
Thursday, February 13, 2020

THIRTY-SEVENTH DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, February 12, 2020, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Summers announced that S. B. 170, on Second Reading, Special Calendar, had been transferred to the House Calendar; and Com. Sub. for H. B. 4198, on Second Reading, House Calendar, had been transferred to the Special Calendar.

Committee Reports

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

Your Committee on the Judiciary has had under consideration:

S. B. 620, Authorizing Division of Corrections and Rehabilitation approve home plans for inmates,

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

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

H. B. 4633, Expanding county commissions' ability to dispose of county or district property,

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

Com. Sub. for H. B. 4633 - "A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions' ability to dispose of county or district property; and adding the ability of county commissions to dispose of the property to a nonprofit community center organization or nonprofit senior center organization without conducting a public sale,"

With the recommendation that the committee substitute do pass, and with the recommendation that second reference to the Committee on Government Organization be dispensed with.

In the absence of objection, reference of the bill (H. B. 4633) to the Committee on Government Organization was abrogated.

Delegate Ellington, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

H. B. 4519, Establishing a summer youth intern pilot program within Department of Commerce,

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

Delegate Ellington, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

H. B. 4112, Requiring county school boards to provide adequate mental health evaluations, and counseling services,

And,

H. B. 4720, Qualifying not-for-profit private baccalaureate institutions for the Advanced Career Education Programs and the WV Invests Grant Program,

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

In accordance with the former direction of the Speaker, the bills (H. B. 4112 and H. B. 4720) were each referred to the Committee on Finance.

Delegate Ellington, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

H. B. 4165, West Virginia Remembers Program,

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

Com. Sub. for H. B. 4165 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-8b, relating to public education; establishing the West Virginia Remembers Program; and authorizing the State Board of Education to promulgate a rule providing for maintaining of lists by county boards of veteran volunteers to speak in the public schools,"

With the recommendation that the committee substitute do pass.

Delegate Ellington, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

H. B. 4729, Requiring higher education institutions to use previous versions or editions of instructional materials,

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

Com. Sub. for H. B. 4729 - "A Bill to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to the purchase of educational materials at institutions of higher education; establishing or continuing an educational materials affordability committee; requiring that the educational materials affordability committee make certain recommendations to the institutional governing boards; and defining the term 'educational materials'."

With the recommendation that the committee substitute do pass.

Delegate Ellington, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

H. B. 2775, Requiring each high school student to complete a one-half credit course of study in personal finance,

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

Com. Sub. for H. B. 2775 - "A Bill to amend and reenact §18-2-7c of the Code of West Virginia, 1931, as amended, relating to requiring each high school student to complete a one credit course of study in personal finance as a requirement for high school graduation; end-of-course examination; state board development of standards,"

With the recommendation that the committee substitute do pass.

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

Your Committee on Finance has had under consideration:

H. B. 4092, Relating to foster care,

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

Com. Sub. for H. B. 4092 - "A Bill to repeal §49-2-102, and §49-2-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-206 of said code; to amend and reenact §49-2-108, §49-2-110, §49-2-111, §49-2-111a, §49-2-112, §49-2-118, §49-2-121, §49-2-124, and §49-2-126 of said code; to amend said code by adding thereto two new sections designated, §49-2-127, §49-2-128, and §49-2-129; and to amend and reenact §49-4-604, of said code; all relating to foster care; defining terms; increasing the number children allowed in a foster care family; setting forth the requirements of performance based contracting; requiring certain moneys to be used in setting the rate for performance based contracting; requiring the department to create a tiered reimbursement model; setting payment minimums; providing rulemaking authority; establishing the rights of foster children; establishing the rights of foster parents; establishing the rights of certified kinship placements; setting forth the reasonable and prudent parent standard; establishing criteria for scattered-site living arrangements; establishing the criteria for supervised group settings; requiring the department promulgate emergency rules; setting forth reporting requirements of a guardian ad litem; and removing non applicable language from the code,"

With the recommendation that the committee substitute do pass.

Delegate Rowan, Chair of the Committee on Senior, Children, and Family Issues, submitted the following report, which was received:

Your Committee on Senior, Children, and Family Issues has had under consideration:

H. B. 4447, Creating the shared table initiative for senior citizens who suffer from food insecurity,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (H. B. 4447) was referred to the Committee on Government Organization.

Delegate Rowan, Chair of the Committee on Senior, Children, and Family Issues, submitted the following report, which was received:

Your Committee on Senior, Children, and Family Issues has had under consideration:

H. B. 4591, Amending the definition of “financial exploitation” to include the use of undue influence,

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

In accordance with the former direction of the Speaker, the bill (H. B. 4591) was referred to the Committee on the Judiciary.

Delegate Capito, Chair of 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 11th day of February, 2020, 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. 4091, Allowing for expedited oil and gas well permitting upon payment of applicable expedited fees,

And,

H. B. 4496, Removing the specific mandate of the Board of Risk and Insurance Management to purchase liability insurance for the Division of Corrections.

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

Your Committee on the Judiciary has had under consideration:

H. B. 4621, West Virginia FinTech Regulatory Sandbox Act,

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

Com. Sub. for H. B. 4621 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31A-8G-1, §31A-8G-2, §31A-8G-3, §31A-8G-4, §31A-8G-5, §31A-8G-6, §31A-8G-7, and §31A-8G-8, all relating to the West Virginia FinTech Regulatory Sandbox Program; defining terms; establishing requirements for participants to temporarily test innovative financial products or services on a limited basis without otherwise being licensed or authorized to act under the laws of the state; establishing scope of the ability to operate without otherwise being licensed or authorized to act with respect to approved financial products or services; providing consumer protections; establishing time limitations on the ability to operate without otherwise being licensed or authorized to act with respect to approved financial products or services; providing reporting requirements; and providing for rule-making.”

