

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE  
REGULAR SESSION, 2016  
FORTY-FIFTH DAY

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Charleston, W. Va., Friday, February 26, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Minister Donnie Chapman, Dunbar Church of Christ, Dunbar, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Bob Ashley, a senator from the third district.

Pending the reading of the Journal of Thursday, February 25, 2016,

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

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

At the request of Senator Plymale, and by unanimous consent, the provisions of rule number fifty-four of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant William "Red" Dawson privileges of the floor for the day.

The Senate then proceeded to the third order of business.

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

**Eng. Senate Bill 419**, Relating to termination of Workers' Compensation Debt Reduction Act.

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

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

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

That §4-11A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13A-3b of said code be amended and reenacted; that §11-13V-4 of said code be amended and reenacted; that §11-21-96 of said code be amended and reenacted; that §23-2C-3 of said code be amended and reenacted; and that that §29-22A-10d and §29-22A-10e of said code be amended and reenacted, all to read as follows:

#### **CHAPTER 4. THE LEGISLATURE.**

##### **ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.**

##### **§4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.**

(a) There is hereby dedicated an annual amount of \$50,400,000 from annual collections of the tax imposed by article twenty-one, chapter eleven of this code as a portion of the revenue source dedicated to satisfy the Old Fund liabilities as they occur to provide a dollar for dollar replacement of the first \$30 million received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement as previously dedicated to the Old Fund prior to the sale of state's share to the Tobacco Settlement Finance Authority. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning immediately after the sale of the state's share to the Tobacco Settlement Finance Authority, \$50,400,000 from collections of the tax imposed by article twenty-one, chapter eleven of this code shall be deposited each calendar year to the credit of the Old Fund created in article two-d, chapter twenty-three of this code in accordance with the following schedule. Each calendar month, except for July, August and September each year, \$5,600,000 shall be transferred, on or before the twenty-eighth day of the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code. The transfers pursuant to this section are in addition to the transfers pursuant to section ninety-six, article twenty-one, chapter eleven of this code.

(c) *Expiration.* —

The transfers required by this section shall ~~continue to be made until the Governor certifies to the Legislature that an independent actuary study determined that the unfunded liability of the Old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety~~ cease on and after February 1, 2016. No transfer pursuant to this section shall be made thereafter.

#### **CHAPTER 11. TAXATION.**

##### **ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

##### **§11-13A-3b. Imposition of tax on privilege of severing timber.**

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be three and twenty-two hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That as to timber produced after December 31, 2006 the rate of the tax imposed in subsection (a) of this section shall be one and twenty-two hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all persons severing timber in this state and shall be in addition to all other taxes imposed by law.

(d) *Elimination Discontinuation and reestablishment of tax.* — Beginning in the tax year 2010 and continuing until ~~June 30, 2016~~, the imposition of the additional tax on the privilege of severing timber imposed by subsection (c), section four, article thirteen-v of this chapter expires under the authority of subsection (g), section four, article thirteen-v of this chapter, the tax imposed by this section is discontinued. On and after expiration of the additional tax on the privilege of severing timber imposed by subsection c, section four, article thirteen-v of this chapter July 1, 2016, the tax imposed by this section ~~resumes~~ is reestablished and is imposed and shall apply to all persons severing timber in this state at the rate of ~~one and twenty-two hundredths~~ one and fifty hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(e) Termination of taxes imposed by this section. – The taxes imposed under this section shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section shall not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of such termination.

## **ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.**

### **§11-13V-4. Imposition of tax.**

(a) *Imposition of additional tax on privilege of severing coal.* — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an additional annual severance tax for exercising the privilege after November 30, 2005. The tax shall be 56 cents per ton and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance with rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment before July 1, 2005, the rule may be promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed with respect to the severance and production of coal in this state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

(b) *Imposition of additional tax on privilege of severing natural gas.* — For the privilege of engaging or continuing within this state in the business of severing natural gas for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax. The rate of this additional tax shall be ~~\$.047~~ 4.7 cents per mcf of natural gas and the measure of the tax is natural gas produced after November 30, 2005, determined at the point where the production privilege ends for purposes of the tax imposed by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to natural gas produced after November 30, 2005.

(c) *Imposition of additional tax on privilege of severing timber.* — For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising this privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the gross value of the timber produced, determined at the point where the production privilege ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with respect to timber produced after November 30, 2005: *Provided*, That during the period of discontinuance of the tax as provided in subsection (d), section three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection shall be determined as provided in this subsection in the same manner as if the tax described under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to the provisions of subsection (g) of this section.

(d) *No pyramiding of tax burden.* — Each ton of coal and each mcf of natural gas severed in this state after the effective date of the taxes imposed by this section shall be included in the measure of a tax imposed by this section only one time.

(e) *Effect on utility rates.* — The Public Service Commission shall, upon the application of any public utility that, as of the effective date of the taxes imposed by this section, is not currently making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs because the mechanism historically used to make such periodic adjustments is suspended by an order of the commission, allow such utility to defer, for future recovery from its customers, any increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas severed in this state and utilized in the production of electricity generated or produced in this state and sold to customers in this state; coal and natural gas severed in this state and utilized in the production of electricity not generated or produced in this state that is sold to customers in this state; and natural gas severed in this state that is sold to customers in this state.

(f) *Dedication of new taxes.* —

(1) Subject to the provisions of subdivision (2) of this subsection, the The net amount of all moneys received by the Tax Commissioner from collection of the taxes imposed by this section, including any interest, additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this code, shall be deposited in the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code. As used in this section, "net amount of all taxes received by the Tax Commissioner" means the gross amount received by the Tax Commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this article, including the amount of any interest on the overpayment amount due the taxpayer under the provisions of section fourteen, article ten of this chapter.

(2) If the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from taxes imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

~~(g) *Sunset expiration date of taxes.* — The new taxes imposed by this section shall expire and not be imposed with respect to privileges exercised on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (1) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired, or payment of the debt service provided for; and (2) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for~~

~~in its entirety. Expiration of the taxes imposed in this section as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.~~

(g) Termination of taxes imposed by this article. – The taxes imposed under this article shall cease, terminate and be of no further force or effect on and after July 1, 2016: *Provided*, That the Governor may, by Executive Order, cause the tax to terminate before July 1, 2016. Termination of the taxes imposed under this article shall not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of such termination.

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-96. Dedication of personal income tax proceeds.**

(a) There is hereby dedicated an annual amount of \$45 million from annual collections of the tax imposed by this article for payment of the unfunded liability of the current Workers' Compensation Fund. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning in January of 2006, \$45 million from collections of the tax imposed by this article shall be deposited each calendar year to the credit of the old fund created in article two-c, chapter twenty-three of this code, in accordance with the following schedule. Each calendar month, except for July, August and September each year, \$5 million shall be transferred, on or before the twenty-eighth day of the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code.

