

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE  
REGULAR SESSION, 2016  
THIRTY-FIRST DAY

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Charleston, W. Va., Friday, February 12, 2016

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Dr. Michael Young, Emmanuel Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert H. Plymale, a senator from the fifth district.

Pending the reading of the Journal of Thursday, February 11, 2016,

At the request of Senator Karnes, 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.

On motion of Senator Carmichael, the Senate recessed for five minutes to permit Claudia Chapman to address the Senate on behalf of the Frasure-Singleton Student Legislative Program.

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

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

**Eng. Com. Sub. for House Bill 4012**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all relating to establishing the West Virginia Religious Freedom Restoration Act to ensure that, in all cases where state action is alleged to substantially burden the exercise of religion, that a

compelling interest test is mandated, and, strict scrutiny is applied; including a short title; providing definitions; and addressing applicability, construction, remedies, and severability.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 4148**—A Bill to amend and reenact §11-24-3 and §11-24-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Corporation Net Income Tax Act; updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act; changing the due date for filing a West Virginia Corporation Net Income Tax return; and specifying effective dates.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 4158**—A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2016, to the Department of Commerce, WorkForce West Virginia – Workforce Investment Act, fund 8749, fiscal year 2016, organization 0323, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Referred to the Committee on Finance.

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

**Eng. House Bill 4161**—A Bill to amend and reenact §11-8-6a of the Code of West Virginia, 1931, as amended, relating to levies on classifications of property by the Board of Public Works; removing antiquated language requiring Board of Public Works to levy property tax rates to meet the requirements of state road bonds issued prior to November 8, 1932; and removing references to corresponding levy rates.

Referred to the Committee on Finance.

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

**Eng. House Bill 4362**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-9d, relating to crimes against the person; establishing a felony offense of strangulation; defining terms; and providing penalties.

Referred to the Committee on the Judiciary.

### Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on February 11, 2016, he had approved **Enr. Senate Bill 32, Enr. Committee Substitute for Senate Bill 342, Enr. Senate Bill 357, Enr. Senate Bill 360 and Enr. Committee Substitute for House Bill 2101.**

Senator Cole (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

February 11, 2016

**VIA HAND DELIVERY**

The Honorable William P. Cole III  
President, West Virginia Senate  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Senate Bill 1

Dear President Cole:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 1 for public policy reasons.

I dispute that West Virginia needs a "right to work" law. The issue of "right to work" has been discussed for several years, but I have never had a company cite "right to work" as a barrier to relocating in West Virginia. We do not lack prospects. Our issues are best addressed by improving our workforce and creating new development opportunities. Since I became governor in 2010, West Virginia has welcomed more than \$10 billion in new investments and expansion projects. A "right to work" law will lead to little if any economic growth and may lower the wages of West Virginia workers.

For the foregoing reasons, I disapprove and return the bill.

Sincerely,

Earl Ray Tomblin  
*Governor*

cc: The Hon. Tim Armstead  
*Speaker of the House of Delegates*  
The Hon. Natalie E. Tennant  
*Secretary of State*

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

**Enr. Senate Bill 1**, Establishing WV Workplace Freedom Act.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

Following discussion,

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Senate Bill No. 1, the same was put and prevailed.

The question now being on the passage of the bill, disapproved by the Governor.

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

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

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. S. B. 1) passed with its title, as a result of the objections of the Governor.

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

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senators Miller, Kessler, Romano, Laird and Carmichael regarding Enrolled Senate Bill 1 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the fourth order of business.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Senate Bill 10**, Unborn Child Protection from Dismemberment Abortion Act.

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

**Com. Sub. for Senate Bill 10** (originating in the Committee on Health and Human Resources)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2P-1, relating to creating the Unborn Child Protection from Dismemberment Abortion Act; providing definitions; prohibiting dismemberment abortions; deeming violations by physicians and other licensed medical practitioners to be a breach of the standard of care and outside the scope of practice that is permitted by law; allowing for discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice for violation; constituting violations for nonphysician and nonlicensed medical practitioners as unauthorized practice of medicine and subject to criminal penalties; preserving existing legal remedies for violations; and clarifying that no penalty may be assessed against a patient.

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

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Health and Human Resources.

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

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Bill 16** (originating in the Committee on Transportation and Infrastructure), Providing tax credit for providing broadband service to unserved areas.