With the recommendation that the committee substitute do pass.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 2602, Including possession of known stolen property in the offense of receiving or transferring stolen property.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-18. Receiving or transferring stolen goods.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, or possesses any stolen goods or other thing of value, which he or she knows or has reason to believe has been stolen, ~~he shall be deemed that person is~~ guilty of the larceny thereof, and may be prosecuted although the principal offender ~~be not~~ has not been convicted: Provided, That possession of stolen goods while acting at the request of law enforcement or in cooperation with law enforcement does not constitute a violation of this section.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2602 — “A Bill to amend and reenact §61-3-18 of the Code of West Virginia, 1931, as amended, relating to criminalizing possession of property when a person knows or has reason to know it is stolen; making possession of stolen property larceny; and clarifying that possession of stolen property while acting in cooperation with law enforcement or at law enforcement’s request is not a crime.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 163**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Canestraro and Linville.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2602) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2924, Permitting the West Virginia Tourism Office to decide to contract with the Division of Highways to sell advertising space on the WV511 website.

A message from the Senate, by

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

Com. Sub. for H. B. 4129, Relating to adoption.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4141, Requiring the Department of Administration to publish its comprehensive annual financial report by the end of December.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 2. FINANCE DIVISION.

§5A-2-33. Financial accounting and reporting section; comptroller; powers and responsibilities.

(a) The financial accounting and reporting section created under section one of this article shall be under the control and supervision of a comptroller. The provisions of this section shall apply to all component units of state government, as defined by generally accepted accounting principles.

(b) The comptroller, under the direction and supervision of the director of the Finance Division, has the power and responsibility to:

(1) Maintain financial records supporting the Comprehensive Annual Financial Report required under ~~subsection (8) of this section~~ subdivision (8) of this subsection, in accordance with generally accepted accounting principles;

(2) Maintain the official chart of accounts of the state;

(3) Maintain the centralized accounting system;

(4) Maintain the statewide accounting policies and procedures;

(5) Direct the establishment and maintenance of an adequate internal control structure by the various component units of state government;

(6) Verify the periodic reconciliation of assets as reported by the board of Investments and budgetary fund balances as reported by the State Auditor;

(7) Issue management financial reports by component unit and department, as well as consolidated management financial reports, as follows:

~~(a)~~ (A) Monthly budgetary basis reports by revenue and expense, budget compared to actual, and encumbrances; and

~~(b)~~ (B) Financial position reports, including, but not limited to, cash, investments, indebtedness, obligations and accounts payable.

(8) Issue a comprehensive annual financial report.

(A) When all state agencies meet the financial reporting deadlines set by the financial accounting and reporting section, the report shall be issued on or before December 31 of the calendar year in which the reporting period ends.

(B) When any agency fails to meet the reporting deadline, the report shall be issued within 60 days of receiving the last agency report.

(C) The financial report will be prepared in accordance with generally accepted accounting principles;

(9) Have the general purpose financial statements of the state audited annually by independent certified public accountants;

(10) Require the state pension systems, workers' compensation commission, Public Employees Insurance Agency, Board of Risk and Insurance Management and the various other component units of the state to prepare financial statements audited by independent certified public accountants and submit the audited financial statements to the financial accounting and reporting section in the form and within the time frames established by the financial accounting and reporting section;

(11) Maintain controls over access to the centralized accounting system and the required modifications, as well as edits, controls and tables;

(12) Promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code to effectuate the intent and purpose of this section: *Provided*, That such rules may initially be implemented by emergency rule; and

(13) Do all things necessary and convenient to maintain the centralized accounting system, to issue financial reports of the state and to carry out its powers and responsibilities."

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 164**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Howell and McGeehan.

Absent and Not Voting: Azinger, Canestraro and Linville.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4141) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4179, Recognition of Emergency Medical Services Personnel Licensure Interstate Compact.

On motion of Delegate Summers, the House of Delegates refused to concur in the following amendment of the bill by the Senate, and the Senate was requested to recede therefrom:

On page one, after the enacting clause by inserting the following:

“§16-4C-8a. Courtesy certification of emergency medical services personnel in surrounding states.

[Repealed.]”

And,

By amending the title of the bill to read as follows:

H. B. 4179 — “A Bill to repeal §16-4C-8a of the Code of West Virginia, 1931, as amended; and to amend the code by adding thereto a new article, designated §16-59-1, §16-59-2, §16-59-3, §16-59-4, §16-59-5, §16-59-6, §16-59-7, §16-59-8, §16-59-9, §16-59-10, §16-59-11, §16-59-12, §16-59-13, §16-59-14, and §16-59-15, all relating to enacting the Recognition of Emergency Medical Services Personnel Licensure Interstate Compact; entering into the Compact with all jurisdictions also enacting the Compact; stating purpose of Compact; defining terms; identifying member states as home states; retaining authority of member state to require license under circumstances not covered by Compact; setting conditions for home state’s license to authorize practice in a remote state under the Compact; requiring member states to recognize licenses issued by another member state under certain conditions; setting requirements for individuals to exercise privilege to practice; setting scope of practice; making individuals practicing in remote states subject to that state’s laws; authorizing remote states to take action against individual’s privilege to practice within that state under certain circumstances; providing effect of restrictions on license on Compact privileges; setting conditions of practicing in remote state under Compact terms; defining relationship of Compact with Emergency Management Assistance Compact; setting terms and requirements for certification of veterans, certain service members, and their spouses; recognizing exclusive power of home states to impose adverse action against license issued by home state; providing consequences for Compact participation if individual’s license is subject to adverse action by home state; requiring member states to report adverse actions against licenses; authorizing states to take action against individual’s privilege to practice within that state; requiring home state EMS authority investigate and take appropriate action based on reported conduct in remote state; authorizing alternative programs in

