuant to a written agreement filed with the Secretary of State subject to certain requirements; requiring the State Election Commission to promulgate legislative rules pertaining to joint fundraising efforts; permitting unlimited transfers of money between and among state party executive committees, legislative caucus campaign committees, and national committees of the same political party for voter registration and get-out-the-vote initiatives; providing that prohibition against intimidating or coercing certain government employees into engaging in political activity also extends to intimidating or coercing employees into refraining from political activity; eliminating prohibition on a political organization organized under Section 527 of the Internal Revenue Code from soliciting or accepting donations before registering with the Secretary of State; providing that it is unlawful for any person to establish more than one political committee with the intent to evade contribution limitations; and deleting obsolete language.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 622, as amended, was then put upon its passage.

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

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

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. 622) 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.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 632,
Improving student safety.

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

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

On page one, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

§18-5-48. Safety and security measures for school facilities;
Safe Schools Fund created.;

On page two, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

§18-20-11. Video cameras required in certain special education
classrooms.;

On page two, section eleven, line three, by striking out the word “A” and inserting in lieu thereof the words “Upon appropriation of funds by the Legislature, a”;

On page five, section eleven, lines seventy-two and seventy-three, by striking out all of subdivision (2);

And by renumbering the remaining subdivisions;

On page seven, section eleven, lines one hundred nine through one hundred twelve, by striking out all of subsection (q) and inserting in lieu thereof a new subsection, designated subsection (q), to read as follows:

(q) (1) A public school or school district may use funds distributed from the Safe Schools Fund created in §18-5-48 of this code to meet the requirements of this section.

(2) A public school or school district may accept gifts, grants, or donations to meet the requirements of this section.;

On page eight, by striking out all of section six and inserting in lieu thereof a new section, designated section six, to read as follows:

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

(a) The state superintendent may, after 10 days' notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the

teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: *Provided further*, That a teacher, as defined by West Virginia Code §18-1-1(g), convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, any criminal offense that requires the teacher to register as a sex offender, or any criminal offense which has as an element delivery or distribution of a controlled substance, shall have his or her certificate or license automatically revoked. Should the conviction resulting in automatic revocation pursuant to this section be overturned by any Court of this State or the United States, the teacher's certification shall be reinstated unless otherwise prohibited by law.

(b) It shall be the duty of Any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section to shall report the same this, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent's judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent has authority to may recall the certificate and make such corrections as will conform to the requirements of law and the state board.;

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 632—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-48; to amend said code by adding thereto a new section, designated §18-20-11; to amend and reenact §18A-2-8 of said code; and to amend and reenact §18A-3-6 of said code, all relating to improving student safety; requiring safety and

security measures of each school facility be upgraded when necessary to ensure, to the best of the county board's ability, the safety of students; creating Safe Schools Fund and providing for distribution of funds subject to appropriation; requiring video cameras capable of audio recording in certain public special education classrooms upon appropriation of funds; prohibited monitoring in certain areas; providing for notice of placement; setting requirements video retention and access; immunity from liability not waived and liability not created; limitations on use of video; protection of confidentiality and identity of students not involved in incident; allowing appeals to state board; permitting funding from Safe School Fund and gifts, grants or donations; authorizing state board rule; adding to justifications for which a school employee may be suspended or dismissed; providing duty and authority to provide safe and secure environment; requiring reports on suspensions and dismissals of employees and database maintained by state superintendent of individuals suspended or dismissed for certain reasons; and adding to justifications for which a teacher's certificate shall be automatically and reinstated should conviction be overturned.

On motion of Senator Rucker, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for Com. Sub. for S. B. 632) were reported by the Clerk, considered simultaneously, and adopted:

On page five, section eleven, subsection (k), by inserting a new subdivision, designated subdivision (2), to read as follows:

“(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district;”;

And by renumbering the remaining subdivisions;

On page eight, section eight, after subsection (e), by striking out the remainder of the bill;

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 632—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-48; to amend said code by adding thereto a new section, designated §18-20-11; and to amend and reenact §18A-2-8 of said code, all relating to improving student safety; requiring safety and security measures of each school facility be upgraded when necessary to ensure, to the best of the county board's ability, the safety of students; creating Safe Schools Fund and providing for distribution of funds subject to appropriation; requiring video cameras capable of audio recording in certain public special education classrooms upon appropriation of funds; designating principal as the custodian; requiring written explanation if there is an interruption in the operation of the video camera; setting forth required capabilities of the video camera; prohibited monitoring in certain areas; allowing video camera to not be in operation when students not present; providing for notice of placement; setting forth video retention and access requirements; providing that immunity from liability not waived and liability not created; providing limitations on use of video; providing for protection of confidentiality and identity of students not involved in incident; allowing appeals to state board; permitting funding from Safe School Fund and gifts, grants or donations; authorizing state board rule; adding to justifications for which a school employee may be suspended or dismissed; providing duty and authority to provide safe and secure environment; requiring reports on suspensions and dismissals of employees and database maintained by state superintendent of individuals suspended or dismissed for certain reasons.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 632, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—30.

The nays were: Facemire, Lindsay, Romano, and Stollings—4.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 632) passed with its Senate amended title.

Senator Takubo moved that the bill take effect July 1, 2019.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—30.

The nays were: Facemire, Lindsay, Romano, and Stollings—4.

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. 632) takes effect July 1, 2019.

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. Senate Bill 665, Allowing for expedited oil and gas well permitting.

On motion of Senator Takubo, 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:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the secretary a well work permit pursuant to this article.

(b) Every permit application filed under this section shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain the following information:

(1) The names and addresses of: (A) The well operator; (B) the agent required to be designated under subsection (k) of this section; and (C) every person whom the applicant shall notify under any section of this article, together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The names and addresses of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is not yet operating the coal seams;

(3) The number of the well or other identification the secretary may require;

(4) The well work for which a permit is requested;

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled;

the proposed angle and direction of the well; the actual depth or the approximate depth at which the well to be drilled deviates from vertical, the angle, and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

(6) Each formation in which the well will be completed if applicable;

(7) A description of any means used to stimulate the well;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an existing well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(10) If the proposed well work is to plug or replug the well, all information necessary to demonstrate compliance with the legislative rules promulgated by the secretary in accordance with §22-6A-13 of this code;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator

shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to §15-5A-7 of this code for the emergency planning district in which the well work will occur at least seven days before commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that: (A) It has provided the owners of the surface described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a) of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing by the surface owner; and

(15) Any other relevant information which the secretary may reasonably require.

(c)(1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from time to time amended by the department. The erosion and sediment control plan shall become part of the terms and conditions of any well work permit that is issued pursuant to this article and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this code.

(2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the erosion and sediment control plan submitted in accordance with this section shall be certified by a registered professional engineer.

(d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the operator shall

submit a site construction plan that shall be certified by a registered professional engineer and contains information that the secretary may require by rule.

(e) In addition to the other requirements of this section, if the drilling, fracturing, or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for a well work permit shall include a water management plan, which may be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

(1) The type of water source, such as surface or groundwater, the county of each source to be used by the operation for water withdrawals and the latitude and longitude of each anticipated withdrawal location;

(2) The anticipated volume of each water withdrawal;

(3) The anticipated months when water withdrawals will be made;

(4) The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation, and production activities;

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by §22-6A-5(a)(14) of this code;

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;

(B) For surface waters, a demonstration, using methods acceptable to the secretary, that sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use of the stream is preserved immediately downstream of the point of withdrawal; and

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(f) An application may propose and a permit may approve two or more activities defined as well work; however, a separate permit shall be obtained for each horizontal well drilled.

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

(h)(1) An applicant may enter into an expedited permit application process with the secretary for a well permit and pay an additional expedited permit fee of \$10,000 for the initial horizontal well drilled at a location and an additional expedited permit fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location; *Provided*, That deep well permitting is excluded from this expedited permit process due to the independent board review and approval requirement which is outside the secretary's control.

(2) Upon entering into an expedited permit process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit

application under this article, unless the secretary seeks additional information or modification from the applicant, which would toll the 45 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an expedited initial horizontal well drilled, the secretary shall refund \$666.66 per day up to and including day 60 after the submission of a permit application until the expedited fee is reduced to the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited permit for any additional horizontal well drilled on a single well pad at the same location, the secretary shall be required to refund \$333.33 per day up to and including day 60 after the submission of a permit application, until the expedited fee is reduced to the normal permit fee amount.

(4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed \$1,000,000 annually in combination with proceeds received through §22-6A-7(i)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(h)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the additional expedited permit fee, plus any residuary as set forth in §22-6A-7(h)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(i)(1) An applicant may enter into an expedited permit modification application process with the secretary for a well permit and pay an expedited permit modification fee of \$5,000 for the modification of the permit for any horizontal well drilled at a location. *Provided*, That deep well permit modifications are

excluded from this expedited permit modification process if the modification is subject to independent board review and approval.

(2) Upon entering into an expedited permit modification process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the submission of a permit modification application under this article, unless the secretary seeks additional information or further modification from the applicant, which would toll the 20 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds the 20-day deadline for approval or denial of an expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and including day 30 after the submission of an expedited permit modification application, until the expedited permit modification fee of \$5,000 is reduced to zero.

(4)(A) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed \$1,000,000 annually in combination with proceeds received through §22-6A-7(h)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(i)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the expedited permit modification fee, plus any residuary as set forth in §22-6A-7(i)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code, which remains at the end of any state

fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account as indicated and may be used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

~~(h)~~ (k) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders, or other communications issued pursuant to this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

~~(i)~~ (l) The well owner or operator shall install the permit number as issued by the secretary and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications, and manner of installation shall be in accordance with the rules of the secretary.

~~(j)~~ (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the action necessary. In that case the secretary may issue an emergency permit which is effective for not more than 30 days, unless reissued by the secretary.

~~(k)~~ (n) The secretary shall deny the issuance of a permit if the secretary determines that the applicant has committed a substantial violation of a previously issued permit for a horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this article,

and in each instance has failed to abate or seek review of the violation within the time prescribed by the secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the rules promulgated hereunder, which time may not be unreasonable.

(H) (o) If the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The secretary shall make a written finding of any such determination.

(M) (p) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500. Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to subdivision (13), subsection (b) of this section.

On motion of Senator Smith, the following amendment to the House of Delegates amendment to the bill (Eng. S. B. 665) was reported by the Clerk:

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

**ARTICLE 6A. NATURAL GAS HORIZONTAL WELL
CONTROL ACT.**

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the secretary a well work permit pursuant to this article.

(b) Every permit application filed under this section shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain the following information:

(1) The names and addresses of: (A) The well operator; (B) the agent required to be designated under subsection (k) of this section; and (C) every person whom the applicant shall notify under any section of this article, together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The names and addresses of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is not yet operating the coal seams;

(3) The number of the well or other identification the secretary may require;

(4) The well work for which a permit is requested;

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or the approximate depth at which the well to be drilled deviates from vertical, the angle, and direction of the nonvertical well bore until

the well reaches its total target depth or its actual final depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

(6) Each formation in which the well will be completed if applicable;

(7) A description of any means used to stimulate the well;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an existing well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(10) If the proposed well work is to plug or replug the well, all information necessary to demonstrate compliance with the legislative rules promulgated by the secretary in accordance with §22-6A-13 of this code;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to §15-5A-7 of this code for the emergency planning district in which the

well work will occur at least seven days before commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that: (A) It has provided the owners of the surface described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a) of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing by the surface owner; and

(15) Any other relevant information which the secretary may reasonably require.

(c)(1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from time to time amended by the department. The erosion and sediment control plan shall become part of the terms and conditions of any well work permit that is issued pursuant to this article and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this code.

(2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the erosion and sediment control plan submitted in accordance with this section shall be certified by a registered professional engineer.

(d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the operator shall submit a site construction plan that shall be certified by a registered

professional engineer and contains information that the secretary may require by rule.

(e) In addition to the other requirements of this section, if the drilling, fracturing, or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for a well work permit shall include a water management plan, which may be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

(1) The type of water source, such as surface or groundwater, the county of each source to be used by the operation for water withdrawals and the latitude and longitude of each anticipated withdrawal location;

(2) The anticipated volume of each water withdrawal;

(3) The anticipated months when water withdrawals will be made;

(4) The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation, and production activities;

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by §22-6A-5(a)(14) of this code;

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;

(B) For surface waters, a demonstration, using methods acceptable to the secretary, that sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use of the stream is preserved immediately downstream of the point of withdrawal; and

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(f) An application may propose and a permit may approve two or more activities defined as well work; however, a separate permit shall be obtained for each horizontal well drilled.

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

(h)(1) An applicant may enter into an expedited permit application process with the secretary for a well permit and pay an additional expedited permit fee of \$30,000 for the initial horizontal well drilled at a location and an additional expedited permit fee of \$15,000 for each additional horizontal well drilled on a single well pad at the same location; *Provided*, That deep well permitting is excluded from this expedited permit process due to the independent board review and approval requirement which is outside the secretary's control.

(2) Upon entering into an expedited permit process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit

application under this article, unless the secretary seeks additional information or modification from the applicant, which would toll the 45 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an expedited initial horizontal well drilled, the secretary shall refund \$2,000 per day up to and including day 60 after the submission of a permit application until the expedited fee is reduced to the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited permit for any additional horizontal well drilled on a single well pad at the same location, the secretary shall be required to refund \$1,000 per day up to and including day 60 after the submission of a permit application, until the expedited fee is reduced to the normal permit fee amount.

(4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed \$1,000,000 annually in combination with proceeds received through §22-6A-7(i)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(h)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the additional expedited permit fee, plus any residuary as set forth in §22-6A-7(h)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(i)(1) An applicant may enter into an expedited permit modification application process with the secretary for a well permit and pay an expedited permit modification fee of \$5,000 for the modification of the permit for any horizontal well drilled at a location. *Provided*, That deep well permit modifications are

excluded from this expedited permit modification process if the modification is subject to independent board review and approval.

(2) Upon entering into an expedited permit modification process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the submission of a permit modification application under this article, unless the secretary seeks additional information or further modification from the applicant, which would toll the 20 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds the 20-day deadline for approval or denial of an expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and including day 30 after the submission of an expedited permit modification application, until the expedited permit modification fee of \$5,000 is reduced to zero.

(4)(A) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed \$1,000,000 annually in combination with proceeds received through §22-6A-7(h)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(i)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the expedited permit modification fee, plus any residuary as set forth in §22-6A-7(i)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code, which remains at the end of any state

fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account as indicated and may be used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

~~(h)~~ (k) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders, or other communications issued pursuant to this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

~~(i)~~ (l) The well owner or operator shall install the permit number as issued by the secretary and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications, and manner of installation shall be in accordance with the rules of the secretary.

~~(j)~~ (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the action necessary. In that case the secretary may issue an emergency permit which is effective for not more than 30 days, unless reissued by the secretary.

~~(k)~~ (n) The secretary shall deny the issuance of a permit if the secretary determines that the applicant has committed a substantial violation of a previously issued permit for a horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this article,

and in each instance has failed to abate or seek review of the violation within the time prescribed by the secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the rules promulgated hereunder, which time may not be unreasonable.

(~~h~~) (o) If the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The secretary shall make a written finding of any such determination.

(~~m~~) (p) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500. Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to subdivision (13), subsection (b) of this section.

Following discussion,

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

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Senate Bill 665, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 665) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 665) 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 amendment by that body, passage as amended with its House of Delegates amended title, to take effect July 1, 2019, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 543, Relating generally to automobile warranties and inspections.

On motion of Senator Takubo, 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:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-107a. Used motor vehicles sold “as is”.

(a) Notwithstanding the provisions of §46A-6-107 of this code, a used motor vehicle may be sold “as is” if:

(1) The vehicle is inoperable and a total loss;

(2) The vehicle has been custom built or modified for show purposes or racing; or

(3) The vehicle is the following:

(A) Sold for less than \$4,000;

(B) Driven more than 100,000 miles at the time sold; or

(C) Seven years of age or older as calculated from January 1 of the designated model year of the vehicle.

(b) A buyer who purchases a vehicle “as is” that meets the criteria set out in the provisions of §46A-6-107a(a)(3) of this code shall have the right to cancel the sale by the end of the dealer’s third

business day following the sale. To cancel the sale, the “as is” vehicle must have a significant mechanical issue or issues that can be reasonably expected to have existed at the time of the sale. Cancellation shall become effective when the buyer returns the “as is” vehicle to the point of sale by the end of the dealer’s third business day following the sale.

(c) For the purposes of this section, a used motor vehicle is a “total loss” only if:

(1) There is material damage to the vehicle’s frame, unitized structure, or suspension system; and

(2) The projected cost of repairing the damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss.

(d) If a used motor vehicle is sold “as is” pursuant to this section, a merchant shall satisfy the following disclaimer requirements:

(1) A disclaimer must appear on the front page of the contract of sale;

(2) The disclaimer shall read as follows:

“AS IS”

THIS VEHICLE IS SOLD “AS IS”. THIS MEANS THAT YOU WILL LOSE YOUR IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS WE MUST KEEP OUR PROMISES EVEN IF WE SELL “AS IS”. TO PROTECT YOURSELF, ASK US TO PUT ALL PROMISES IN WRITING. YOU MAY HAVE THE RIGHT TO CANCEL THIS SALE BY THE END OF THE DEALER’S THIRD BUSINESS DAY FOLLOWING THE SALE IF THE VEHICLE HAS SIGNIFICANT MECHANICAL ISSUE THAT CAN BE REASONABLY EXPECTED TO HAVE EXISTED AT THE TIME OF THE SALE.

(3) The text of the disclaimer must be printed in 12-point boldfaced type, except the heading, which must be in 16-point extra boldfaced type;

(4) The entire disclaimer must be boxed;

(5) The consumer shall sign and date within the box containing the disclaimer prior to the sale;

(6) The merchant shall describe in writing any defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used motor vehicle or discoverable by the merchant after an inspection of the used motor vehicle; and

(7) The merchant shall provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle.