(c) ~~The transfers required by subsection (b) of this section shall continue to be made until the Governor certifies to the Legislature that an independent actuarial study determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety. Thereafter, cease on and after February 1, 2016. For fiscal years beginning on and after July 1, 2016, an annual amount of \$35 \$30 million from annual collections of the tax imposed by this article and which were previously dedicated by this section for payment of the unfunded liability of the Workers Compensation Fund shall be dedicated for payment of the unfunded liability of the West Virginia Retiree Health Benefit Trust Fund and to provide funding for the Post-July 1, 2010, Employee Trust Fund created by section five-b, article sixteen, chapter five of this code. The \$35 \$30 million transferred pursuant to this subsection shall be transferred in accordance with the following:~~

~~(1) The annual amount of \$30 million shall be transferred into the West Virginia Retiree Health Benefit Trust Fund by transferring \$5 million each month for the following months of each year: October, November, December, January, February and March, until the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later: *Provided*, That no transfer shall be made under this subdivision in the months of February and March of fiscal year 2016. Transfers shall thereafter resume and be made in October, November, December, January, February and March of fiscal year 2017 and thereafter. No transfer into the West Virginia Retiree Health Benefit Trust Fund pursuant to this subdivision shall be made after the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later. thereafter; and~~

~~(2) An annual amount of \$5 million shall be transferred into the Post July 1, 2010, Employee Trust Fund created by section five-b, article sixteen, chapter five of this code in April of each year.~~

## **CHAPTER 23. WORKERS' COMPENSATION.**

### **ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.**

#### **§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.**

(a) (1) On or before July 1, 2005, the executive director may take such actions as are necessary to establish an employers' mutual insurance company as a domestic, private, nonstock, corporation to:

(A) Insure employers against liability for injuries and occupational diseases for which their employees may be entitled to receive compensation pursuant to this chapter and federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. '901, *et seq.*;

(B) Provide employer's liability insurance incidental to and provided in connection with the insurance specified in paragraph (A) of this subdivision, including coal workers' pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and

(C) Transact other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.

(2) The company may not sell, assign or transfer substantial assets or ownership of the company.

(b) If the executive director establishes a domestic mutual insurance company pursuant to subsection (a) of this section:

(1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with the Insurance Commissioner and apply for a license with the Insurance Commissioner to transact insurance in this state. Notwithstanding any other provision of this code, the Insurance Commissioner shall act on the documents within fifteen days of the filing by the company.

(2) In recognition of the workers' compensation insurance liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature authorizes the Insurance Commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three, chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The Insurance Commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until the commissioner, in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall comply with the applicable provisions of chapter thirty-three of this code.

(3) Subject to the provisions of subdivision (4) of this subsection, the Insurance Commissioner may waive other requirements imposed on mutual insurance companies by the provisions of chapter thirty-three of this code the Insurance Commissioner determines are necessary to enable the company to begin insuring employers in this state at the earliest possible date.

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless the deadline is extended by the Insurance Commissioner.

(c) For the duration of its existence, the company is not a department, unit, agency or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, are the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(d) The moneys of the company are not part of the General Revenue Fund of the state. The debts, claims, obligations and liabilities of the company are not a debt of the state or a pledge of the credit of the state.

(e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of article two, chapter six-c of this code; the provisions of chapter twenty-nine-b of this code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter twenty-nine of this code; or the provisions of chapter twelve of this code.

(f) If the commission has been terminated, effective upon the termination, private carriers, including the company, are not subject to payment of premium taxes, surcharges and credits contained in article three, chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:

(1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policyholders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the Insurance Commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policyholder's premium payment and deductible payments as a surcharge and remitted to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of premium payments;

(B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount of five and five-tenths percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and every five years thereafter, the commissioner shall review the percentage surcharge and determine a new percentage as he or she deems necessary.

(C) The amounts required to be collected under paragraph (B) of this subdivision shall be remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in the state into the portion of the Insurance Commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Industrial Council may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the Insurance Commissioner with all required information and

cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the costs associated with the administration of this chapter and the funds raised shall not be used for any other purpose except as set forth in subdivision (4) of this subsection;

(3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45 million annually, of each policyholder's periodic premium amount for workers' compensation insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1, 2008, shall be nine percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied.

(B) By May 1 each year, the self-insured employer community shall be assessed a cumulative total of \$9 million. The methodology for the assessment shall be fair and equitable and determined by exempt legislative rule issued by the Industrial Council. The amount collected pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit in the Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter: *Provided*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of the amount collected pursuant to this subdivision, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the fund otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code or in any other provision of this code: *Provided, however*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of the amount collected pursuant to this subdivision, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty three of this code, has been paid or provided for in its entirety.

(4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B), subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of Employment Programs' Commissioner for deposit with the Secretary of the Treasury of the United States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to section four, article eight, chapter twenty-one-a of this code.

(g) The new premiums surcharge imposed by paragraphs (A) and (B), subdivision (3), subsection (f) of this section sunset and are not collectible with respect to workers' compensation insurance premiums paid when the policy is renewed on or after the first day of the month following the month in which the Governor certifies to the Legislature that the revenue bonds issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

#### **§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.**



(a) Notwithstanding any provision of subsection (b), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer up to \$9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

(b) Notwithstanding any provision of subsection (c), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (c), section ten of this article, shall be reduced by one hundred percent. Payments shall not be made pursuant to section ten of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(c) The total amount of reductions resulting from subsection (b) of this section shall be paid into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(d) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(e) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(f) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(g) (1) Notwithstanding Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of paragraph (B), subdivision (9), subsection (c), section ten of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (c), section ten of this article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the

funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty three of this code, has been paid or provided for in its entirety.

**§29-22A-10e. Changes in distribution of excess net terminal income; distributions from excess lottery fund.**

(a) Notwithstanding any provision of subsection (a), section ten-b of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (a), section ten-b of this article, shall be reduced by one hundred percent. Payments shall not be made pursuant to section ten-b of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (a), section ten-b of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d, and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

~~(f)(1) Notwithstanding~~ Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (a), section ten-b of this article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty three of this code, has been paid or provided for in its entirety.;

And,

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

**Eng. Senate Bill 419**—A Bill to amend and reenact §4-11A-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13A-3b of said code; to amend and reenact §11-13V-4 of said code; to amend and reenact §11-21-96 of said code; to amend and reenact §23-2C-3 of said code; and to amend and reenact §29-22A-10d and §29-22A-10e of said code, all relating to termination of transfers of certain personal income tax revenues to the Workers' Compensation Debt Reduction Fund; reestablishing and imposing increased severance tax on severance of timber effective July 1, 2016; termination of additional severance taxes on severance of coal, natural gas and timber on and after July 1, 2016; authorizing earlier termination date; authorizing redirection of additional severance tax revenues to the General Revenue Fund for period prior to termination date; delaying transfers of certain personal income tax revenues to the West Virginia Retiree Health Benefit Trust Fund; eliminating transfers of certain personal income tax revenues to the Post-July 1, 2010, Employee Trust Fund; authorizing redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to July 1, 2017; authorizing redirection of amounts collected from certain deposits of revenues derived from net terminal income for periods prior to July 1, 2017.

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

Engrossed Senate Bill 419, as amended by the House of Delegates, was then 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 and Cole (Mr. President)—33.

The nays were: None.

Absent: Yost—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 419) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect from passage.

On this question, 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 and Cole (Mr. President)—33.

The nays were: None.

Absent: Yost—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 419) takes effect from passage.

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

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 2202**—A Bill to amend and reenact §18-20-5 of the Code of West Virginia, 1931, as amended, relating to more equitable disbursement of funds to county boards to lessen budgetary impact of serving high cost/high acuity special needs students; eliminating requirement to annual review of rules, policies and standards and federal law and report to legislative oversight commission; defining high cost/high acuity special needs; and providing for method of fund disbursement.

Referred to the Committee on Education; and then 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. Com. Sub. for House Bill 2897**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §59-1-2c, relating to creating Young Entrepreneur Reinvestment Act; waiving certain fees for individuals under thirty creating certain business organizations, and expire the waiver of those fees.

Referred to the Committee on Economic Development; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 4171**—A Bill to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, all relating to primary and secondary school instructional terms; removing the word “separate” throughout the section as it relates to the number of instructional days in the school calendar; requiring that the instructional term for students begin no earlier than August 10 and end no later than June 10, except for schools operating on a balanced calendar; removing preparation for opening and closing school from mandatory list of areas for which remaining noninstructional days may be designated by county school board; designating one noninstructional day for teachers as a preparation day; allowing teacher preparation day to be used for other purposes only at teacher’s discretion; increasing number of two-hour blocks for faculty senate meetings from four to six; removing requirement that faculty senate meetings be held once every forty-five days; permitting accrued minutes to be used for lost instructional days; designating time frames within which faculty senate meetings may take place; requiring county boards to first use accrued minutes for early dismissals and late arrivals and requiring that any reimagining student instructional days be exhausted prior to using accrued minutes for lost instructional days.

Referred to the Committee on Education.

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 4295**—A Bill to amend the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-14; and to further amend said code by adding thereto a new article, designated §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, §18-5E-6 and §18-5E-7, all relating to all relating to Innovation in Education Schools and Innovation Zones; terminating funding for Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones; setting forth purpose of Innovation in Education Act; defining innovation in education school; specifying minimum requirements; authorizing soliciting, accepting and expending gifts, donations and grants with certain limits to remain for use in school accounts; authorizing state board designation of innovation in education school; requiring state board rule for implementation and authorizing emergency rule if necessary; providing process for application process, minimum content, review and approval; requiring innovation in education plan as part of application; specifying plan minimum contents, components and requirements; requiring operational agreement between school principal and county board; specifying minimum contents of operational agreement; requiring evaluations of Innovation in Education designated schools; authorizing amendment and suspension of components of Innovation in Education plans; authorizing termination of designation of a school as an Innovation in Education school; authorizing designation of demonstration schools; creating Innovation in Education Fund; authorizing expenditures from Innovation in Education Fund; and authorizing investment of Innovation in Education Fund moneys.

Referred to the Committee on Education; and then 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. Com. Sub. for House Bill 4365**—A Bill to repeal §16-2D-4a, §16-2D-4b, §16-2D-5a, §16-2D-5b, §16-2D-5c, §16-2D-5d, §16-2D-5e and §16-2D-7a, of the Code of West Virginia, 1931, as amended; to amend and reenact §16-2D-1, §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-6, §16-2D-7, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-12, §16-2D-13, §16-2D-14 and §16-2D-15; and to amend said code be adding thereto five new sections, designated §16-2D-16, §16-2D-17, §16-2D-18, §16-2D-19 and §16-2D-20, all relating to the certificate of need process; providing legislative findings; defining terms; providing powers to the authority; providing duties to the authority; providing rulemaking authority; continuing a special revenue account; providing a process to update certificate of need standards; providing a process to update the state health plan; providing a process to review the cost effectiveness of the certificate of need standards; providing a process for the Health Care Authority to review whether a certificate of need is required; providing health services that require a certificate of need; providing health services for which a certificate of need may not be granted; providing an exemption process; providing exemptions to the certificate of need requirement; providing criteria the authority shall use to determine whether to grant a certificate of need; changing the certificate of need process; providing certain timelines; requiring the creation of a process to review an uncontested certificate of need application; requiring the authority to make certain findings to approve a certificate of need; providing an appeal process; prohibiting the transfer of a certificate of need; permitting the authority to perform a compliance review of an issued certificate of need; permitting the revocation of a license; creating an injunction process; establishing a statute of limitations; establishing an administrative penalty;

Referred to the Committee on Health and Human Resources.

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 4572**—A Bill to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended, relating to excepting specialized contract instructors from the definition of teacher; and defining that term.

Referred to the Committee on Education.

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 4594**—A Bill to amend and reenact §30-21-7 of the Code of West Virginia, 1931, as amended, relating to predoctoral psychology internship qualifications; and requiring that in order to be eligible for a license to engage in the practice of psychology, an applicant with a doctor of philosophy degree or its equivalent must have at least one thousand eight hundred hours from a doctoral internship.

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

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 4617**—A Bill to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.

Referred to the Committee on Education.

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 4651**—A Bill to amend and reenact §30-26-4, §30-26-6 and §30-26-7 of the Code of West Virginia, 1931, as amended, all relating to professional examination requirements for hearing-aid dealers and fitters; requiring applicants for professional licensure to pass the International Licensing Examination for Hearing Healthcare Professionals or an equivalent examination; requiring applicants for professional licensure to pass a nationally recognized practical examination, or a practical examination designed by the West Virginia Board of Hearing-Aid Dealers to test certain demonstrated skills and techniques; requiring applicants to pass an examination, designed by the board, to test knowledge of certain local laws and practices; eliminating the requirement that the board provide applicants with certain details pertaining to an applicant's failure of an examination; and authorizing emergency and legislative rulemaking.

Referred to the Committee on Government Organization.

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 4674**—A Bill to amend and reenact §17C-15-19 of the Code of West Virginia, 1931, as amended, relating to motor vehicle back-up lamps.

Referred to the Committee on Government Organization.

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 4705**—A Bill to amend and reenact §11-21-32 and §11-21-77 of the Code of West Virginia, 1931, as amended, relating to adding an additional type of West Virginia source income of nonresident individual; and exclusion of lottery winnings as compensation for personal services.

Referred to the Committee on Finance.

### Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on February 25, 2016, he had approved **Enr. Senate Bill 15, Enr. Senate Bill 123, Enr. Senate Bill 261, Enr. House Bill 4148, Enr. Committee Substitute for House Bill 4158, Enr. House Bill 4161, Enr. Committee Substitute for House Bill 4244** and **Enr. Committee Substitute for House Bill 4245**.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 26th day of February, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for S. B. 7)**, Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances.

**(Com. Sub. for S. B. 14)**, Limiting successor corporation asbestos-related liabilities.

**(Com. Sub. for S. B. 146)**, Establishing instruction standards for early childhood education.

**(Com. Sub. for S. B. 150)**, Authorizing Department of Transportation promulgate legislative rules.

**(Com. Sub. for S. B. 369)**, Reducing legislative education reporting requirements.

**(Com. Sub. for Com. Sub. for S. B. 387)**, Shared animal ownership agreements to consume raw milk.

And,

**(Com. Sub. for H. B. 4175)**, Relating generally to home schooling.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

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 12** (originating in the Committee on Transportation and Infrastructure), Relating to County Local Powers Act.

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

**Com. Sub. for Com. Sub. for Senate Bill 12** (originating in the Committee on Finance)—A Bill to amend and reenact §7-20-1, §7-20-2, §7-20-3, §7-20-6, §7-20-7, §7-20-7a, §7-20-14, §7-20-15, §7-20-16, §7-20-23 and §7-20-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto twenty-seven new sections, designated §7-20-25, §7-20-26, §7-20-27, §7-20-28, §7-20-29, §7-20-30, §7-20-31, §7-20-32, §7-20-33, §7-20-34, §7-20-35, §7-20-36, §7-20-

37, §7-20-38, §7-20-39, §7-20-40, §7-20-41, §7-20-42, §7-20-43, §7-20-44, §7-20-45, §7-20-46, §7-20-47, §7-20-48, §7-20-49, §7-20-50 and §7-20-51; and to amend said code by adding thereto a new section designated §31-15-16c, all relating generally to County Local Powers Act; fees, taxes and expenditures for county development; restating short title; amending its purpose and legislative findings; amending certain definitions and adding definitions; amending criteria and requirements to implement and collect certain fees; amending authorization for county commissions to impose impact fees, services fees and other taxes; providing that certain fees and taxes collected may be deposited in special fund and used to pay debt service on revenue bonds issued to finance capital improvements or to finance them on a pay-as-you-go basis; making technical corrections; allowing county commissions and Commissioner of Highways to enter into intergovernmental agreements for construction and modernization of state roads, bridges and related infrastructure and financing in their respective counties; providing procedures for creation and finalization or project plans and amendments of plans; requiring notice to certain locally elected public officials and general public on proposed road, bridge and related infrastructure construction projects and project amendments with opportunity for public comment; providing means to finance cost of proposed road, bridge and related infrastructure construction projects and project amendments; allowing reallocation of ad valorem property taxes after ratification of constitutional amendment of certain property tax collections to finance, in whole or in part, capital improvements to infrastructure; providing for applications for a construction project and the contents of applications; providing rule-making authority; creating special fund; requiring approval of boards of education for reallocation of regular property tax levies; providing for termination of reallocation of levies; authorizing West Virginia Economic Development Authority to issue revenue bonds and refunding bonds to finance road, bridge and related infrastructure projects financed, in whole or in part, by county commissions; providing that all bonds are exempt from tax, are negotiable and are lawful investments; providing procedures for issuance of bonds; allowing projects to also be constructed on a pay-as-you-go basis; providing that these powers are supplemental powers of county commissions, Commissioner of Highways and West Virginia Economic Development Authority; requiring reports; exempting public officials from personal liability; providing a severability clause; effective dates; and generally directing how the West Virginia Economic Development Authority implements and manages bonds issued for road, bridge and related infrastructure projects.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Mike Hall,  
*Chair.*

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 534**, Transferring jurisdiction in DUI and other matters from Office of Administrative Hearings to courts.

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

**Com. Sub. for Senate Bill 534** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §17C-5-2, §17C-5-4 and §17C-5-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §17C-5A-1a, §17C-5A-2, §17C-5A-2a, §17C-5A-3 and §17C-5A-3a of said code; and to amend said code by adding thereto a new section, designated §17C-5C-6, all relating to the procedures for driver's license suspension and revocation in criminal proceedings for driving under the influence of alcohol, controlled substances or drugs (DUI); establishing mandatory revocation



periods for individuals convicted of DUI; establishing mandatory revocation periods for individuals upon subsequent convictions for DUI; requiring individuals whose driver's licenses have been revoked upon conviction of DUI to complete comprehensive safety and treatment program; prohibiting shortening of license revocation period due to completion of safety and treatment program; making individuals who are found guilty of driving under the influence ineligible for deferral of further proceedings upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; making individuals who refuse to submit to secondary chemical test ineligible for deferral of further proceedings upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; prohibiting secondary test of blood without issuance of warrant signed by magistrate or circuit judge; requiring that individual arrested for DUI be advised orally of certain consequences for refusal to submit to secondary chemical test; requiring that individual arrested for DUI be given written statement informing the individual of legal consequences of taking or refusing to take a preliminary breath test and informing the individual of right to receive secondary blood test; requiring that officer give second oral warning fifteen minutes after first warning given and before refusal is considered final; requiring that, following an individual's refusal to take a preliminary breath test, an arresting officer execute a signed statement that the officer administered all required warnings; directing officer to submit copy of written statement to court having jurisdiction over charges filed against the individual; eliminating all statutory provisions authorizing or requiring the Commissioner of the Division of Motor Vehicles to take administrative action upon an individual's driver's license on the basis of DUI arrest; limiting administrative jurisdiction of Division of Motor Vehicles and Office of Administrative Hearings to offenses occurring on or before June 30, 2016; providing that implied consent to administrative hearings does not apply to offenses occurring on or after July 1, 2016; eliminating requirement for order entered by Division of Motor Vehicles revoking license to advise of procedures for requesting administrative hearing; providing procedure for individual to challenge suspension or revocation of licensed based on mistaken identity; requiring the Commissioner to take corrective action if a driver's license is incorrectly suspended or revoked based on mistaken identity; providing that plea of no contest constitutes conviction; requiring pretrial suspension of driver's license if individual refuses to submit to secondary chemical test; permitting pretrial suspension of driver's license by court under certain circumstances; establishing right to request and receive judicial review of suspension orders pending criminal proceedings; establishing the scope of review for judicial review of pretrial driver's license suspension for refusal to submit to secondary chemical test; requiring the clerk of a court to transmit a copy of an order suspending or revoking a driver's license; providing terms and length of pretrial license suspension; giving person credit for pretrial suspension time against period of revocation imposed; establishing procedures and timeline for the Division of Motor Vehicles to transfer jurisdiction of driver's license suspension and revocation to the courts; and making technical corrections.

And,

**Senate Bill 691**, Modifying certain air pollution standards.

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

**Com. Sub. for Senate Bill 691** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to modifying certain air pollution standards; changing certain mandatory requirements to permissive ones; and changing a meter-based standard to a mass-based standard.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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 545**, Relating to asbestos abatement on pipes.

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

**Com. Sub. for Senate Bill 545** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §16-32-2 and §16-32-11 of the Code of West Virginia, 1931, as amended, all relating to asbestos abatement on oil and gas pipelines; defining terms; requiring requests for waivers and other matters be made to the Commissioner of the Bureau for Public Health; exempting the removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds from asbestos abatement requirements; and providing specific requirements for that exemption to apply.

And,

**Senate Bill 635**, Limiting action to recover unpaid balance on contract by consumer purchase.

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

**Com. Sub. for Senate Bill 635** (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 §55-2-6b, relating to the statute of limitation period action that applies to an action to recover the unpaid balance due upon a contract made by a consumer for the purchase of personal property containing terms of financing the purchase price; establishing the statute of limitations period to be four years on claims upon a contract made by a consumer for the purchase of personal property which contains terms of financing all or part of the purchase price over a period of time; clarifying the start of the four-year statute of limitations period; and distinguishing the start of the statute of limitations period if the due date is accelerated.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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 602**, Relating to Patient Injury Compensation Fund.

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

**Com. Sub. for Senate Bill 602** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §29-12D-1 and §29-12D-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-12D-1a; to amend and reenact §55-7B-9, §55-7B-9c and §55-7B-9d of said code; and to amend and reenact §59-1-11 and §59-1-28a of said code, all relating to the Patient Injury Compensation Fund; transferring funds from Medical Liability Fund to Patient Injury Compensation Fund and thereafter closing Medical Liability Fund; prohibiting

direct recover of legal fees from Patient Injury Compensation Fund; providing that the board may not compensate claimants who have not filed a claim with the fund by a specific date; providing an assessment on medical licenses; providing exceptions to assessment on medical licenses; prohibiting granting or renewal of medical license for failure to pay assessment; providing an assessment on trauma patients treated at designated trauma centers; providing an assessment on claims filed under the Medical Professional Liability Act; defining qualifying claim; defining date for purposes of determining applicability of section; directing entities collecting assessments to remit payment to Board of Risk and Insurance Management; setting schedule for remittance of payments to Board of Risk and Insurance Management; providing termination of assessments upon certain deadlines being met; limiting jurisdiction of court reviewing award from board to approval of final award; clarifying authority of Board of Risk and Insurance Management make periodic payments or place claims in nonpayment status in its discretion; permitting trier of fact to consider fault of all alleged parties, including fault of persons who have settled claims with plaintiff arising out of same medical injury, in assessing percentages of fault; permitting clarifying manner in which damages are to be determined with respect to each defendant for purposes of entering judgment when there is no preverdict settlement; providing for limit on liability for economic damages in causes of actions against a trauma facility to be adjusted for inflation annually beginning January 1, 2016; setting limit on inflation increase; authorizing plaintiff who suffers economic damages in excess of limit of liability to collect economic damages up to an additional one million dollars; clarifying that additional economic liability limit is not subject to inflation; providing that that providing that a claimant's attorney fees may not be paid out of the fund; providing that several liability applies in all cases under the Medical Professional Liability Act; increasing filing fee for causes of action under the Medical Professional Liability Act; and directing clerk of court to deposit a portion of the filing fee into Patient Injury Compensation Fund.

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,

Charles S. Trump IV,  
*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 the Judiciary.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4228**, Relating to transportation network companies.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senators Plymale, Woelfel, Maynard, Ashley, Romano, Stollings, Prezioso, Williams, Unger, Laird, Kessler, Trump and Facemire offered the following resolution:

**Senate Resolution 52**—Designating February 26, 2016, as Marshall University Day at the Legislature.

Whereas, The year 2016 marks the 179th anniversary of Marshall University, one of the oldest institutions of higher education in West Virginia, founded in 1837 as Marshall Academy in honor of Chief Justice John Marshall; and

Whereas, Marshall University is one of the state's premier institutions of higher education, and today educates more than 14,000 students at campuses in Huntington, Point Pleasant, South Charleston, Beckley, Logan and Gilbert; and

Whereas, Marshall University is composed of academic units that include the Colleges of Arts and Media; Business; Education and Professional Development; Information Technology and Engineering; Liberal Arts; Health Professions; and Science, as well as the Honors College; University College; the Graduate College; the School of Pharmacy; and the Joan C. Edwards School of Medicine; and

Whereas, Marshall University offers degrees at the associate, baccalaureate, master's and doctoral levels; and

Whereas, Marshall University will soon graduate its first class of students from its School of Pharmacy, which opened in the fall of 2012, with approximately 80 to 85 students getting their degrees in May, 2016; and

Whereas, Marshall University has built a national reputation for research in biotechnology, forensics and medicine; and

Whereas, Marshall University opened its spectacular four-story, \$56 million, 152,000 square-foot, 480-foot long Arthur Weisberg Family Applied Engineering Complex in 2015, a building that includes 72 miles of telecommunication wiring and about one million feet of electrical wiring, which equals about 190 miles; and

Whereas, With every dollar the state invests in Marshall University, the University generates nearly \$20 spent in the West Virginia economy, resulting in an estimated economic output of \$1.5 billion per year; and

Whereas, The Robert C. Byrd Institute (RCBI), Marshall University's Center for Advanced Manufacturing, innovation and entrepreneurship, provides innovative products, services, and solutions; 3D printing, advanced technology and prototyping, workforce skills and world-class apprenticeships that are dedicated to the productivity, growth and global competitiveness of West Virginia entrepreneurs; and

Whereas, The Nick J. Rahall II Appalachian Transportation Institute of Marshall University continues to set national standards in transportation; and

Whereas, Marshall University's Health Sciences trains hundreds of West Virginians to serve as doctors, nurses, therapists and health technicians each year; and

Whereas, In 2015, the Marshall University football team, under the guidance of Coach Doc Holliday, won its fifth bowl game in a row by defeating the University of Connecticut, 16-10, in the St. Petersburg Bowl; and

Whereas, With that victory over the University of Connecticut, the Herd clinched its third consecutive season of 10 or more wins, going 10-3 this season, 13-1 in 2014 and 10-4 in 2013, giving it 33 victories against only eight defeats in its past 41 games; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates February 26, 2016, as Marshall University Day at the Legislature; and, be it

*Further Resolved,* That the Senate hereby recognizes Marshall University for its tremendous contributions to the State of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to Dr. Jerome Gilbert, President of Marshall University.

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

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senators Plymale, Woelfel and Hall regarding the adoption of Senate Resolution 52 were ordered printed in the Appendix to the Journal.

At the request of Senator Carmichael, unanimous consent being granted, the remarks by Senators Stollings, Maynard and Boso regarding the adoption of Senate Resolution 52 were ordered printed in the Appendix to the Journal.

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.

Senators Plymale, Woelfel, Maynard, Romano, Stollings, Prezioso, Williams, Unger, Kessler and Facemire offered the following resolution:

**Senate Resolution 53**—Honoring William “Red” Dawson for his dedication and service to Marshall University and the state of West Virginia.