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

**Com. Sub. for Com. Sub. for Senate Bill 16** (originating in the Committee on Finance)—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, §11-13DD-6 and §11-13DD-7, all relating generally to providing tax credit for providing broadband service and wireless broadband service to unserved areas; requiring Tax Commissioner to propose rules for legislative approval to administer this article; providing definitions; specifying amount, application, restrictions, timing and cap on tax credit; and permitting a carryover of credit to subsequent tax year.

With the recommendation that the committee substitute for committee substitute 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 105**, Allowing nonpublic school student participate in public school athletics.

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

**Com. Sub. for Senate Bill 105** (originating in the Committee on Education)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25b, relating to education; providing for the Tim Tebow Act; permitting students instructed at home, by a private tutor or enrolled in a private, parochial or church school or a school operated by a religious order, who do not attend a school that is a member of the West Virginia Secondary School Activities Commission to participate in extracurricular athletic or other extracurricular activities at a school that is a member of the commission; providing requirements, standards and insurance coverage; and providing that accommodating schools may not be impeded from competing against other schools.

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

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Education.

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 267**, Modifying removal procedure for certain county, school district and municipal officers.

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

**Com. Sub. for Senate Bill 267** (originating in the Committee on Government Organization)—A Bill to amend and reenact §6-6-1 and §6-6-7 of the Code of West Virginia, 1931, as amended, relating to modifying the procedure for removal of certain county, school district and municipal officers; modifying definitions; and providing for political subdivisions be responsible for costs associated with removal proceedings when the outcome is in favor of a challenged officer.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Government Organization.

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 283**, Creating crime of arson when fire is caused by operation of a clandestine drug laboratory.

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

**Com. Sub. for Senate Bill 283** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-9, relating to creating the crime of causing the burning of a building or other structure while operating a clandestine drug laboratory; and establishing criminal penalties.

**Senate Bill 436**, Defining adequate shelter for dogs and cats.

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

**Com. Sub. for Senate Bill 436** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §61-8-19 of the Code of West Virginia, 1931, as amended, relating to animal cruelty; defining adequate shelter for certain dogs and cats; and giving discretion in determining adequate shelter in certain circumstances.

And,

**Senate Bill 504**, Relating to confidentiality of juvenile records.

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

**Com. Sub. for Senate Bill 504** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §62-6B-2 of said code; and to amend said code by adding thereto a new section, designated §62-6B-6,

all relating to confidentiality of records; providing that a recorded interview of a minor in a criminal or abuse or neglect case is generally confidential and exempt from disclosure; defining terms including “interviewed child” and “recorded interview”; providing that recorded interviews of children in criminal and administrative proceedings are confidential and subject to disclosure only pursuant to a court order; requesting Supreme Court of Appeals to promulgate rules which ensure access of parties and counsel to the contents of the recorded interview while ensuring that unauthorized duplication and publication are eliminated; creating the criminal offense of unlawfully duplicating, publishing or using a recorded interview in violation of the terms of a court order or the general confidentiality provision; and establishing penalties therefor.

With the recommendation that the three committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Education has had under consideration

**Senate Bill 313**, Changing mandatory school instructional time from 180 days to minutes.

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

**Com. Sub. for Senate Bill 313** (originating in the Committee on Education)—A Bill to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to school calendar; allowing limited use of available accrued instructional time when not possible to complete one hundred eighty separate instructional days in certain instances; requiring emergency rule if necessary; and removing obsolete effective date provision.

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

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Hall, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Education.

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

Your Committee on Finance has had under consideration

**Senate Bill 351**, Dedicating severance tax proceeds.

**Senate Bill 356**, Eliminating consumers sales and service tax exemption for 2016 fiscal year.

**Senate Bill 439**, Eliminating requirement that budget director approve requisitions for personal services payment under certain circumstances.

And,

**Senate Bill 462**, Reducing deposit of excess lottery proceeds into WV Infrastructure Fund.

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

Respectfully submitted,

Mike Hall,  
*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 400**, Reducing amount of sales tax proceeds dedicated to School Major Improvement Fund.

