

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE  
REGULAR SESSION, 2016  
NINTH DAY

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Charleston, W. Va., Thursday, January 21, 2016

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Kevan Bartlett, Maranatha Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Jeff Mullins, a senator from the ninth district.

Pending the reading of the Journal of Wednesday, January 20, 2016,

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

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

The Senate then proceeded to the 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 4033**—A Bill to amend and reenact §30-5-34 of the Code of West Virginia, 1931, as amended, relating to establishing a criminal penalty; permitting the board to contact law enforcement with information concerning a criminal offense; prohibiting the practice of pharmacist care without a license; prohibiting assistance to practice of pharmacist care without a registration; permitting the fining of a person practicing with an encumbered license; permitting the fining of a person practicing with an encumbered registration; establishing a fine.

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

The Senate next proceeded to the fourth order of business.

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

Your Committee on Natural Resources has had under consideration

**Senate Bill 39**, Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.

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

**Com. Sub. for Senate Bill 39** (originating in the Committee on Natural Resources)—A Bill to amend and reenact §17F-1-1 and §17F-1-9 of the Code of West Virginia, 1931, as amended, all relating to the regulation of all-terrain vehicles; clarifying circumstances in which all-terrain vehicles may operate and travel; and defining motorcycles as all-terrain vehicles.

And,

**Senate Bill 43**, Clarifying means of posting to prohibit hunting or trespassing.

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

**Com. Sub. for Senate Bill 43** (originating in the Committee on Natural Resources)—A Bill to amend and reenact §20-2-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3B-1 of said code, all relating to posted land; and allowing boundaries to be posted with certain clearly visible paint markings.

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

Respectfully submitted,

Robert Karnes,  
*Chair.*

The bills (Com. Sub. for S. B. 39 and 43), under the original double committee references, were then referred to 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

**Senate Bill 107**, Uniform Interstate Depositions and Discovery Act.

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.*

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 Bills 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200 and 201,** DHHR rule relating to WV clearance for access, registry and employment screening.

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

**Com. Sub. for Senate Bill 195** (originating in the Committee on the Judiciary)—A Bill to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various amendments recommended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access, registry and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for service; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to infectious medical waste; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to tuberculosis testing, control, treatment and commitment; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to farmers market vendors; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the certification of opioid overdose prevention and treatment training programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to chronic pain management licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to neonatal abstinence centers; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child-care licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to family child-care facility licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to family child-care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia Works Program sanctions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to qualifications for a restricted provisional license to practice as a social worker within the department; and authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to goals for foster children.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Natural Resources has had under consideration

**Senate Bill 202**, DNR rule relating to prohibitions when hunting and trapping.

**Senate Bill 203**, DNR rule relating to general hunting.

**Senate Bill 204**, DNR rule relating to deer hunting.

And,

**Senate Bill 205**, DNR rule relating to wild boar hunting.

And reports the same back with the recommendation that they each do pass; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Robert Karnes,  
*Chair.*

The bills, under the original double committee references, were then referred to the Committee on the Judiciary.

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

Your Committee on Natural Resources has had under consideration

**Senate Bill 206**, DNR rule relating to elk restoration and management.

And has amended same.

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

Respectfully submitted,

Robert Karnes,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with an amendment from the Committee on Natural Resources pending.

The Senate proceeded to the sixth order of business.

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

**By Senators Trump, Kessler, Woelfel, Palumbo, Romano, Stollings, Plymale and Yost:**

**Senate Bill 338**—A Bill to amend and reenact §61-7A-1, §61-7A-2, §61-7A-3 and §61-7A-4 of the Code of West Virginia, 1931, as amended, all relating generally to compiling and maintaining the West Virginia Central State Mental Health Registry; clarifying that only certain mental illness commitments are to be reported to the registry; and prohibiting reporting children under fourteen years of age to registry.

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

**By Senators Trump, Kessler, Woelfel, Palumbo, Romano, Plymale and Yost:**

**Senate Bill 339**—A Bill to amend and reenact §51-1-10a of the Code of West Virginia, 1931, as amended; to amend and reenact §51-2-13 of said code; to amend and reenact §51-2A-6 of said code; and to amend said code by adding thereto a new article, designated §51-12-1 and §51-12-2, all relating to compensation paid to professional judicial officers; establishing judicial compensation commission; providing eligibility and quorum requirements; filling commission vacancies; filing commission reports and recommendations; and requiring legislative action.