lieu of adverse action; authorizing member state's EMS authority to issue subpoenas; authorizing member state's EMS authority to issue certain cease and desist orders; establishing Interstate Commission for EMS Personnel Practice; providing venue; maintaining state sovereign immunity; providing for membership; providing for voting; requiring annual meetings; requiring meetings to be public; providing exceptions; authorizing Commission prescribe bylaws and/or rules to govern conduct; granting certain powers to Commission; providing for financing for the Commission; making validity of annual assessment against state contingent upon funds being appropriated by the Legislature or otherwise being made available; providing for qualified immunity of certain persons; requiring Commission defend certain persons for actions arising out of actions occurring within the scope of duties related to the Commission; requiring Commission indemnify and hold harmless certain persons under certain circumstances; providing for development and maintenance of coordinated database and reporting system; requiring member states provide certain information to coordinated database; requiring notification by coordinated database administrator of adverse action taken against individual in member state; authorizing member state to designate information not to be shared with the public without express permission of contributing state; providing for removal of information from database when required to be expunged; authorizing rulemaking Commission; providing scope of rulemaking; providing procedures for rulemaking; authorizing emergency rulemaking by the Commission; providing that Commission rules are not binding on the State of West Virginia until they have been authorized as legislative rules; providing timeline and procedure for proposing legislative rules; authorizing emergency rulemaking; directing state government to enforce Compact and take necessary actions to effectuate its purposes and intent; directing courts take judicial notice of Compact and rules promulgated pursuant to Compact; providing procedures for the Commission to follow if member state has defaulted; authorizing member state be terminated from the Compact under certain conditions; setting terms of termination; authorizing appeal; authorizing mediation and binding dispute resolution between Commission and member state; authorizing enforcement of the Compact by the Commission; authorizing legal action; establishing venue; providing for venue in West Virginia; providing implementation date for the Compact; making any state joining after implementation subject to rules as they exist when the Compact is adopted; authorizing member state withdraw from the Compact; maintaining member state authority to enter into licensure or cooperative agreements with nonmember state; authorizing amendment of the Compact; providing for liberal construction; providing for severability of the Compact if it is found to violate constitution of member state; directing Emergency Medical Services Advisory Council review decisions of the Commission; and authorizing Emergency Medical Services Advisory Council make recommendation to Legislature for withdrawal from the Compact."

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

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 180 - "A Bill to amend and reenact §17B-7-5 and §17B-7-9 of the Code of West Virginia, 1931, as amended, all relating to the Second Chance Driver's License Program; providing that a court's accounting of amounts due for crime victim restitution be separately identified; providing that any moneys for restitution that are not submitted in the accounting by the court may not be waived by the participant's completion of the program; and providing that amounts of court costs collected under the Second Chance Driver's License Program attributable to crime victim restitution are not subject to the five percent offset for use by the Director of the Division of Justice and Community

Services in the administration of the program”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

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

Com. Sub. for S. B. 230 - “A Bill to amend and reenact §18-2-40 of the Code of West Virginia, 1931, as amended, relating to suicide prevention awareness training and dissemination of information; providing findings; requiring State Board of Education to provide routine education in suicide prevention under guidelines established by board; and requiring dissemination of information”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 364, Authorizing Department of Transportation promulgate legislative rules.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 500, Relating to Class Y special crossbow hunting permit.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 501, Adding protection, operation of North Bend Rail Trail, Greenbrier River Trail, and Elk River Trail to Parks and Recreation Section of DNR.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 545 - “A Bill to amend and reenact §23-2C-16 of the Code of West Virginia, 1931, as amended, relating to authorizing the Insurance Commissioner to transfer moneys from the Insurance Commission Fund, also known as the Commissioner’s Operating Fund, into the Workers’ Compensation Old Fund to reduce any deficit balance of the Old Fund”; which was referred to the Committee on Finance.

A message from the Senate, by

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

Com. Sub. for S. B. 571 - “A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, in the amount of \$20,000,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and making a supplementary appropriation of public moneys out of the Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2020, organization 0221”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 641 - "A Bill to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended, relating to the requirement that provider reimbursement schedules shall be no lower than the reimbursement provided for the same services under the plans offered in §5-16-1 *et seq.* of said code; and making other technical changes"; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 647 - "A Bill to amend and reenact §16-30C-6 of the Code of West Virginia, 1931, as amended, relating to permitting physician's assistants and advanced practice registered nurses to issue do-not-resuscitate orders"; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 662 - "A Bill to amend and reenact §44-3-1 of the Code of West Virginia, 1931, as amended, relating to removing language restricting more than two fiduciary commissioners being from the same political party"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 664 - "A Bill to amend and reenact §16-30-7 of the Code of West Virginia, 1931, as amended, relating to adding a physician's assistant to the list of medical professionals able to determine an individual lacks capacity; updating terminology related to advanced practice registered nurses; removing terminology related to physicians; and permitting a psychologist, physician's assistant, or advanced practice registered nurse to inform a person, if conscious, that he or she has been determined to be incapacitated"; which was referred to the Committee on Health and Human Resources then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 674 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-4-56, relating to permitting the Commissioner of the Division of Highways to purchase hardware items and equipment from a local seller rather than the holder of a state contract if the cost of the item or equipment is less than the cost from the holder of the state contract"; which was referred to the Committee on Government Organization.

Resolutions Introduced

Delegates D. Jeffries, Atkinson, Nelson, Butler, Bibby, Pack and Wilson offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

H. C. R. 83 - "Requesting the Division of Highways name bridge number 20-79-9.20 NB and SB, carrying Interstate 79 over Little Sandy near Elkview in Kanawha County, the 'U. S. Army SFC Guy R. Hively Memorial Bridge'."

