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SENATE BILL NO. 339

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 6.2-1901 and 58.1-322.02 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 13.1-514.3 and 15.2-2288.9 and by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603, 59.1-604, and 59.1-605, relating to digital asset mining; holding, use, and transfer of digital assets; securities exemption; tax exemption.

Patrons—Salim and Head

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1901 and 58.1-322.02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 13.1-514.3 and 15.2-2288.9 and by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603, 59.1-604, and 59.1-605, as follows:

§ 6.2-1901. License required; exception.

A. No person shall engage in the business of selling money orders or engage in the business of money transmission, whether or not the person has a location in the Commonwealth, unless the person obtains from the Commission a license issued pursuant to this chapter.

B. No license under this chapter shall be required of any authorized delegate of a licensee.

C. Every person required to be licensed under this chapter shall register with the Registry and be subject to such registration and renewal requirements as may be established by the Registry, in addition to any requirements of this chapter. In adopting regulations pursuant to § 6.2-1913, the Commission shall include any terms, conditions, or requirements applicable to such registration and renewal. Any fees required by the Registry shall be separate and apart from any fees imposed by this chapter. The Commission, at its discretion, may collect any registration and renewal fees on behalf of the Registry and remit such fees to the Registry or permit the Registry to collect any fees imposed by this chapter and remit such fees to the Commission.

D. In connection with its implementation and administration of this chapter, the Commission may establish agreements or contracts with the Registry or other entities designated by the Registry to collect, distribute, and maintain information and records and process fees related to persons required to be licensed under this chapter. In establishing such agreements or contracts, the Commission shall not be subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

E. No license under this chapter shall be required of any person engaging in home digital asset mining, digital asset mining, or digital asset mining business activities, as those terms are defined in § 15.2-2288.9.

§ 13.1-514.3. Digital assets; exemption.

A. As used in this section:

"Digital asset" has the same meaning as provided in § 59.1-603.

"Financial investment" means a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, regardless of the manner in which shares in the enterprise are evidenced.

"Staking" has the same meaning as provided in § 59.1-603.

B. An issuer or seller of a digital asset shall be exempt from the securities registration requirements of this chapter if (i) the digital asset cannot be considered an investment contract, (ii) the issuer or seller of the digital asset did not market the digital asset to the initial buyer as a financial investment, and (iii) the issuer or seller of the digital asset takes other reasonable precautions to prevent an initial buyer from purchasing the digital asset as a financial investment. A business offering to provide digital asset mining or staking as a service for individuals or to other businesses shall not be considered a financial investment.

C. An issuer or seller of a digital asset that is engaged in the business of affecting or attempting to affect the purchase, sale, or transfer of digital assets shall file a notice of intent with the Commission before the issuer or seller may qualify for an exemption under this section. The Commission shall make a form easily available for such purpose on its website. If the information contained in the notice of intent becomes inaccurate in any material respect at any time, the issuer or seller shall file an amendment to the notice with the Commission within 30 days of the change.

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59 *E. An issuer or seller of a digital asset shall not be presumed to have violated this section solely by*
60 *reason of the issuer's or seller's participation in the business of affecting or attempting to affect the*
61 *purchase, sale, or transfer of any digital asset or other virtual currency, as defined in § 6.2-818.1. No*
62 *presumption shall arise that an issuer's or seller's securities offerings permitted under this chapter will*
63 *be integrated with an issuer's or seller's digital asset offering permitted under this section.*

64 *F. The Commission may promulgate rules as necessary to implement the provisions of this section.*

65 **§ 15.2-2288.9. Local regulation of home digital asset mining.**

66 *A. As used in this section:*

67 *"Blockchain" has the same meaning as provided in § 59.1-603.*

68 *"Digital asset mining" means using electricity to power a computer or node for the purpose of*
69 *securing a blockchain network.*

70 *"Digital asset mining business activities" means the activity of a group of computers working*
71 *together for the purpose of securing a blockchain protocol that consumes more than one megawatt of*
72 *electricity.*

73 *"Home digital asset mining" means using digital asset mining in an area zoned for residential use.*

74 *"Node" has the same meaning as provided in § 59.1-603.*

75 *B. It shall be legal in the Commonwealth to participate in home digital asset mining, provided that*
76 *the person engaging in home digital asset mining complies with all local noise ordinances.*

77 *C. No locality's industrial zone shall prohibit the use of the area for digital asset mining or digital*
78 *asset mining business activities, provided that such activities comply with all applicable general*
79 *industrial noise ordinances.*

80 *D. No local ordinance shall pertain specifically to the use of home digital asset mining. No local*
81 *ordinance shall regulate the sound of a digital asset mining business in an industrially zoned area.*