Referred to the Committee on the Judiciary.

**By Senators Gaunch, Ashley, Carmichael, Facemire, Ferns, Hall, Mullins, Palumbo, Prezioso, Romano, Snyder, Trump, Woelfel and Plymale:**

**Senate Bill 340**—A Bill to amend and reenact §7-3-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-17 of said code; to amend and reenact §8-27-16 of said code; to amend and reenact §10-2A-16 of said code; and to amend and reenact §17-17-22 of said code, all relating to payment by West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing bonds of principal and interest on bonds owned by the United States or any governmental agency or department of the United States.

Referred to the Committee on Government Organization.

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

**Senate Bill 341**—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2016, in the amount of \$659,500 from the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the amount of \$26,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2016, organization 0704.

Referred to the Committee on Finance.

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

**Senate Bill 342**—A Bill supplementing and amending by decreasing the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2016, organization 0511, and to the Bureau of Senior Services, fund 0420, fiscal year 2016, organization 0508, by supplementing, amending and decreasing the appropriations for the fiscal year ending June 30, 2016.

Referred to the Committee on Finance.

**By Senators Cole (Mr. President), Hall, Kessler and Trump:**

**Senate Bill 343**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §52-2-11, relating to grand juries; authorizing prosecuting attorneys to designate law-enforcement officers and investigators as custodians of records, documents and other evidence subpoenaed by a grand jury; authorizing designated custodians to use subpoenaed records, documents and other evidence for investigative purposes prior to such records, documents or other evidence being presented to a grand jury; requiring presentation of subpoenaed materials held by custodian be presented to the next session of the grand jury meeting after receipt; and limiting law enforcement use of such subpoenaed materials to legitimate investigation and prosecuted purposes relevant to the investigation underlying issuance of subpoena.

Referred to the Committee on the Judiciary.

**By Senators Cole (Mr. President), Hall, Kessler and Trump:**

**Senate Bill 344**—A Bill to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4, §4-5-5 and §4-5-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §4-5-7, all relating to Commission on Special Investigations; clarifying composition and chairmanship of commission; redefining what constitutes a quorum for voting procedures of commission; clarifying contents of commission's annual report; listing existing and necessary commission staff positions; defining an agency's duty to cooperate with commission during investigations and requiring agencies to disclose information and documents to commission; establishing requirements for commission to enter into executive session; establishing procedures for conducting executive session; removing requirement that Joint Committee on Government and Finance approve expenses of commission; establishing procedure for commission retention and disposal of records; defining new felony offense of making false statement to commission; setting penalties for making false statement to commission; defining new felony offense of impersonating a commission member or staff member; and setting penalties for impersonating a commission member or staff member.

Referred to the Committee on the Judiciary.

**By Senator Hall:**

**Senate Bill 345**—A Bill to repeal §5A-4-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-10-3a, all relating to parking on state-owned or leased property; creating parking fees fund; authorizing Real Estate Division to collect parking fees; providing for rule-making authority; and continuing Parking Garage Fund.

Referred to the Committee on Finance.

**By Senators Hall and Prezioso:**

**Senate Bill 346**—A Bill to amend and reenact §5A-6-2 of the Code of West Virginia, 1931, as amended, relating to information technology projects under Office of Technology; and raising minimum dollar value for information technology project to qualify as major information technology project.

Referred to the Committee on Finance.

**By Senators Walters and Boso:**

**Senate Bill 347**—A Bill to amend and reenact §29-22B-1101 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at a retail location; and requiring Lottery Commission to conduct a bid for current permit holders prior to September 1, 2016.

Referred to the Committee on Finance.

**By Senators Boso, Gaunch, Leonhardt, Mullins, Palumbo, Walters and Williams:**

**Senate Bill 348**—A Bill to amend and reenact §20-2-28 of the Code of West Virginia, 1931, as amended, relating to permitting lineal descendants of landowner to hunt, trap and fish on that landowner's property without obtaining a license.

Referred to the Committee on Natural Resources; and then to the Committee on Finance.