Whereas, Sergeant First Class Guy R. Hively was born on May 22, 1938, in Roane County, and died on February 2, 1968, in Vietnam. He left behind his wife Rita Cassell Hively, and their child, Alison who was three at the time; and

Whereas, In 1998 Don Fitzwater, Sr., wrote "Memories That Won't Go Away" that he dedicated to Sergeant Hively's family: "Here it is soon to be 1998 and I still have some memories of 1968 that are almost as clear as yesterday. I suppose that is because they are burned into my memory by fear or for some other reason that I don't understand. I have decided to write this story about the loss of your husband, your father, your brother and my friend. I have driven through or near Clendenin, West Virginia on several occasions during the past thirty years and every time that I see the city limit sign or a directional sign on the Interstate my mind immediately flashes to the memories of Guy Hively. I have often thought of finding you and telling you about his last days and hours and the events surrounding his death, however something always caused me to talk myself out of it. I even stopped at a service station in town one day and inquired about you but still couldn't make myself look you up. I kept thinking that maybe time has taken care of everything and it would be pointless to do so. I now think that I have been wrong all these years. I first met Guy while assigned to the Berlin Commands' Second Battle Group of the Sixth Infantry. I had been assigned to Bear Company for some time where this tall, gangly, slow walking and slow talking fellow reported for duty. As everyone does when someone new shows up, we all asked him where he was from and when he said he was from Clendenin, West Virginia I then told him I was from Clay County near the small town of Ivydale. Actually, I was raised on Otter Creek some five miles northwest of Ivydale on Route 16. Everyone liked Guy. He always had a smile and a good word for everyone in the unit. He was never loud and boisterous as some of us were in those days. He had a special gait which often got him teased about being a plowboy or Hillbilly. The unit we were in was a show outfit more than anything else and required us to do an extraordinary amount of close order drill continually preparing for the inevitable parade. Our big Polish-American First Sergeant, Casmir J. Cezyk, had a set of lungs that could over shout any speaker system and I am sure all of the Berliners knew all of the country boys by name because when parade practice was going on you could always hear this booming voice yelling 'Hively, Fitzwater, Garrett, or some other country boys name, telling us to settle down and quit bobbing up and down like we were following a plow or climbing a hill'. Everyone got a kick out of that kind of stuff. After it was over. I can't recall a lot more about him while we were in Berlin. I left Berlin in 1965. On January 2, 1968 I arrived in the Republic of South Vietnam and was assigned to the Ninth Infantry Divisions' Fourth Battalion, Forty Seventh Infantry located at a base camp called Dong Tam. I was assigned to Company A as the Third Platoon Sergeant. The platoon was on base security the evening that I arrived, and I didn't get to meet all the men for a day or two. I can't remember exactly when I finally saw Guy for the first time and can't even remember if he was in my platoon initially after I arrived at the company. Shortly after I arrived, there was some shifting of personnel within the company because some of the platoons had lost people due to casualties and normal rotations back to the states and other places as is common in all units. Guy ended up being one of my Squad Leaders. We went on patrols around the base camp and flew here and there on a Med Cap (security missions for the medics to treat the Vietnamese civilians) or two. We had the occasional sniper and booby traps and shellings but nothing major during the month of January until the night of the 29th. We had flown out in the direction of the Cambodian border and established a security perimeter around a floating artillery base. The artillery pieces (howitzers) were mounted aboard pontoons and were either pulled or pushed through the myriad of waterways in the area. The troops had been pretty busy, and it was just the beginning of Tet or The Lunar New Year Season. The Armed Forces Network Radio and TV, as well as the Stars and Stripes Newspaper had been talking of the truce that would be in effect during the next few weeks or so. The troops had been a little slow building up our

defensive positions and all of the squad leaders and I had to make them all understand that we had to be ready just in case the truce was a trick to get all of us relaxed in order for the enemy to get in a surprise attack. Guess what!!! It was a trick with devastating consequences for some units, especially the South Vietnamese Forces. We were attacked with mortars at around 9 PM. We also had some ground fire, but the engagement wasn't much more than harassment as our choppers came out and hosed the area down good with machine gun fire and rockets. We stayed the rest of the night and were sent back to the base camp sometime the next day and were assigned the mission of ready reaction force in the event that the basecamp was hit hard, or some other unit needed help. Our base camp was hit pretty hard with rockets and mortars during the next couple of nights, but we were hunkered down in our large bunkers and didn't do anything but complain about the heat, bugs and cramped conditions in the bunkers. Some of us would stand around the entrances to the bunkers and make a mad dash for the door when we heard a rocket or mortar coming. Talk about traffic congestion. It was always hot, and the bugs were plentiful. During these few days the First Sergeant, Bob Careless, came to me and asked if I had any objections to him making Guy a Platoon Sergeant of one of the other platoons that had lost theirs in a skirmish. I had no objection as we were all career folks and I knew he would do a good job and be good for the men in that platoon. He was a good noncommissioned officer. He worked hard and looked out for his soldiers. On the morning of February 2, the Platoon Leader, Second Lieutenant John Walsh, from Moses Lake, Washington, came to me and told me to assemble the squad leaders for a meeting and to have the troops prepare to move out in a hurry. At the meeting we learned that our sister battalion, the Third Battalion, Forty Seventh Infantry, was pinned down in or near the town of My Tho some four or five miles up the road from us and that our mission was to break through them and help them. I don't recall knowing it at the time, but the country was locked in combat nearly from one end to the other. To conduct the breakthrough, we were given a company of M113 Armored Personnel Carriers, with drivers, from B Company Fifth Battalion, Sixtieth infantry for transportation, small arms fire protection, and 50 caliber machine firepower. This mission would not be successful. My platoon was chosen to lead the movement. I rode the lead Track (personnel carrier) as both Track Commander (TC) and 50 caliber gunner. Guy was several Tracks behind me also in the TC hatch. We moved out and picked up our prearranged distance between tracks and made communications checks with the company leadership making sure we could talk to each other when necessary. The Company Commander was several Tracks behind Guy. As we were pulling out of the company area the new company clerk, whose name I have forgotten, went to each track passing out updated versions of what we called 'Unit Line Rosters.' The rosters were used to identify someone in the unit during radio communications without having to say their names. Each Roster was in alphabetical order and also in numerical sequence with a number in the far-left column beside each name. There was never a number 13 because some folks are superstitious, and you don't need any superstitions that you can avoid in a combat zone. A short distance after leaving the base camp we travelled through a small village occupied by local civilians and several members of the South Vietnamese military. I remember seeing a number of young men standing around in white shirts which was indicative of them not being in the South Vietnamese armed forces and wondered why there were so many of them not in the military when we were there fighting for them. Near the end of the village we had to make a hard tum to the left. After we left the village we would next pass by a South Vietnamese training camp on the left side of the road. A small contingent of American advisers were also stationed there. We passed by the training camp waving at the guards and other locals standing around the entrance. No warning or any word of approaching danger was given by any of them. Nothing looked suspicious to any of us and we continued up the road. As I remember we had gone approximately 1,000 yards past the training camp and the road made a gradual tum to the right. As I was lead track I was the eyes and ears for the front of the column. After making the right tum we had another 1,000 or so yards of open territory, both rice paddies and grassy area, to cross before the road passed a South Vietnamese Army outpost located just inside the tree line of a fair-sized forest. Just after breaking into the opening area after making the tum, I looked at the tree line through my binoculars and immediately saw that the outpost had been overrun by the enemy and was flying Viet Cong (VC) flags on what was left of the towers on