Whereas, William “Red” Dawson was born and raised in Valdosta, Georgia, on December 4, 1942, and was nicknamed “Red” for his red hair; and

Whereas, Red Dawson received a football scholarship to Florida State University, was team co-captain and an All-American at both tight end and defensive end. Head coach Peterson described him as, “. . . one of the best team leaders I have ever been associated with. When ‘Red’ spoke, his teammates listened”. Red, #83 and being 6’-3” and 230 lbs., finished his collegiate career at Florida State with a 36-19 win over Oklahoma in the Gator Bowl. His position coach his final two years was legendary coach Bobby Bowden. They developed a life-long friendship, with Coach Bowden frequently referring to Red as one of his all-time favorite players and friends, saying simply “I love him”; and

Whereas, Red Dawson was drafted by both the Los Angeles Rams and the Boston Patriots and he signed with the Patriots in 1965. He played nine games for Boston in 1965 before a knee injury curtailed his career in 1966 with the Orlando Panthers of the Continental Football League; and

Whereas, In 1968, at the young age of twenty-six, Red Dawson was given his first job as a coach. He was hired as a receivers coach at Marshall University by head coach Perry Moss, his former

coach for the Orlando Panthers. Coach Moss was replaced later by Rick Tolley. Coach Dawson continued his role under Tolley's leadership and became a recruiting asset for the football team; and

Whereas, On November 14, 1970, Marshall University played East Carolina University in football and lost 17-14. The chartered jet bringing the Marshall football team home that night crashed into a hillside just short of the airport and was the worst sports-related plane crash in American history; and

Whereas, Marshall University and its surrounding community lost all seventy-five people aboard, including Marshall head coach Rick Tolley, assistant coach, Frank Loria, thirty-seven football players, the team doctors, the university athletic director and twenty-four wonderful team boosters. The Marshall University community was left in mourning and devastated as "the whole heart of the town was aboard"; and

Whereas, William "Red" Dawson and graduate assistant Gail Parker were sent on a recruiting mission after the game and drove back instead of boarding the plane. The news of the plane crash broke on the radio as they were driving to Huntington. Their lives were spared but forever changed; and

Whereas, Still in mourning and coping with survivor's guilt, Dawson was appointed acting head coach in 1970 until a new head coach could be found. The Marshall University Athletic Director recruited a new coach, Jack Lengyel, to help revive the broken team. Coach Lengyel persuaded Red Dawson to stay on as an assistant coach to help him rebuild the Marshall University football team and gain the respect of the community; and

Whereas, Coach Lengyel, Coach Dawson and the Marshall University administration convinced the NCAA to do something never done before in modern day football: allow freshmen to play on the varsity team. Coach Lengyel and Coach Dawson were able to pull together a ragtag group of first-years, walk-ons and the nine veteran players who had not been on the plane that night; and

Whereas, In 1971, the Thundering Herd defeated Ohio's Xavier University 15-13 in its first home game since the crash in an emotional victory. The team won one more emotional home game that season against Bowling Green. Coach Dawson resigned in the fall on 1972; and

Whereas, After his last season of coaching, Red Dawson distanced himself from Marshall University and its football program; however, he could not part with the city of Huntington. He began working in construction and eventually owned his own successful construction company, which he operated for thirty-five years prior to retiring; and

Whereas, When Jim Donnan became the Herd's head coach in 1990, he contacted Red Dawson to involve him with the program again. Red met with Donnan and rekindled his relationship with Marshall football. His relationship with Marshall has grown closer under coaches Bobby Pruett, Mark Snyder and Doc Holliday; and

Whereas, The making of the movie, *We Are Marshall*, helped Dawson, the Huntington community and the State of West Virginia in the healing process. When Warner Brothers set out to make the movie, Red felt it was his "duty that it was positive and respectful of the family of the boys who died on that plane". He was instrumental in retelling and consulting with screenwriters to create the worldwide sensation. The movie premier in Huntington was at the historic Keith Albee Performing Arts Center on December 12, 2006, attended by Matthew McConaughey, who played Coach Lengyel, and Matthew Fox, who played Coach Red Dawson; and

Whereas, Another step in overcoming his survivor's guilt came from opening up to write his book, *A Coach In Progress: Marshall Football – A Story of Survival and Revival*. The book was released on November 10, 2015, which coincided with the 45th anniversary of the crash. Forewords were

provided by Coach Bobby Bowden and Fred Biletznikoff, a former Florida State cocaptain with Red and Pro Football Hall of Famer for the Oakland Raiders. Biletznikoff wrote in the foreward: "Knowing Red for more than fifty years, the one thing I can say is if you could have only one friend, Red Dawson is the friend you want to have"; and

Whereas, William "Red" Dawson can still be found at Marshall's scrimmages and, on game days in Huntington, at tailgates and along the sidelines. He resides in Huntington, West Virginia, and remains a huge supporter of Marshall University; therefore, be it

*Resolved by the Senate:*

That the Senate hereby honors William "Red" Dawson for his dedication and service to Marshall University and the State of West Virginia; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to William "Red" Dawson.

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

Thereafter, at the request of Senator Carmichael, and by unanimous consent, the remarks by Senators Plymale, Woelfel, Hall and Romano regarding the adoption of Senate Resolution 53 were ordered printed in the Appendix to the Journal.

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

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Stollings, and by unanimous consent, returned to the second order of business and the introduction of guests.

The Senate then proceeded to the seventh order of business.

**Senate Concurrent Resolution 48**, Requesting Joint Committee on Government and Finance study addition of medical review panels in medical malpractice cases.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on the Judiciary; and then to the Committee on Rules.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 106**, Waiver of warranty on sale of used manufactured home under certain circumstances.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams and Cole (Mr. President)—31.

The nays were: None.

Absent: Plymale, Woelfel and Yost—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 106) 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 525**, Relating to WV Insurance Guaranty Association Act.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams and Cole (Mr. President)—28.

The nays were: Facemire, Romano and Unger—3.

Absent: Plymale, Woelfel and Yost—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 525) 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 538**, Relating to salaries of appointed officers fixed by Governor.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 538 pass?”

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 and Woelfel—15.

Absent: Yost—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 538) passed.

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

**Eng. Senate Bill 538**—A Bill to amend and reenact §5B-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §6-7-2a of said code; to amend and reenact §17A-2-6 of said code; and to amend and reenact §29-21-5 of said code, all relating to the salaries of certain appointed officers being fixed by the Governor.

*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 593**, Clarifying disqualification from unemployment benefits.

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 and Cole (Mr. President)—33.

The nays were: None.

Absent: Yost—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 593) 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 613**, Defining total capital for purposes of calculating state-chartered bank's lending limit.

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, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—32.

The nays were: Facemire—1.

Absent: Yost—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 613) passed with its title.

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

The Senate proceeded to the ninth order of business.

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

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 344**, Clarifying composition and chairmanship of Commission on Special Investigations.

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 411**, Creating Second Chance for Employment Act.

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

On motion of Senator Trump, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section twenty-six, lines ten and eleven, by striking out the words “as defined in subsection (c) of this section, or nonviolent felony” and inserting in lieu thereof the word “or”.

The bill (Com. Sub. for S. B. 411), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 421**, Terminating behavioral health severance and business privilege tax.

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

**Senate Bill 455**, Allowing person to be both limited video lottery operator and retailer.

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

**Senate Bill 461**, Updating WV Workforce Investment Act to the WV Workforce Innovation and Opportunity Act.

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

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

On page five, section three, line eighty-three, after the word “Governor,” by inserting the words “with the advice and consent of the Senate,”.

The bill (S. B. 461), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 468**, Allowing lender charge and receive interest on rescindable loan during rescission period.

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 542**, Admissibility of certain evidence in civil action on use or nonuse of safety belt.