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

**Senate Bill 349**—A Bill to amend and reenact §11-21-9 and §11-21-71a of the Code of West Virginia, 1931, as amended, all relating to updating the meaning of "federal adjusted gross income"

and certain other terms used in the West Virginia Personal Income Tax Act; changing due dates for partnership returns; and specifying effective dates.

Referred to the Committee on Finance.

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

**Senate Bill 350**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2D-4c, relating to exempting community-based behavioral health facilities, programs or services from the certificate of need process; and defining “community-based”.

Referred to the Committee on Health and Human Resources.

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

**Senate Bill 351**—A Bill to amend and reenact §31-15A-16 of the Code of West Virginia, 1931, as amended, relating to dedication of severance tax proceeds to the West Virginia Infrastructure General Obligation Debt Service Fund; and specifying reduction of the amount of severance tax proceeds dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.

Referred to the Committee on Finance.

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

**Senate Bill 352**—A Bill to amend and reenact §11-24-43a of the Code of West Virginia, 1931, as amended, relating to dedication of corporation net income tax proceeds to railways; and specifying that dedication of corporation net income tax proceeds to railways expires and is void on and after January 1, 2016.

Referred to the Committee on Finance.

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

**Senate Bill 353**—A Bill to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended, relating to the allocation of premiums for employers and employees in Public Employees Insurance Agency; and establishing contribution levels of seventy-five percent for employers and twenty-five percent for employees with respect to health insurance premiums for plan year commencing July 1, 2017, and each plan year thereafter.

Referred to the Committee on Finance.

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

**Senate Bill 354**—A Bill to amend and reenact §11-24-3 and §11-24-13 of the Code of West Virginia, 1931, as amended, all relating to updating meaning of “federal taxable income” and certain other terms used in West Virginia Corporation Net Income Tax Act; changing due date for filing West Virginia Corporation Net Income Tax return; and specifying effective dates.

Referred to the Committee on Finance.

**By Senator Kessler (By Request of the Executive):**

**Senate Bill 355**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-3d, relating to imposing consumers sales and service tax and use tax on sales of telecommunications service and ancillary services.

Referred to the Committee on Finance.

**By Senator Kessler (By Request of the Executive):**

**Senate Bill 356**—A Bill to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to sales tax exemption for certain sales of materials acquired for use in highway

construction or maintenance project; and specifying elimination for fiscal year beginning July 1, 2015, of refundable exemption for sales of construction and maintenance material acquired by a second party for use in construction or maintenance of a highway project, with retroactive effect for elapsed portion of that fiscal year, and resumption thereof for fiscal year beginning July 1, 2016.

Referred to the Committee on Finance.

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

**Senate Bill 357**—A Bill making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2016, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Referred to the Committee on Finance.

**By Senators Gaunch, Boso, Blair, Walters, Palumbo, Stollings, Kirkendoll, Carmichael, Ferns, Takubo, Prezioso, Plymale, Williams, Trump, Hall and Mullins:**

**Senate Bill 358**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-20G-1, §33-20G-2, §33-20G-3, §33-20G-4, §33-20G-5, §33-20G-6, §33-20G-7, §33-20G-8, §33-20G-9, §33-20G-10, §33-20G-11, §33-20G-12, §33-20G-13 and §33-20G-14, all relating to establishing Mining Mutual Insurance Company; establishing scope, findings and purpose; defining terms; authorizing creation and requirements of company; establishing provisional board of directors and continuing governance and organization; establishing board of directors may enter into contract with firm or company to administer affairs of company; creating special revenue account entitled “Department of Environmental Protection Mining Mutual Insurance Company Account”; establishing initial capital and surplus for company; authorizing issuance of bonds; requiring DEP to promulgate rules regarding purchase of bonds; establishing controlling law; establishing liberal construction of article; and allowing severability of article provisions.

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

**By Senators Boso, Gaunch, Blair, Palumbo, Stollings, Kirkendoll, Carmichael, Ferns, Takubo, Prezioso, Plymale, Williams, Trump, Hall and Mullins:**

**Senate Bill 359**—A Bill to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to requirements for performance bonds by operators; providing amount and method of bonding; establishing that issuance of bonds be limited to Mining Mutual Insurance Company beginning one year after it is funded; establishing purpose for bonds; requiring secretary to submit plan to allow additional entities to issue bonds; allowing secretary to issue bond without additional surety under certain circumstances; prohibiting owner from interfering with operator obligations; continuing Special Reclamation Fund; creating and administering Special Reclamation Water Trust Fund; creating requirements for tax credits for operators reclaiming or remediating sites; allowing Tax Commissioner to promulgate rules regarding tax credits; establishing special reclamation tax rates; establishing review by Legislature of special reclamation tax; establishing secretary’s duties for special reclamation program; establishing Tax Commissioner’s duties for special reclamation tax; prohibited acts; establishing liability for special reclamation tax; and requiring approval from federal agency before implementation of section if necessary.