both sides of the road. I immediately gave the halt signal to the rest of the column by holding my right arm up with the palm facing forward. We had a quick discussion with the Company Commander as to what the proper action should be to minimize our risks and the decision was made to form a line with the tracks side by side, a few yards apart, and move to the tree-line. With the tracks online we would be able to put all of our 50 caliber firepower to the front instead of everybody shooting over or past the front tracks. Everything went smoothly with just a few nervous bursts of fire from the tracks until we reached a small canal near the tree-line. The canal was obscured with grass and wasn't on the maps. Everyone had a bad feeling about having all those tracks stopped out in the open 50 or so yards from the tree line. The decision was made to dismount the troops and walk to the tree line and to have the tracks return to and line up on the road. All of the troops crossed the canal and went into the tree line without incident. The company commander then gave the word to move back to the road and mount back up onto the tracks. The tracks came forward and stopped for the troops to load up. I walked to the lead track but discovered that the tracks had, gotten all mixed up during their movement back to the road and instead of my track being in the lead, Guy's track was the front vehicle. The area surrounding the outpost was sort of a half circle on each side of the road. We had cleared the outpost by several yards before the tracks moved forward. When I discovered that my track was not the first track I started back toward the other vehicles looking for mine. I had just reached the rear of Guy's track when he arrived looking for it. He was smiling and we chatted for a few seconds with his last words to me and probably his last words to anyone being, 'What a mess those mixed up tracks were and that there probably wasn't a VC within 10 miles of the place.' We were to get our tracks back into our assigned positions once we began to move up the road again, however we never reached that point. I had stopped at the back of Guy's track talking to him when my platoon leader stopped to say something to me. As LT. Walsh and I began talking, Guy went to the front of his track and climbed aboard. Just as he was entering the TC hatch a rocket propelled grenade (RPG) hit his machinegun mount and blew him off the track killing him instantly. The track driver was critically injured and several others, including my platoon leader, were injured in the initial blasts of RPG and small arms fire. We exchanged fire for what seemed to be an eternity. Some of our own artillery landed in our positions killing some more soldiers and wounding several. Everything, including my flak jacket, except my boots and pants were blown off me and my M16 was destroyed in my hands. God was looking out for me that day. I had another track driver pull his track in front of Guys in order to provide protection for some of us to get into his track to render lifesaving first aid to the critically wounded driver. The covering track hit the mine that my track was supposed to have hit to spring the ambush initially, had we driven straight up the road instead of getting in line and becoming disorganized as we did. Fortunately, that driver was uninjured, but the track was badly damaged, locking the tracks so that it wouldn't move until we disconnected the final drives. Guy's track took another hit and burned. It was full of gasoline and ammunition and burned and exploded for a long time. He was not burned. I only saw his body at a distance a few seconds after the initial burst of enemy fire. I didn't know it was him until after the fracas was over. Some of the men told me that the only wounds they observed were small shrapnel wounds in the middle of his chest. Your husband, your father, your brother and my friend died bravely and dedicated to that which he thought to be right. He didn't run and hide in Canada or disobey orders or make excuses. He died as a soldier dies True to his country. If only the national leadership at the time would have supported the soldier as much as the soldier supported them, the results of the Vietnam conflict would have had been better recorded in the annals of History. I don't want his memory to go away. Sometimes memories are all you have. Oh yes, that new company clerk that had just finished updating the Unit Line Roster hadn't learned the routine and added a 13 to the list. Guy was number 13;" and

Whereas, Sergeant Hively's funeral was held at the First Baptist Church on February 22, 1968, and his body was interred at Elk Hill Memorial Gardens in Big Chimney; and

Whereas, Sergeant Hively was posthumously awarded the Bronze Star and the Purple Heart for his heroic efforts; and

Whereas, It is fitting that an enduring memorial be established to commemorate Sergeant First Class Guy R. Hively and his contributions to our country and state, having made the ultimate sacrifice; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 20-79-9.20 NB and SB, carrying Interstate 79 over Little Sandy near Elkview in Kanawha County, the "U. S. Army SFC Guy R. Hively Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to erect signs containing bold and prominent letters identifying the bridge as the "U. S. Army SFC Guy R. Hively Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

And,

Delegates Angelucci, C. Thompson, Lavender-Bowe, S. Brown, Longstreth, Staggers, Caputo, Pyles, Walker, Hanna, Zukoff and Diserio offered the following resolution, which was read by its title and referred to the Committee on the Judiciary then Rules:

H. C. R. 84 - "Requesting the Division of Corrections and Rehabilitation to conduct annual studies on the reporting of sexual assaults in the state's correctional facilities."