82 **§ 58.1-322.02. Virginia taxable income; subtractions.**

83 *In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal*
84 *adjusted gross income, there shall be subtracted:*

85 *1. Income derived from obligations, or on the sale or exchange of obligations, of the United States*
86 *and on obligations or securities of any authority, commission, or instrumentality of the United States to*
87 *the extent exempt from state income taxes under the laws of the United States, including, but not*
88 *limited to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of*
89 *federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.*

90 *2. Income derived from obligations, or on the sale or exchange of obligations, of the Commonwealth*
91 *or of any political subdivision or instrumentality of the Commonwealth.*

92 *3. Benefits received under Title II of the Social Security Act and other benefits subject to federal*
93 *income taxation solely pursuant to § 86 of the Internal Revenue Code.*

94 *4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code;*
95 *however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a*
96 *subtraction under this subdivision.*

97 *5. The amount of any refund or credit for overpayment of income taxes imposed by the*
98 *Commonwealth or any other taxing jurisdiction.*

99 *6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was not*
100 *deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.*

101 *7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.*

102 *8. The wages or salaries received by any person for active and inactive service in the National Guard*
103 *of the Commonwealth of Virginia, (i) for taxable years beginning before January 1, 2023, not to exceed*
104 *the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is*
105 *less; however, only those persons in the ranks of O3 and below shall be entitled to the subtractions*
106 *specified in this clause, and (ii) for taxable years beginning on or after January 1, 2023, not to exceed*
107 *the amount of income derived from 39 calendar days of such service or \$5,500, whichever amount is*
108 *less; however, only those persons in the ranks of O6 and below shall be entitled to the subtractions*
109 *specified in this clause.*

110 *9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or before*
111 *December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward for*
112 *information provided to a law-enforcement official or agency, or to a nonprofit corporation created*
113 *exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of*
114 *perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an*
115 *employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime*
116 *for which the reward was paid, or any person who is compensated for the investigation of crimes or*
117 *accidents.*

118 *10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction*
119 *for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the*
120 *Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and*

members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

13. All military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted, or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

15. Fifteen thousand dollars of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is \$15,000 or less.

17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

18. a. Any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

b. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, up to \$10,000 of military benefits; and for taxable years beginning on and after January 1, 2023, but before January 1, 2024, up to \$20,000 of military benefits.

c. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, up to \$30,000 of military benefits; and for taxable years beginning on and after January 1, 2025, up to \$40,000 of military benefits.

d. For purposes of subdivisions b and c, "military benefits" means any (i) military retirement income received for service in the Armed Forces of the United States, (ii) qualified military benefits received pursuant to § 134 of the Internal Revenue Code, (iii) benefits paid to the surviving spouse of a veteran of the Armed Forces of the United States under the Survivor Benefit Plan program established by the U.S. Department of Defense, and (iv) military benefits paid to the surviving spouse of a veteran of the Armed Forces of the United States. The subtraction allowed by subdivision b shall be allowed only for military benefits received by an individual age 55 or older. The subtraction allowed by subdivision c shall be allowed for military benefits received by an individual of any age. No subtraction shall be allowed pursuant to subdivisions b and c if a credit, exemption, subtraction, or deduction is claimed for the same income pursuant to subdivision a or any other provision of Virginia or federal law.

19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from, hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, surviving spouse, or child or stepchild of such victim.

As used in this subdivision:

182 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those
183 European countries allied with Nazi Germany, or any other neutral European country or area in Europe
184 under the influence or threat of Nazi invasion.

185 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by
186 the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or
187 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,
188 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,
189 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II
190 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual
191 forced into labor against his will, under the threat of death, during World War II and its prelude and
192 direct aftermath.

193 20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased
194 military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction
195 amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal
196 gross income in accordance with § 134 of the Internal Revenue Code.

197 21. The death benefit payments from an annuity contract that are received by a beneficiary of such
198 contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an
199 insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under
200 this subdivision shall be allowed only for that portion of the death benefit payment that is included in
201 federal adjusted gross income.

202 22. Any gain recognized from the sale of launch services to space flight participants, as defined in
203 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of
204 a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch
205 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

206 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined
207 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the
208 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,
209 and launched from an airport or spaceport in Virginia.

210 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
211 taxed as investment services partnership interest income (otherwise known as investment partnership
212 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
213 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in
214 § 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided
215 that the business has its principal office or facility in the Commonwealth and less than \$3 million in
216 annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this
217 subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No
218 taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4
219 shall be eligible for the subtraction under this subdivision for an investment in the same business.

220 25. For taxable years beginning on and after January 1, 2014, any income of an account holder for
221 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's
222 first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36
223 and (ii) interest income or other income for federal income tax purposes attributable to such person's
224 first-time home buyer savings account.