Referred to the Committee on Energy, Industry and Mining; then to the Committee on the Judiciary; and then to the Committee on Finance.

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

**Senate Bill 360**—A Bill making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance from the State Fund, State Excess Lottery Revenue Fund,



to the Department of Health and Human Resources, Division of Human Services, fund 5365, fiscal year 2016, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Referred to the Committee on Finance.

**By Senators Gaunch, Boso, Mullins, Palumbo, Walters, Williams and Prezioso:**

**Senate Bill 361**—A Bill to amend and reenact §61-2-10a of the Code of West Virginia, 1931, as amended, relating to prohibiting persons who have committed crimes against the elderly from performing any court-ordered public service involving the elderly.

Referred to the Committee on the Judiciary.

**By Senators Gaunch, Boso, Mullins, Palumbo, Walters, Williams, Unger, Plymale, Trump and Prezioso:**

**Senate Bill 362**—A Bill to amend and reenact §61-2-29b of the Code of West Virginia, 1931, as amended, relating to increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person, protected person or incapacitated adult; and increasing the criminal penalty for the offense of financial exploitation of \$1,000 or more.

Referred to the Committee on the Judiciary.

**By Senator Walters:**

**Senate Bill 363**—A Bill to amend and reenact §17B-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-2-7b of said code; to amend said code by adding thereto a new section, designated §17C-1-69; and to amend and reenact §17C-15-44 of said code, all relating to autocycles; defining “autocycle”; creating an autocycle exemption from motorcycle examination, licensing and endorsement requirements; allowing a person with valid driver’s license to operate an autocycle; creating autocycle exemption from helmet and certain other motorcycle or motor-driven cycle safety requirements; and deleting obsolete language regarding the motorcycle safety and education committee.

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

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

**Senate Bill 364**—A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2016, in the amount of \$51,800,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2016, organization 0701, in the amount of \$1,940,500 from the Department of Revenue, Insurance Commissioner – Examination Revolving Fund, fund 7150, fiscal year 2016, organization 0704, and in the amount of \$4,800,000 from the Department of Revenue, Insurance Commissioner, WV Health Insurance Plan Fund, fund 7161, fiscal year 2016, organization 0704.

Referred to the Committee on Finance.

**By Senators Gaunch, Karnes, Kirkendoll, Boso, Palumbo and Unger:**

**Senate Bill 365**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6 and §39A-4-7, all relating to creating Uniform Real Property Electronic Recording Act; providing short title; defining terms; clarifying validity of electronic documents and electronic signatures; providing for recording of electronic documents; requiring any county clerk implementing the provisions of the act to comply with established standards; authorizing county clerks to receive, index, store, archive and transmit electronic documents; authorizing county clerks to allow public access, search and retrieval

of electronic documents; allowing county clerks to convert paper documents accepted for recording into electronic documents; authorizing county clerks to collect electronically any tax or fee relating to electronic recording of real property documents they are authorized by law to collect; authorizing county clerks to agree with other jurisdictions on procedures or processes necessary for electronic recording of documents; creating Real Property Electronic Recording Standards Committee to develop standards necessary to electronically record real property documents; authorizing Commissioner of Highways to promulgate legislative rule; providing for report and recommendations to the Legislature; providing that members of Real Property Electronic Recording Standards Committee pay their own expenses; setting forth areas for consideration when adopting or changing standards; providing for uniformity of application and construction of the act; and providing that this act modifies, limits and supersedes certain parts of the federal Electronic Signatures in Global and National Commerce Act.

Referred to the Committee on Government Organization.