Whereas, In 2012, the U.S. Justice Department issued its first set of national standards requiring that detention facilities not only give inmates multiple ways to report sexual abuse but also investigate every allegation; and

Whereas, In 2011, before the national standards were issued, there were 8,768 allegations of sexual assault and harassment nationwide. By the end of 2015, that total had jumped to 24,661, a leap of more than 180 percent, according to the federal Bureau of Justice Statistics, which compiles the numbers it collects from corrections departments; and

Whereas, It is prudent for our own Division of Corrections and Rehabilitation to conduct a study on the reporting of sexual assaults in the state's correctional facilities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Corrections and Rehabilitation conduct annual studies on the reporting of sexual assaults in the state's correctional facilities; and, be it

Further Resolved, That the Division of Corrections and Rehabilitation submit its first annual study on the reporting of sexual assaults in the state's correctional facilities to the regular session of the Legislature, 2021, and annually thereafter, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations.

Motions

Delegate Fluharty moved, under the provisions of House Rule 82, to discharge **H. B. 2741**, Relating to unlawful discriminatory practices in categories covered by the Human Rights Act and the Fair Housing Act, from the Committee on Industry and Labor.

Delegate Summers moved that the motion to discharge be laid upon the table.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were (**Roll No. 165**), and there were—yeas 59, nays 38, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Azinger, Canestraro and Linville.

So, a majority of the members present and voting having voted in the affirmative, the motion to discharge was laid upon the table.

Special Calendar

Third Reading

Com. Sub. for S. B. 16, Creating Protect Our Right to Unite Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 166**), and there were—yeas 75, nays 22, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, S. Brown, Byrd, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Fleischauer, Fluharty, Lavender-Bowe, Longstreth, Miller, Pyles, Robinson, Skaff, Sponaugle, C. Thompson, Walker and Williams.

Absent and Not Voting: Azinger, Canestraro and Linville.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 16) passed.

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

Com. Sub. for S. B. 560, Permitting nursing home use trained individuals administer medication; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 167**), and there were—yeas 70, nays 26, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: N. Brown, S. Brown, Byrd, Campbell, Doyle, Evans, Fast, Fleischauer, Fluharty, Hornbuckle, D. Jeffries, Lavender-Bowe, Lovejoy, C. Martin, P. Martin, Paynter, Pushkin, Pyles, Rohrbach, Rowe, Staggers, Summers, R. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Azinger, Canestraro, Linville and Steele.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 560) passed.

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

Com. Sub. for S. B. 676, Permitting fees from Child Abuse Registry be used for information technology support costs; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 168**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Canestraro and Linville.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 676) passed.

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

Com. Sub. for H. B. 4088, Disposition of funds from certain oil and natural gas wells due to unknown or unlocatable interest owners; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 169**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Canestraro, Linville and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4088) passed.

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

H. B. 4113, Relating to motor fuel excise taxes; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 170**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4113) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk.

Whereupon,

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

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

H. B. 4113 - "A Bill to amend and reenact §11-14C-9 and §11-14C-30 of the Code of West Virginia, 1931, as amended, all relating to refundable exemptions from tax on motor fuels generally; modifying certain refundable exemption from tax on motor fuel purchased for use as a motor fuel for certain internal combustion engines; extending certain refundable exemption from tax to tax on motor fuel used in a power take-off unit on a fuel delivery truck; and expanding certain refundable exemptions from tax on motor fuel claimable by certain taxpayers to include the variable rate component of the tax."

Delegate Summers moved that the bill take effect July 1, 2020.

On this question, the yeas and nays were taken (**Roll No. 171**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4113) takes effect July 1, 2020.

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

Com. Sub. for H. B. 4158, Allowing a person to manufacture a stated amount of alcoholic liquor for personal consumption; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 172**), and there were—yeas 75, nays 19, absent and not voting 6, with the nays and absent and not voting being as follows:

Nays: Barnhart, Bartlett, Boggs, Butler, Cowles, Fast, Hicks, D. Jeffries, Jennings, D. Kelly, J. Kelly, Mandt, P. Martin, Pack, Porterfield, Rowan, Rowe, Skaff and Worrell.

Absent and Not Voting: Azinger, Canestraro, Linville, Robinson, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4158) passed.

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

Com. Sub. for H. B. 4398, Relating to required courses of instruction; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 173**), and there were—yeas 92, nays 3, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Bates, Fluharty and McGeehan.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4398) passed.

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

H. B. 4437, Relating to the West Virginia Pay Card program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 174**), and there were—yeas 94, nays 1, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Criss.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4437) passed.

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

H. B. 4551, Relating to subsidized adoption; on third reading, coming up in regular order, was read a third time.

Delegate Cowles requested to be excused from voting on H. B. 4551 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 175**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4551) passed.

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

Com. Sub. for H. B. 4615, West Virginia Critical Infrastructure Protection Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 176**), and there were—yeas 60, nays 35, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, S. Brown, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miller, Phillips, Pushkin, Pyles, Robinson, Rowe, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Walker, Williams, Worrell and Zukoff.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4615) passed.

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

H. B. 4655, Permitting military personnel in areas where on-the-job emergency medicine is part of the training to be granted automatic EMS or EMT certification; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 177**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Canestraro, Hornbuckle, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4655) passed.

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

Com. Sub. for H. B. 4706, Relating to reports concerning funds due to unknown or unlocatable interest owners; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 178**), and there were—yeas 85, nays 10, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Hartman, D. Kelly, Kump, Mandt, McGeehan, Miley, Pushkin, Sponaugle, Steele and C. Thompson.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4706) passed.

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

H. B. 4790, Relating to Career Technical Education for middle school students; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 179**), and there were—yeas 94, nays 1, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Robinson.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4790) passed.

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

Second Reading

S. B. 300, Updating certain terms in WV Corporation Net Income Tax Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 310, Updating certain terms used in WV Personal Income Tax Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for H. B. 4155, Relating generally to the regulation of plumbers; on second reading, coming up in regular order, was read a second time.

Delegate Foster moved to amend the bill on page one, section two, line seven, by striking out “who can show proof they passed a drug and alcohol test within the previous 12 months that meets the requirements set out in §21-1d-2 (a), (d), and (h), and”.