(e) An “as is” sale of a used motor vehicle waives implied warranties, but does not waive any express warranties, either oral or written, upon which the consumer relied in entering into the transaction.

(f) The provisions of this section do not apply to motor vehicles sold as surplus by a state agency.

(g) The provisions of this section only apply to sales directly to consumers.;

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 543—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §46A-6-107a, relating to warranties as to sales of motor vehicles; providing that a used motor vehicle may be sold “as is” under certain circumstances; providing certain disclosure requirements for “as is” sales of used motor vehicles; allowing cancellation of an “as is” sale by the end of the dealer’s third business day following the sale if the vehicle has mechanical issues; providing that a consumer shall sign and date the disclosure for an “as

is” sale in order for the disclosure to be effective; providing that a merchant disclose in writing certain defects or malfunctions when selling a used motor vehicle “as is”; providing that the merchant provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle; and providing that an “as is” sale of a used motor vehicle waives implied warranties but does not waive any express warranties.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 543, as amended by the House of Delegates, was then put upon its passage.

Senator Maynard requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Maynard would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Blair, Boley, Boso, Cline, Facemire, Hamilton, Hardesty, Mann, Maroney, Maynard, Plymale, Roberts, Rucker, Smith, Stollings, Swope, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—24.

The nays were: Beach, Clements, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Sypolt, and Unger—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 Com. Sub. for S. B. 543) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect July 1, 2019.

On this question, the yeas were: Azinger, Baldwin, Blair, Boley, Boso, Cline, Facemire, Hamilton, Hardesty, Mann,

Maroney, Maynard, Plymale, Roberts, Rucker, Smith, Stollings, Swope, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—24.

The nays were: Beach, Clements, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Sypolt, and Unger—10.

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. 543) takes effect July 1, 2019.

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, 2019, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill 544, Increasing salaries for members of WV State Police over three-year period.

On motion of Senator Takubo, 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:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant,

and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VIII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on July 1, ~~2018~~ 2019, members shall receive annual salaries payable at least twice per month as follows:

~~ANNUAL SALARY SCHEDULE (BASE PAY)~~

~~SUPERVISORY AND NONSUPERVISORY RANKS~~

Cadet During Training	\$ 36,154
Cadet Trooper After Training	43,414
Trooper Second Year	44,426
Trooper Third Year	44,809
Senior Trooper	45,208
Trooper First Class	45,814
Corporal	46,420
Sergeant	50,721

First Sergeant	52,872
Second Lieutenant	55,022
First Lieutenant	57,173
Captain	59,324
Major	61,474
Lieutenant Colonel	63,625

~~ANNUAL SALARY SCHEDULE (BASE PAY)~~

~~ADMINISTRATION SUPPORT SPECIALIST-
CLASSIFICATION~~

I	44,426
II	45,208
III	45,814
IV	46,420
V	50,721
VI	52,872
VII	55,022
VIII	57,173

~~ANNUAL SALARY SCHEDULE (BASE PAY)~~

~~CRIMINALIST CLASSIFICATION~~

I	44,426
II	45,208
III	45,814
IV	46,420

V50,721

VI52,872

VII55,022

VIII57,173

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Cadet During Training..... \$ 38,524

Cadet Trooper After Training.....45,784

Trooper Second Year.....46,796

Trooper Third Year.....47,179

Senior Trooper.....47,578

Trooper First Class48,184

Corporal.....48,790

Sergeant53,091

First Sergeant.....55,242

Second Lieutenant57,392

First Lieutenant.....59,543

Captain.....61,694

Major.....63,844

Lieutenant Colonel.....65,995

ANNUAL SALARY SCHEDULE (BASE PAY)

ADMINISTRATION SUPPORT SPECIALIST
CLASSIFICATION

<u>I</u>	<u>46,796</u>
<u>II</u>	<u>47,578</u>
<u>III</u>	<u>48,184</u>
<u>IV</u>	<u>48,790</u>
<u>V</u>	<u>53,091</u>
<u>VI</u>	<u>55,242</u>
<u>VII</u>	<u>57,392</u>
<u>VIII</u>	<u>59,543</u>

ANNUAL SALARY SCHEDULE (BASE PAY)

CRIMINALIST CLASSIFICATION

<u>I</u>	<u>46,796</u>
<u>II</u>	<u>47,578</u>
<u>III</u>	<u>48,184</u>
<u>IV</u>	<u>48,790</u>
<u>V</u>	<u>53,091</u>
<u>VI</u>	<u>55,242</u>
<u>VII</u>	<u>57,392</u>
<u>VIII</u>	<u>59,543</u>

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in §15-2-5(e) of this code and supplemental pay as provided in §15-2-5(g) of this code.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in §15-2-

5(d) of this code for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of \$500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall

certify at least twice per month to the West Virginia State Police's payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed \$200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of \$5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members' participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.;

And,

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

Eng. Senate Bill 544—A Bill to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to increasing salaries of members of the West Virginia State Police.

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

Engrossed Senate Bill 544, as amended by the House of Delegates, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Senate Bill 544 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 544) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect July 1, 2019.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 544) takes effect July 1, 2019.

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

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

Eng. Com. Sub. for Senate Bill 564, Expanding comprehensive coverage for pregnant women through Medicaid.

On motion of Senator Takubo, 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 564—A Bill to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-5-12 of said code, all relating to expanding certain insurance coverages for pregnant women; expanding who is eligible to receive certain Medicaid services; expanding who is eligible to receive certain services through the Children’s Health Insurance Program; providing the minimum services are to be covered; and providing an effective date.

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

Engrossed Committee Substitute for Senate Bill 564, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 564) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 561, Permitting Alcohol Beverage Control Administration request assistance of local law enforcement.

On motion of Senator Takubo, 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:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ss. County option election on ~~allowing~~ forbidding nonintoxicating beer, wine or alcoholic liquors to be sold, given or dispensed after 10:00 a.m. on Sundays.

Beginning July 1, 2019, the county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine or alcoholic liquors in or on a licensed premises shall be allowed in the county

beginning ~~ten o'clock a.m.~~ 1:00 p.m. on any Sunday, as provided ~~in §11-16-18 of this code, sections three-a and three-b, article four, chapter sixty of this code~~ §60-7-12 of this code, §60-8-34 of this code upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of §60-59-3 of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election. On the local option election ballot shall be printed the following: "Shall the beginning hour at which non-intoxicating beer, wine and alcoholic liquor be sold or dispensed for licensed on premises consumption only in _____ County on Sundays be changed from 10:00 a.m. ~~one o'clock p.m.~~ to ten o'clock a.m. 1:00 p.m.

If approved by the voters this would ~~allow~~ forbid private clubs and restaurants licensed to sell and dispense non-intoxicating beer, wine and alcoholic liquor; licensed private wine restaurants, private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on premises consumption ~~only~~ beginning at ten o'clock a.m. until 1:00 p.m. If prior to July 1, 2019, a county commission had voted against 10:00 a.m. on premises sales, then notwithstanding this section, on premises sales of nonintoxicating beer, wine and alcoholic liquors shall not begin until 1:00 p.m. Additionally, if approved, it would also allow any mini distilleries, wineries or farm wineries in this county to offer complimentary samples for on premises consumption only beginning at ten o'clock a.m."

Yes No

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

The ballots shall be counted, returns made and canvassed as in general elections and the results certified by the commissioners of

election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked "Yes" all applicable licensees shall be ~~permitted-prohibited~~ forbidden to sell and dispense beer, wine or alcoholic liquors ~~beginning at 10:00 a.m. until 1:00 p.m.~~ on Sundays. In the event a majority of the votes are marked "No" all applicable licensees will continue to be required to comply with existing law.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It shall be unlawful:

(1) For any licensee, his, her, its or their servants, agents or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and ~~one p.m.~~ 10:00 a.m., or a Class A retail dealer who sells nonintoxicating beer for on premises consumption only between the hours of 2:00 a.m. and ~~ten a.m.~~ 1:00 p.m. in any county upon approval as provided for in ~~section three pp, article one, chapter seven~~ §7-1-3ss of this code, on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained in this section prohibits a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor or brew-pub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(6) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events: *Provided, however*, That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner;

(7) For any licensee to permit in his or her premises any lewd, immoral or improper entertainment, conduct or practice;

(8) For any licensee except the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code or a holder of a license or a private wine

restaurant issued under the provisions of article eight of said chapter to possess a federal license, tax receipt or other permit entitling, authorizing or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(9) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of article seven, chapter sixty of this code or the premises of a private wine restaurant licensed under the provisions of article eight of said chapter;

(10) For any licensee to manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of article eight of said chapter insofar as the private wine restaurant is authorized to serve wine;

(11) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased, or acquired from any source other than a distributor, brewer or manufacturer licensed under the laws of this state;

(12) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: *Provided*, That a licensee may have speaker systems for

outside broadcasting so long as the noise levels do not create a public nuisance or violate local noise ordinances;

(13) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(14) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

(15) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(16) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(17) For any Class A licensee, his, her, its or their servants, agents or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of eighteen years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of eighteen years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on the premises;

(18) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of

such nonintoxicating beer: Provided, That nothing in this section is considered to prohibit sales of convenience between distributors licensed in this state where one distributor sells, transfers or delivers to another distributor a particular brand or brands for sale at wholesale; and

(19) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Any person who violates any provision of this article including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer to an individual who is less than 21 years of age by one of his or her employees, servants or

agents. Any agent, servant, or employee who has improperly sold, furnished or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away; (B) that it has communicated this policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) “Transaction scan” means the process by which a person checks, by means of a transaction scan device, the age, and identity of the cardholder, and “transaction scan device” means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver’s license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in the licensee’s lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and

convenience stores, may employ persons who are less than 18 years of age but at least 16 years of age: Provided, That the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: Provided, however, That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-17a. Law enforcement cooperation.

In addition to the assistance of law enforcement provided under §15-2-12 of this code, the commissioner may obtain assistance in the enforcement of §11-16-1 et seq. and §60-1-1 et seq. of this code from county or municipal law-enforcement agencies by making a written request therefor. The assistance authorized by this section is limited only to accompanying the Commissioner and his or her agents and may not be unreasonably withheld. Any law enforcement officer acting pursuant to this section may further act upon crimes committed in his or her presence: *Provided*, That any officer so acting must be within his or her geographic jurisdiction, and nothing in this section authorizes any officer to act outside of the scope of his or her geographic jurisdiction.

§60-2-17b. Wine and liquor operating fund established; operations fee; fund issues.

(a) As of July 1, 2019, there is an annual nonrefundable and nonprorated operational fee of \$100 for all distilleries, mini-distilleries, wineries, farm wineries, Class A retail licensees, Class B retail licensees, private clubs, private wine retailers, wine specialty shops, wine restaurants, private wine spas, private wine bed and breakfasts, wine suppliers, and wine distributors which shall be paid on or before July 1, 2019, and every July 1 thereafter. All fees collected by the commissioner pursuant to this section shall be deposited in a special revenue account in the State

Treasury, hereby created, to be known as the Wine and Liquor Operations Fund. Moneys in the fund may only be expended by the commissioner for the administration of this chapter, as appropriated by law.

(b) Licensees holding multiple licenses for nonintoxicating beer, nonintoxicating craft beer, wine, or liquor shall be subject to paying only one operations fee of \$100 under this chapter and under §11-16-10(d) of this code.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

A person shall 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 or tender 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; or

(8) Manufacture or sell, aid or abet in the manufacture or sale, possess, transport or ship, use, or in any other manner provide or furnish powdered alcohol.

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 30 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 for a period not to exceed three years. A person who violates any provision of this section for the second 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 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, 20..., 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 §62-9-1 *et seq.* of this code.

§60-6-8. Unlawful sale or possession by licensee.

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which such license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this chapter;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by his or her license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: Provided, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1: et seq. of this code, that is in good standing with the commissioner and has paid a \$1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by such a private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and no such liquor bottle shall be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 et seq. of this code may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless such licensee has obtained a license or privilege authorizing other activity.

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: Provided, That a licensee may sell, furnish, tender, and serve pre-mixed beverages consisting of alcoholic liquors, non-alcoholic mixer, and ice if:

(A) The frozen drink mixing machine is emptied and sanitized daily; and

(B) That a written record reflecting the cleaning and sanitizing of the frozen drink machine is maintained for inspection by the commissioner and health inspectors.

~~(6)~~ (8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

~~(7)~~ (9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

~~(8)~~ (10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

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 30 days nor more than one year, or both such fine and confinement 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 correction facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correction facility for a period not to exceed three years.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person may not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Tender a drink of alcoholic liquor to another person in a public place;

(4) Operate a business without a license issued under §60-1-1 et seq. of this code which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice, and non-alcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic dancing or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a “bring your own bottle”, “bring your own booze”, or “BYOB” establishments.

~~(4)~~(5) Possess alcoholic liquor in the amount in excess of 10 gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the commissioner therefor; or

~~(5)~~(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: *Provided*, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of a citation, transport the individual to the individual’s present residence or arrange for the transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the law-enforcement officer’s judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the

emergency room, the officer may proceed as described in subdivisions (1), (2), and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

(1) If the individual is no longer incapacitated, he or she may be released;

(2) If the individual is still incapacitated but a non-intoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or

(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under §27-5-1 *et seq.* and §27-6A-1 *et seq.* of this code.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: *Provided*, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested, or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than \$5 nor more than \$100. If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health — mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not less than \$5 nor more than \$100 and not more than 60 days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100 and not less than five nor more than 60 days in jail or a fine of not less than \$5 nor more than \$100 and completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center: *Provided*, That three convictions for public intoxication within the preceding six months is considered evidence of alcoholism. For the educational counseling programs described in this subsection the community mental health — mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to §27-5-1 *et seq.* and §27-6A-1 *et seq.* of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100; and upon a second or subsequent conviction thereof, shall be fined not less than \$5 nor more than \$100, or confined in jail not more than 60 days, or both.

(h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not less than \$5 nor more than \$100, or confined in jail not more than 60 days, or both.

(i) Any person who violates subdivision (5) or (6), subsection (a) of this section is guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than \$100 nor more than \$500; and upon conviction of second or subsequent offense, he or she is guilty of a felony and, shall be confined in a state correctional facility for a period of not less than one year nor more than three years.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; power to lease building for establishment of private club.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) “Applicant” means a private club applying for a license under the provisions of this article.

(b) “Code” means the official Code of West Virginia, 1931, as amended.

(c) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.

(d) “Licensee” means the holder of a license to operate a private club granted under this article, which license shall remain unexpired, unsuspended, and unrevoked.

(e) “Private club” means any corporation or unincorporated association which either: (1) Belongs to or is affiliated with a nationally recognized fraternal or veterans’ organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general

public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (2) is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; or (3) is organized and operated for legitimate purposes which has at least 100 duly elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or (4) is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(f) “Private fair and festival” means an applicant for a private club or a licensed private club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county wherein the festival, fair, or other event is to be conducted;

(3) Shall prepare, provide, or engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements of such to the commissioner prior to approval;

(4) Shall not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors (liquor and wine), nonintoxicating beer, or nonintoxicating craft beer;

(5) Shall provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(6) Shall provide a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event; and

(7) Utilizes an age verification system approved by the commissioner.

(g) "Private hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 2,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed

premises and serves freshly prepared food at least 20 hours per week;

(4) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared in the private hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists in the application referenced in subdivision (5) of this subsection the entire property and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(7) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises; and

(8) Utilizes an age verification system approved by the commissioner.

~~(f)~~ (h) "Private resort hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 5,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(4) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for destination, resort, and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private resort hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises and as noted on the private resort hotel's floorplan;

(7) Has an identified person or persons or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(8) Utilizes an age verification system approved by the commissioner; and

(9) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.

~~(g)~~ (i) “Private golf club” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least ~~one thousand~~ 100 members;

(2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club’s floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private golf club’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club’s licensed premises and as noted on the private golf club’s floorplan;

(6) Has an identified person or persons or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; and

(7) Utilizes an age verification system approved by the commissioner.

(j) “Private nine-hole golf course” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 50 members;

(2) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private nine-hole golf course's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises and as noted on the private nine-hole golf course's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; and

(7) Utilizes an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation or public authority operating any park or airport may lease as lessor a building or portion thereof or other limited premises in any such park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

Notwithstanding any other provisions of this code to the contrary, licensees are hereby authorized to sell, tender, and serve alcoholic liquors by the drink and as otherwise authorized by the provisions of §60-1-1 et seq. of this code. other than in sealed packages, for consumption on the premises of the licensees, to their members and their guests in accordance with the provisions of this article, rules of the commissioner and as authorized under §60-6-8 of this code. The licensees may keep and maintain on their premises a supply of those lawfully acquired alcoholic liquors in such quantities as may be appropriate for the conduct of operations thereof.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

(a) Application for a license to operate a private club shall be made on such form as may be prescribed by the commissioner and shall include:

- (1) The name of the applicant;
- (2) If the applicant is an unincorporated association, the names and addresses of the members of its governing board;
- (3) If the applicant is a corporation, the names and addresses of its officers and directors;
- (4) The place at which the applicant will conduct its operations and whether the same is owned or leased by the applicant;
- (5) The number of members of the applicant;
- (6) The name or names of any national organizations with which applicant is affiliated and the nature of such affiliation;

(7) The size and nature of the dining and kitchen facilities operated by applicant;

(8) Accurate and complete ownership information;

(9) An attestation that the information in the application is true and accurate; and

(10) Such other information as the commissioner may reasonably require which shall include, but not be limited to, the criminal records, if any, of each member of the applicant's governing board and/or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

(b) The application shall be verified by each member of the governing board of the applicant if an unincorporated association or, if the applicant is a corporation, by each of its officers and all members of its board of directors. The application shall be accompanied by the license fee hereinafter prescribed and by a bond of the applicant in the penal sum of \$5,000 with a corporate surety authorized to transact business in the state of West Virginia, payable to the State of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

(c) Under no circumstance may any college fraternity or sorority be issued a license to operate a private club.