225 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction
226 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys
227 or funds withdrawn from the first-time home buyer savings account were used for any purpose other
228 than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under
229 § 36-174. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable
230 year that was used for other than the payment of eligible costs, computed by multiplying the amount
231 withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in
232 the account at the time of the withdrawal to the total balance in the account at such time.

233 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
234 withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the
235 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
236 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.)
237 of Title 36 into another account established pursuant to such chapter for the benefit of another qualified
238 beneficiary.

239 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings
240 account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

241 26. For taxable years beginning on and after January 1, 2015, any income for the taxable year
242 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of
243 this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal

Revenue Code.

27. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

b. As used in this subdivision 27:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4 for the same investment.

b. As used in this subdivision 28:

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

29. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real property by condemnation proceedings.

30. For taxable years beginning before January 1, 2021, up to \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by the Governor and administered by the Department of Small Business and Supplier Diversity.

31. For taxable years beginning on and after January 1, 2022, any compensation for wrongful incarceration awarded pursuant to the procedures established under Article 18.2 (§ 8.01-195.10 et seq.) of Chapter 3 of Title 8.01.

32. a. For taxable years beginning on and after January 1, 2024, up to \$200 per transaction of any net capital gain from exchanges made on or after January 1, 2024, for using digital assets to purchase a good or service.

b. The amount of net capital gain eligible for the subtraction in this subdivision shall be annually adjusted based on the total change in the United States Average Consumer Price Index for all items, all

urban consumers (CPI-U), as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the previous five-year period.

CHAPTER 57.
DIGITAL ASSETS.

§ 59.1-603. Definitions.

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

"Blockchain" means data that is shared across a network to create a ledger of verified transactions or information among network participants linked using cryptography to maintain the integrity of the ledger and to execute other functions and that is distributed among network participants in an automated fashion to concurrently update network participants on the state of the ledger and any other functions.

"Blockchain protocol" means any executable software deployed to a blockchain composed of source code that is publicly available and accessible, including a smart contract or any network of smart contracts.

"Digital asset" means virtual currency, as defined in § 6.2-818.1, cryptocurrency, natively electronic assets, including stablecoins and non-fungible tokens, and other digital-only assets that confer economic, proprietary, or access rights or powers.

"Node" means a computational device that contains and updates a copy of a blockchain.

"Self-hosted wallet" means a digital interface used to secure and transfer digital assets and under which the owner of a digital asset retains independent control over the digital assets that are secured by such digital interface.

"Staking" means the act of committing digital assets for a period of time to validate and secure a specific blockchain network.

"Staking as a service" means the provision of technical staking services, including the operation of nodes and the associated infrastructure necessary to facilitate participation in the blockchain network's consensus mechanisms.

§ 59.1-604. Holding, transfer, and exchange.

A. Any person in the Commonwealth may:

1. Use or transfer digital assets to purchase legal goods or services;
2. Transfer or exchange digital assets using a blockchain protocol; and
3. Self-custody digital assets using a self-hosted wallet or a third-party digital wallet.

B. Any person in the Commonwealth may operate a node for the purpose of connecting to a blockchain protocol or a protocol built on top of a blockchain protocol and transferring or exchanging digital assets on a blockchain protocol or participating in staking on a blockchain protocol.

C. No person operating a node or series of nodes on a blockchain network shall be subject to liability related to a specific transaction merely by validating that transaction.

§ 59.1-605. Digital asset mining and digital asset mining business.

A. As used in this section, "digital asset mining" and "digital asset mining business activities" have the same meanings as provided in § 15.2-2288.9.

B. No person engaged in digital asset mining, digital asset mining business activities, or providing digital asset mining or staking services for another person shall be subject to liability related to a specific transaction merely by validating that transaction.

2. That the Bureau of Financial Institutions of the State Corporation Commission shall convene a work group for the purpose of studying and making recommendations related to blockchain technology, digital asset mining, and cryptocurrency and fostering the appropriate expansion of blockchain technology, digital asset mining, and cryptocurrency in the Commonwealth. The work group shall consist of five members of the House of Delegates; five members of the Senate; two nonlegislative citizen members who are members of the technology industry and have demonstrated knowledge of blockchain technology and its uses; two nonlegislative citizen members who are members of the technology industry and have demonstrated knowledge of blockchain technology and its uses; and two nonlegislative citizen members who are members of the technology industry and have demonstrated knowledge of blockchain technology and its uses and one nonlegislative citizen member representing local government. Nonlegislative citizen members of the work group shall be citizens of the Commonwealth of Virginia. The work group shall complete its meetings by November 1, 2024, and submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations.