

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2016
TWENTY-SEVENTH DAY

Charleston, W. Va., Monday, February 8, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Jesse Waggoner, Senior Pastor, Mount Calvary Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael A. Woelfel, a senator from the fifth district.

Pending the reading of the Journal of Saturday, February 6, 2016,

At the request of Senator Maynard, 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.

The Senate then proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 116, Increasing number of limited video lottery terminals allowed at retail location.

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

Com. Sub. for Senate Bill 116 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §29-22B-1101 and §29-22B-1408 of the Code of West Virginia, 1931, as amended, all relating to increasing the number of limited video lottery terminals allowed at retail locations; requiring

the Lottery Commission to conduct a bid only open to current permit holders prior to September 1, 2016, for permits expiring June 30, 2021; establishing the procedure for bid process; and setting commission's share of net terminal income at fifty percent, effective July 1, 2016, regardless of average daily gross terminal income per terminal.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Finance has had under consideration

Senate Bill 341, Expiring funds from Insurance Commissioner, Examination Revolving Fund and Insurance Commission Fund to State Fund, General Revenue.

Senate Bill 449, Supplemental appropriation from State Fund, General Revenue to Department of Administration, Public Defender Services.

Senate Bill 450, Supplemental appropriation from State Fund, General Revenue to DHHR, Division of Health.

And,

Senate Bill 451, Supplemental appropriation from State Fund, General Revenue to Department of Military Affairs.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Education has had under consideration

Senate Bill 373, Granting full control of Board of Education regional education service agencies to state superintendent.

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

Com. Sub. for Senate Bill 373 (originating in the Committee on Education)—A Bill to amend and reenact §18-2-26 of the Code of West Virginia, 1931, as amended, relating to regional education service agencies; modifying legislative vision in establishing agencies; changing the name of regional councils to boards of directors; changing the stated purpose of boards of directors to governing; requiring that board of directors membership provided by State Board of Education be nonvoting; providing for executive director to be selected by board of directors; requiring all of the executive director performance evaluation to be conducted by the board of directors; requiring that employment of other staff be with board of directors approval instead of State Board of Education approval; and removing obsolete agency employee protection provision.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Dave Sypolt,
Chair.

On motion of Senator Carmichael, the bill (Com. Sub. for S. B. 373) contained in the foregoing report from the Committee on Education was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 378, Relating to truancy intervention.

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

Com. Sub. for Senate Bill 378 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §18-8-4 and §18-8-8 of the Code of West Virginia, 1931, as amended, all relating generally to truancy intervention; expanding the definition of excused absence; exempting absences for a chronic medical condition or disability which may be reasonably accommodated by the school; requiring parent to request reasonable accommodation; defining chronic medical condition or disability; requiring written excuses or documentation from a medical provider in certain cases; limiting number of days which may be excused absences; defining immediate family; requiring verification of absence for a judicial obligation or court appearance; allowing principal to authorize excused absences for other reason or for longer periods of time with the approval of the county superintendent; removing notice requirement after three days absence; requiring written excuses or documentation to be submitted within certain time frame; defining the term “reasonable accommodation”; and modifying the effect of student suspensions on enforcement of the provisions of compulsory attendance enforcement.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Government Organization has had under consideration

Senate Bill 432, Relating to levies on classifications of property by Board of Public Works.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Craig Blair,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on Government Organization has had under consideration

Senate Bill 437, Updating and clarifying code relating to rules governing mixed martial arts.

And,

Senate Bill 509, Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

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

Respectfully submitted,

Craig Blair,
Chair.

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills were introduced, read by their titles, and referred to the appropriate committees:

By Senators Carmichael, Boso, Ferns, Gaunch, Maynard, Mullins, Palumbo, Trump, Blair and Plymale:

Senate Bill 544—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29A-3-16a, relating to requiring all executive branch agencies to review all rules under their jurisdiction to compare them to federal rules; providing notice and comment period for all rules; and submitting reports.

Referred to the Committee on Government Organization.

By Senator Boso:

Senate Bill 545—A Bill to amend and reenact §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as amended, all relating to asbestos abatement on pipes.

Referred to the Committee on the Judiciary.

By Senators Hall, Palumbo, Trump and Plymale:

Senate Bill 546—A Bill to amend and reenact §29-21-2, §29-21-6, §29-21-8, §29-21-9 and §29-21-13a of the Code of West Virginia, 1931, as amended, all relating generally to Public Defender Services; transferring authority to review, approve, reduce or reject panel attorney vouchers from circuit courts to Public Defender Services; providing for resubmission of vouchers previously reduced or rejected; authorizing the Executive Director of Public Defender Services, with approval of the Indigent Defense Commission, to establish conflict public defender corporations and establishing criteria therefor; authorizing the Executive Director of Public Defender Services to contract for legal services or specialized legal services in any circuit; revising order of preference for the appointment of attorneys; and requiring panel attorneys to maintain time-keeping records on a daily basis.

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

By Senators Gaunch, Carmichael and Cline:

Senate Bill 547—A Bill to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931, as amended, all relating to requirements for making consumer loans in West Virginia; and adjusting limits on consumer loans in West Virginia for which certain finance charges can be imposed.

Referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.

By Senators Snyder, Beach, Blair, Prezioso, Trump, Unger and Williams:

Senate Bill 548—A Bill to amend and reenact §50-1-2 of the Code of West Virginia, 1931, as amended, relating to the number of magistrates in Jefferson, Berkeley, Monongalia, Kanawha and Raleigh counties.

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

By Senators Romano, Stollings, Boley, Kirkendoll, Laird, Miller, Plymale, Snyder, Sypolt and Williams:

Senate Bill 549—A Bill to amend and reenact §18-5-18b of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-8 of said code, all relating to requiring school counselors in public schools to spend one hundred percent of their time on comprehensive school counseling programs; school counselor county funding ratio; allowing counties to set their own caseloads while requiring that counselors be equally distributed; and providing that counties with funding ratio better than three hundred fifty to one are not to be penalized.

Referred to the Committee on Education.

By Senators Boso, Carmichael, Blair, Ferns, Gaunch, Maynard and Trump:

Senate Bill 550—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29A-8-1, §29A-8-2, §29A-8-3, §29A-8-4, §29A-8-5, §29A-8-6, §29A-8-7, §29A-8-8, §29A-8-9 and §29A-8-10, all relating generally to lessening regulatory burdens on small businesses; creating the Small Business Regulatory Review Board; establishing powers and duties of the board; establishing obligations of departments and agencies; requiring reports and analysis; establishing rule-making procedures; providing injunctive relief; requiring notice of hearings; providing for review of existing rules; and defining terms.

Referred to the Committee on Government Organization.

By Senators Karnes, Ashley, Blair, Maynard, Sypolt and Plymale:

Senate Bill 551—A Bill to amend and reenact §20-2-42x of the Code of West Virginia, 1931, as amended, relating to allowing a person to purchase a Class XS resident senior hunting, fishing and trapping license at the beginning of the year he or she becomes sixty-five, if otherwise eligible.

Referred to the Committee on Natural Resources.

By Senators Miller, Beach, Carmichael, Williams, Woelfel, Blair and Plymale:

Senate Bill 552—A Bill to amend and reenact §52-1-17 of the Code of West Virginia, 1931, as amended, relating to eliminating provisions requiring sheriff to pay into the State Treasury all jury costs received from court clerks; and requiring that the sheriff be held to account in the sheriff's annual settlement for all moneys.

Referred to the Committee on Government Organization.

By Senator Trump:

Senate Bill 553—A Bill to amend and reenact §33-2-21a of the Code of West Virginia, 1931, as amended, relating to the Volunteer Fire Department Workers' Compensation Subsidy Program and the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; and providing for the merger of the purposes and provisions of the subsidy program and the subsidy fund in the state agency workers' compensation programs section of the code.

Referred to the Committee on Government Organization.

By Senators Leonhardt, Trump, Walters, Takubo, Palumbo, Boso, Kessler, Stollings, Snyder, Kirkendoll, Unger, Miller, Laird, Plymale and Williams:

Senate Bill 554—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5 and §11-13DD-6, all relating to issuance of tax credits for land conservation.

Referred to the Committee on Finance.

By Senators Carmichael, Gaunch and Plymale:

Senate Bill 555—A Bill to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating to providing whenever average wholesale price of motor fuel is less than \$2 per gallon, the tax on that fuel is increased by 5 cents.

Referred to the Committee on Finance.

By Senator Walters:

Senate Bill 556—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-12-9, relating to providing owner of conservation easement be given the right of first refusal to purchase the land upon which it enjoys a conservation easement when a landowner intends to sell land upon which the easement exists.

Referred to the Committee on the Judiciary.

By Senators Sypolt, Plymale and Williams:

Senate Bill 557—A Bill to amend and reenact §17-27-9 of the Code of West Virginia, 1931, as amended, relating to eliminating the sunset on Division of Highways public-private partnership agreements.

Referred to the Committee on Transportation and Infrastructure.

By Senators Cole (Mr. President) and Kessler (By Request of the Executive):

Senate Bill 558—A Bill to amend and reenact §21A-8-10 and §21A-8-16 of the Code of West Virginia, 1931, as amended, all relating to maintaining the solvency of the Unemployment Compensation Fund; providing a mechanism for the Governor to borrow funds from the Revenue Shortfall Reserve Fund for a limited period and deposit those funds into the Unemployment Compensation Fund if the balance of the Unemployment Compensation Fund drops below \$50 million; providing that borrowed funds may only be used to pay benefits; providing that no amount borrowed may exceed \$50 million; and providing for repayment of borrowed amounts.

Referred to the Committee on Finance.

Senators Kirkendoll, Unger, Plymale and Stollings offered the following resolution:

Senate Concurrent Resolution 28—Requesting the Division of Highways to name bridge number 30-52/26-0.01 (30A081) (37.65255, -82.06172) locally known as Musick Box Beam, carrying County Route 52/26 over Pigeon Creek on Musick Bottom Road in Mingo County, the "U. S. Marine Corps CPL Ronald 'Duke' Varney Memorial Bridge".

Whereas, Ronald J. Varney, “Duke” was born on April 15, 1950. He spent his childhood in Varney, West Virginia, where he attended Red Jacket High School. At the age of seventeen he voluntarily enlisted in the United States Marine Corps where he defended his country as a Corporal in the Vietnam War. In May of 1972, he married Penny White, of Lenore, West Virginia, and they had three children, Kimberly, Kelly and Michael Varney. He also had seven grandchildren, Amber Rasnake, Ronnisue Justice, McKenzie Goff, Tori Varney, Kylee Varney, Waylon Parker Varney, Kelsey Stogsdill and one great-grandson, Noah Michael Rasnake. He passed away in February, 2004, from cancer as a result of Agent Orange. He was a very loving and dedicated father who worked hard for his family. He was a retired coal miner who lived in Mingo County for fifty-four years. “Duke” was a friend to so many people and never failed to help anyone in need. He is sadly missed and sweetly remembered by all who had the pleasure of knowing him; and

Whereas, Naming bridge number 30A081 crossing County Route 52/26 and a creek on Musick Bottom Road in Mingo County, the “U. S. Marine Corps CPL Ronald ‘Duke’ Varney Memorial Bridge” is an appropriate recognition of his contributions to his country, state, community and Mingo County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 30-52/26-0.01 (30A081) (37.65255, -82.06172) locally known as Musick Box Beam, carrying County Route 52/26 over Pigeon Creek on Musick Bottom Road in Mingo County, the “U. S. Marine Corps CPL Ronald ‘Duke’ Varney Memorial Bridge”; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying bridge number 30-52/26-0.01 (30A081) (37.65255, -82.06172) locally known as Musick Box Beam, carrying County Route 52/26 over Pigeon Creek on Musick Bottom Road in Mingo County, the “U. S. Marine Corps CPL Ronald ‘Duke’ Varney Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the Senate forward a certified copy of this resolution to the Secretary of the Department of Transportation and the surviving wife and children of CPL Ronald ‘Duke’ Varney and their families.

Which, under the rules, lies over one day.

Petitions

Senator Boso presented a petition from the Convention of States Action and one hundred twenty-one eleventh senatorial district residents, supporting an Article V convention to impose fiscal restraints, term limits and limitations on the power and jurisdiction of the federal government.

Referred to the Committee on the Judiciary.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 25, US Army PFC Cornelius Vance Memorial Bridge.

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

Senate Concurrent Resolution 26, Charles Edward Ellis and Ira Virgil Ellis Memorial Bridge.

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

Senate Concurrent Resolution 27, Herman Daner Rogers Memorial Bridge.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 278, Clarifying physicians' mutual insurance company is not state or quasi-state actor.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 278) passed with its title.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 6, Requiring drug screening and testing of applicants for TANF program.

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

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

On page six, section six, after subsection (q), by adding a new subsection, designated subsection (r), to read as follows:

(r) For the purposes of the pilot program contained in this section, pursuant to the authority and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all persons domiciled within the state from the application of 21 U. S. C. §862a(a).

On motion of Senator Ferns, the following amendment to the bill (Com. Sub. for S. B. 6) was next reported by the Clerk and adopted:

On page one, section six, lines four and five, by striking out all of subdivision (2) and inserting in lieu thereof a new subdivision, designated subdivision (2), to read as follows:

(2) "Board of Review" means the board established in subdivision (2), section six, article two, chapter nine of this code.

The bill (Com. Sub. for S. B. 6), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 39, Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.

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

Com. Sub. for Senate Bill 43, Clarifying means of posting to prohibit hunting or trespassing.

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

Com. Sub. for Senate Bill 309, Relating to child-care center licensing and exempting county parks and recreation from licensure.

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

On motion of Senator Blair, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page two, section one hundred thirteen, line thirty-three, after the word "organization" by inserting the words "or is operated by a county parks and recreation commission, boards and municipalities";

On page two, section one hundred thirteen, line thirty-six, after the word "performs" by inserting the words "state and federal";

On page two, section one hundred thirteen, line thirty-seven, after the word "service" by inserting the words "except for programs operated by county parks and recreation commissions, boards and municipalities";

On page two, section one hundred thirteen, line thirty-eight, after the word "place", by changing the semicolon to a period and striking out the word "and";

And,

On page two, section one hundred thirteen, line thirty-nine, by striking out all of subdivision (9).

The bill (Com. Sub. for S. B. 309), as amended, was then ordered to engrossment and third reading.

Senate Bill 345, Relating to parking on state-owned or leased property.

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

Senate Bill 346, Updating projects managed by Project Management Office.

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

Senate Bill 349, Updating meaning of federal adjusted gross income.

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

Senate Bill 419, Terminating taxes imposed under Workers' Compensation Debt Reduction Act of 2005.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Senate Bill 426, Continuing Office of Coalfield Community Development.

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

The Senate proceeded to the tenth order of business.

Com. Sub. for Senate Bill 7 Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances.

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

Eng. Com. Sub. for House Bill 2800, Adding law-enforcement officers' contact

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Woelfel.

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

At the request of Senator Romano, unanimous consent being granted, the Senate returned to the eleventh order of business and the introduction of guests.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Plymale, the name of Senator Plymale was removed as a sponsor of **Senate Bill 492** (*Allowing Superintendent of State Police establish fee schedule for forensic services*).

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

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, February 9, 2016, at 11 a.m.

SENATE CALENDAR

**Tuesday, February 09, 2016
11:00 AM**

UNFINISHED BUSINESS

S. C. R. 28 - U.S. Marine Corps CPL Ronald 'Duke' Varney Memorial Bridge.

THIRD READING

Eng. Com. Sub. for S. B. 6 - Requiring drug screening and testing of applicants for TANF program.

Eng. Com. Sub. for S. B. 39 - Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.

Eng. Com. Sub. for S. B. 43 - Clarifying means of posting to prohibit hunting or trespassing.

Eng. Com. Sub. for S. B. 309 - Relating to child-care center licensing and exempting county parks and recreation from licensure.

Eng. S. B. 345 - Relating to parking on state-owned or leased property.

Eng. S. B. 346 - Updating projects managed by Project Management Office.

Eng. S. B. 349 - Updating meaning of federal adjusted gross income.

Eng. S. B. 426 - Continuing Office of Coalfield Community Development.

SECOND READING

Com. Sub. for S. B. 7 - Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances.

S. B. 419 - Terminating taxes imposed under Workers' Compensation Debt Reduction Act of 2005.

Eng. Com. Sub. for H. B. 2800 - Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests - (Com. amend. and title amend. pending) (original similar to SB 310).

FIRST READING

Com. Sub. for S. B. 116 - Increasing number of limited video lottery terminals allowed at retail location.

S. B. 341 - Expiring funds from Insurance Commissioner, Examination Revolving Fund and Insurance Commission Fund to State Fund, General Revenue.

Com. Sub. for S. B. 378 - Relating to truancy intervention.

- S. B. 437 - Updating and clarifying code relating to rules governing mixed martial arts.
- S. B. 449 - Supplemental appropriation from State Fund, General Revenue to Department of Administration, Public Defender Services.
- S. B. 450 - Supplemental appropriation from State Fund, General Revenue to DHHR, Division of Health.
- S. B. 451 - Supplemental appropriation from State Fund, General Revenue to Department of Military Affairs.
- S. B. 509 - Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Tuesday, February 9, 2016

10 a.m.	Transportation & Infrastructure	(Room 451M)
1 p.m.	Health & Human Resources	(Room 451M)
1 p.m.	Energy, Industry & Mining	(Room 208W)
2 p.m.	Education	(Room 451M)
2 p.m.	Government Organization	(Room 208W)
4:30 p.m.	Joint Water Resources	(House Chamber)