(d) No license to operate a private club will be issued to applicants who discriminate against any person or group of persons because of race or color of such person or group of persons.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

(a) Upon receipt of ~~the~~ a completed application referred to in §60-7-4 of this code, together with the accompanying fee and bond, the commissioner shall conduct an investigation to determine the

accuracy of the matters contained in such completed application and whether applicant is a bona fide private club of good reputation in the community in which it shall operate. For the purpose of conducting such investigation, the commissioner may withhold the granting or refusal to grant such license for a period not to exceed 30 days or until the applicant has completed the conditions set forth in this article and in §60-7-4(a) of this code, all as determined by the commissioner. If it shall appear that such applicant is a bona fide private club of good reputation in the community in which it shall operate and that there is no false statement, no material misrepresentations, no hidden ownership, or persons with an undisclosed pecuniary interest, and no omissions or failures to disclose in such application as determined by the commissioner, ~~the commissioner~~ he or she shall issue a license authorizing the applicant to sell alcoholic liquors as provided in §60-7-3 of this code, and otherwise shall refuse to issue such license, except that in the case of an application by a corporation or association to operate a private club in connection with:

(1) A state park, the Director of the Department of Natural Resources must grant his or her approval before the license can be issued; or

(2) A county or municipal park, or an airport, the authority governing the park or airport must grant its approval before the license can be issued.

A license may not be issued for a private club in any state park unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public. A license may not be issued for a private club in any county or municipal park, or an airport, unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public.

(b) Upon refusal to issue such license the commissioner shall make and enter an order denying such application, which denial and refusal shall be final unless a hearing is requested in accordance with the provisions of §60-7-13 of this code. When such refusal or denial becomes final the commissioner shall

forthwith refund to the applicant his or her fees and bond accompanying the application.

(c) Such license shall be of such form and design as the commissioner may prescribe by reasonable rule or regulation and shall authorize the licensee to sell alcoholic liquors at only one location.

(d) Such license shall expire on June 30 next following the date of issue and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees and filing of the bond as required by this article.

(e) A license issued under the provisions of this article may not be transferable.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club shall be \$750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section shall be \$1,000 if the private club has less fewer than 1,000 members, \$2,000 if the private club is a private nine-hole golf course as defined in §60-7-2 of this code; \$2,500 if the private club has 1,000 or more members, \$4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code, and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, said private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas shall be \$7,500, and the annual license fee for a private resort hotel with at least six but no more than 10 designated areas shall be \$12,500. The annual license fee for a private resort hotel with at least 11 but no more than 15 designated areas shall be \$17,500. The annual license fee for a

private resort hotel with no fewer than 15 nor more than 20 designated areas shall be \$22,500: *Provided*, That a private resort hotel having obtained the license and paid the \$22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

(c) The fee for any such license issued following January 1 of any year and to expire on June 30 of such year shall be one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee must be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

~~(d)~~ (e) All such fees shall be paid by the commissioner to the State Treasurer and credited to the General Revenue Fund of the state.

§60-7-6a. Special privilege of Class A private club licensee to operate separate but connected Class B license.

A Class A private club licensee with 1,000 or more members may, in the commissioner's discretion, operate Class B licenses for the off-premises sale of nonintoxicating beer and wine in a connected but separately operated area of the Class A private club premises: *Provided*, That each business is licensed separately and operates separate cash registers and maintains separation barriers between the different licensed operations. Failure of a licensee to license two innerconnected businesses shall subject the licensee to the penalties under this article.

§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and non-intoxicating craft beer for on-premises consumption.

(b) To be eligible for the license authorized by subsection (a) of this section, the private fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;

(2) Shall make application with the commission at least 15 days pursuant to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of \$750; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event.

(c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days and no more than six licenses may be issued to the same person or entity in a calendar year.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section must be purchased from the licensed distributor that services the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(e) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(f) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 et seq. of this code.

(g) A licensee authorized by this section may utilize bona fide employees or volunteers to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

(h) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products but shall not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

(i) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell, ~~or~~ offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in §60-6-8 of this code;

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice,

gambling or any slot machine, multiple coin console machine, multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming, and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by duly licensed charitable or public service organization, (or its auxiliaries) pursuant to §47-20-1 et seq. of this code, and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries) pursuant to §47-21-1 et seq. of this code, all of which are permissible on a licensee's licensed premises when operated in accordance with this code, rules, and regulations: *Provided*, That a private resort hotel holding a license issued pursuant to §60-7-1 et seq. of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under §29-22A-1 et seq., and §29-22C-1 et seq., or §29-25-1 et seq. of this code, during hours of operation authorized by §29-22A-1 et seq., and §29-22C-1 et seq., or §29-25-1 et seq., of this code.

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. the 7:00 a.m. on weekdays or Saturdays, between the hours of 3:00 a.m. and ~~1:00 p.m.~~ 10:00 a.m. on any Sunday or, between the hours of 3:00 a.m. and ~~10:00 a.m.~~ 1:00 p.m. in any county upon approval as provided for in ~~§7-1-3pp~~ §7-1-3ss of this code, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of age;

(7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption except as authorized by the commissioner;

(10)(A) Employ any person who is less than 18 years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;

(B) Employ any person who is between the ages of 18 and 21 who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is ~~unlawful~~ lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises., ~~the fact that alcoholic liquors may be purchased thereat.~~

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or imprisoned in ~~the county~~ jail for a period not to exceed 1 year, or both fined and imprisoned.

ARTICLE 8. SALE OF WINES.

§60-8-34. WHEN RETAIL SALES PROHIBITED.

It shall be unlawful for a retailer, farm winery, wine specialty shop retailer, private wine bed and breakfast, private wine restaurant, or private wine spa licensee, his or her servants, agents or employees to sell or deliver wine between the hours of ~~two o'clock a.m. and one o'clock p.m.~~, 2:00 a.m. and 10:00 a.m. or, it shall be unlawful for a winery, farm winery, private wine bed and breakfast, private wine restaurant, or private wine spa, his or her servants, agents or employees to sell wine between the hours of ~~two o'clock a.m. and ten o'clock a.m.~~ 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in ~~section three pp, article one, chapter seven~~ §7-1-3ss of this code, on Sundays, or between the hours of 2:00 a.m. and 7:00 a.m. on weekdays and Saturdays.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private hotel, private nine-hole golf course, private resort hotel, and private golf club licensed pursuant to §60-7-1 et seq. of this code and in compliance with subdivision (8), subsection (f), section two of said article §60-7-2(g)(8), §60-7-2(h)(7), §60-7-2(i)(7), and §60-7-2(j)(7) of this code; ~~or~~ (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage

Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan; or (c) a private fair and festival that is in compliance with §60-7-2(f)(7) of this code, by utilizing a mandatory carding or identification program whereby all members or guests being served or sold alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer are asked and must provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer, or nonintoxicating craft beer.;

And,

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

Eng. Com. Sub. for Senate Bill 561—A Bill to amend and reenact §7-1-3ss of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §60-2-17a and §60-2-17b; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto two new sections, designated §60-7-6a and §60-7-8a; and to amend and reenact §61-8-27 of said code, all relating to alcoholic beverages generally; creating a county option election on forbidding nonintoxicating beer, wine or alcoholic liquors to be sold, given or dispensed after 10:00 a.m. on Sundays in lieu of an county option election to permit such sales; permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement; limiting the jurisdiction of such requested law enforcement assistance; implementing a \$100 operations fee and establishing special revenue account and fund; clarifying that consumption of alcoholic liquors in public is unlawful; clarifying that West Virginia licensees can only sell liquor by the drink with certain exceptions; clarifying prohibition on liquor bottle sales in Class A licenses; providing for a bottle service fee and establishing requirements for bottle service; clarifying certain licensing requirements for licensure; providing

guidance on certain lawful conduct such as wine bottle sales and frozen drink machines; forbidding the operation of certain bring your own bottle establishments; creating a private fair and festival license; definitions; license requirements; license fee; creating the private hotel license and license fee; creating a private nine-hole golf course license and fee; removing the need for golf carts to be offered at licensed golf courses; definitions; license requirements; license fee; permitting a private resort hotel to have inner-connection with a resident brewer who has a brewpub; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees who fail to timely file their renewal application and pay their annual license fees; permitting a license privilege for certain licensees to operate a connected but separately operated Class A on-premises license and a Class B off-premises license; clarifying that certain state-licensed gaming is permissible in a private club; clarifying permitted hours of operation for certain licensees; and permitting minors to attend a private hotel, private nine-hole golf course, and a private fair or festival under certain conditions.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 561) was reported by the Clerk and adopted:

On page two, section three-ss, after the words “until 1:00 p. m.” by striking out the following: If prior to July 1, 2019, a county commission had voted against 10:00 a.m. on premises sale, then notwithstanding this section, on premises sales of nonintoxicating beer, wine, and alcoholic liquors shall not begin until 1:00 p.m.

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

Engrossed Committee Substitute for Senate Bill 561, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: Azinger and Roberts—2.

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. 561) 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.

The Senate again proceeded to the eighth order of business.

Eng. House Bill 2474, Relating to a reserving methodology for health insurance and annuity contracts.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2474) 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 2761, Modernizing the self-service storage lien law.

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

Senators Azinger and Tarr respectively requested rulings from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Azinger and Tarr would be as members of a class of persons and that they would be required to vote.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—31.

The nays were: Baldwin, Facemire, and Romano—3.

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. 2761) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2019.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—31.

The nays were: Baldwin, Facemire, and Romano—3.

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. 2761) takes effect July 1, 2019.

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 2618, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2618) 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 2618—A Bill to amend and reenact §55-7J-1 of the Code of West Virginia, 1931, as amended, relating to amending the definition of the terms “financial exploitation” or “financially exploit” to include the use of undue influence resulting in diminishment of assets of an elderly person, protected person or incapacitated adult; authorizing cause of action in magistrate and circuit court for financial exploitation due to intentional misappropriation or misuse of funds or undue influence

against an elderly person, protected person or incapacitated adult; temporary relief may be granted without notice to the respondent; providing for issuance of protective orders; providing protective orders issued by a magistrate court are temporary; requiring magistrate court to transfer matter to circuit court upon issuance of a temporary protective order; setting time frame for hearing; and authorizing circuit court to issue a permanent protective order under stated circumstances.

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

Eng. Com. Sub. for House Bill 2673, Creating the Oil and Gas Abandoned Well Plugging Fund.

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

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: Azinger—1.

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. 2673) passed.

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

Eng. Com. Sub for House Bill 2673—A Bill to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-6-29a, all relating to creating the Oil and Gas Abandoned Well Plugging Fund for use by the West Virginia

Department of Environmental Protection to plug abandoned oil and gas wells without a responsible operator; providing for administration of the fund; requiring severance tax to be deposited in the fund; providing specific purposes and limitations for use of the fund; modifying imposition of the tax on the privilege of severing natural gas or oil by marginal oil and gas wells; providing exemptions from the severance tax; deleting a subsection of the code which expired by its own terms; providing reporting requirements for the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; and providing a short 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 2779, Providing that proceeds from certain oil and gas wells to persons whose name or address are unknown are to be kept in a special fund.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2779 pass?”

On this question, the yeas were: Rucker, Tarr, Trump, and Carmichael (Mr. President)—4.

The nays were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Unger, Weld, and Woelfel—30.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2779) rejected.

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

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

On motion of Senator Takubo, at 1:56 p.m., the Senate recessed until 2:45 p.m. today.

The Senate reconvened at 3:17 p.m. today.

On motion of Senator Takubo, the special order of business set for this position on the calendar (*consideration of executive nominations*) was postponed and made a special order of business at 5 p.m. today.

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

The Senate then proceeded to the fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 3:20 p.m. today:

Eng. Com. Sub. for Senate Bill 241, Permitting county court clerks scan certain documents in electronic form.

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

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

Your Committee on Finance has had under consideration

Senate Bill 424, Supplemental appropriation to Civil Contingent Fund.

And has amended same.

And,

Senate Bill 435, Supplemental appropriation to State Department of Education and Vocational Division.

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 Takubo, unanimous consent being granted, Senate Bill 424 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.

On motion of Senator Takubo, 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: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

The bill (S. B. 424) was then 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, line twenty-seven, by striking out “28,000,000” and inserting in lieu thereof “10,000,000”.

The bill, as amended, was ordered to engrossment and third reading.

Engrossed Senate Bill 424 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 424) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 424) takes effect from passage.

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

At the request of Senator Takubo, unanimous consent being granted, Senate Bill 435 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.

On motion of Senator Takubo, 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: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

The bill (S. B. 435) was then 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:

TITLE II – APPROPRIATIONS.

Section. 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

43 – State Board of Education –

State Department of Education

(WV Code Chapter 18 and 18A)

Fund 0313 FY 2019 Org 0402

	Appropriation	General Revenue Fund
36 Communities in Schools (R).....	78103	3,000,000

Any unexpended balance remaining in the appropriation for Communities in Schools (fund 0313, appropriation 78103) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

And, That the total appropriation for the fiscal year ending June 30, 2019, to fund 0390, fiscal year 2019, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section. 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46 – State Board of Education –

Vocational Division

(WV Code Chapter 18 and 18A)

Fund 0390 FY 2019 Org 0402

7a Jim’s Dream (R)	14901	\$ 9,700,000
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From the above appropriation for Jim’s Dream (fund 0390, appropriation 14901), funds are to be used for rehabilitation and workforce readiness transition programs.

Any unexpended balance remaining in the appropriation for Jim’s Dream (fund 0390, appropriation 14901) at the close of the fiscal year 2019 is hereby reappropriated for expenditure during the fiscal year 2020.

The bill (S. B. 435), as amended, was ordered to engrossment and third reading.

Engrossed Senate Bill 435 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 435) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 435) 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, passage as amended with its House of Delegates amended title, to take effect July 1, 2019, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 522, Creating Special Road Repair Fund.

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

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

On page one, after the enacting clause, by inserting a new section, designated section six-b, to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§ 17-2A-6b. Country roads accountability and transparency.

(a) The Legislature finds that taxpayers should be able to easily access the details of how the state is spending their tax dollars to build and repair state and public roads. The taxpayers should also be able to easily access and compare the budgeted moneys and the performance results that are achieved for those expenditures. It is the intent of the Legislature, therefore, to direct the Auditor to create and maintain a searchable website detailing where, how much, and from what source the taxpayer moneys in state government are expended for payment to third party vendors for state roads.

(b) No later than July 1, 2019, the Auditor shall develop and make publicly available a searchable website containing, at a minimum, the following information for a given fiscal year, and the three immediately preceding fiscal years, to the extent that the

commissioner has the ability to provide the information to the Auditor:

(1) The project number or name for each state road in which moneys have been expended to pay vendors to build, repair or maintain a state road;

(2) The county location for each such project;

(3) The funding source for a given funding action or expenditure to pay vendors;

(4) The budget program or activity related to a given funding action or expenditure;

(5) The name and the address, principal location or residence of the vendors receiving payment from a given funding action or expenditure; and

(6) Additional information as to the funding action or expenditure the Auditor considers valuable for the public.

(c) For the purposes of this section:

(1) "Auditor" means the State Auditor of West Virginia, or his or her designee appointed to perform the service;

(2) "Funding action or expenditure" includes details on the type of spending to vendors, including, but not limited to, grants, contracts, and any expenditure from the state road fund, federal funds, special revenue funds, including any civil contingency or similar fund. Where possible, a hyperlink to the actual grants or contracts shall be provided;

(3) "Funding source" means the state account from which the funding action or expenditure is appropriated;

(4) "Vendor" means any person or entity that is authorized by the State of West Virginia to supply the Division of Highways with commodities or services;

(5) “Searchable website” means a website that allows the public at no cost to search and aggregate information regarding the state’s budget and spending for state roads.

(d) The searchable website shall be updated periodically as new data becomes available and is submitted by the commissioner to the Auditor. The commissioner shall provide to the Auditor, in a format specified by the Auditor, all the data that is required to be included in the searchable website no later than 30 days after the data becomes available to the agency. The Auditor shall provide guidance and specifications to the commissioner to promote compliance with this section. The commissioner and the Auditor shall communicate and cooperate to develop methodologies for the efficient transfer of the data, including, but not limited to, methodologies to convert noncompatible electronic formats of data into data formats that can be reasonably converted and transferred to the website.

(e) The Auditor and the commissioner shall each report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability as to the status of the website and shall advise the Committee and the Commission of any issues related to the transfer and receipt of the information from the commissioner to the Auditor in a timely manner as required in this section. The reports shall be submitted at the end of each quarter for the 2019-2020 fiscal year; and annually thereafter, beginning December 1, 2020, and on December 1 of each year thereafter, until the Joint Committee finds that the annual reports are no longer required.;

On page one, section eleven, lines one through six, by striking out all of subsections (a) and (b) and inserting in lieu thereof the following:

There is created a special subaccount in the State Road Fund, designated the Special Road Repair Fund, to be expended solely for the purposes specified in §17-30-1 *et seq.* of this code for the maintenance and repair of the state’s roads and highways.;

And,

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 522—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-6b; to amend said code by adding thereto a new section, designated §17-3-11; and to amend said code by adding thereto a new article, designated §17-30-1, §17-30-2, §17-30-3, §17-30-4, and §17-30-5, all relating to enhancing maintenance and repair of the state's roads and highways generally; establishing roads accountability and transparency; directing the State Auditor to develop and maintain a searchable website of funding actions and expenditures relating state and public roads; setting forth the minimum content to be contained in the website; directing the Commissioner of Highways to provide information and data to the State Auditor; requiring an annual update to the Joint Committee on Government and Finance; creating the Special Road Repair Fund as a subaccount of the State Road Fund; creating the Enhanced Road Repair and Maintenance Program; stating legislative finding and purpose of program; requiring Division of Highways county supervisors consult with county commissions and legislators to submit project requests to the Division of Highways; setting forth a funding formula; setting forth requirements concerning bidding, vendors, and contracts with private vendors; specifying uses of Special Road Repair Fund; defining terms; providing requirements for Commissioner of Highways and districts; requiring for rulemaking; and requiring reporting by Division of Highways and Legislative Auditor.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for Com. Sub. for S. B. 522) 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.

The Senate again proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2807, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking.

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

Senator Boso requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he is an owner of a Subchapter S corporation.

The Chair replied that any impact on Senator Boso would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2807) 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 2807—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12j; and to amend and reenact §11-21-17a of said code, all relating to creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations or members of a limited liability company engaged in business as a financial organization in this state, similar to the modification that presently exists in the code for financial organizations organized as C corporations; setting forth apportionment rules for certain financial organizations; specifying special gross receipts factor; and providing for retroactive effective date.

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

Eng. House Bill 2968, Adding remote service unit to the definition of customer bank communications terminals.

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

Senator Trump requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he is a director of a community bank.

The Chair replied that any impact on Senator Trump would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2968) 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 2968—A Bill to amend and reenact §31A-8-12b of the Code of West Virginia, 1931, as amended, relating to adding remote service units to the definition of customer bank communication terminal; defining remote service unit; and

allowing national banks to operate remote service units in this state pursuant to federal regulation.

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 2947, Relating generally to telemedicine prescription practice requirements and exceptions.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2947) 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 3131, Relating to providing salary adjustments to employees of the Department of Health and Human Resources.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3131) passed.

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

Eng. Com. Sub. for House Bill 3131—A Bill to amend and reenact §5-5-4a of the Code of West Virginia, as amended, all relating to employees of the Department of Health and Human Resources; providing that the Department of Health and Human Resources shall develop a special merit-based system for specified employees at state-operated acute care, long-term care, psychiatric care, clinical, and medical facilities; providing for an effective date; providing that provisions of the West Virginia Public Employees Grievance Act apply to employees of the special merit-based system; providing that the Department of Health and Human Resources may conduct a marketplace analysis; and providing for emergency rulemaking.

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 2674, Creating a student loan repayment program for a mental health provider.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2674) 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 2674—A Bill to amend and reenact §18C-3-3 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated, §18C-3-5, all relating to establishing health professionals' student loan programs; providing legislative findings and purpose; establishing a loan repayment program for mental health providers; providing for in-state tuition rates to out-of-state medical students who agree to practice for a specific time within West Virginia; establishing the program eligibility requirements; setting forth repayment schedules; creating application procedures; establishing violations; providing for civil penalties for the failure to complete the required service; creating a special revenue accounts; and providing for legislative rule-making authority.

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 2770, Fairness in Cost-Sharing Calculation Act.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton,

Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2770) passed.

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

Eng. Com. Sub. for House Bill 2770—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4t; to amend said code by adding thereto a new section, designated §33-16-3ee; to amend said code by adding thereto a new section, designated §33-24-7t; to amend said code by adding thereto a new section, designated §33-25-8q; and to amend said code by adding thereto a new section, designated §33-25A-8t, all relating to establishing the Fairness in Cost-Sharing Calculation Act; providing for definitions; establishing health plan cost sharing calculations; establishing pharmacy benefits cost sharing calculations; providing for an effective date; and providing for rule-making authority.

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 2933, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton,

Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2933) 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 2933—A Bill to amend and reenact §61-8D-3 and §61-8D-4 of the Code of West Virginia, 1931, as amended, relating to modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury and child abuse or neglect creating risk of injury.

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 2540, Prohibiting the waste of game animals, game birds or game fish.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2540 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Hamilton, Mann, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—22.

The nays were: Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2540) passed.

At the request of Senator Weld, as vice 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 2540—A Bill to amend the Code of West Virginia, 1931, as amended, by thereto a new section, designated §20-2-5i, relating to prohibiting the waste of any edible portion of big game or game fish; making it unlawful to take any big game and detach or remove the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste; setting forth exceptions; and establishing criminal penalties for violations.

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

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

The Senate again proceeded to the eighth order of business.

Eng. House Bill 3139, Relating to funding of the Public Employees Health Insurance Program.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3139) passed.

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

Eng. House Bill 3139—A Bill to amend and reenact §5-16-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11B-2-15a, all relating generally to funding of Public Employees Health Insurance Program; requiring the finance board to maintain a reserve fund at actuarially recommended amounts of at least 10 percent of plan costs; removing requirement to transfer moneys resulting from plan savings into reserve fund; removing requirement that excess funds be transferred to West Virginia Retiree Health Benefit Trust Fund; establishing PEIA Rainy Day Fund as special, nonexpiring, interest-bearing revenue account in the State Treasury; providing for the administration of the fund, including investment of funds, transfer of funds, and purposes for which the fund can be used; and authorizing the promulgation of emergency and legislative rules.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3139) 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 2665, Supplemental appropriation for PEIA Rainy Day Fee.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2665) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2665) 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 2479, Corporate Governance Annual Disclosure Act.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2479) passed with its title.

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

Eng. House Bill 2856, Relating to the administration of the operating fund of the securities division of the Auditor's office.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard,

Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2856) 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 2945, Relating to vendors paying a single annual fee for a permit issued by a local health department.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2945) 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 2490, Preventing proposing or enforcing rules that prevent recreational water facilities from making necessary upgrades.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2490 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2490) passed with its title.

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

At the request of Senator Romano, 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 that that body had refused to concur in the Senate amendment to the House of Delegates amendment, and requested the Senate to recede therefrom, as to

Eng. Com. Sub. for Senate Bill 405, Increasing limit on additional expenses incurred in preparing notice list for redemption.

On motion of Senator Takubo, the Senate refused to recede from its amendment to the House of Delegates 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 Carmichael (Mr. President) appointed the following conferees on the part of the Senate:

Senators Boso, Sypolt, and Palumbo.

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

A message from the Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Com. Sub. for Senate Bill 487, Relating to admissibility of health care staffing requirements in litigation.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Capito, Foster, and Lovejoy.

On motion of Senator Takubo, the Senate agreed to the appointment of a conference committee on the bill.

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

Senators Takubo, Boso, and Woelfel.

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

A message from the Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of

conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Senate Bill 596, Adjusting voluntary contribution amounts on certain DMV forms.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Harshbarger, Phillips, and Hartman.

On motion of Senator Takubo, the Senate agreed to the appointment of a conference committee on the bill.

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

Senators Weld, Sypolt, and Jeffries.

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

The Senate proceeded to the sixth order of business.

Senators Palumbo, Plymale, Takubo, Stollings, Beach, and Jeffries offered the following resolution:

Senate Concurrent Resolution 63—Requesting the Division of Highways name bridge number 20-60-36.23 (20A160), locally known as U.S. Route 60 Cedar Grove Overpass 3565 Bridge, carrying U. S. Route 60 over County Route 81 in Kanawha County, the “U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders Jr., Memorial Bridge”.

Whereas, Earl Russell Cobb, known throughout his life by his classmates and friends as Russell, was born in Ward, West Virginia, on October 24, 1946, to Carl and Mabel Cobb. He loved hunting squirrel and deer near the mountains of Ward. Earl Russell Cobb attended Ward Elementary and graduated from Cedar Grove High School in the class of 1966; and

Whereas, Earl Russell Cobb entered the U. S. Army on April 17, 1967 and trained in Light Infantry (MOS 11B20), and was then assigned to serve as a Private First Class in Company A, 22nd Infantry Regiment, 25th Infantry Division; and

Whereas, PFC Earl Russell Cobb was declared missing in action and ultimately declared deceased on September 4, 1967. His casualty occurred in or around the Tau Ninh Province of South Vietnam near the Cambodian border due to “. . . hostile, died while missing due to multiple fragmentation wounds.”; and

Whereas, PFC Earl Russell Cobb was killed in action on September 4, 1967, just five months into his tour of duty and is now listed on panel 25E, line 96, of the Vietnam Veterans Memorial in Washington, D.C.; and

Whereas, Carl Bradford “Punkin” Goodson was born on October 14, 1948, and was the son of Vernon and Dortha Goodson and the brother of Vernon Goodson Jr. of Cedar Grove, West Virginia. He lived beside Cedar Grove High and the Little League baseball field where he honed his skills that would enable him to play high school baseball for three years; and

Whereas, Carl Bradford Goodson graduated from Cedar Grove High School in the class of 1966 and was a member of the Church of God at Ward, West Virginia; and

Whereas, Carl Bradford Goodson entered the U. S. Army on October 28, 1969 and graduated basic and AIT as a specialist fourth class. He served in Charlie Company, 2nd Battalion, 506th Infantry Battalion, 101st Airborne Division, 1969 and 1970, in the Republic of Vietnam; and

Whereas, SPC4 Carl Bradford Goodson was killed in action on April 6, 1970, just five months into his tour of duty and is now listed on panel 12W, line 101, of the Vietnam Veterans Memorial in Washington, D.C., and is buried in the Ward Cemetery at Ward, West Virginia; and

Whereas, On September 29, 2018, a memorial service was held for SPC4 Carl Bradford Goodson at his graveside at the Ward

Cemetery near Cedar Grove, attended by several of his fellow soldiers from his army unit; and

Whereas, On this occasion, one of his comrades in arms, Gary Gilliam, recounted this about Carl and the circumstances of his death on April 6, 1970: “He was a brave young soldier who died serving the country he loved. Carl was part of the battle of Firebase Ripcord. The elements of this battle began as the 101st Airborne Division began the effort to reopen the strategic firebase (Ripcord) located overlooking the infamous A Shau Valley in March and ended July 22,” Gilliam said. “With almost continual daily contact throughout the campaign, on April 6 on Hill 927, 25 miles west of the city of Hue, Carl, along with his brothers Larry Christmas and Steve Steward of Charlie Company, fought bravely to hold their position to protect Firebase Ripcord against an overwhelming force of the North Vietnamese Army. After two brutal hours of battle, these three brave soldiers gave their lives to save the lives of their brothers of Charlie Company.”; and

Whereas, George Thomas Saunders Jr., was born on February 28, 1942, and grew up in the community of Cedar Grove, West Virginia; and

Whereas, George T. Saunders, Jr., the son of George T. Saunders, Sr., and Carol Saunders of Cedar Grove, West Virginia, on February 2, 1942. His friends and classmates called him “G.T.”; and

Whereas, George T. Saunders, Jr., graduated from Cedar Grove High School in the class of 1959. His sisters Pam and Diane said that since early childhood, he wanted a career in the U. S. military; and

Whereas, George T. Saunders, Jr., entered the U. S. Army straight out of high school and was trained for Military Police (MOS 13B), and attached to the 1st Infantry Division, 1st Military Police Company; and

Whereas, George T. Saunders Jr., joined the U. S. Army, served six years, and attained the rank of Staff Sergeant; and

Whereas, SSGT George T. Saunders, Jr., was posted to the 1st Military Police Company, 1st Infantry Division in the Republic of Vietnam in 1965; and

Whereas, On October 31, 1965, SSGT George T. Saunders Jr., was on forward scouting patrol when he experienced a traumatic event that resulted in his death. His life was taken in the South Vietnamese Province of Thua Thien. The official circumstances of his death were: SSGT Saunders died of hostile action “explosive device”; and

Whereas, SSGT George T. Saunders, Jr., was killed in hostile fire on October 31, 1965, less than two weeks into his tour of duty in Vietnam and is now listed on panel 3E, line 10, of the Vietnam Veterans Memorial in Washington, D.C., and is buried at Woodland Cemetery in Cedar Grove, West Virginia; and

Whereas, It is fitting that an enduring memorial be established to commemorate PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders, Jr., and their sacrifice for their state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 20-60-36.23 (20A160), locally known as U. S. Route 60 Cedar Grove Overpass 3565 Bridge, carrying U. S. Route 60 over County Route 81 in Kanawha County, the “U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders Jr., Memorial Bridge” and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders 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 Commissioner of the Division of Highways.

At the request of Senator Palumbo, unanimous consent being granted, the resolution was taken up for immediate consideration and referred to the Committee on Rules.

Senators Palumbo, Plymale, Jeffries, Stollings, Beach, and Takubo offered the following resolution:

Senate Concurrent Resolution 64—Requesting the Division of Highways name bridge number 20-73/5-0.55, locally known as Point Lick Bridge, carrying Route 73/5 over Campbells Creek in Kanawha County, the “U. S. Marine Corps CPL Larry Scott Kennedy Memorial Bridge”.

Whereas, Larry Scott Kennedy was born in Charleston, West Virginia, May 15, 1947, and died March 6, 1968, in Khe Sanh, Vietnam. He was the first child and only son born to Clyde J. Kennedy and Janet Trigg Kennedy; and

Whereas, Larry Scott Kennedy attended New Lexington High School in New Lexington, Ohio, was senior class president at New Lexington High School, and was deeply admired by his peers. He was on the football team at New Lexington High School and helped carry his team to victory at the Muskingham Valley Championship; and

Whereas, Larry Scott Kennedy helped his relatives build a home for his family at Point Lick on Campbells Creek. He treasured nature and enjoyed fishing, trapping, and hunting with his parents and his dogs; and

Whereas, Larry Scott Kennedy attended West Virginia University for one year and aspired to finish college to become a forester after he returned home from service; and

Whereas, Larry Scott Kennedy joined the U. S. Marine Corps and departed for Parris Island in July 1967 and was sent to AIT Camp Lejeune in North Carolina thereafter where he served as a Forward Observer for the Artillery; and

Whereas, CPL Larry Scott Kennedy was sent to Camp Pendleton in California, and from there he was sent to Khe Sanh,

Vietnam, along with 6,000 fellow Marines. He fell ill for three weeks in Vietnam and he valiantly persevered through his illness; he worked alongside the Bru Montagnards, finding brotherhood through a love of the mountains and fighting for peace; and

Whereas, CPL Larry Scott Kennedy was wounded on the hand by shrapnel that killed a Marine nearby. He was subsequently injured with a damaging concussion and internal bleeding after being launched 30 feet into the air; he received two Purple Hearts during his service; and

Whereas, During CPL Larry Scott Kennedy's recovery at a hospital in Da Nang, his best friend George L. Elliott III, diligently remained by his side. They decided to return to Khe Sanh together because they knew every capable man was needed. The plane that carried CPL Larry Scott Kennedy and George L. Elliott III, back to Khe Sanh was shot down by enemy forces and everyone aboard was pronounced dead or missing in action; and

Whereas, CPL Larry Scott Kennedy was killed in action on March 6, 1968, and now rests at the Jefferson Barracks National Cemetery; and

Whereas, It is fitting that an enduring memorial be established to commemorate CPL Larry Scott Kennedy's and his sacrifice to our state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 20-73/5-0.55, locally known as Point Lick Bridge, carrying Route 73/5 over Campbells Creek in Kanawha county, the "U. S. Marine Corps CPL Larry Scott Kennedy Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Marine Corps CPL Larry Scott Kennedy 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.

At the request of Senator Palumbo, unanimous consent being granted, the resolution was taken up for immediate consideration and referred to the Committee on Rules.

Senators Baldwin, Jeffries, Stollings, Beach, and Hamilton offered the following resolution:

Senate Resolution 76—Urging the Environmental Protection Agency, West Virginia Department of Environmental Protection, West Virginia Bureau for Public Health, Agency for Toxic Substances and Disease Registry, and Centers for Disease Control to assist Minden, West Virginia, residents with both relocation assistance and specialized medical treatment as a result of their long-term exposure to polychlorinated biphenyl, dioxins, and dibenzofurans.

Whereas, Polychlorinated biphenyl (PCB) is a toxic substance known to cause harm to human health and the health of the environment; and

Whereas, PCB's were burned in Minden, West Virginia; and

Whereas, When PCB's are burned, they can form dioxins and dibenzofurans which are toxic chemicals; and

Whereas, It has been confirmed by Environmental Protection Agency (EPA) that PCB contamination has spread throughout Minden, West Virginia; and

Whereas, The EPA has proposed Minden, West Virginia, for the National Priorities List of Superfund sites, a designation reserved for the most toxic sites in the United States; and

Whereas, Polychlorinated biphenyl contamination has been discovered on residential properties in Minden, West Virginia; and

Whereas, Frequent flooding spreads PCB contamination further throughout Minden, West Virginia; and

Whereas, The true extent of PCB contamination has not yet been discovered; and

Whereas, The community members in Minden, West Virginia, believe that PCB contamination is a contributing factor to alarming rates of cancer amongst other illnesses; and

Whereas, There are many Minden, West Virginia, residents that wish to be relocated so that they can abstain from the future risks to their health; and

Whereas, Minden, West Virginia, residents do not have access to medical services that are specific to PCB exposure, yet these resources exist in society; and

Whereas, The presence of PCB contamination is reducing property values in Minden, West Virginia, which decreases the ability of residents to move according to their will; and

Whereas, The EPA, WVDEP, WVBPH, ATSDR, and CDC are not readily willing to relocate Minden, West Virginia, residents who wish to be relocated; and

Whereas, Minden, West Virginia, residents have lived amongst PCB contamination for many decades; and

Whereas, Chronic and multigenerational exposure to PCB's across many decades has not been adequately studied from a public health perspective by CDC, ATSDR, and WVBPH; and

Whereas, Exposure to PCB has been correlated with brain cancer, breast cancer, gastrointestinal cancers, liver cancer, lung cancer, malignant melanoma, non-Hodgkin's lymphoma, pancreatic cancer, prostate cancer, thyroid cancer, nonmelanoma skin cancer, recurrent infections, skin infections, respiratory infections, harm to the immune system, lowered IQ, abnormal reflexes, greater response to stress, less habituation to repeated stimuli, modified Brazelton Neonatal Behavioral Assessment Scale

results, memory reduction, anxiety, depression, thyroid disease, reduced testosterone in males, longer menstrual cycles, reduced sperm mobility, endometriosis, earlier menarche in young women, elevated plasma triglyceride levels, hypertension, ischemic heart disease, myocardial infarction, diastolic blood pressure, systolic blood pressure, diabetes, liver disease, asthma, arthritis, low birthweight, shortened gestation periods, chloracne, porphyria cutanea tarda, soft tissue sarcoma, eczema, benign fatty tumors, epidermoid cysts, rash not otherwise specified, dyschromia, skin sensitivity, and NMSCs, rare diseases, and possibly more illnesses yet to be discovered; and

Whereas, It is inhumane to expect people to continue to live in an environment that can harm them; and

Whereas, The concerns that Minden, West Virginia, residents have about their health while living in Minden, West Virginia, have merit; and

Whereas, The EPA has failed to remediate Minden, West Virginia, after three separate clean-up attempts; and

Whereas, Future efforts of EPA and WVDEP will be focusing on cleanup of Minden, West Virginia; and

Whereas, The long term nature of remediation will not adequately meet all of the needs of Minden, West Virginia, residents; and

Whereas, Relocation and long term specialized health resources have been deemed an essential need by Minden-led community groups since the 1980's; therefore, be it

Resolved by Legislature of West Virginia:

That the Legislature hereby urges the Environmental Protection Agency, West Virginia Department of Environmental Protection, West Virginia Bureau for Public Health, Agency for Toxic Substances and Disease Registry, and Centers for Disease Control to assist Minden, West Virginia, residents with both relocation assistance and specialized medical treatment as a result

of their long-term exposure to polychlorinated biphenyl, dioxins, and dibenzofurans; and, be it

Further Resolved, That Minden, West Virginia, residents who need life-long access to specialized health care resources that are familiar with the health consequences of PCB, dioxin, and dibenzofuran exposure be provided the assistance to obtain such medical care; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Administrator of the Environmental Protection Agency, Cabinet Secretary of the West Virginia Department of Environmental Protection, Commissioner for the West Virginia Bureau for Public Health, Administrator of the Agency for Toxic Substances and Disease Registry, and Director of the Centers for Disease Control.

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

Senators Palumbo, Plymale, Jeffries, Beach, Hardesty, Stollings, Hamilton, Takubo, and Swope offered the following resolution:

Senate Resolution 77—Urging the President of the United States, Donald J. Trump, to direct the Federal Emergency Management Administration to complete the work necessary to replace Clendenin Elementary and Herbert Hoover High School.

Whereas, On June 23, 2016, floods ravaged communities in West Virginia, destroying schools, homes, and infrastructure; and

Whereas, The federal government declared a state of emergency for West Virginia counties affected by those floods, qualifying those counties for emergency funds; and

Whereas, The Federal Emergency Management Administration must complete an Environmental Assessment before the school district can move forward in purchasing property and building schools replacing those damaged; and

Whereas, Nearly three years later, the rebuilding of Clendenin Elementary and Herbert Hoover High School has yet to commence, and the opening of the new schools lacks a definite timetable; and

Whereas, The students of Clendenin Elementary and Herbert Hoover High School have learned in temporary classrooms for the 2017, 2018, and 2019 school years; and

Whereas, Disaster recovery is not complete until community institutions have been rebuilt; and

Whereas, West Virginia has no more precious resource than its children; and

Whereas, Every child in West Virginia deserves to learn in a safe and well-resourced building; therefore, be it

Resolved by the Senate:

That the Senate hereby urges the President of the United States, Donald J. Trump, to direct the Federal Emergency Management Administration to complete the work necessary to replace Clendenin Elementary and Herbert Hoover High School; and, be it

Further Resolved, That the Senate asks the Honorable Donald J. Trump, President of the United States, to direct the Federal Emergency Management Administration to do its duty by helping West Virginia communities rebuild the schools affected by the 2016 floods; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Honorable Donald J. Trump, President of the United States of America; to the Honorable Joe Manchin III, United States Senator; to the Honorable Shelley Moore Capito, United States Senator; and to the Honorable Brock T. Long, Administrator of the Federal Emergency Management Administration.

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

At the request of Senator Maynard, and by unanimous consent, Senator Maynard offered the following resolution from the floor:

Senate Concurrent Resolution 65—Requesting the Joint Committee on Government and Finance study the proposal of allowing retailers to pay sales tax for the consumer as a method of advertisement.

Whereas, Retailers are currently prohibited from absorbing sales tax on consumer transactions; and

Whereas, Permitting retailers to absorb sales tax on consumer purchases allows small businesses to create unique discounts that would draw customers; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the proposal of allowing retailers to pay sales tax for the consumer as a method of advertisement; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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, prepare a report, and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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

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.

At the request of Senator Sypolt, and by unanimous consent, Senators Sypolt, Clements, Swope, Beach, Boley, Boso, Jeffries, Mann, Plymale, Roberts, Azinger, Baldwin, Blair, Carmichael (Mr. President), Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Lindsay, Maroney, Maynard, Palumbo, Prezioso, Romano, Rucker, Smith, Stollings, Takubo, Tarr, Trump, Unger, Weld, and Woelfel offered the following resolution from the floor:

Senate Resolution 78—Urging Congress to allow vehicles traveling on interstate highways in West Virginia to have the same maximum gross vehicle weight and axle configuration as currently permissible for vehicles traveling on U.S. routes in West Virginia.

Whereas, Federal law currently imposes a maximum gross vehicle weight of 80,000 pounds on interstate highways, without any tolerance, and with axle weight restrictions and the bridge formula often reducing such maximum weight; and

Whereas, West Virginia also has an 80,000-pound maximum gross vehicle weight limit, but permits a 10-percent tolerance, raising the permissible maximum weight to 88,000 pounds; and

Whereas, Vehicles transporting commodities through West Virginia often reach our state on interstate highways, but leave the interstate highways system and switch to West Virginia's local roads, taking advantage of the higher weight limit on such routes; and

Whereas, Such practice increases traffic on West Virginia's mountainous country roads, raises safety concerns, and limits economic avenues; and

Whereas, Interstates could safely support the same weight restrictions as those on U.S. routes in West Virginia given that the design standards used for both systems are identical and the weight increase would be minimal; and

Whereas, The West Virginia Department of Transportation, Division of Highways, is poised to address any questions Congress

or the U.S. Department of Transportation, Federal Highway Administration, may have to demonstrate the feasibility of this request; and

Whereas, Providing an exception to the existing weight limits and restrictions in Title 23 of the United States Code, including the bridge formula, for vehicles operating on interstate highways in West Virginia will allow more vehicles to travel the safer interstate highways and expand economic access throughout West Virginia; and

Whereas, Congress has previously provided exceptions to the maximum gross vehicle weight on interstate highways for several states of the United States; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is urged to allow vehicles traveling on interstate highways in West Virginia to have the same maximum gross vehicle weight and axle configuration as currently permissible for vehicles traveling on U.S. routes in West Virginia; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the President and Secretary of the United States Senate, to the Speaker and Clerk of the United States House of Representatives, and to the members of West Virginia's congressional delegation.

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

The question being on the adoption of the resolution, and on this question, Senator Stollings demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (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 resolution (S. R. 78) adopted.

Without objection, the Senate 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, 2019, he had approved **Enr. House Bill 2036** and **Enr. Committee Substitute for House Bill 2821**.

The Senate again proceeded to the fifth order of business.

Senator Trump, from the committee of conference on matters of disagreement between the two houses, as to

Eng. Com. Sub. for Senate Bill 295, Relating to crimes against public justice.

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 House to Engrossed Committee Substitute for Senate Bill 295 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 the amendment of the House of Delegates, by striking out everything after the enacting clause, and that the Senate and House agree to an amendment as follows:

ARTICLE 3. COURTS IN GENERAL.

§51-3-19. Courthouse security officers; arrest authority; concealed-carry authority; requirements for participation; authorization to carry firearms concealed consistent with federal law.

(a) In furtherance of enhanced courthouse security for court personnel, litigants, and the general public, courthouse security officers charged with effecting courthouse security may arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure occurring within a courthouse while the courthouse security officer is engaged in his or her official duties;

(b) For purposes of subsection (a) of this section, the arrest authority of courthouse security officers is consistent with that of a county deputy sheriff;

(c) In any judicial circuit where there is an order in effect authorizing courthouse security officers to carry a firearm, the circuit court may also authorize, consistent with the provisions of this section, qualifying courthouse security officers to carry a concealed firearm for self-defense purposes pursuant to 18 U.S.C. § 926B, upon the following criteria being met:

(1) The supervising authority of the courthouse security officer shall require courthouse security officers desiring to participate to regularly qualify in the use of firearms with standards therefor which are equal to or exceed those required of sheriff's deputies in the county in which the courthouse security officers are employed;

(2) The supervising authority of the courthouse security officers shall issue photographic identification and certification cards which identify the courthouse security officers as law-enforcement employees of the supervising entity pursuant to the provisions of §30-29-12 of this code;

(3) Any policy instituted pursuant to this section shall include provisions that:

(A) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of his or her authority to participate in the program;

(B) Preclude from participation persons prohibited by federal or State law from possessing or receiving a firearm; and

(C) Prohibit persons from carrying a firearm pursuant to this subsection while in an impaired State as defined in §17C-5-2 of this code; and

(4) A courthouse security officer who participates in a program authorized by this section is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition for use when not engaged in his or her official duties.

(d) It is the intent of the Legislature in enacting this section during the 2019 regular session of the Legislature that active courthouse security personnel meeting all the requirements of this section to also meet the requirements of the federal Law-Enforcement Officers Safety Act, 18 U.S.C. § 926B.

(e) The provisions of this section shall become effective July 1, 2020.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.

(a) A person who by threats, menaces, acts or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, ~~or~~ parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(b) A person who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, ~~or~~ parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200, or confined in jail for five days, or both fined and confined. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, "law-enforcement officer" does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law-enforcement officer.

(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, ~~or~~ parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has

given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be confined in jail not more than one year.

(f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned in a state correctional facility not less than one nor more than five years.

(g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 and shall be confined in jail for not less than six months nor more than one year.

(h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than ten years.

(i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall

be imprisoned in a state correctional facility for not less than five nor more than fifteen years. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than ten years.

(k) For purposes of this section, the term “vehicle” includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile as those terms are defined in section one, article one, chapter seventeen-a of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms “flee”, “fleeing” and “flight” do not include a person’s reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer’s direction to stop.

(m) The revisions to subsections (e), (f), (g) and (h) of this section enacted during the regular session of the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical service personnel.

(2) For the purpose of this subsection, the term “interfere with or prevent” includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line or equipment or other communication device.

(3) For the purpose of this subsection, the term “emergency communication” means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year or shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and confined.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and confined.

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than ten years prior to the offense in question.;

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title as follows:

Eng. Com. Sub. for Senate Bill 295—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-3-19, and to amend and reenact §61-5-7 of

said code relating to granting courthouse security officers arrest powers under certain circumstances; authorizing certain West Virginia courthouse security officers to carry concealed firearms while off duty with court approval; setting forth firearm training and qualification requirements; requiring supervising authority to issue photo identification and certification cards; specifying policy content; stating legislative intent that the new code section be consistent with the federal Law-Enforcement Officers Safety Act; establishing an effective date of July 1, 2020; criminalizing the obstruction of a courthouse security officer, correctional officer, and certain Fire Marshal's office personnel while they are acting in their official capacities; criminalizing fleeing from a courthouse security officer, correctional officer, and certain Fire Marshal's office personnel; criminalizing the disarming or attempted disarming of courthouse security officers and certain Fire Marshal's office personnel; including the investigation of misdemeanor offenses as subject to prohibition against making false statements; criminalizing the making of materially false statements as to misdemeanor and felony investigations to the State Fire Marshal and certain Fire Marshal's office personnel; and setting criminal penalties.

Respectfully submitted,

Charles S. Trump, IV, *Chair*, Sue Cline, Richard D. Lindsay II, *Conferees on the part of the Senate*.

Ray Hollen, *Chair*, David Kelly, Rodney Miller, *Conferees on the part of the House of Delegates*.

On motions of Senator Trump, severally made, the report of the committee of conference was taken up for immediate consideration and adopted.

Engrossed Committee Substitute for Senate Bill 295, as amended by the conference report, was then put upon its passage.

On the passage of the bill, as amended, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire,

Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 295) passed with its conference amended title.

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

On motion of Senator Takubo, at 4:28 p.m., the Senate recessed until 5 p.m. today.

The Senate reconvened at 5:36 p.m.

Senator Weld announced a meeting of the committee of conference as to Engrossed Senate Bill 596 (*Adjusting voluntary contribution amounts on certain DMV forms*).

Senator Boso announced a meeting of the committee of conference as to Engrossed Committee Substitute for Senate Bill 405 (*Increasing limit on additional expenses incurred in preparing notice list for redemption*).

Senator Clements announced a meeting of the Committee on Transportation and Infrastructure.

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

Senator Carmichael (Mr. President) laid before the Senate the following communication from His Excellency, the Governor:



Jim Justice
Governor of West Virginia

March 9, 2019

The Honorable Donna Boley
Senate Confirmations Chair
Building 1, Room 206W
Charleston, West Virginia 25305

Dear Madam Chairwoman:

I am respectfully withdrawing the reappointment of Executive Nomination #9 as contained in Senate Executive Message #3, Regular Session 2019.

As always, if I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Jim Justice".

Jim Justice
Governor

JCJ: mrp

Cc: Clerk of the Senate
Ethics Commission
Secretary of State
Senate Confirmations Chair
Shepherd University Board of Governors

Which communication was received.

The Senate again 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 3, dated March 6, 2019, requesting confirmation by the Senate of the nominations mentioned therein. The following list of names from Executive Message 3 is submitted:

1. For Member, Ethics Commission, Lindsey C. Ashley, Pineville, Wyoming County, for the term ending June 30, 2022.

2. For Member, Blue Ridge Community and Technical College Board of Governors, Bradley J. Close, Martinsburg, Berkeley County, for the term ending June 30, 2022.

3. For Member, Blue Ridge Community and Technical College Board of Governors, Taylor James Perry, Jr., Martinsburg, Berkeley County, for the term ending June 30, 2021.

4. For Member, Blue Ridge Community and Technical College Board of Governors, Francisco S. Lanza, Frederick, Maryland, for the term ending June 30, 2022.

5. For Member, Glenville State College Board of Governors, Stephen Gandee, Jane Lew, Lewis County, for the term ending June 30, 2022.

6. For Member, Mountwest Community and Technical College Board of Governors, Jeffrey D. Goad, Barboursville, Cabell County, for the term ending June 30, 2022.

7. For Member, Mountwest Community and Technical College Board of Governors, Melvin J. Miller, Jr., Huntington, Cabell County, for the term ending June 30, 2022.

8. For Member, Mountwest Community and Technical College Board of Governors, Dinah A. Ledbetter, Ceredo, Wayne County, for the term ending June 30, 2022.

10. For Member, Shepherd University Board of Governors, Henry M. Kayes, Jr., Martinsburg, Berkeley County, for the term ending June 30, 2022.

11. For Member, West Liberty University Board of Governors, Richard A. Lucas, Wheeling, Ohio County, for the term ending June 30, 2022.

12. For Member, West Virginia State University Board of Governors, Kenneth D. Gray, Morgantown, Monongalia County, for the term ending June 30, 2022.

13. For Member, West Virginia State University Board of Governors, Mark D. Davis, Charleston, Kanawha County, for the term ending June 30, 2022.

14. For Member, BridgeValley Community and Technical College Board of Governors, Srinu Matam, Scott Depot, Putnam County, for the term ending June 30, 2021.

15. For Member, BridgeValley Community and Technical College Board of Governors, Charles A. Kennedy, Charleston, Kanawha County, for the term ending June 30, 2021.

16. For Secretary, Department of Commerce, The Honorable C. Edward Gaunch, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

17. For Member, West Virginia Board of Veterinary Medicine, Frank J. Cary, Kingwood, Preston County, for the term ending June 30, 2021.

18. For Member, Board of Funeral Service Examiners, John C. Valentine, Weston, Lewis County, for the term ending June 30, 2019.

19. For Executive Director, Real Estate Division, John K. McHugh, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

20. For Secretary, Department of Administration, Allan L. McVey, St. Albans, Kanawha County, to serve at the will and pleasure of the Governor.

21. For Member, Aeronautics Commission, James W. Wallace, Beverly, Randolph County, for the term ending June 30, 2020.

22. For Member, Board of the College Prepaid Tuition and Savings Program, Chuck Smith, Charleston, Kanawha County, for the term ending June 30, 2023.

23. For Member, West Virginia University Board of Governors, Charles L. Capito, Jr., Charleston, Kanawha County, for the term ending June 30, 2022.

24. For Member, Commission on the Arts, Rebecca A. Deem, Vienna, Wood County, for the term ending June 30, 2020.

25. For Member, Environmental Quality Board, Stephen G. Capelli, Sr., Elkins, Randolph County, for the term ending June 30, 2022.

26. For Member, Tourism Commission, Barry Kadel, Charleston, Kanawha County, for the term ending May 1, 2021.

27. For Member, Shepherd University Board of Governors, James M. Cherry, Frederick, Maryland, for the term ending June 30, 2022.

28. For Member, West Virginia State University Board of Governors, James Payne, Charleston, Kanawha County, for the term ending June 30, 2021.

29. For Commissioner, Insurance Commission, James A. Dodrill, Hurricane, Putnam County, to serve at the will and pleasure of the Governor.

30. For Member, West Virginia Board of Medicine, Angela A. Mayfield, Nitro, Kanawha County, for the term ending September 30, 2023.

31. For Member, Real Estate Commission, James S. Walker, Morgantown, Monongalia County, for the term ending June 30, 2022.

32. For Member, Board of Directors of the West Virginia United Health System, Jocelyn M. Moore, Inwood, Berkeley County, for the term ending October 15, 2022.

33. For Member, Board of Directors of the West Virginia United Health System, Hannah Hazard-Jenkins, Morgantown, Monongalia County, for the term ending October 15, 2022.

34. For Member, West Virginia Board of Osteopathic Medicine, Heather K. Jones, Chapmanville, Logan County, for the term ending June 2023.

35. For Member, Public Land Corporation Board of Directors, Carl D. Andrews, Charleston, Kanawha County, for the term ending June 30, 2021.

36. For Member, Board of Barbers and Cosmetologists, Donald Snyder, Fayetteville, Fayette County, for the term ending June 30, 2019.

37. For Member, Eastern West Virginia Community and Technical College Board of Governors, Andrew N. Blackwood, Charleston, Kanawha County, for the term ending June 30, 2021.

38. For Member, Eastern West Virginia Community and Technical College Board of Governors, Sonnee Carter, Petersburg, Grant County, for the term ending June 30, 2021.

39. For Member, West Liberty University Board of Governors, Richard H. Carter, Wheeling, Ohio County, for the term ending June 30, 2020.

40. For Member, West Liberty University Board of Governors, William C. Mercer, Wheeling, Ohio County, for the term ending June 30, 2019.

41. For Member, Aeronautics Commission, Brian Thompson, Huntington, Cabell County, for the term ending June 30, 2022.

42. For Member, Board of Directors of the West Virginia United Health System, Ellen S. Cappellanti, Charleston, Kanawha County, for the term ending October 15, 2024.

43. For Member, State Conservation Committee, Timothy VanReenen, Hillsboro, Pocahontas County, for the term ending June 30, 2022.

44. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Kim Nuckles, Charleston, Kanawha County, for the term ending January 31, 2021.

45. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Douglas Auten, Moundsville, Marshall County, for the term ending January 31, 2021.

46. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Susannah Carpenter, Charleston, Kanawha County, for the term ending January 31, 2021.

47. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Jerry Boyko, Charleston, Kanawha County, for the term ending January 31, 2021.

48. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, John Hyre, Kingwood, Preston County, for the term ending January 31, 2021.

49. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Thomas Belasco II, Bridgeport, Harrison County, for the term ending June 30, 2024.

50. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Gary D. Shaw, Fairmont, Marion County, for the term ending June 30, 2022.

51. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Johnnie E. Brown, Charleston, Kanawha County, for the term ending June 30, 2022.

52. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Richard Casto, Madison, Boone County, for the term ending June 30, 2020.

53. For Member, Family Protection Services Board, Trudi Blaylock, Charleston, Kanawha County, for the term ending June 30, 2019.

54. For Member, Family Protection Services Board, Kimberly Sanford Sizemore, Fraziers Bottom, Putnam County, for the term ending June 30, 2019.

55. For Member, West Virginia Health Care Authority, Robert J. Gray, Charleston, Kanawha County, for the term ending June 30, 2023.

56. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Dennis Funk, Kirby, Hardy County, for the term ending June 30, 2021.

57. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Charles M. Long, Frankford, Greenbrier County, for the term ending June 30, 2020.

58. For Member, Workforce Development Board, John Sorrenti, Weirton, Hancock County, for the term ending June 30, 2021.

59. For Member, Workforce Development Board, Penny Brown, Belington, Barbour County, for the term ending June 30, 2021.

60. For Member, Workforce Development Board, Eunice Bellinger, Montgomery, Fayette County, for the term ending June 30, 2021.

61. For Member, Workforce Development Board, Kim Barber Tieman, Charleston, Kanawha County, for the term ending June 30, 2021.

62. For Member, Workforce Development Board, Myisha Robinson, Charleston, Kanawha County, for the term ending June 30, 2020.

63. For Member, Workforce Development Board, Bryan Johnson, Kenova, Wayne County, for the term ending June 30, 2020.

64. For Member, Workforce Development Board, Michael Bombard, Fairmont, Marion County, for the term ending June 30, 2020.

65. For Member, Workforce Development Board, Michael Sirockman, Winfield, Putnam County, for the term ending June 30, 2020.

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, the special order thereon was called by the President.

Thereupon, Senator Carmichael (Mr. President) laid before the Senate the following executive message:

Senate Executive Message 3, dated March 6, 2019 (*shown in the Senate Journal of Wednesday, March 6, 2019, pages 2045 through 2050, inclusive*).

Senator Boley then moved that the Senate advise and consent to all of the executive nominations referred to in the foregoing report from the Committee on Confirmations.

The question being on the adoption of Senator Boley's aforesaid motion,

The roll was then taken; and

On this question, the yeas were: Azinger, Baldwin, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Beach and Mann—2.

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 nominations referred to in the foregoing report from the Committee on Confirmations had been confirmed.

Consideration of executive nominations having been concluded,

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

The Senate again proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 30, Eliminating tax on annuity considerations collected by life insurer.

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

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

On page one, section fifteen, line one, by striking out all of subsection (a) and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) For the taxable years beginning on or after January 1, 2021, the tax imposed by this section is discontinued.

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

Engrossed Committee Substitute for Senate Bill 30, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Boley and Mann—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. 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, to take effect July 1, 2019, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill 36, Allowing adjustment of gross income for calculating personal income liability for certain retirees.

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

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

On page one, section twelve-d, line sixteen, by striking out “2019” and inserting in lieu thereof “2020”.

Senator Takubo moved that the Senate concur in the House of Delegates amendment to the bill.

Following discussion,

The question being on the adoption of Senator Takubo’s aforesaid motion, the same was put and prevailed.

Engrossed Senate Bill 36, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Boley and Mann—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 36) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2019.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Boley and Mann—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 36) takes effect July 1, 2019.

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, 2019, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 103, Relating generally to Public Defender Services.

On motion of Senator Takubo, 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 six, after line forty-two, by inserting a new subsection, designated subsection (f), to read as follows:

(f) The agency shall establish and the executive director or his or her designee shall operate a division within the agency for the purpose of prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals. The executive director or his or her designee shall be the director of the division. The division shall represent eligible clients upon appointment by a circuit court or the Supreme Court of Appeals. A court may appoint the division to represent an eligible person unless the appointment would create a conflict of interest or the executive director has notified the court in writing that the division's existing caseload cannot be increased for a specified period of time without jeopardizing its ability to provide effective representation. In appointing the division, a court should determine whether the appointment of the division is the most effective use of the office considering the grounds and legal issues raised by the petitioner. The executive director may select and employ staff attorneys, paraprofessionals, and investigators to perform the duties prescribed by this subsection. The division shall maintain records of representation of eligible clients for record-keeping purposes only.;

And by relettering the remaining subsections;

On page four, by striking out all of section nine-a;

And,

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

Eng. Com. Sub. for Senate Bill 103—A Bill to amend and reenact §29-21-6 and §29-21-13a of the Code of West Virginia, 1931, as amended, all relating generally to Public Defender Services; requiring Public Defender Services to establish and operate a division within the agency for the purpose of prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals upon appointment by a court; transferring initial authority to review, approve, modify, or refuse panel attorney vouchers from circuit courts to Public Defender Services; providing for resubmission or

reconsideration of vouchers previously modified or refused; establishing procedures for handling of modified or refused vouchers; maintaining final authority over payment of vouchers with circuit courts; authorizing the Executive Director of Public Defender Services, with approval of the Indigent Defense Commission, to contract for noncriminal legal services; providing for payment of contracts; authorizing agency to reduce or reject vouchers or requests for payment; requiring panel attorneys to maintain time-keeping records to enable the attorney to determine time expended on a daily basis; setting record-keeping standards; requiring prompt processing and payment of vouchers; increasing the rates of compensation for panel attorneys; authorizing payment for in-court paralegal services with prior approval of the circuit court and subject to agency rule regarding maximum reimbursement; authorizing the executive director to promulgate emergency rules; and setting an effective date.

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

Engrossed Committee Substitute for Senate Bill 103, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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. 103) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect July 1, 2019.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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 S. B. 103) takes effect July 1, 2019.

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 147, Shifting funding from Landfill Closure Assistance Fund to local solid waste authorities.

On motion of Senator Takubo, 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:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-22. County solid waste assessment fees authorized.

Each county or regional solid waste authority is hereby authorized to impose a similar solid waste assessment fee to that imposed by §22-15-11 of this code at a rate not to exceed ~~50¢~~ \$1.50 per ton or part thereof upon the disposal of solid waste in that county or region. All assessments due shall be applied to the reasonable costs of administration of the county's regional or county solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, litter control programs, or any solid waste programs ~~deemed~~ considered necessary to fulfill its duties.

CHAPTER 22. ENVIRONMENTAL RESOURCES.**ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.****§22-16-4. Solid waste assessment fee; penalties.**

(a) *Imposition.* — A solid waste assessment fee is levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of ~~\$3.50~~ \$2.50 per ton or like ratio on any part of a ton of solid waste, except as provided in §22-16-4(e) of this code: *Provided*, That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that the facility is required by the Public Service Commission to set aside for the purpose of closure of that portion of the facility required to close by §22-15-1 *et seq.* of this code. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) *Collection, return, payment and records.* — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not that person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner:

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the Tax Commissioner;

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code;

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner;

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them as against the association or corporation which they represent; and

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in the form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter 24A of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of the fee in the motor carrier's rates for solid waste removal service. In calculating the amount of the fee to the motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States environmental protection agency.

(d) *Definitions.* — For purposes of this section, the term “solid waste disposal facility” means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal

facility if the facility is used exclusively to dispose of waste originally produced by that person in the person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the director as exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler shall keep accurate records of incoming and outgoing waste by weight. The records shall be made available to the appropriate inspectors from the division, upon request.

(f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in §11-10-1 *et seq.* of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) *Criminal penalties.* — Notwithstanding §11-9-2 of this code, §11-9-3 through §11-9-17 of this code apply to the fee imposed by this section with like effect as if the sections were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(h) *Dedication of proceeds.* — (1) The proceeds of the fee collected pursuant to this section shall be deposited in the Closure Cost Assistance Fund established pursuant to §22-16-12 of this code: *Provided*, That the director may transfer up to 50 cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected on or after July 1, 1998, to the

Solid Waste Enforcement Fund established pursuant to §22-15-11 of this code.

(2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of 30,000 tons per month from any landfill which is permitted to accept in excess of 30,000 tons per month pursuant to §22-15-9 of this code shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the Closure Cost Assistance Fund established pursuant to §22-16-12 of this code.;

And,

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

Eng. Com. Sub. for Senate Bill 147—A Bill to amend and reenact §7-5-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-16-4 of said code, all relating to shifting funding from the Landfill Closure Assistance Fund to local solid waste authorities.

Senator Takubo moved that the Senate concur in the House of Delegates amendments to the bill.

Following discussion,

The question being on the adoption of Senator Takubo's aforesated motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 147, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Clements, Cline, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—24.

The nays were: Baldwin, Boso, Facemire, Hamilton, Hardesty, Plymale, Romano, Sypolt, and Takubo—9.

Absent: Boley—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. 147) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 152, Relating generally to criminal offense expungement.

On motion of Senator Takubo, 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:

**ARTICLE 11. GENERAL PROVISIONS CONCERNING
CRIMES.**

**§61-11-26. Expungement of certain criminal convictions;
procedures; effect.**

(a) Eligibility for expungement. —

(1) Misdemeanors.

~~Subject to the limitations set forth in this section, a Any person convicted of a misdemeanor offense or offenses arising from the same transaction committed while he or she was between the ages of eighteen and twenty six, inclusive, may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions. therewith. The clerk of the circuit court shall charge and collect in advance the same fee as is charged for instituting a civil action pursuant to subdivision (1), subsection (a), section eleven, article one, chapter fifty nine of this code for a petition for expungement.~~

(2) Nonviolent felonies.

Subject to the limitations set forth in this section, a person convicted of a nonviolent felony offense or offenses arising from the same transaction or series of transactions may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

~~(b) Expungement shall not be available for any conviction of an offense listed in subsection (i) of this section. The relief afforded by this subsection is only available to persons having no other prior or subsequent convictions other than minor traffic violations at the time the petition is filed: *Provided*, That at the time the petition is filed and during the time the petition is pending, petitioner may not be the subject of an arrest or any other pending criminal proceeding. No person shall be eligible for expungement pursuant to the provisions of subsection (a) of this section until one year after the conviction, completion of any sentence of incarceration or probation, whichever is later in time.~~

(b) Temporal requirements. —

(1) Misdemeanor - A person is not eligible for expungement pursuant to subdivision (1), subsection (a) of this section until one year after conviction, completion of any sentence of incarceration

or completion of any period of supervision, whichever is later in time.

(2) More than one misdemeanor – A person is not eligible for expungement of multiple misdemeanors pursuant to subdivision (1), subsection (a) of this section until two years after the last conviction, completion of any sentence of incarceration or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Non-violent felonies – A person is not eligible for expungement of a nonviolent felony pursuant to subdivision (2), subsection (a) of this section until five years after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(c) Limitations on eligibility for expungement. — A person is not eligible for expungement pursuant to subsection (a) of this section for convictions of the following offenses:

(1) Any felony offense of violence against the person as defined in subdivision (2), subsection (p) of this section or any misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer;

(2) Any felony offense in which the victim of the crime was a minor as defined in subdivision (3), subsection (p) of this section;

(3) Any violation of §61-8B-1 *et seq.* of this code;

(4) Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;

(5) Any violation of §61-2-28 of this code, or any offense which violates §61-2-9(b) or §61-2-9(c) of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of §61-2-28(c) of this code;

(6) Any violation of §61-2-29 of this code;

(7) Any offense of driving under the influence of alcohol or a controlled substance;

(8) Any offense which violates §17B-4-3 of this code;

(9) Any offense which violates §61-8-12 or §61-8-19 of this code;

(10) Any violation of §61-2-9a of this code;

(11) Any violation of §61-8B-8 and 9 of this code;

(12) Any violation of §61-3-11 of this code

(13) Any conviction for which the sentencing judge made a written finding that the offense was sexually motivated;

(14) Any offense which violates §17E-1-13(g) of this code; and

(15) Any offense of conspiracy or attempt to commit a felony set forth in subdivisions (1) through (13), inclusive, of this subsection.

~~(e)~~ (d) Content of petition for expungements. — Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information, Provided, That a petition for the expungement of multiple misdemeanors shall identify and group such information by circuit court, as applicable, from which expungement of a particular conviction or convictions is being sought:

(1) The Petitioner's petitioner's current name and all other legal names or aliases by which the petitioner has been known at any time;

(2) All of the petitioner's addresses from the date of the offense ~~or alleged offense~~ in connection with which an expungement order is sought to date of the petition;

(3) The Petitioner's petitioner's date of birth and Social Security number;

(4) ~~The Petitioner's~~ petitioner's date of arrest, the court of jurisdiction, and criminal complaint, indictment, summons, or case number;

(5) The statute or statutes and offense or offenses for which the petitioner was charged and of which the petitioner was convicted;

(6) The names of any victim or victims, or a statement that there were no identifiable victims;

(7) Whether there is any current order for restitution, protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victims or whether there has ever been a prior order for restitution, protection, or restraining order prohibiting the petitioner from contacting the victim. If there is ~~such~~ a current order, the petitioner shall attach a copy of that order to his or her petition;

(8) The ~~court's~~ disposition of the matter and ~~punishment~~ sentence imposed, if any;

(9) ~~Why~~ The grounds on which expungement is sought, ~~such as, including,~~ but not limited to, employment or licensure purposes ~~and why it should be granted;~~

(10) The steps the petitioner has taken since the time of the offense or offenses toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;

(11) Whether petitioner has ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, by the court of any other state, or by any federal court; ~~and~~

(12) Any supporting documents, sworn statements, affidavits, or other information supporting the petition ~~to expunge~~ for expungement.

~~(d)~~ (e) Service of petition for expungement. — The petitioner shall serve a copy of the petition, with any supporting

documentation, ~~shall be served by petitioner~~ pursuant to the rules of the trial court upon the following persons or entities:

(1) The Superintendent of the State Police;

(2) The prosecuting attorney of the county of conviction;

(3) The chief of police or other executive head of the municipal police department wherein where the offense was committed;

(4) The chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner;

(5) The superintendent or warden of any institution in which the petitioner was confined; and

(6) The circuit court, magistrate court, or municipal court which disposed of the petitioner's criminal charge. and all other state and local government agencies whose records would be affected by the proposed expungement.

~~(f) The prosecutorial office that had jurisdiction over the offense or offenses for~~ The prosecuting attorney of the county in which expungement is sought shall serve by first class mail the petition for expungement, accompanying documentation, and any proposed expungement order by first class mail to any identified victims.

~~(e)~~ (g) Notice of opposition. —

~~(1) Upon receipt of a petition for expungement, the Superintendent of the State Police; the prosecuting attorney of the county of conviction; the chief of police or other executive head of the municipal police department wherein the offense was committed; the chief law-enforcement officer of any other law-enforcement agency which participated in the arrest of the petitioner; the superintendent or warden of any institution in which the petitioner was confined; the magistrate court or municipal court which disposed of the petitioner's criminal charge; all other state and local government agencies whose records would be affected~~

by the ~~proposed expungement~~ persons and entities listed in subsection (e) of this section, and any other interested ~~individual person~~ or agency that desires to oppose the expungement ~~shall may~~, within 30 days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition for expungement.

(2) A copy of any notice of opposition with supporting documentation and sworn statements shall be served upon the petitioner in accordance with trial court rules.

(3) The petitioner may file a reply to a notice of opposition no later than ~~ten~~ 30 days after service of any notice of opposition to the petition for expungement.

(~~f~~) (h) Burden of proof. — The burden of proof shall be on the petitioner seeking an order of expungement to prove by clear and convincing evidence ~~that~~:

(1) That the conviction or convictions for which expungement is sought are the only convictions against the petitioner and that the conviction or convictions are not excluded from expungement by ~~subsection (j)~~ the provisions of this section;

(2) That the requisite time ~~period~~ has passed since the conviction or convictions or ~~end of~~ the completion of any sentence of incarceration or ~~probation~~ period of supervision as set forth in subsection (b) of this section;

(3) That the petitioner has no criminal charges pending against him or her;

(4) That the expungement is consistent with the public welfare;

(5) That the petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and

(6) Any other ~~matter~~ facts deemed considered appropriate or necessary by the court to make a determination regarding the petition for expungement.

