

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
REGULAR SESSION, 2018
NINTH DAY

Charleston, West Virginia, Thursday, January 18, 2018

The Senate met at 11:11 a.m.

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

Prayer was offered by the Reverend Brad Spencer, Canaan Valley Baptist Church, Davis, West Virginia.

Kenneth Honey Rubenstein Juvenile Center Honor Guard Cadets from Davis, West Virginia, proceeded in the presenting of the Colors. The Honorable Donna J. Boley, a senator from the third district, then led the Senate in the recitation of the Pledge of Allegiance.

Pending the reading of the Journal of Wednesday, January 17, 2018,

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

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

The Clerk presented the following communications from various state agencies as required by the provisions of law:

Medicine, Board of (§30-1-12)

Natural Resources, Division of (§20-1-7)

The Senate proceeded to the third order of business.

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

Eng. House Bill 2869—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-15b, relating to providing that certain state employees may be granted a leave of absence with pay while providing assistance as an essential member of an emergency aid provider during a declared state of emergency.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

Senator Karnes, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Senate Bill 67, Exempting DNR police officers' pensions from state income tax.

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

Respectfully submitted,

Robert Karnes,
Chair.

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

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

Your Committee on the Judiciary has had under consideration

Senate Bill 146, Correcting technical error within Solid Waste Management Act.

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

Com. Sub. for Senate Bill 146 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §22-15-10 of the Code of West Virginia, 1931, as amended, relating to correcting technical errors within the Solid Waste Management Act.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the sixth order of business.

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

By Senators Gaunch, Drennan, Karnes, and Rucker:

Senate Bill 310—A Bill to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5F-2-1 of said code; to amend and reenact §6-7-2a of said code; to amend said code by adding thereto a new section, designated §19-1-3b; to amend and reenact §19-1A-5 of said code; to amend and reenact §19-1B-3 of said code; and to amend and

reenact §19-12A-5 of said code, all relating to transferring the Division of Forestry from the Department of Commerce to the Department of Agriculture; eliminating references in code showing the Division of Forestry as part of the Department of Commerce; transferring all authorities, powers, and duties of the Division of Forestry to the Department of Agriculture; ensuring all legislative rules currently in effect remain in effect as if they were proposed by the Division of Forestry under the Department of Agriculture; making the Director of the Division of Forestry a position hired by the Commissioner of Agriculture rather than a position appointed by the Governor; and making the Director of the Division of Forestry a will and pleasure employee of the Commissioner of Agriculture rather than the Governor.

Referred to the Committee on Agriculture and Rural Development; and then to the Committee on Finance.

By Senators Romano, Facemire, Gaunch, Boso, Plymale, and Takubo:

Senate Bill 311—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9p, relating to specifying exemption from the consumers sales and service tax and use tax for purchases of certain services and tangible personal property sold for the repair, remodeling, and maintenance of certain specified aircraft; defining a term; and specifying method for claiming exemption.

Referred to the Committee on Finance.

By Senators Ferns and Takubo:

Senate Bill 312—A Bill to amend and reenact §21-3-19 of the Code of West Virginia, 1931, as amended, relating to exempting certain employers from discriminating against tobacco users.

Referred to the Committee on the Judiciary.

By Senators Gaunch, Azinger, Boso, Karnes, Maynard, Ojeda, Palumbo, Romano, Rucker, Baldwin, Cline, Stollings, Prezioso, and Plymale:

Senate Bill 313—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, relating to waiver of occupational fees and fees from licensing requirements for certain low-income individuals, military families, and young workers.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

By Senators Romano, Baldwin, Clements, Facemire, Karnes, Ojeda, Swope, Trump, Woelfel, Stollings, and Cline:

Senate Bill 314—A Bill to amend and reenact §5G-1-3 of the Code of West Virginia, 1931, as amended, relating to modifying the procedure certain public agencies must take in order to contract for certain architectural and engineering services; requiring joint discussions with prospective architectural or engineering firms in certain situations; permitting contract proposals with a fee for service from the firms; replacing the single entity negotiations with a competitive low bid process; and allowing for the public agency to reject all proposed contracts and seek proposals from additional firms.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

By Senators Jeffries, Baldwin, Beach, Ojeda, Prezioso, Romano, Smith, Facemire, Stollings, Cline, Boso, and Plymale:

Senate Bill 315—A Bill to amend and reenact §61-1-9 of the Code of West Virginia, 1931, as amended, relating to increasing the misdemeanor penalty for impersonation of a law-enforcement officer or official to include the possibility of confinement in jail.