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

On motion of Senator Kessler, the following amendment to the bill was reported by the Clerk:

On pages two and three, section forty-nine, lines twenty-two through fifty-four, by striking out all of subsection (d) and inserting in lieu thereof a new subsection, designated subsection (d), to read as follows:

(d) A violation of this section is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and is not admissible in mitigation of damages: *Provided*, That the court may, upon motion of the defendant, conduct an in camera hearing to determine whether an injured party’s failure to wear a safety belt was a proximate cause of the injuries complained of. Upon a finding by the court, the court may then, in a jury trial, by special interrogatory to the jury, determine: (1) That the injured party failed to wear a safety belt; and (2) that the failure to wear the safety belt constituted a failure to mitigate damages. The trier of fact may reduce the injured party’s recovery for medical damages by an amount not to exceed five percent thereof. In the event the plaintiff stipulates to the reduction of five percent of

medical damages, the court shall make the calculations and the issue of mitigation of damages for failure to wear a safety belt may not be presented to the jury. In all cases, the actual computation of the dollar amount reduction shall be determined by the court. In any action claiming damages under a product liability theory, claim or cause of action, this subsection is not intended to limit the manufacturer from introducing evidence of an adult vehicle occupant's failure to wear a safety belt in violation of this section to defend the design, manufacture or crashworthiness of the product that is the subject of the action.

The question being on the adoption of Senator Kessler's amendment to the bill (Com. Sub. for S. B. 542), the same was put.

The result of the voice vote being inconclusive, Senator Kessler demanded a division of the vote.

The question being on the adoption of Senator Kessler's amendment to the bill, and on this question, Senator Kessler demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Walters, Williams and Woelfel—16.

The nays were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump and Cole (Mr. President)—17.

Absent: Yost—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Kessler's amendment to the bill rejected.

The bill (Com. Sub. for S. B. 542) was then ordered to engrossment and third reading.

**Senate Bill 578**, Protecting utility workers from crimes against person.

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 595**, Relating to retirement credit for members of WV National Guard.

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

**Senate Bill 618**, Allowing Economic Development Authority to make loans to certain whitewater outfitters.

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 619**, 2016 Regulatory Reform Act.

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

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

On page four, section eleven, after line twenty-five, by inserting a new subdivision, designated subdivision (7), to read as follows:

“(7) A public health impact statement assessing the health impact of the proposed rule on the State of West Virginia, including, but not limited to, the effect of the regulation on the short-term and long-term health impact on the citizens of the state and whether there will be any detrimental public health impact from the rule. The agency may work with the Bureau of Public Health or any public university department that has sufficient expertise to determine the impact of the rule on public health. The statement shall include the names of those persons who participated in the drafting of the statement and the time spent preparing the statement. The agency shall also make available the lead author of the statement or other qualified representative of the agency to discuss the statement with the Legislative Rule-Making Committee and any committee of the Senate or House of Delegates to which the rule is referred;”;

And by renumbering the remaining subdivisions;

On page six, section eleven, line sixty-seven, after the word “Innovation;” by striking out the word “and”;

On page six, section eleven, line seventy-two, after the word “rule” by changing the period to a semicolon and inserting the word “and”;

And,

On page six, section eleven, after line seventy-two, by inserting a new subdivision, designated subdivision (10), to read as follows:

(10) Whether the proposed legislative rule will negatively impact public health based on the public health impact statement and other relevant considerations presented to the committee.

The bill (Com. Sub. for S. B. 619), as amended, was then ordered to engrossment and third reading.

**Senate Bill 627**, Permitting physician to decline prescribing controlled substance.

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 634**, Creating WV Second Chance Driver’s License Act.

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 641**, Transferring revenues from certain greyhound racing funds to State Excess Lottery Revenue Fund.

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

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

**Eng. Com. Sub. for House Bill 2444**, Providing for the assignment of economic development office representatives to serve as Small Business Allies as facilitators to assist small business entities and individuals.

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

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

On page two, section five, lines thirty-one through thirty-five, by striking out all of subdivisions (3) and (4) and inserting in lieu thereof a new subdivision, designated subdivision (3), to read as follows:

“(3) Identify and describe issues with formation, registration and licensure requirements that state law imposes on small businesses that small businesses have identified to the West Virginia Development Office in the immediately preceding reporting cycle as burdensome;”;

And by renumbering the remaining subdivisions;

On page two, section five, line thirty-six, after the word “law” by inserting the words “that small businesses have identified to the West Virginia Development Office in the immediately preceding reporting cycle”;

On page two, section five, line forty-one, by striking out “(6)” and inserting in lieu thereof “(4)”;

And,

On page three, section five, lines fifty-two and fifty-three, by striking out all of subdivision (8).

The bill (Eng. Com. Sub. for H. B. 2444), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4163**, Providing the authority and procedure for municipalities to give notice to, and publish the names of, entities delinquent in paying business and occupation taxes.

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

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

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

## **ARTICLE 13. TAXATION AND FINANCE.**

### **§8-13-24. Notice of delinquency.**

Plenary power and authority is hereby conferred upon all municipalities to adopt an ordinance providing for the publication of delinquent business and occupation taxes, subject to the requirements and limitations set forth herein. The ordinance shall set forth the time, place and manner in which the publication shall occur and shall identify the official or officials responsible for conducting and overseeing the publication. Any such ordinance shall provide for notice of the delinquency to the taxpayer at least thirty days prior to publication. Said notice may be by mail to each delinquent taxpayer or may be by general notice of the forthcoming publication by publishing a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. No delinquency shall be published by the municipality unless the delinquency has lasted for at least for at least four consecutive quarters.

### **§8-13-25. Delinquent list preparation.**

(a) The official designated to conduct publication of delinquent business and occupation taxes provided for by section twenty-four of this article shall prepare the delinquent list in a manner set forth in the ordinance, so long as it is consistent with the requirements and limitations set forth herein. The ordinance shall require the designated code official adopt policies and procedures designed to verify each delinquency prior to publication.

(b) The delinquent list may include the name of the delinquent taxpayer and the year(s) in which the delinquency arises.

(c) For each delinquent list published by the municipality, and prior to such publication, the official designated in the ordinance to oversee or conduct the publication shall take an oath, to be included in or attached to the delinquent list, certified by the city clerk or some other person duly authorized to administer oaths, in form and effect as follows:

“I, \_\_\_\_\_ (municipal official title) of \_\_\_\_\_, do swear, to the best of my knowledge and belief, that the foregoing list of delinquent business and occupation taxes to be published on \_\_\_\_\_, is complete and accurate, and, as of the date of this oath, that I have not received payment from any of the entities listed for the delinquent amounts included in the list.”

**§8-13-26. Publication and posting of delinquent tax list; costs.**

(a) A copy of a delinquent list may be posted at the front door of city hall or other municipal buildings used to conduct municipal business, and may be published as a Class I-0 legal advertisement in the newspaper or other media in compliance with the provisions of article three, chapter fifty-nine of this code, on the municipality’s website or in such other reasonable manner as determined by the municipality to provide notice of the delinquency without incurring unnecessary costs related to the publication.