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

**Com. Sub. for Senate Bill 400** (originating in the Committee on Finance)—A Bill to amend and reenact §11-15-30 of the Code of West Virginia, 1931, as amended, relating to dedication and deposit of certain tax proceeds; reducing amount of sales tax proceeds annually dedicated to School Major Improvement Fund by \$999,996 for fiscal year 2017; amending monthly deposit requirements; specifying retroactive effect; and reducing amount of sales tax proceeds annually dedicated to School Construction Fund by \$3 million for fiscal year 2017.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

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

Your Committee on Government Organization has had under consideration

**Senate Bill 424**, Allowing fire departments assess fees.

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

**Com. Sub. for Senate Bill 424** (originating in the Committee on Government Organization)—A Bill to amend and reenact §7-1-3d of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-17-12 of said code, all relating to county commissions authorizing reasonable fees charged for fire department or fire company response to fires or other call for assistance; describing the means to be used for calculating and charging fees for responding to fire or other calls for assistance; prohibiting fire company or fire department from seeking reimbursement where the property is assessed a fire service levy or fire service fee; and establishing the method for revising and reauthorizing the county fire service fee by the county commission.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*



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

Your Committee on Government Organization has had under consideration

**Senate Bill 507**, Exempting motor vehicles engaged in nonemergency transport of Medicaid recipients from PSC permit requirements.

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

Respectfully submitted,

Craig Blair,  
*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 515**, Authorizing payment of certain claims against state.

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

Respectfully submitted,

Mike Hall,  
*Chair.*

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

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

February 11, 2016

**VIA HAND DELIVERY**

The Honorable Tim Armstead  
Speaker, West Virginia House of Delegates  
Room 228M, Building 1  
State Capitol Complex  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

Re: Enrolled House Bill 4005

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled House Bill 4005.

The Legislature of West Virginia enacted the Wages for Construction of Public Improvements Act in 1935 to ensure that laborers, workers, and mechanics receive fair wages on state public improvement contracts. Contending that the prevailing wage rates for building bridges, digging ditches, and tunneling sewers have become too generous, several legislators sought the Act's repeal during the 2015 Regular Session of the Legislature. I encouraged a less drastic course of action, and urged the Legislature to collaborate with Workforce West Virginia and our state's foremost universities to improve the Act's methodology for calculating prevailing wage rates. Working together, we achieved a reasonable compromise in 2015, modernizing the Act instead of extinguishing it.

Our compromise, it turns out, was all for naught. Enrolled House Bill 4005 repeals the Act in an about-face from our eighty-one year history of paying laborers, workers, and mechanics fairly for constructing public improvements. Because I favor compromise and fairness over extreme measures, I disapprove and return this bill.

Sincerely,

Earl Ray Tomblin  
*Governor*

cc: The Hon. William P. Cole III  
*President of the Senate*  
The Hon. Natalie E. Tennant  
*Secretary of State*

A message from The Clerk of the House of Delegates announced the reconsideration and passage of a bill disapproved and returned by the Governor with his objections, and requested the concurrence of the Senate in the passage, of

**Eng. House Bill 4005**, Repealing prevailing hourly rate of wages requirements.

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

**Enr. House Bill 4005**, Repealing prevailing hourly rate of wages requirements.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled House Bill No. 4005, the same was put and prevailed.

The question now being on the passage of the bill, disapproved by the Governor.

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

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

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. H. B. 4005) passed with its title, as a result of the objections of the Governor.

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

The Senate proceeded to the 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 Trump, Gaunch, Walters, Ashley, Snyder, Beach, Takubo, Maynard, Kessler, Palumbo, Blair, Miller, Williams, Kirkendoll, Woelfel, Romano, Mullins, Unger, Laird, Sypolt, Stollings and Plymale:**

**Senate Bill 591**—A Bill to amend and reenact §3-2-4a and §3-2-12 of the Code of West Virginia, 1931, as amended, all relating to voter registration list maintenance and the combined voter registration and driver licensing fund; and providing that under certain circumstances moneys from that fund would be transferred to another fund.

Referred to the Committee on the Judiciary.

**By Senator Hall:**

**Senate Bill 592**—A Bill to amend and reenact §24B-5-3 of the Code of West Virginia, 1931, as amended, relating to pipeline safety and the method of calculating the amount of special license fees paid by pipeline companies to the Public Service Commission.

Referred to the Committee on Government Organization.

**By Senator Carmichael:**

**Senate Bill 593**—A Bill to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to disqualification for unemployment benefits; and providing that an individual shall be disqualified for benefits for any week, or portion of a week, in which he or she did not work as a result of a strike.

Referred to the Committee on the Judiciary.

**By Senators Prezioso, Plymale and Gaunch:**

**Senate Bill 594**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-3-10g, relating to requiring the State Auditor to consider for payment a claim submitted by an electronically generated invoice.

Referred to the Committee on Government Organization.

**By Senators Gaunch, Blair, Boso, Carmichael, Kirkendoll, Maynard, Prezioso, Stollings, Walters, Plymale and Williams:**

**Senate Bill 595**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-15c; and to amend said code by adding thereto a new section, designated §18-7A-17b, all relating to retirement credit for members of the West Virginia National Guard; and establishing procedure for purchase of military service credit by members of certain retirement systems with current or prior service in the West Virginia National Guard.

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

**By Senators Carmichael and Walters:**

**Senate Bill 596**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §37-16-1, relating to permitting natural gas companies to enter upon real property in certain instances for limited purposes; setting forth those instances and purposes; making legislative findings; establishing a procedure to enter upon the property; requiring the company to

pay for damages; excluding certain activities; exempting the company and its agents from trespass penalties if certain conditions are met; and providing that certain other rights are not impaired.

Referred to the Committee on the Judiciary.

**By Senators Ferns and Plymale:**

**Senate Bill 597**—A Bill to amend and reenact §5F-1-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §6-7-2a of said code; to amend and reenact §9-4C-7 of said code; to amend and reenact §11-27-9 and §11-27-11 of said code; to amend and reenact §16-2D-2 and §16-2D-5 of said code; to amend and reenact §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5 and §16-5F-6 of said code; to amend and reenact §16-29B-3, §16-29B-5, §16-29B-6, §16-29B-7, §16-29B-8, §16-29B-9, §16-29B-11, §16-29B-12, §16-29B-13, §16-29B-14, §16-29B-15, §16-29B-17, §16-29B-18, §16-29B-19a, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25 and §16-29B-26 of said code; to amend said code by adding thereto a new section, designated §16-29B-5a; to amend and reenact §16-29G-2, §16-29G-4, §16-29G-5 and §16-29G-6 of said code; and to amend and reenact §16-29I-4 of said code, all relating generally to the Health Care Authority; employment of the members of the Board of the West Virginia Health Care Authority; setting salaries for board members; creating the position of Executive Director of the Health Care Authority; making the executive director the administrative head of the Health Care Authority; setting forth the qualifications of the executive director; adding the executive director to the Public Employees Insurance Agency Advisory Board; clarifying where the administrative duties of the Health Care Authority are to be carried out; clarifying that the board of Directors of the Health Care Authority is the adjudicatory arm of the Health Care Authority; requiring that the members of the board of directors be employed on a part-time basis; setting forth other employment requirements for the board of directors; expanding the board of directors from three to five members; setting forth qualifications for appointment to the board of directors; providing that the board of directors shall report to the executive director; establishing compensation for the board of directors; setting forth minimum hearing requirements before the board of directors; providing for recommended decisions by the board of directors to the executive director; setting forth executive director procedure for review and approval of recommended decisions of the board of directors; providing for remand of a decision; clarifying that the executive director has all rule-setting powers; providing for a study by the Health Care Authority of concerns of hospitals in border counties; requiring a comprehensive study of the certificate of need program, including possible elimination of certificate of need; eliminating rate review from the authority of the Health Care Authority; making technical corrections; and updating code reference.

Referred to the Committee on Health and Human Resources; and then to the Committee on Finance.

**By Senators Walters, Boso and Carmichael:**

**Senate Bill 598**—A Bill to amend and reenact §19-23-10, §19-23-12b, §19-23-13 and §19-23-13c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §19-23-10a; to amend and reenact §29-22-18a of said code; to amend and reenact §29-22A-7, §29-22A-10, §29-22A-10b, §29-22A-10d and §29-22A-10e of said code; and to amend and reenact §29-22C-8, §29-22C-27 and §29-22C-27a of said code, all relating to transferring certain revenues derived from racetrack video lottery and racetrack table games from the special fund established for greyhound racetrack licensees to the State Excess Lottery Revenue Fund; defunding the West Virginia Greyhound Breeding Development Fund and transferring money dedicated to the Greyhound Breeding Development Fund to the State Excess Lottery Revenue Fund for appropriation by the Legislature; and eliminating the requirement that video lottery licensee must hold a racing license to renew video lottery license or racetrack table games license.

Referred to the Committee on Finance.

Senators Stollings, Plymale, Gaunch, Sypolt, Kessler and Prezioso offered the following resolution:

**Senate Concurrent Resolution 35**—Requesting that the West Virginia Legislature proclaim the week of March 7, 2016, through March 13, 2016, to be MS Awareness Week, and commend observance of the week to all citizens to encourage all West Virginians to learn more about multiple sclerosis and what they can do to support individuals with MS and their families.

Whereas, Multiple sclerosis (MS) is a neurological disease of the central nervous system affecting at least 2.3 million people worldwide; and

Whereas, The National Multiple Sclerosis Society reports that in our state we serve more than 3,000 people diagnosed with MS, and that the disease generally strikes people in the prime of life, between ages 20 through 50, and causes unpredictable effects in which the progression, severity and specific symptoms cannot be foreseen, and the cause and cure for this often debilitating disease remain unknown; and

Whereas, The National Multiple Sclerosis Society has been committed for more than 70 years to creating a world free of MS, heightening public knowledge about and insight into the disease while mobilizing people and resources so that everyone affected by MS can live their best lives as we stop MS in its tracks, restore what has been lost and end MS forever; and

Whereas, Since 1946 the National Multiple Sclerosis Society has been a driving force of MS research, relentlessly pursuing prevention, treatment and a cure and has invested more than \$920 million in groundbreaking research; and

Whereas, Funds raised through the National Multiple Sclerosis Society fuel the efforts of more than 380 research projects globally totaling nearly \$54 million annually at the best medical centers, universities and other institutions throughout the United States and abroad. Because of this, MS research has never been more hopeful than it is today; and

Whereas, Discovering the cause, finding a cure and preventing future generations from being diagnosed with MS is an important task that all Americans support; and

Whereas, The State of West Virginia recognizes the importance of finding the cause and cure of MS, a chronic and often devastating disease, and expresses its appreciation and admiration for the dedication that the National Multiple Sclerosis Society has shown toward a future free of MS; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the week of March 7, 2016, through March 13, 2016, is hereby proclaimed to be MS Awareness Week in West Virginia; and, be it

*Further Resolved,* That the West Virginia Legislature hereby commends observance of the week to encourage all West Virginians to learn more about multiple sclerosis and what they can do to support individuals with MS and their families.

Which, under the rules, lies over one day.

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

**Senate Resolution 34**—Memorializing the life of Virginia Mae Ellars, devoted wife, mother, sister and friend; former long-time employee of the West Virginia Senate; and dedicated public servant.

Whereas, Virginia Mae Ellars was a lifelong resident of Charleston, West Virginia, and enjoyed a long, distinguished career in the West Virginia Senate; and

Whereas, Virginia Mae Ellars began her tenure in the West Virginia Senate in 1948 as an interim committee secretary and would go on to become the Bill Clerk and Chief Journal Clerk of the Senate before her retirement in 1986; and

Whereas, Virginia Mae Ellars continued serving the Senate part-time after her retirement as a proofreader during legislative sessions, training new staff and imparting her 38 years of institutional knowledge to them; and

Whereas, Virginia Mae Ellars was married to her beloved husband, James, with whom she shared the joy of having three children: Cherie, Daniel and James; and

Whereas, Virginia Mae Ellars was devoted to her family and friends, was a role model to many and demonstrated the importance of home and family in preserving our culture, our moral values, our traditions and our crafts; and

Whereas, Virginia Mae Ellars was a dedicated public servant who truly loved the West Virginia Senate and it is fitting that the Senate pay tribute to her life, legacy and loyalty; therefore, be it

*Resolved by the Senate:*

That the Senate hereby memorializes the life of Virginia Mae Ellars, devoted wife, mother, sister and friend; former long-time employee of the West Virginia Senate; and dedicated public servant; and, be it

*Further Resolved,* That the Senate expresses its most sincere and heart-felt condolences to the family of Virginia Mae Ellars; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the family of Virginia Mae Ellars.

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

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

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

### **Petitions**

Senator Sypolt presented a petition from Harriet Hartman and numerous West Virginia residents, urging the Legislature to preserve the Nancy Hanks Antique Cabin and Historic Memorial in Mineral County.

Referred to the Committee on Government Organization.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 32**, CW2 Robert D. Taylor 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 33**, Requesting WV Infrastructure and Jobs Development Council study and report on consolidation regarding public water and sewer utilities.