~~(g)~~ (i) Court procedure for petition for expungement. —

Within 60 days of the filing of a petition for expungement the circuit court shall:

(1) Summarily grant the petition;

(2) Set the matter for hearing; or

(3) Summarily deny the petition if the court determines that the petition is insufficient or, based upon supporting documentation and sworn statements filed in opposition to the petition, the court determines that the petitioner, as a matter of law, is not entitled to expungement;

~~(h)~~ (j) Hearing on petition for expungement. —

If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner's arrest, conviction, sentence, and post-conviction supervision, including any record of arrest or conviction in any other state or federal court. The court may hear testimony of witnesses and any other matter the court ~~deems~~ considers proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for expungement with appropriate findings of fact and conclusions of law.

~~(i) No person shall be eligible for expungement of a conviction and the records associated therewith pursuant to the provisions of subsection (a) of this section for any violation involving the infliction of serious physical injury; involving the provisions of article eight b of this chapter where the petitioner was eighteen~~

~~years old, or older, at the time the violation occurred and the victim was twelve years of age, or younger, at the time the violation occurred; involving the use or exhibition of a deadly weapon or dangerous instrument; of the provisions of subsection (b) or (c), section nine, article two of this chapter where the victim was a spouse, a person with whom the person seeking expungement had a child in common or with whom the person seeking expungement ever cohabitated prior to the offense; any violation of the provisions of section twenty eight of said article; a conviction for driving under the influence of alcohol, controlled substances or a conviction for a violation of section three, article four, chapter seventeen b of this code or section nineteen, article eight of this chapter.~~

~~(j)(k) *Sealing of records.* — If the court grants the petition for expungement, it shall order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official, including law-enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or conviction that is ordered to expunge records shall certify to the court within 60 days of the entry of the expungement order that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed. For the purposes of this section, “records” do not include the records of the Governor, the Legislature or the Secretary of State that pertain to a grant of pardon. Such records that pertain to a grant of pardon are not subject to an order of expungement. The amendment to this section during the fourth extraordinary session of the Legislature in the year 2009 is not for the purpose of changing existing law, but is intended to clarify the intent of the Legislature as to existing law regarding expungement.~~

~~(k)(1) *Disclosure of expunged matters.* —~~

~~(1) Subject to the exceptions set forth in this section, upon expungement, the proceedings in the matter shall be deemed, considered, as a matter of law, never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto to~~

the record on an application for employment, credit, or other type of application: *Provided, That any person applying for a position in which he or she would be engaging in the prevention, detection, investigation, prosecution, or incarceration of persons for violations of the law shall disclose any and all convictions to his or her prospective employer, regardless of whether the conviction or convictions have been expunged pursuant to this section.*

(2) A person for whom an order of expungement has been entered pursuant to this section may not be found guilty of perjury or otherwise giving a false statement, under any provision of this code, because of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction, as long as the person is in compliance with subdivision (1) of this subsection.

(3) Notwithstanding any provisions of this code to the contrary, any person required by state or federal law to obtain a criminal history record check on a prospective employee are authorized to have knowledge of any convictions expunged under this section.

(4) (m) *Inspection of sealed records.* — Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that there is a legitimate reason for access and the interests of justice will be served by granting a petition to inspect the sealed record, it may ~~be granted~~ grant access under the terms and conditions determined by the court.

(n) *Fees for filing petition for expungement and processing orders of expungement.* — The clerk of the circuit court shall charge and collect in advance the same fee for a petition for expungement as is charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code. A person obtaining an order of expungement pursuant to the provisions of this section shall pay a fee of \$100 to the records division of the West Virginia State Police for the cost of processing the order of expungement deposited into

a special revenue account within the State Treasurer's office to be known as the West Virginia State Police Criminal History Account.

(o) Notwithstanding any provision of this code to the contrary, a person may only obtain the relief afforded by the provisions of this section and §61-11-26a of this code once.

(p) For the purposes of this section:

(1) "Court record" means an official record of a court about a proceeding that the clerk of the court or other court personnel maintains. "Court record" includes an index, a docket entry, a petition or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment.

(2) "Felony crime of violence against the person" means those felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, and §61-8D-1 *et seq.* of this code.

(3) "Felony offenses in which the victim was a minor" means felony violation of §61-3C-14b, §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(4) "Nonviolent felony" means a felony that:

(A) Is not an offense listed in subsection (c) of this section;

(B) Is not an offense involving the intentional infliction of serious bodily injury;

(C) Is an offense the conviction of which is based on facts and circumstances of which the circuit court finds to be consistent with the purposes of this article; and

(D) Is an offense the conviction of which the circuit court finds does not involve violence or potential violence to another person or the public.

(5) "Records" do not include the records of the Governor, the Legislature, or the Secretary of State that pertain to a grant of pardon. Records that pertain to a grant of pardon are not subject to an order of expungement.

(6) “Seal” means removing information from public inspection in accordance with this section.

(7) “Sealing” means:

(A) For a record kept in a courthouse, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access;

(B) For electronic information about a proceeding on the website maintained by a magistrate court, circuit court, or the Supreme Court of Appeals, removing the record from the public website; and

(C) For a record maintained by any law-enforcement agency, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access.

(q) *Statutory construction.* — Nothing in this section may be construed to allow a person obtaining relief pursuant to this section to be eligible for reinstatement of any retirement or employment benefit which he or she lost or forfeited due to the conviction or convictions expunged.

(r) The enactment of this section during the 2019 regular session includes the repeal of the provisions of §61-11B-1 *et seq.* of this code. Any person that had a sentence reduction pursuant to the provisions of §61-11B-1 *et seq.* of this code may petition the court of record to have the criminal offense reduction order converted into an order of expungement. Upon verification by the court that the petitioner qualifies, the court shall enter an order of expungement of the petitioner’s conviction.

§61-11-26a. Expungement of certain criminal convictions with approved treatment or recovery and job program.

(a) Notwithstanding any provisions of §61-11-26 of this code to the contrary, any person who has been convicted of a nonviolent felony offense or multiple misdemeanors and that would be eligible for expungement pursuant to the provisions of §61-11-26 of this code and who: (1) has a medically documented history of substance

abuse and successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health and Human Resources; or (2) graduates from a West Virginia Department of Education approved Job Readiness Adult Training course, or both, if applicable, may petition the circuit court or circuit courts in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith as provided in §61-11-26 of this code as follows:

(1) Any person who has been convicted of a single misdemeanor that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is eligible for expungement pursuant to §61-11-26(a)(1) of this code upon successful compliance with an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved Job Readiness Adult Training course, or both, if applicable, but after the completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) Any person who has been convicted of multiple misdemeanors that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is not eligible for expungement pursuant to §61-11-26(a)(1) of this code until 1 year after the last conviction, completion of any sentence of incarceration or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Any person who has been convicted of a nonviolent felony offense that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is not eligible for expungement pursuant to §61-11-26(a)(2) of this code until three years after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(b) In addition to the required content of a petition for expungement as required by §61-11-26(d) of this code, any person

petitioning for an expungement pursuant to the provisions of this section, shall also include the following, if applicable:

(1) Documentation of compliance with an approved treatment or recovery and counseling program; and

(2) Certificate of graduation from an approved Adult Training Job Readiness Course.

(c) A person may file only one petition for expungement, to the circuit court or circuit courts as applicable, pursuant to the provisions of this section and the provisions of §61-11-26 of this code.

(d) The fee of \$100 to the records division of the West Virginia State Police for the cost of processing the order of expungement required in §61-11-26(n) of this code is waived for petitions of expungement filed pursuant to the provisions of this section.

ARTICLE 11B. CRIMINAL OFFENSE REDUCTION.

§61-11B-1. Legislative intent.

[Repealed.]

§61-11B-2. Definitions.

[Repealed.]

§61-11B-3. Criminal offense reduction.

[Repealed.]

§61-11B-4. Petition for reduction.

[Repealed.]

§61-11B-5. Employer protections.

[Repealed.];

And,

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

Eng. Com. Sub. for Senate Bill 152—A Bill to repeal §61-11B-1, §61-11B-2, §61-11B-3, §61-11B-4, and §61-11B-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-11-26 of said code; and to amend said code by adding thereto a new section, designated §61-11-26a, all relating generally to expungement of certain convictions; eliminating statutory authority to reduce certain felonies to misdemeanor status; authorizing those who have used statutory authority to reduce certain felonies to misdemeanors to seek expungement; defining terms; eliminating age limitations for petitioners seeking to expunge certain misdemeanors; expanding eligibility for criminal expungement to persons convicted of certain nonviolent felonies or multiple misdemeanors; providing exclusions from eligibility; establishing time limitations for filing a petition for expungement; creating petition requirements and court procedure for evaluating petitions for orders of expungement for expungable offenses; clarifying disclosure requirements with respect to the information sealed pursuant to an order of expungement, including exemptions; providing standard for inspection of sealed records; establishing fees, including when fees are waived; clarifying that an order of expungement does not reinstate eligibility for certain benefits lost due to expunged conviction; providing time limitations for filing petitions of expungement after completion of certain drug treatment or job training; and making technical changes.

Senator Takubo moved that the Senate concur in the House of Delegates amendments to the bill.

Following discussion,

The question being on the adoption of Senator Takubo's aforesaid motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 152, as amended by the House of Delegates, was then put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 152 pass?”

Senator Tarr requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate because he is an employer who may be in the position of hiring a person with an expunged criminal record.

The Chair replied that any impact on Senator Tarr would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: Tarr—1.

Absent: Boley—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. 152) 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 again proceeded to the fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 6:19 p.m. today:

Eng. Com. Sub. for Com. Sub. for Senate Bill 317, Authorizing three or more adjacent counties form multicounty trail network authority.

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 July 1, 2019, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 291, Relating generally to survivor benefits for emergency response providers.

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

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

On page one, section one, line five, after the word “law-enforcement” by inserting the word “agency”;

And,

On page two, section two, line twenty-two, after the word “law-enforcement” by inserting the word “agency”.

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

Engrossed Committee Substitute for Senate Bill 291, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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. 291) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2019.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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 S. B. 291) takes effect July 1, 2019.

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 345, Relating to fire service equipment and training funds for VFDs.

On motion of Senator Takubo, 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:

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.****§8-15-8b. Authorized expenditures of revenues from the Municipal Pensions and Protection Fund and the Fire Protection Fund; deductions for unauthorized expenditures; record retention.**

~~(a) Revenues allocated to volunteer and part volunteer fire companies and departments may be expended only for the items listed in subdivisions (1) through (15) of this section. Funds Money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, may not be commingled with funds moneys received from any other source, except money received as a grant from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code. Expenditures may be made Distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund allocated to volunteer and part-volunteer fire companies and departments may be expended only for the following:~~

(1) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats, and gloves;

(2) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(3) Compliance with insurance service office recommendations relating to fire departments;

(4) Rescue equipment, communications equipment, and ambulance equipment: *Provided*, That no moneys received from the Municipal Pensions and Protection Fund or the Fire Protection Fund may be used for equipment for personal vehicles owned or operated by volunteer or part-volunteer fire company or department members;

(5) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;

(6) Retirement of debts;

(7) Payment of utility bills;

(8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood-borne pathogens: *Provided*, That the vaccine shall be purchased through the state immunization program or from the lowest-cost vendor available: *Provided, however*, That volunteer and part-volunteer fire companies and departments shall seek to obtain no-cost administration of the vaccinations through local boards of health: *Provided further*, That in the event any volunteer or part-volunteer fire company or department is unable to obtain no-cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;

(9) Any filing fee required to be paid to the Legislative Auditor's Office under §12-4-14 of this code relating to sworn statements of annual expenditures submitted by volunteer or part-volunteer fire companies or departments that receive state funds or grants;

(10) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;

(11) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage, and accounting costs;

(12) Dues paid to national, state, and county associations;

(13) Workers' compensation premiums;

(14) Life insurance premiums to provide a benefit not to exceed \$20,000 for firefighters; and

(15) Educational and training supplies and fire prevention promotional materials, not to exceed \$500 per year.

(b) If a volunteer or part-volunteer fire company or department spends any amount of money received from the Municipal Pensions and Protection Fund or the Fire Protection Fund for an item, service, or purpose not authorized by this section, that amount, when determined by an official audit, review, or investigation, shall be deducted from future distributions to the volunteer fire company or part-volunteer fire department.

(c) If a volunteer or part-volunteer fire company or department purchases goods or services authorized by this section, but then returns the goods or cancels the services for a refund, then any money refunded shall be deposited back into the same, dedicated bank account used for the deposit of distributions from the Municipal Pensions and Protection Fund and the Fire Protection Fund.

(d) Each volunteer or part-volunteer fire company and department shall retain, for five calendar years, all invoices, receipts, and payment records for the goods and services paid with money received from the state for volunteer and part-volunteer fire companies and departments, pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code and money received as a grant from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS, AND GENERAL PROVISIONS.

§12-4-14. Accountability of persons grantees receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

(a) For the purposes of this section:

(1) “Grantor” means a state spending unit awarding a state grant.

(2) ~~“Person”~~ “Grantee” means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity. The term “person” does not include a state spending unit or a local government as defined in section one-a, article nine, chapter six of this code

(3) “Report” means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term “report” does not mean a full-scope audit or review of the person receiving state funds.

(4) “State grant” means funding provided by a state spending unit, regardless of the original source of the funds, to a ~~person~~ grantee upon application for a specific purpose. The term “state grant” does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, *et seq.* The term “state grant” does not include formula distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 ~~of said chapter of this code~~ and does not include money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

(b) (1) Any ~~person~~ grantee who receives one or more state grants in the amount of \$50,000 or more in the aggregate in a state’s fiscal year shall file with the grantor a report of the disbursement

of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, ~~as published on June 27, 2003,~~ and submitted within the period provided in this section may be substituted for the report.

(2) Any ~~person~~ grantee who receives a state grant in an amount less than \$50,000 or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures made under the grant.

(3) Reports and sworn statements of expenditures required by ~~subdivisions (1) and (2) of this subsection~~ shall be filed within two years of the end of the ~~person's~~ grantee's fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the ~~person receiving the state grant~~ grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

(c) (1) Any ~~person~~ grantee failing to file a required report or sworn statement of expenditures within the two-year period provided in subdivision (3), subsection (b) of this section for state grant funds ~~disbursed after July 1, 2003,~~ is barred from subsequently receiving state grants until the ~~person~~ grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any ~~persons~~ grantee failing to file a required report or sworn statement of expenditures within the required period provided in ~~subdivision (3), subsection (b) of this section~~ for a state grant ~~disbursed after July 1, 2003,~~ to

the Legislative Auditor for purposes of debarment from receiving state grants.

(d) (1) The state agency administering the state grant shall notify the ~~person~~ grantee of the reporting requirements set forth in this section.

(2) All grantors awarding state grants shall, prior to awarding a state grant, take reasonable actions to verify that the ~~person~~ grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the ~~person~~ grantee seeking the state grant provide a sworn statement from an authorized representative that the ~~person~~ grantee has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the Legislative Auditor by the grantor that the ~~person~~ grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided in subsection (e) of this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the Legislative Auditor within 30 days of receipt by the grantor.

(4) The grantor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) The Secretary of the Department of Administration has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to assist in

implementing the provisions of ~~subsections (a), (b), (c) and (d)~~ of this section.

(e) (1) Any state agency administering a state grant shall, in the manner designated by the Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be disbursed, the identity of the ~~person~~ grantee authorized to receive the funds, the ~~person's~~ grantee's fiscal year and federal employer identification number, and the purpose and nature of the state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later. ~~If the state grant was awarded prior to October 1, 2005, the grantor shall provide the information required by this section by December 1, 2005.~~

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 ~~of said chapter of this code~~, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The Legislative Auditor shall maintain a list identifying ~~persons~~ grantees who have failed to file reports and sworn statements required by this section. The list may be in the form of a computerized database that may be accessed by state agencies over the Internet.

(f) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the grantee.

~~(g) (1) Volunteer and part-volunteer fire departments receiving formula distributions pursuant to §33-3-14D, §33-3-33, §33-12C-7 of this code shall either:~~

~~(A) File a report, as defined in §12-4-14(a)(3) of this code with the Legislative Auditor within the same time frames as are required for sworn statements of annual expenditures to be filed under this section. The report shall be made by an independent certified public accountant at the cost of the volunteer or part-volunteer fire~~

department. The scope of the report is limited to showing that the funds distributed were spent for authorized purposes; or

~~(B) File a sworn statement of annual expenditures with the Legislative Auditor on or before February 14 of each year. The sworn statement of expenditures shall be signed by the chief or director of the volunteer fire department and shall be made under oath and acknowledged before a notary public.~~

~~(2) If the sworn statement or report required by this subsection is not filed on or before May 15, unless the time period is extended by the Legislative Auditor, the Legislative Auditor may conduct an audit of the volunteer or part volunteer fire department.~~

~~(3) If the sworn statement of annual expenditures or report required by this subsection is not filed with the Legislative Auditor by July 1, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of §33 3-14D, §33 3-33, §33 12C 7 of this code until the report is complete. Moneys withheld pursuant to this subdivision are to be deposited in the special revenue account created in the State Treasury in §12-4 14(g)(4) of this code.~~

~~(4) The Legislative Auditor may assign an employee or employees to perform audits or reviews at the direction of the Legislative Auditor of the disbursement of state grant funds to volunteer fire departments. The volunteer fire department shall cooperate with the Legislative Auditor, the Legislative Auditor's employees and the State Auditor in performing their duties under this section. If the Legislative Auditor determines a volunteer fire department is not cooperating, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of §33 3-14D, §33 3-33, §33 12C 7 of this code until the Legislative Auditor informs the Treasurer that the fire department has cooperated as required by this section. The State~~

~~Treasurer shall pay the amount withheld into a special revenue account hereby created in the State Treasury and designated the "Volunteer Fire Department Audit Account". If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the fire department, the State Treasurer shall pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of these sections.~~

~~(5) Whenever the State Auditor performs an audit of a volunteer fire department for any purpose the Auditor shall also conduct an audit of other state funds received by the fire department pursuant to §33-3-14D, §33-3-33, §33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit under this section.~~

~~(6) If the Legislative Auditor is notified by a grantor that a fire department has failed to file a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor shall notify the Treasurer who shall withhold further distributions to the fire department in the same manner provided in §12-4-14(g)(3) of this code.~~

~~(h)~~ (g) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of §39A-1-1 *et seq.* of this code.