Referred to the Committee on the Judiciary.

By Senators Jeffries, Baldwin, Beach, Ojeda, Prezioso, Romano, Smith, Facemire, and Stollings:

Senate Bill 316—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-97, relating to creating a refundable personal income tax credit to encourage persons receiving public assistance to get married; reducing the so-called marriage penalty that may exist in certain public assistance programs; declaring legislative intent; defining terms; requiring certain facts be proven to obtain the credit; detailing how the credit is calculated; authorizing procedural rules; and authorizing the sharing of confidential information between the Tax Commissioner and the Secretary of the Department of Health and Human Resources.

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

By Senators Sypolt, Blair, Boso, Gaunch, Maroney, Rucker, Smith, Facemire, and Cline:

Senate Bill 317—A Bill to amend and reenact §16-7-5 of the Code of West Virginia, 1931, as amended, relating to transferring milk rules and regulations from Department of Health and Human Resources to Department of Agriculture; requiring consultation with Department of Health and Human Resources; and striking outdated language.

Referred to the Committee on Agriculture and Rural Development; and then to the Committee on the Judiciary.

By Senators Jeffries, Beach, Prezioso, Romano, Smith, Facemire, and Takubo:

Senate Bill 318—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-3-4b, relating to requiring influenza immunizations for health care workers; providing certain exceptions; defining terms; requiring persons providing influenza immunizations to present a certificate of immunization; providing civil penalties that include monetary fines; and authorizing the director to request the Attorney General or county prosecutor to institute a civil action to recover the penalty.

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

By Senators Rucker, Azinger, Drennan, Gaunch, Karnes, Smith, Sypolt, Trump, Unger, Cline, Boso, Plymale, Clements, Maroney, and Takubo:

Senate Bill 319—A Bill to amend and reenact §18C-7-6 of the Code of West Virginia, 1931, as amended, relating to allowing individuals who completed home school to be eligible for the PROMISE scholarship without having to obtain a diploma equivalent such as a general equivalency degree.

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

By Senators Ferns, Facemire, Baldwin, Cline, Prezioso, and Takubo:

Senate Bill 320—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-10-6, relating to permitting a law-enforcement officer or humane officer to, under certain circumstances, remove an animal from a motor vehicle; providing for the safety of the animal; providing for how the animal may be claimed by its owner; defining a term; and providing for a limitation of liability.

Referred to the Committee on the Judiciary.

By Senators Blair and Boso:

Senate Bill 321—A Bill to amend and reenact §5A-11-3 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the Public Land Corporation; allowing the proceeds of public lands to be given to the agency or institution assigned the public land; authorizing the Public Land Corporation to retain proceeds to cover any expenses incurred; requiring all agencies and institutions provide an annual inventory of public lands; and including in the annual report to the Legislature those agencies or institutions that do not comply with annual inventory reporting requirements to the Public Land Corporation.

Referred to the Committee on Government Organization.