**By Senators Trump, Woelfel and Snyder:**

**Senate Bill 366**—A Bill to amend and reenact §6B-3-7 of the Code of West Virginia, 1931, as amended, relating to lobbyist duties and prohibitions; prohibiting a lobbyist from contributing money to candidates for Governor, Board of Public Works, State Senate or House of Delegates; extending that prohibition to the lobbyist's spouse and dependent children; and providing exceptions.

Referred to the Committee on the Judiciary.

**By Senators Carmichael and Prezioso:**

**Senate Bill 367**—A Bill to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to prohibiting any sex offender from living within one thousand feet of a school.

Referred to the Committee on the Judiciary.

**By Senator Carmichael:**

**Senate Bill 368**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §61-6-26 and §61-6-27, all relating to making it a criminal offense to disturb the peace; and providing criminal penalties.

Referred to the Committee on the Judiciary.

**By Senators Sypolt, Boso, Plymale, Prezioso and Williams:**

**Senate Bill 369**—A Bill to repeal §18-2-5g of the Code of West Virginia, 1931, as amended; to repeal §18-2E-3g of said code; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-2I-5 of said code; to amend and reenact §18-3-12 of said code; to amend and reenact §18-5-44 of said code; to amend and reenact §18-20-5 and §18-20-8 of said code; to amend and reenact §18A-2-3 of said code; to amend and reenact §18A-4-7a of said code; to amend and reenact §18A-5-1a of said code; to amend and reenact §18B-1D-8 of said code; to amend said code by adding thereto a new section, designated §18B-1D-8a; and to amend and reenact §18B-1E-3 and §18B-1E-4 of said code, all relating to legislative education reporting requirements; repealing obsolete section providing for establishment of a special five-year demonstration professional development school project for improving academic achievement including requirement for status reports to commission; repealing requirement for review, evaluation and report to commission on reports required to be written by principals and teachers; removing requirement for Office of Education Performance Audits to report to commission on each appeal of on-site review findings; removing requirement for report to the commission on the effectiveness of staff development resulting from expenditures from the Strategic Staff Development Fund; removing requirement for status report to commission relating to the Special Community Development School Pilot Program; removing requirement for report to commission on the progress of implementation of early childhood education programs for all children who have

attained the age of four prior to September 1 of the school year in which the pupil enters the program; removing requirement for report to the commission and the Joint Committee on Government and Finance that addresses, at a minimum, certain early childhood education program issues; removing requirement for State Superintendent of Schools to review the rules, policies and standards of the state and federal law for serving the needs of certain exceptional children and removes requirement for report to commission on the findings of the review along with an accounting of the services provided and the costs thereof; removing requirement for annual report to commission, the Joint Committee on Education, the Legislative Commission on Juvenile Law, and other agencies, as appropriate, which recommends policies, procedures and legislation for effectively providing early intervention services and reports on the status of existing programs; removing requirement for State Board of Education to review the status of employing prospective employable professional personnel and the requirement for an annual report to the commission which must include certain minimum prospective employable professional personnel related items; removing requirement that county board of education submit a copy of its policy defining which policies are lateral positions to the state board within thirty days of any adoption or modification, and the requirement that the state board compile a report and submit the report to the commission; removing requirement that county boards report the number of students determined to be dangerous students to the state board, and the requirement that the state board compile the statistics and report its findings to the commission; adding to the list of reports to the commission that are not required to be prepared and submitted annually unless a member of the Legislature makes a specific request for a particular report, including reports related to community and technical college progress toward meeting statutory goals, whether statewide independently accredited community and technology should be created, the progress of community and technical colleges meeting statutory objectives, workforce development initiatives, community and technical college system performance, capital investment priorities, and recommendations for statutory changes, training of commission, council, and board of Governors members, the status of the Higher Education Adult Part-Time Student Grant Program, the number of nursing scholarship recipients, and the annual recommendation to encourage recipients to live and work in West Virginia after graduation; listing certain reports that are not required to be made annually to the Legislature, but instead requiring them to be combined with other reports, including certain personnel, classification, compensation and human resources reports, all capital appropriation requests, priorities and campus and state capital development plans, all academic related matters and reports, and all financial aid reports; removing obsolete requirements that the findings, conclusions and recommendations of the Revitalization Project for WVU-Tech study, together with the revitalization plan for implementation, shall be reported to the commission and the governing board, that the revitalization plan be delivered to the commission, and that the commission consider the proposed plan and approve or disapprove; removing requirement that the Chancellor report to the commission on the allocation of funds to support the revitalization project at WVU-Tech and on progress made in implementing the purposes and intent of the revitalization project article and the components of the revitalization plan; and removing requirement that the commission and governing board provide to the commission a detailed summary of all revitalization project activities undertaken.