(b) To cover the costs of preparing, publishing and posting a delinquent list, a reasonable charge may be added to the amount owed by a taxpayer included in any such list, in addition to the tax, interest and penalty already owed by the taxpayer.

**§8-13-27. Notice of delinquent lists to city council and retention of list by city.**

A copy of each published delinquent list shall be provided to the city council of the municipality not later than the first regular meeting of the city council after the publication. A copy of the delinquent list shall be retained by the official designated in the ordinance for a period of not less than three years.

The bill (Eng. Com. Sub. for H. B. 4163), as amended, was then ordered to third reading.

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

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

**Com. Sub. for Com. Sub. for Senate Bill 47**, Rewriting licensing requirements for practice of medicine and surgery and podiatry.

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

**Com. Sub. for Senate Bill 287**, Creating West Virginia Safer Workplaces Act.

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

**Com. Sub. for Com. Sub. for Senate Bill 303**, Providing for 5-day resident fishing license.

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

**Senate Bill 384**, Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation.

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

**Com. Sub. for Senate Bill 399**, Establishing personal and corporate income tax credits for farmers donating edible agricultural products.

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

**Senate Bill 435**, Allowing farm winery enter alternating wine proprietorship agreements with farm owners.

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

**Com. Sub. for Senate Bill 594**, Requiring State Auditor consider for payment claim submitted by electronically generated invoice.

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

**Com. Sub. for Senate Bill 596**, Permitting natural gas companies enter upon real property in certain instances.

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

**Senate Bill 626**, Requiring DHHR secretary seek waiver within Supplemental Nutrition Assistance Program limiting purchases under WIC program.

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

**Com. Sub. for Senate Bill 637**, Creating WV Uniform Fiduciary Access to Digital Assets Act of 2016.

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

**Senate Bill 670**, Relating to filling vacancies in elected offices.

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

**Senate Bill 700**, Authorizing Berkeley County Council own or operate a drug treatment or drug rehabilitation facility.

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

**Com. Sub. for Senate Joint Resolution 1**, County Economic Development Amendment.

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

**Eng. Com. Sub. for House Bill 2852**, Relating to legalizing and regulating the sale and use of fireworks.

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

And,

**Eng. Com. Sub. for House Bill 4366**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

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

On motion of Senator Carmichael, a leave of absence for the day was granted Senator Yost.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Saturday, February 27, 2016, at 11 a.m.

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## SENATE CALENDAR

Saturday, February 27, 2016  
11:00 AM

### THIRD READING

- Eng. Com. Sub. for Com. Sub. for S. B. 116 - Increasing number of limited video lottery terminals allowed at retail location (original similar to HB4523).
- Eng. Com. Sub. for S. B. 344 - Clarifying composition and chairmanship of Commission on Special Investigations (original similar to HB4302).
- Eng. Com. Sub. for S. B. 411 - Creating Second Chance for Employment Act.
- Eng. Com. Sub. for S. B. 421 - Terminating behavioral health severance and business privilege tax (original similar to HB4486).
- Eng. S. B. 455 - Allowing person to be both limited video lottery operator and retailer.
- Eng. S. B. 461 - Updating WV Workforce Investment Act to the WV Workforce Innovation and Opportunity Act (original similar to HB4396).
- Eng. Com. Sub. for S. B. 468 - Allowing lender charge and receive interest on rescindable loan during rescission period (original similar to HB4495).
- Eng. Com. Sub. for S. B. 542 - Admissibility of certain evidence in civil action on use or nonuse of safety belt.
- Eng. S. B. 578 - Protecting utility workers from crimes against person.
- Eng. Com. Sub. for S. B. 595 - Relating to retirement credit for members of WV National Guard.
- Eng. S. B. 618 - Allowing Economic Development Authority to make loans to certain whitewater outfitters (original similar to SB622).
- Eng. Com. Sub. for S. B. 619 - 2016 Regulatory Reform Act.
- Eng. S. B. 627 - Permitting physician to decline prescribing controlled substance.
- Eng. Com. Sub. for S. B. 634 - Creating WV Second Chance Driver's License Act (original similar to HB4683).
- Eng. Com. Sub. for H. B. 2444 - Providing for the assignment of economic development office representatives to serve as Small Business Allies as facilitators to assist small business entities and individuals.
- Eng. Com. Sub. for H. B. 4163 - Providing the authority and procedure for municipalities to give notice to, and publish the names of, entities delinquent in paying business and occupation taxes.

## SECOND READING

- Com. Sub. for Com. Sub. for S. B. 47 - Rewriting licensing requirements for practice of medicine and surgery and podiatry .
- Com. Sub. for S. B. 287 - Creating West Virginia Safer Workplaces Act.
- Com. Sub. for Com. Sub. for S. B. 303 - Providing for 5-day resident fishing license.
- S. B. 384 - Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation .
- Com. Sub. for S. B. 399 - Establishing personal and corporate income tax credits for farmers donating edible agricultural products (original similar to SB418).
- S. B. 435 - Allowing farm winery enter alternating wine proprietorship agreements with farm owners (original similar to HB4539).
- Com. Sub. for S. B. 594 - Requiring State Auditor consider for payment claim submitted by electronically generated invoice (original similar to HB4608, SB174).
- Com. Sub. for S. B. 596 - Permitting natural gas companies enter upon real property in certain instances (original similar to SB698).
- S. B. 626 - Requiring DHHR secretary seek waiver within Supplemental Nutrition Assistance Program limiting purchases under WIC program.
- Com. Sub. for S. B. 637 - Creating WV Uniform Fiduciary Access to Digital Assets Act of 2016.
- Com. Sub. for S. B. 641 - Transferring revenues from certain greyhound racing funds to State Excess Lottery Revenue Fund.
- S. B. 670 - Relating to filling vacancies in elected offices - (Com. amend. and title amend. pending).
- S. B. 700 - Authorizing Berkeley County Council own or operate a drug treatment or drug rehabilitation facility.
- Com. Sub. for S. J. R. 1 - County Economic Development Amendment.
- Eng. Com. Sub. for H. B. 2852 - Relating to legalizing and regulating the sale and use of fireworks - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4366 - Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

## **FIRST READING**

- Com. Sub. for Com. Sub. for S. B. 12 - Relating to County Local Powers Act (original similar to HB4009, SB135).
- Com. Sub. for S. B. 534 - Relating to procedures for driver's license suspension and revocation in criminal proceedings.
- Com. Sub. for S. B. 545 - Relating to asbestos abatement on oil and gas pipelines.
- Com. Sub. for S. B. 602 - Relating to Patient Injury Compensation Fund.
- Com. Sub. for S. B. 635 - Limiting action to recover unpaid balance on contract made by consumer purchase (original similar to HB4641).
- Com. Sub. for S. B. 691 - Modifying certain air pollution standards.
- Eng. Com. Sub. for H. B. 4228 - Relating to transportation network companies - (Com. amend. and title amend. pending) (original similar to SB324).

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2016**

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**Saturday, February 27, 2016**

9 a.m.	Judiciary	(Room 208W)
2 p.m.	Government Organization	(Room 208W)