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Joint Resolution 9—Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof by adding thereto a new section, designated section one-d, relating generally to the Just Cut Taxes and Win Amendment; providing a purpose for the amendment; clarifying the ad valorem taxation of current tangible industrial machinery, equipment, and inventory personal property directly used in industrial business activity, and such components thereof, will be reduced and ultimately eliminated; clarifying tangible industrial personal property of public service companies will continue to be taxed; defining certain terms; exempting from ad valorem taxation new tangible industrial machinery, equipment, and inventory personal property directly used in industrial business activity, and such components thereof, except for that imposed on the tangible industrial personal property of public service companies, purchased on and after July 1, 2019; freezing the assessed value of tangible industrial machinery and equipment personal property directly used in industrial business activity, and such components thereof, except for the assessed value of the tangible industrial personal property of public service companies; stepping down the assessed value and ultimately eliminating the ad valorem taxation of tangible industrial machinery and equipment personal property directly used in industrial business activity, and such components thereof, except for the assessed value and tax on tangible industrial personal property of public service companies; replacing revenue to the schools, municipalities, counties, the state, other levying bodies, and levies reduced because of the assessed value stepdown and ultimate elimination of the ad valorem tax on tangible industrial machinery and equipment personal property directly used in industrial business activity, and such components thereof; requiring the Governor to annually provide in the Budget Bill, the Legislature to annually preserve and appropriate in the Budget Bill, and prohibiting the Governor from line item vetoing or reducing replacement revenue in the Budget Bill required by this amendment for the schools, municipalities, counties, the state, other levying bodies, and levies; clarifying why replacement revenue is needed and how it is distributed; permitting the Legislature to enact general laws required to carry out the provisions of this amendment; permitting agencies through rulemaking authorized by general law approved by the Legislature to promulgate rules required to carry out the provisions of this amendment; preserving earned tax relief benefits; prohibiting the reinstatement of the ad valorem tax on tangible industrial machinery, equipment and inventory personal property directly used in industrial business activity, and such components thereof, after

ultimate elimination; providing for primacy of this section over all other law in the West Virginia Constitution, West Virginia Code and West Virginia common law; numbering and designating the amendment; and providing a summarized statement of the purpose of the amendment.

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

Senators Smith, Sypolt, Facemire, Stollings, Beach, and Plymale offered the following resolution:

Senate Resolution 10—Designating January 18, 2018, as Tucker County Day at the Legislature.

Whereas, In the winter of 1949-1950, two members of the Ski Club of Washington, D. C., discovered a substantial snow drift when most of the region was bare; and

Whereas, In February of 1951, the two members returned to ski the drift and skiing in Tucker County was born; and

Whereas, Today, Tucker County is home to two downhill ski areas and one Cross Country Ski Center and endless winter activities for all ages and has established itself as a winter destination; and

Whereas, Tucker County is home to three West Virginia state parks, namely: Canaan Valley Resort State Park; Blackwater Falls State Park; and Fairfax Stone State Park, and Monongahela National Forest; and

Whereas, Tucker County enjoys a location within a few hours' drive of most of the population in the eastern United States; and

Whereas, Tucker County is not only a year-round outdoor recreation destination, but is now emerging as an art and cultural destination; and

Whereas, Tucker County is home to three breweries, the only Cultural District Authority in West Virginia, the Potomac Stone, the newly installed paragliding site at Canaan Valley Resort, the Splash Park in Parsons, and soon-to-be Tucker County Boulder Park; and

Whereas, On the occasion of Tucker County Day at the Legislature, we hereby recognize Tucker County and its citizens for their contributions to the great State of West Virginia; therefore, be it

Resolved by the Senate:

That the Senate hereby designates January 18, 2018, as Tucker County Day at the Legislature; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the many important contributions the citizens and businesses of Tucker County make 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 the appropriate representatives from Tucker County.

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

On motion of Senator Ferns, at 11:28 a.m., the Senate recessed to present Senate Resolution 10.

The Senate reconvened at 11:32 a.m. today and proceeded to the seventh order of business.

Senate Concurrent Resolution 6, Supporting construction of Gold Star Families Memorial Monument.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 73, Modifying crime of fleeing from scene of accident.

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 154, Department of Administration rule relating to parking.

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

Senate Bill 296, Relating to sale or transfer of surplus property.

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

Senate Bill 297, Eliminating taxation on annuity considerations collected by life insurer.