~~(i)~~ (h) Any ~~person~~ grantee who files a fraudulent sworn statement of expenditures under ~~subsection (b) or (g) of this section~~ subsection (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

§12-4-14b. Accountability of volunteer and part-volunteer fire companies or departments receiving state funds for equipment and training; review or audit of expenditures; withholding of state funds for delinquency or misuse; notifications.

(a) *Definitions.* — For the purposes of this section:

“Equipment and training grant” means a grant of money to a volunteer fire company or a part-volunteer fire department from the Fire Service Equipment and Training Fund created in §29-3-5f of this code;

“Formula distribution” means a distribution of money to volunteer and part-volunteer fire companies or departments made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code; and

“State funds account” means a bank account established by a volunteer or part-volunteer fire company or department and maintained for the exclusive use and accounting of money from formula distributions and equipment and training grants.

(b) *Filing required documentation.* — Every volunteer and part-volunteer fire company or department seeking to receive formula distributions or an equipment and training grant shall file copies of bank statements and check images from the company’s or department’s state funds account for the previous calendar year with the Legislative Auditor on or before February 1 of each year.

(c) *Reviews and audits.* — The Legislative Auditor is authorized to conduct regular reviews or audits of deposits and expenditures from formula distribution and equipment and training grant funds by volunteer and part-volunteer fire companies or departments. The Legislative Auditor may assign an employee or employees to perform audits or reviews at his or her direction. The State Treasurer shall provide the Legislative Auditor information, in the manner designated by the Legislative Auditor, concerning formula distributions and equipment and training grants paid to volunteer or part-volunteer fire companies and departments. The volunteer or part-volunteer fire company or department shall

cooperate with the Legislative Auditor, the Legislative Auditor's employees, and the State Auditor in performing their duties under the laws of this state.

(d) State Auditor. — Whenever the State Auditor performs an audit of a volunteer or part-volunteer fire company or department for any purpose, the Auditor shall also conduct an audit of other state funds received by the company or department pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code. The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit under this section.

(e) Withholding of funds. — The Treasurer is authorized to withhold payment of a formula distribution or an equipment and training grant from a volunteer or part-volunteer fire company or department, when properly notified by the Legislative Auditor pursuant to this section, of any of the following conditions:

(1) Failure to file, in a timely manner, copies of bank statements and check images with the Legislative Auditor;

(2) Failure to cooperate with a review or audit conducted by the Legislative Auditor;

(3) Misapplication of state funds; or

(4) Failure to file a report or a sworn statement of expenditures as required by §12-4-14 of this code for a state grant other than an equipment and training grant.

(f) Delinquency in filing. — If, after February 1, a volunteer or part-volunteer fire company or department has failed to file the required bank statements and check images with the Legislative Auditor, the Legislative Auditor shall notify the delinquent company or department at two separate times in writing of the delinquency and of possible forfeiture of its Fire Service Equipment and Training Fund distribution for the year. If the required bank statements and check images are not filed with the Legislative Auditor by March 31, unless the time period is extended by the Legislative Auditor, the Legislative Auditor shall

then notify the Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department. Prior to each subsequent quarterly disbursement of funds by the Treasurer, the Legislative Auditor shall notify each delinquent company or department twice per each quarter in which the company or department is delinquent. The Legislative Auditor may choose the method or methods of notification most likely to be received by the delinquent company or department.

(g) *Noncooperation.* — If, in the course of an audit or review by the Legislative Auditor, a volunteer or part-volunteer fire company or department fails to provide documentation of its accounts and expenditures in response to a request of the Legislative Auditor, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the company or department under the provisions of §33-3-14d, §33-3-33, and §33-12C-7 of this code until the Legislative Auditor informs the State Treasurer that the company or department has cooperated with the review or audit.

(h) *Reporting of other grants.* — Nothing in this section alters the duties and responsibilities of a volunteer or part-volunteer fire company or department imposed under §12-4-14 of this code if that company or department has received funds from any state grant program other than from the Fire Service Equipment and Training Fund. If the Legislative Auditor is notified by a grantor that a volunteer or part-volunteer fire company or department has failed to file a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor shall notify the State Treasurer who shall withhold further distributions to the company or department in the manner provided in this section.

(i) *Escrow and forfeiture of moneys withheld.* — The Volunteer Fire Department Audit Account previously created in the Treasury is hereby continued. When the State Treasurer receives notice to withhold the distribution of money to a volunteer or part-volunteer fire company or department pursuant to this section, the Treasurer shall instead deposit the amounts withheld into the Volunteer Fire Department Audit Account. If the Treasurer receives notice that the volunteer or part-volunteer

fire company or department has come into compliance in less than one year from the date of deposit into this special revenue account, then the Treasurer shall release and distribute the withheld amounts to the company or department, except that any interest that has accrued thereon shall be credited to the general revenue of the state. If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the company or department, the delinquent company or department forfeits the amounts withheld and the State Treasurer shall pay the amounts withheld into Fire Service Equipment and Training Fund created in §29-3-5f of this code.

(j) *Misuse of state money.* — If the Legislative Auditor determines that a volunteer or part-volunteer fire company or department has used formula distribution money for purposes not authorized by §8-15-8b of this code or has used equipment and training grant money for purposes not authorized by the grant program, the Legislative Auditor shall give a written notice of noncompliance to the company or department. If a volunteer or part-volunteer fire company or department disagrees or disputes the finding, the company or department may contest the finding by submitting a written objection to the Legislative Auditor within five working days of receipt of the Legislative Auditor's finding. The department or company shall then have 60 days from the date of the Legislative Auditor's finding to provide documentation to substantiate that the expenditures were made for authorized purposes. If the volunteer or part-volunteer fire company or department does not dispute the findings of the Legislative Auditor or if the company or department is not able to substantiate an authorized purpose for the expenditure, the Legislative Auditor shall notify the Treasurer of the amount of misapplied money and the Treasurer shall deduct that amount from future distributions to that company or department until the full amount of unauthorized expenditure is offset.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant; reports of ineligibility to State Fire Marshal.

(a) There is hereby created in the Treasury a special revenue fund to be known as the Fire Service Equipment and Training Fund. Expenditures from the fund by the State Fire Marshal are authorized from collections. The fund may only be used for the purpose of providing grants to equip volunteer and part-volunteer fire companies and departments and their members, and to train volunteer and part-volunteer firefighters. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund. ~~The State Fire Marshal shall propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to implement the grant program established pursuant to this section~~

(b) The State Fire Marshal shall establish a grant program for equipment and training for volunteer and part-volunteer fire companies and departments. Such grant program shall be open to all volunteer and part-volunteer fire companies and departments. In making grants pursuant to this section, the State Fire Marshal shall consider:

(1) The number of emergency and nonemergency calls responded to by the company or department;

(2) The activities and responses of the company or department;

(3) The revenues received by the company or department from federal, state, county, municipal, local, and other sources; and

(4) The company's or department's assets, expenditures, and other liabilities, including whether the fire company or department has availed itself of available statewide contracts.

(c) The State Fire ~~Commission~~ Marshal shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the grant program established pursuant to this section.

(d) The Legislative Auditor shall notify the State Fire Marshal of any volunteer or part-volunteer fire company or department that is ineligible to receive grant funds due to the company's or department's failure to file required bank statements or financial reports or failure to comply with an audit or review by the Legislative Auditor. A volunteer or part-volunteer fire company or department reported by the Legislative Auditor shall be ineligible to receive funds under this section until the Legislative Auditor notifies the State Fire Marshal that the company or department has come into compliance.

§29-3-8. Comprehensive report by State Fire Marshal.

~~(a) On or before July 1, 2019, the State Fire Marshal shall submit a comprehensive report to the Joint Committee on Government and Finance containing a recommended plan for transferring authority and responsibility for providing fire services to the counties. Such report shall include, but not be limited to, recommendations regarding recommended state oversight of such fire services; financial support for fire services, a plan and timeline for transitioning responsibility and oversight to the counties; and county authority, oversight, and accountability of operations, fiscal planning, financial accountability, and risk management planning. The State Fire Marshal shall solicit input from appropriate state agencies, county officials, and other interested parties, which shall provide requested information to the State Fire Marshal to assist in preparation of the report and recommendation.~~

(b) On or before July 1, 2019, the State Fire Marshal shall study, prepare, and submit a report to the Joint Committee on Government and Finance regarding reciprocity of firefighter and fire officer certification with other states. Such report shall include recommendations regarding ways to increase availability of reciprocal certification, including any necessary changes to state code or regulation necessary to facilitate additional reciprocity.;

And,

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

Eng. Com. Sub. for Senate Bill 345—A Bill to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14b; and to amend and reenact §29-3-5f and §29-3-8 of said code, all relating to accounting and reporting relating state grants, distributions and studies generally; authorizing commingling of certain funds; imposing authority, duties and consequences relating to volunteer and part-volunteer fire companies and departments as to state grants and distributions; imposing authority, duties and consequences relating to other recipients of state grants; modifying liability for criminal penalties; imposing authority and duties on Legislative Auditor, State Auditor and State Fire Marshal; clarifying the responsibility for proposing legislative rules; removing requirement for report by State Fire Marshal; and updating outdated language.

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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. 345) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 402, Authorizing Division of Forestry investigate and enforce timber theft violations.

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

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 402—A Bill to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-52 of said code, all relating to authorizing the Division of Forestry to investigate and enforce timber theft and intentional damage to the timber of another; increasing the threshold between felony and misdemeanor from \$1,000 to \$2,500; requiring enhanced penalties for subsequent offenses occurring within ten years of the first offense; and establishing criminal penalties.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 402, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Boley—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. 402) passed with its House of Delegates amended title.

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

At the request of Senator Woelfel, unanimous consent being granted, Senator Woelfel addressed the Senate regarding the actions of a member of the House of Delegates yesterday, Friday, March 8, 2019, during an interfaith prayer.

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

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, 2019, 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. 2183), Clarifying where a charge of DUI may be brought against an individual.

(Com. Sub. for H. B. 2359), Relating to exemptions to the commercial driver's license requirements.

(Com. Sub. for H. B. 2439), Relating to fire service equipment and training funds for volunteer and part-volunteer fire companies.

(**Com. Sub. for H. B. 2531**), Permitting trained nurses to provide mental health services in a medication-assisted treatment program.

(**Com. Sub. for H. B. 2538**), Providing banking services for medical cannabis.

(**Com. Sub. for H. B. 2609**), Relating to presumptions of abandonment and indication of ownership in property.

And,

(**Com. Sub. for H. B. 2734**), Relating to reduced rates for low-income residential customers of privately owned sewer and combined water and sewer utilities.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Moore Capito,
Chair, House Committee.

Senator Takubo announced a meeting of the committee of conference as to Engrossed Committee Substitute for Senate Bill 487 (*Relating to admissibility of health care staffing requirements in litigation*).

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 6:27 p.m., the Senate recessed until 7:10 p.m. tonight.

The Senate reconvened at 7:14 p.m. and, without objection, returned to the third order of business.

A message from the Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 522, Creating Special Road Repair Fund.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Criss, Linville, and Barrett.

On motion of Senator Trump, the Senate agreed to the appointment of a conference committee on the bill.

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

Senators Blair, Smith, and Plymale.

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

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

Eng. Com. Sub. for House Bill 2670, Relating to damages for medical monitoring.

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

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

Senators Trump, Takubo, and Hardesty.

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

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

Eng. House Bill 3143, Relating to requirements for consumer loans in West Virginia.

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

Senators Azinger, Maynard, and Jeffries.

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

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

Eng. Com. Sub. for House Bill 2049, Relating to a prime contractor's responsibility for wages and benefits.

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

On further motion of Senator Trump, the Senate acceded to the request of the House of Delegates and receded from its amendments to the bill.

On motion of Senator Trump, the following substitute amendments to the bill were reported by the Clerk and considered simultaneously:

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

ARTICLE 5. WAGE PAYMENT AND COLLECTION.**§21-5-7. Prime contractor's responsibility for wages and benefits.**

(a) Whenever any person, firm, or corporation shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under ~~such~~ the contract for the payment of wages and fringe benefits relating to such work only, exclusive of attorney's fees, interest, liquidated damages, or any other damages of any kind, as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent that the employer of ~~such~~ the employee fails to pay ~~such~~ the wages and fringe benefits: for work performed under the contract with the prime contractor. The employer, and its shareholders, owners, directors, and officers shall be personally and civilly liable to the prime contractor for any sums paid under this section, including attorney's fees.

(b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

(1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee; and

(2) Commence the action within one year of the date the employee delivered notice to the prime contractor pursuant to subdivision (1) of this subsection.

~~*Provided, That such employees have exhausted all feasible remedies contained in this article against such employer, but if the prime contractor has failed to notify the commissioner as required by section sixteen of this article, then the employee shall not be required to exhaust any remedies against the employer: Provided, however, That such employer shall become civilly liable to such prime contractor for any sum of money paid by him under this section.*~~

(c) The employer of the employee to whom wages and/or fringe benefits are owed, shall whenever feasible provide, immediately upon request by the employee or the prime contractor, complete payroll records relating to work performed under the contract with the prime contractor.

(d) Whenever the employee to whom wages and/or fringe benefits are due is represented by a union or other plan administrator, the union or other plan administrator, shall whenever feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor. Further, if the union or agents thereof or other plan administrator, including, but not limited to, third party administrators, trustees, administrators, or employees, become aware that an employer is not timely in the payment of wages and/or fringe benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor for whom the affected employee provided work.

(e) A prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.;

And,

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

Eng. Com. Sub. for House Bill 2049—A Bill to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating to a prime contractor's responsibility for wages and benefits of employees of a subcontractor; establishing personal and civil liability for the employer and its shareholders, owners, directors, and officers to the prime contractor for any sums paid under this section, including attorney's fees; requiring notice to prime contractor by certified mail within 100 days of the missing wages becoming payable to the employee; instituting a one-year statute of limitations; requiring the employer of the employee to

whom wages and fringe benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor; requiring when an employee to whom wages and fringe benefits are due is represented by a union or other plan administrator that the union or other plan administrator must whenever feasible immediately upon notice of a claim cooperate with the employee and the prime contractor to identify and quantify the wages and fringe benefits owed for work performed under the contract with the prime contractor; providing that if the union or its agents or other plan administrator become aware that an employer is not timely in the payment of wages and fringe benefits the union or other plan administrator must immediately notify the affected employee and the prime contractor for whom the affected employee provided work; and providing that a prime contractor must notify the owner and the architect prior to the completion of the contract if any subcontractor has not been paid in full.

Following discussion,

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

The question being "Shall Engrossed Committee Substitute for House Bill 2049 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—29.

The nays were: None.

Absent: Blair, Boley, Boso, Takubo, and Woelfel—5.

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. 2049) 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 again proceeded to the fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 7:28 p.m. tonight:

Eng. Senate Bill 596, Adjusting voluntary contribution amounts on certain DMV forms.

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

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

Eng. House Bill 3044, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

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

Senators Clements, Swope, and Beach.

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

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

Eng. Com. Sub. for House Bill 2503, Relating to court actions.

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

On further motion of Senator Trump, the Senate acceded to the request of the House of Delegates and receded from its amendments to the bill.

On motion of Senator Trump, the following substitute amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

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

ARTICLE 4. COURT ACTIONS.

PART VI.

PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

(a) *Petitioner and venue.* — If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the department, in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

(b) *Contents of Petition.* — The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how the conduct comes within the statutory definition of neglect or abuse with references ~~thereto~~ to the statute, any supportive services provided by the department to remedy the alleged circumstances, and the relief sought. Each petition shall name as a party each parent,

guardian, custodian, other person standing in loco parentis of or to the child allegedly neglected or abused and state with specificity whether each parent, guardian, custodian, or person standing in loco parentis is alleged to have abused or neglected the child.

(c) *Court action upon filing of petition.* — Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to this article, the preliminary hearing shall be held within 10 days of the order continuing or transferring custody, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(d) *Department action upon filing of the petition.* — At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

(e) *Notice of hearing.* —

(1) The petition and notice of the hearing shall be served upon both parents and any other guardian, custodian, or person standing in loco parentis, ~~giving to the parents or custodian~~ those persons at least five days' actual notice of a preliminary hearing and at least ten days' notice of any other hearing.

(2) Notice shall be given to the department, any foster or pre-adoptive parent, and any relative providing care for the child.

(3) In cases where personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to the person by certified mail, addressee only, return receipt requested, to the last known address of the person. If the person signs the certificate, service ~~shall be~~ is complete and the certificate shall be filed as proof of the service with the clerk of the circuit court.

(4) If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code.

(5) A notice of hearing shall specify the time and place of the hearing hearings, the right to counsel of the child, ~~and parents,~~ or and other guardians, custodians, at every stage of the proceedings, and other persons standing in loco parentis with the child and the fact that the proceedings can result in the permanent termination of the parental rights.

(6) Failure to object to defects in the petition and notice may not be construed as a waiver.

(f) *Right to counsel.* —

~~(1) In any proceeding under this article, the child, his or her parents, and his or her legally established custodian or other persons standing in loco parentis to him or her has the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed.~~

(1) In any proceeding under this article, the child shall have counsel to represent his or her interests at all stages of the proceedings.

~~(2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other persons standing in loco parentis, the representation may only continue after the first appearance the parent or other persons standing in loco parentis cannot pay for the services of counsel.~~

(2) The court's initial order shall appoint counsel for the child and for any parent, guardian, custodian, or other person standing in loco parentis with the child if such person is without retained counsel.

~~(3) Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties.~~