On page one, section two, line eleven, by striking out the words “Journeyman plumber” and inserting in lieu thereof the words “Master-Journeyman plumber: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements”.

On page one, section two, line fifteen, by striking out “who can show proof they passed a drug and alcohol test within the previous 12 months that meets the requirements set out in §21-1d-2 (a), (d), and (h), and”.

On page two, section two, line nineteen, after the word “training”, by inserting “: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements”

And,

On page two, section two, line twenty, by striking out “who can show proof they passed a drug and alcohol test within the previous 12 months that meets the requirements set out in §21-1d-2 (a), (d), and (h), and”.

Delegate Maynard requested to be excused from voting on Com. Sub. for H. B. 4155 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the bill and directed the Member to vote on the amendment and passage.

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

The yeas and nays having been ordered, they were taken (**Roll No. 180**), and there were—yeas 45, nays 49, absent and not voting 6, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Barnhart, Bartlett, Bibby, Butler, Cadle, Capito, Cooper, Cowles, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Higginbotham, Hill, Hott, Householder, Howell, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Kump, Mandt, C.R. Martin, P. Martin, McGeehan, Nelson, Pack, Phillips, Porterfield, Rowan, Shott, Steele, Summers, Sypolt, Waxman, Wilson, Worrell and Mr. Speaker Hanshaw.

Absent and Not Voting: Azinger, S. Brown, Canestraro, Linville, Rodighiero and Toney.

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

Delegate Diserio moved to amend the bill on page one, section two, line eleven, by striking out the words “Journeyman plumber” and inserting in lieu thereof the words “Master-Journeyperson plumber: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements”.

And,

On page two, section two, line nineteen after the word “training”, by inserting “: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements”.

Delegate Foster asked unanimous consent that remarks by Delegate Diserio be printed in the Appendix to the Journal, which consent was not granted, objection being heard.

The question being adoption of the amendment, the same was put and the amendment was adopted.

Delegate Worrell moved to amend the bill on page three, section three, line twenty-seven, after the word “facilities”, by inserting the word “or”.

On page three, section three, line thirty, after the word “business” and the semicolon, by striking out the word “or” and inserting in lieu thereof a period.

And

On page three, section three, line 31 by striking out subdivision (10) in its entirety.

On this question, the House divided and the Speaker declared the amendment adopted.

Delegate Miller moved to amend the bill on page two, section three, line three, following the word “article” and the period, by inserting a new subsection (b) to read as follows:

“(b) The Commissioner of Labor shall determine if each applicant for new licenses and license renewal qualifies for employment under the E-Verify program administered by the United States Department of Homeland Security and the United States Social Security Administration: *Provided*, That nothing in this subsection may make the Commissioner liable for the employment of undocumented workers.”

And,

Renumbering the subsequent subsections accordingly.

Delegate Foster arose to a point of order as to the germaneness of the amendment.

The Speaker stated that the bill addresses multiple factors associated with receipt of a license and ruled the amendment was germane to the purpose of the bill.

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

The yeas and nays having been ordered, they were taken (**Roll No. 181**), and there were—yeas 57, nays 38, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Atkinson, Barnhart, Bartlett, Bibby, S. Brown, Butler, Cadle, Capito, Cooper, Cowles, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Hill, Householder, Howell, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kump, Mandt, McGeehan, Pack, Porterfield, Queen, Rowan, Shott, Steele, Summers, Sypolt, Waxman, Worrell and Speaker Hanshaw.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegate Bibby moved that the House of Delegates reconsider its adoption of the amendment offered by Delegate Worrell for Com. Sub. for H. B. 4155.

On the motion to reconsider the amendment offered by Delegate Worrell, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 182**), and there were—yeas 43, nays 52, absent and not voting 5, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Barnhart, Bartlett, Bibby, Butler, Cadle, Capito, Cooper, Cowles, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Higginbotham, Hill, Hott, Householder, Howell, D. Jeffries, Jennings, J. Kelly, Kessinger, C. Martin, P. Martin, Maynard, McGeehan, Pack, Phillips, Porterfield, Queen, Rowan, Shott, Steele, Summers, Sypolt, Waxman, Wilson and Speaker Hanshaw.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting not having voted in the affirmative, the motion to reconsider was rejected.

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 4198, Permitting a person to obtain a 12-month supply of contraceptive drugs; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 4217, Authorizing the Department of Environmental Protection to promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

Delegate Shott moved to amend the bill on page three, section one, line twenty-six, after the word "exceed" and before the word "the", by inserting the words "one hundred and twenty percent of".

Delegate Fleischauer asked unanimous consent that the House stand at ease, which consent was not given, objection being heard.

Delegate Fleischauer moved to place the bill at the foot of bills on second reading.

Whereupon,

Delegate Shott asked unanimous consent to withdraw the amendment, which consent was not given, objection being heard.

The question being on the motion by Delegate Fleischauer to move the bill to the foot of bills on second reading, the same was put and did not prevail.

Delegate C. Martin moved the previous question, which demand was sustained.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 183**), and there were—yeas 45, nays 50, absent and not voting 5, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Barnhart, Bartlett, Bibby, Butler, Cadle, Capito, Cooper, Criss, Ellington, Fast, Foster, Hamrick, Hanna, Higginbotham, Hill, Hott, Householder, Howell, D. Jeffries, J. Jeffries, D. Kelly, J. Kelly, Kessinger, Kump, Little, Mandt, C.R. Martin, P. Martin, Maynard, McGeehan, Nelson, Paynter, Phillips, Porterfield, Queen, Rohrbach, Rowan, Shott, Steele, Sypolt, Waxman, Westfall, Wilson and Speaker Hanshaw.

Absent and Not Voting: Azinger, Canestraro, Linville, Rodighiero and Toney.

So, a majority of the members present and voting not having voted in the affirmative, the motion for the previous question was rejected.

The question being adoption of the amendment offered by Delegate Shott, the same was put and the amendment was adopted.

The bill was then ordered to engrossment and third reading.