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 73**, Creating felony crime of knowingly leaving scene of crash resulting in serious bodily injury.

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. 73) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 429**, Adopting two National Association of Insurance Commissioners' models to protect enrollees and general public and permit greater oversight.

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. 429) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 465**, Allowing professional employer insure certain risks through pure insurance captive.

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

Senator Mullins requested a ruling of the Chair as to whether he should be excused from voting under Senate Rule 43 as he is an owner of a Profession Employer Organization.

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

On the passage of the bill, the yeas were: 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. 465) passed with its title.

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

**Eng. Senate Bill 469**, Clarifying what personal funds are exempt from levy following judgment.

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. S. B. 469) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 501**, Relating to trusts.

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. 501) 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.

**Senate Bill 299**, Creating Library Facilities Improvement Fund.

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 328**, Creating West Virginia Veterans Program Fund.

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

**Senate Bill 403**, Relating to cooperative extension workers.

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 404**, Removing prohibition on billing persons for testing for HIV and sexually transmitted diseases.

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

**Senate Bill 459**, Requiring county board of education to pay tuition to Mountaineer Challenge Academy.

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

**Senate Bill 483**, Marshall County LSIC waiver.

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 517**, Clarifying PEIA plans that are exempt from regulation by Insurance Commissioner.

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 524**, Rewriting Board of Barbers and Cosmetologists article.

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

**Senate Bill 558**, Maintaining solvency of Unemployment Compensation Fund.

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

The Senate proceeded to the tenth order of business.

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

**Senate Bill 147**, Providing consumers sales and service tax and use tax exemption for certain services and tangible personal property sold for repair, remodeling and maintenance of aircraft.

**Com. Sub. for Senate Bill 272**, Allowing investigators from Attorney General's office to carry concealed weapons.

**Com. Sub. for Senate Bill 298**, Allowing restaurants, private clubs and wineries sell alcoholic beverages on Sundays.

**Senate Bill 423**, Providing for disposition of unclaimed and unredeemed savings bond.

**Com. Sub. for Senate Bill 493**, Allowing creation of self-settled spendthrift trusts.

**Com. Sub. for Senate Bill 510**, Establishing Adult Drug Court Participation Fund.

**Com. Sub. for Senate Bill 511**, Establishing Court Advanced Technology Subscription Fund.

**Senate Bill 516**, Relating to registration for selective service.

**Senate Bill 583**, Repealing certain obsolete legislative rules by Department of Administration.

**Senate Bill 584**, Repealing certain obsolete legislative rules by DEP.

**Senate Bill 585**, Repealing certain obsolete legislative rules by DHHR.

**Senate Bill 586**, Repealing certain obsolete legislative rules by Department of Military Affairs and Public Safety.

**Senate Bill 587**, Repealing certain obsolete legislative rules by Department of Revenue.

**Senate Bill 588**, Repealing certain obsolete legislative rules by Department of Transportation.

**Senate Bill 589**, Repealing certain obsolete legislative rules by miscellaneous agencies and boards.

And,

**Senate Bill 590**, Repealing certain obsolete legislative rules by Department of Commerce.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Trump, Hall, Prezioso, Leonhardt and Snyder.

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senators Trump, Hall and Prezioso were ordered printed in the Appendix to the Journal.

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

A message from The Clerk of the House of Delegates announced the passage by a vote of a majority of all the members elected to the House of Delegates taken by yeas and nays, notwithstanding the objections of the Governor, of

**Eng. Senate Bill 1**, Establishing WV Workplace Freedom Act.

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

The Senate then proceeded to the thirteenth order of business.

At the request of Senator Blair, the name of Senator Blair was removed as a sponsor of

**Senate Bill 508** (*Relating to civil claims for private nuisance*).

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until Monday, February 15, 2016, at 11 a.m.

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## **SENATE CALENDAR**

**Monday, February 15, 2016**  
**11:00 AM**

### **UNFINISHED BUSINESS**

S. C. R. 35 - Requesting WV Legislature proclaim week of March 7, 2016, through March 13, 2016, as MS Awareness Week.

### **THIRD READING**

Eng. S. B. 299 - Creating Library Facilities Improvement Fund (original similar to HB4488).

Eng. Com. Sub. for S. B. 328 - Creating West Virginia Veterans Program Fund (original similar to SB77).