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

Senate Bill 298, Authorizing county assessors make separate entries in landbooks when real property is partly used for exempt and partly for nonexempt purposes.

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

Senate Bill 299, Relating to mandatory insurance coverage for medical foods for amino acid-based formulas.

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

Senate Bill 300, Creating five-year tax credits for businesses locating on post-coal mine sites.

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

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

Senate Bill 301, Removing limitation on amount collected by county via hotel occupancy tax used for medical or emergency services.

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

The Senate proceeded to the tenth order of business.

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

Com. Sub. for Senate Bill 53, Correcting code reference in regard to certain persons exempted from prohibitions against carrying concealed deadly weapons.

Senate Bill 62, Adjusting requirements for hiring school attendance directors.

Com. Sub. for Senate Bill 98, Creating incentives to consolidate local governments.

Com. Sub. for Senate Bill 110, Requiring certain licensees notify law enforcement or EMS of life-threatening emergency on premises.

Com. Sub. for Senate Bill 133, Exempting renewal of certain contracts entered into during declared state of emergency.

And,

Senate Bill 263, Eliminating film tax credits.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Woelfel, Ferns, and Takubo.

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

The Senate proceeded to the thirteenth order of business.

Senator Carmichael (Mr. President) announced the appointment of Senator Azinger as Chair of the Committee on Banking and Insurance; the replacement of Senator Azinger as Vice Chair of the Committee on Banking and Insurance with Senator Clements; and the appointment of Senator Weld to the Committee on Banking and Insurance.

At the request of Senator Maynard, the name of Senator Maynard was removed as a sponsor of **Senate Bill 6** (*Establishing education savings accounts for WV students*) and **Senate Bill 96** (*Establishing 80-miles per hour speed limit on certain roads*).

At the request of Senator Cline, the name of Senator Cline was removed as a sponsor of **Senate Bill 8** (*Permitting county boards of education to base certain workforce decisions on individual's qualifications*).

At the request of Senator Ferns, unanimous consent being granted, leaves of absence for the day were granted Senators Unger and Romano.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, at 11:48 a.m., the Senate adjourned until tomorrow, Friday, January 19, 2018, at 11 a.m.

SENATE CALENDAR

**Friday, January 19, 2018
11:00 AM**

THIRD READING

- Eng. Com. Sub. for S. B. 73 - Modifying crime of fleeing from scene of accident
- Eng. Com. Sub. for S. B. 154 - Department of Administration rule relating to parking (original similar to HB4086)
- Eng. S. B. 296 - Relating to sale or transfer of surplus property (original similar to SB 283)
- Eng. S. B. 297 - Eliminating taxation on annuity considerations collected by life insurer
- Eng. S. B. 298 - Authorizing county assessors make separate entries in landbooks when real property is partly used for exempt and partly for nonexempt purposes
- Eng. S. B. 299 - Relating to mandatory insurance coverage for medical foods for amino acid-based formulas (original similar to HB 2051, HB 2072, HB 3021)
- Eng. S. B. 301 - Removing limitation on amount collected by county via hotel occupancy tax used for medical or emergency services (original similar to SB 137)

SECOND READING

- Com. Sub. for S. B. 53 - Correcting code reference in regard to certain persons exempted from prohibitions against carrying concealed deadly weapons
- S. B. 62 - Adjusting requirements for hiring school attendance directors
- Com. Sub. for S. B. 98 - Creating incentives to consolidate local governments
- Com. Sub. for S. B. 110 - Requiring certain licensees notify law enforcement or EMS of life-threatening emergency on premises
- Com. Sub. for S. B. 133 - Exempting renewal of certain contracts entered into during declared state of emergency (original similar to HB4034)
- S. B. 263 - Eliminating film tax credits (original similar to HB4144)
- S. B. 300 - Creating five-year tax credits for businesses locating on post-coal mine sites (original similar to SB 12)

FIRST READING

- Com. Sub. for S. B. 146 - Correcting technical error within Solid Waste Management Act