H. B. 4406, Relating to the reproduction of checks and other records; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Banking and Insurance, was reported by the Clerk and adopted, amending the bill on page one, after the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

"ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image

disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the Commissioner of Banking, all or any number of its checks and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original, but every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least five years from the date of the last entry on such books or the date of making of such deposit tickets and card records or, in the case of a banking institution exercising trust or fiduciary powers, accounting and legal records shall be retained until the expiration of five years from the date of termination of any trust or fiduciary relationship relating to such accounting and legal records by a final accounting, release, court decree or other proper means of termination and supporting documentation for fiduciary account transactions shall be retained for five years from the dates of entry of such transactions.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

(b) When a subpoena duces tecum is served upon a custodian of records of any bank in an action or proceeding in which the bank is neither a party nor the place where any cause of action is alleged to have arisen and the subpoena requires the production of all or any part of the records of the bank relating to the conduct of its business with its customers, the bank shall be entitled to a search fee not to exceed \$10, together with reimbursement for costs incurred in the copying or other reproduction of any such record or records which have already been reduced to written form, in an amount not to exceed 75 cents per page. Any and all such costs shall be borne by the party requesting the production of the record or records.

(c) Notwithstanding any other provision of this code establishing a statute of limitations for any period greater than five years, any action by or against a bank for any balance, amount, or proceeds from any time, savings or demand deposit account based on the contents of records for which a period of retention or preservation is set forth in section (a) of this section shall be brought within the time for which the record must be retained or preserved. If records are retained beyond the period set forth in section (a) of this section or the bank otherwise has information regarding the status of funds held or previously held in any time, savings or demand deposit account, the bank shall provide such information, to the extent permitted by all applicable state and federal privacy laws, upon written request, to anyone with a legal interest in such balance, amount, or proceeds. This section does not apply to savings accounts or certificates of deposit established as a result of any legal action for the benefit of a minor."

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 4513, Increasing the replacement costs required of a person causing injury or death of game or protected species; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

First Reading

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

Com. Sub. for S. B. 534, Removing workers' compensation exclusion for temporary legislative employees,

Com. Sub. for S. B. 544, Authorizing pharmacists and pharmacy interns administer vaccines,

S. B. 642, Correcting incorrect code citation in WV Consumer Credit and Protection Act,

Com. Sub. for H. B. 2961, Permitting the commissioner to require a water supply system be equipped with a backflow prevention assembly,

Com. Sub. for H. B. 4067, Relating to crimes against property,

Com. Sub. for H. B. 4101, Relating to requiring a court to verify certain conditions are met before a child who has been removed from a home,

Com. Sub. for H. B. 4123, Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform "emergency services" during a disaster,

Com. Sub. for H. B. 4387, Donated Drug Repository Program,

Com. Sub. for H. B. 4546, Relating to tuberculosis testing for school superintendents,

Com. Sub. for H. B. 4581, Relating to West Virginia Clearance for Access: Registry and Employment Screening,

Com. Sub. for H. B. 4620, Redefining definition of "recovery residence",

Com. Sub. for H. B. 4666, Relating to competitive bids for intergovernmental relations and urban mass transportation,

Com. Sub. for H. B. 4670, Relating to the juvenile restorative justice programs,

Com. Sub. for H. B. 4690, Relating to solid waste facilities,

And,

H. B. 4955, Relating to reducing the cost of fees for state licenses to carry concealed deadly weapons and provisional state licenses to carry concealed deadly weapons.

Leaves of Absence

At the request of Delegate Summers, and by unanimous consent, leaves of absence for the day were granted Delegates Azinger, Canestraro and Linville.

Delegate Fluharty moved that the motion to discharge **H. B. 2741**, Relating to unlawful discriminatory practices in categories covered by the Human Rights Act and the Fair Housing Act, from the Committee on Industry and Labor, be taken from the table.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 184**), and there were—yeas 34, nays 58, absent and not voting 8, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, S. Brown, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rowe, Skaff, Sponaule, Staggers, C. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Azinger, Byrd, Canestraro, Lavender-Bowe, Linville, Rodighiero, Swartzmiller and Toney.

So, a majority of the members present and voting not having voted in the affirmative, the motion to take the discharge motion from the table did not prevail.

Miscellaneous Business

Pursuant to House Rule 132, consent was requested and obtained to print the following remarks in the Appendix to the Journal:

- Delegate Kump regarding Com. Sub. for H. B. 4158
- Delegate Miley during Remarks by Members
- Delegate Caputo regarding Com. Sub. for H. B. 4615
- Delegate Zukoff for H. B. 4790
- Delegate Hanna for H. B. 4790
- Delegate Pack during Remarks by Members
- Delegate Cadle during Remarks by Members
- Delegate Hill during Remarks by Members
- Delegate Fluharty during Remarks by Members
- Delegate Hornbuckle during Remarks by Members

Pursuant to House Rule 94b, forms were filed with the Clerk's Office to be added as a cosponsor of the following:

- Delegate Mandt for H. B. 4603
- Delegate Pushkin for H. B. 4668, H. B. 4773, H. B. 4797
- Delegate Sypolt for H. B. 4705 and H. B. 4862

- Delegate C. Thompson for H. B. 4804
- Delegates Byrd, Higginbotham, Rohrbach and Skaff for H. B. 4843
- Delegate D. Jeffries for H. B. 4799
- Delegate Rohrbach for H. C. R. 82

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be removed as a cosponsor of the following:

- Delegate Mandt for H. B. 4445
- Delegate McGeehan for H. C. R. 9

Delegate Espinosa noted to the Clerk that he was absent when the votes were taken on Roll Nos. 145 through 162, and had he been present, he would have voted "Yea" on Roll Nos. 145, 146, 147, 149, 150, 151, 152, 153, 154, 155, 156, 157 and 158; and "Nay" on Roll Nos. 148, 159, 160, 161 and 162.

At 3:09 p.m., the House of Delegates adjourned until 11:00 a.m., Friday, February 14, 2020.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470