Eng. S. B. 403 - Relating to cooperative extension workers.

Eng. Com. Sub. for S. B. 404 - Removing prohibition on billing persons for testing for HIV and sexually transmitted diseases.

Eng. S. B. 459 - Requiring county board of education to pay tuition to Mountaineer Challenge Academy (original similar to HB4325).

Eng. S. B. 483 - Marshall County LSIC waiver (original similar to HB4447).

Eng. Com. Sub. for S. B. 517 - Clarifying PEIA plans that are exempt from regulation by Insurance Commissioner.

Eng. Com. Sub. for S. B. 524 - Rewriting Board of Barbers and Cosmetologists article.

Eng. S. B. 558 - Maintaining solvency of Unemployment Compensation Fund.

### **SECOND READING**

S. B. 147 - Providing consumers sales and service tax and use tax exemption for certain services and tangible personal property sold for repair, remodeling and maintenance of aircraft - (Com. amends. pending).

Com. Sub. for S. B. 272 - Allowing investigators from Attorney General's office to carry concealed weapons.

Com. Sub. for S. B. 298 - Allowing restaurants, private clubs and wineries sell alcoholic beverages on Sundays (original similar to SB21, SB307).

S. B. 423 - Providing for disposition of unclaimed and unredeemed savings bond.

Com. Sub. for S. B. 493 - Allowing creation of self-settled spendthrift trusts.

Com. Sub. for S. B. 510 - Establishing Adult Drug Court Participation Fund.

Com. Sub. for S. B. 511 - Establishing Court Advanced Technology Subscription Fund.

- S. B. 516 - Relating to registration for selective service (original similar to HB4512).
- S. B. 583 - Repealing certain obsolete legislative rules by Department of Administration.
- S. B. 584 - Repealing certain obsolete legislative rules by DEP.
- S. B. 585 - Repealing certain obsolete legislative rules by DHHR.
- S. B. 586 - Repealing certain obsolete legislative rules by Department of Military Affairs and Public Safety.
- S. B. 587 - Repealing certain obsolete legislative rules by Department of Revenue.
- S. B. 588 - Repealing certain obsolete legislative rules by Department of Transportation.
- S. B. 589 - Repealing certain obsolete legislative rules by miscellaneous agencies and boards.
- S. B. 590 - Repealing certain obsolete legislative rules by Department of Commerce.

#### **FIRST READING**

- Com. Sub. for S. B. 10 - Creating Unborn Child Protection from Dismemberment Abortion Act (original similar to HB4004).
- Com. Sub. for Com. Sub. for S. B. 16 - Providing tax credit for providing broadband service to unserved areas.
- Com. Sub. for S. B. 105 - Creating Tim Tebow Act allowing nonpublic school student participate in SSAC member school athletics.
- Com. Sub. for S. B. 267 - Modifying removal procedure for certain county, school district and municipal officers.
- Com. Sub. for S. B. 283 - Creating crime when fire is caused by operation of a clandestine drug laboratory.
- Com. Sub. for S. B. 313 - Relating to school calendar and allowing limited use of available accrued instructional time.
- S. B. 351 - Dedicating severance tax proceeds (original similar to HB4268).
- S. B. 356 - Eliminating consumers sales and service tax exemption for 2016 fiscal year (original similar to HB4294).
- Com. Sub. for S. B. 400 - Reducing amount of sales tax proceeds dedicated to School Major Improvement Fund (original similar to SB463).
- Com. Sub. for S. B. 424 - Allowing fire departments assess fees.
- Com. Sub. for S. B. 436 - Defining adequate shelter for dogs and cats (original similar to HB4373).

- S. B. 439 - Eliminating requirement that budget director approve requisitions for personal services payment under certain circumstances.
- S. B. 462 - Reducing deposit of excess lottery proceeds into WV Infrastructure Fund (original similar to HB4217).
- Com. Sub. for S. B. 504 - Relating to confidentiality of juvenile records.
- S. B. 507 - Exempting motor vehicles engaged in nonemergency transport of Medicaid recipients from PSC permit requirements.
- S. B. 515 - Authorizing payment of certain claims against state.

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2016**

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**Monday, February 15, 2016**

9 a.m.	Judiciary (Public Hearing on Eng. Com. Sub. for H. B. 4145)	(Room 208W)
1 p.m.	Agriculture & Rural Development	(Room 451M)