Referred to the Committee on Education.

**By Senators Walters and Miller:**

**Senate Bill 370**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-21-1, §5B-21-2, §5B-21-3, §5B-21-4, §5B-21-5, §5B-21-6 and §5B-21-7, all relating to authorizing local units of government to adopt local energy efficiency partnership programs and to create districts to promote use of energy efficiency improvements by owners of certain real property; providing for financing of programs through voluntary property assessments, commercial lending and other means; authorizing local unit of government to issue bonds, notes and other evidences of indebtedness and to pay the cost of energy efficiency improvements from the proceeds thereof; providing for repayment of bonds, notes and other evidences of indebtedness;

authorizing certain fees; prescribing the powers and duties of certain governmental officers and entities; and providing remedies.

Referred to the Committee on Energy, Industry and Mining; and then to the Committee on Government Organization.

**By Senator Walters:**

**Senate Bill 371**—A Bill to repeal §21-16-1, §21-16-2, §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-9 and §21-16-10 of the Code of West Virginia, 1931, as amended; to repeal §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7 and §29-3D-8, of said code; and to amend and reenact §29-3-12b, of said code, all relating to deregulating persons who perform work on heating, ventilating and cooling systems and fire dampers.

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

**By Senators Walters, Gaunch and Palumbo:**

**Senate Bill 372**—A Bill to amend and reenact §16-1-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-2-5 and §16-2-11 of said code, all relating to powers and duties of the Commissioner of Public Health; modifying administration of local boards of health; providing for regionalization of administration and services of local health departments; requiring local health departments to bill health insurance plans for services that are provided; mandating development of needle exchange programs in local health departments; and providing for rule-making authority.

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

**By Senators Walters and Gaunch:**

**Senate Bill 373**—A Bill to amend and reenact §18-2-26 of the Code of West Virginia, 1931, as amended, relating to granting full control of the Board of Education Regional Education Service Agencies to the State Superintendent including selection of executive directors and support staff as well as organization and operations of Regional Education Service Agencies.

Referred to the Committee on Education.

Senators Maynard, Stollings and Plymale offered the following resolution:

**Senate Concurrent Resolution 9**—Requesting Division of Highways name stretch of highway on U.S. Route 52, in Kimball, West Virginia, from mile marker 27.24 to mile marker 29.20, the “U.S. Army First Sergeant Jesse T. McPeake Memorial Road”.

Whereas, Jesse T. McPeake was born on November 13, 1944, in Kimball, West Virginia, as one of nine children; and

Whereas, Jesse enlisted in the United States Army in 1966. He later became this State’s most decorated Vietnam Veteran, earning the Silver Star, five Bronze Stars, the Purple Heart, the Soldiers Medal, the National Defense Ribbon, the Good Conduct Metal with three loops, the Army Conduct Medal, the Vietnam Service Medal with nine Silver Stars, the Vietnam Compensive Medal and the Expert Badge with Automatic Rifle; and

Whereas, In 1976, Jesse resigned from the United States Army and opened McPeake’s Furniture Store in Kimball. In 1977, Jesse and Manuel Horeluk moved to Beckley, West Virginia, and established employment together at F&W Furniture. In 1978, Jesse and Manuel moved to Welch,

West Virginia, where Jesse established employment with US Steel, where he worked for twenty-eight years until 2006; and

Whereas, Jesse was a key player in the rebuilding of the WWI African American Memorial Building, being an early member of the board where he remained until 2015; and

Whereas, In 2007, Jesse, along with Manuel Horeluk and his mother Mildred, opened the Visitors Center in the Kimball Light and Water Building; and

Whereas, Jesse taught the youth of McDowell County to respect this country and its values while assisting homeless veterans; and

Whereas, Jesse passed away on July 12, 2015, and he will be greatly missed by the people who reside in McDowell County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the stretch of highway on U.S. Route 52, in Kimball, West Virginia, from mile marker 27.24 to mile marker 29.20, the "U.S. Army First Sergeant Jesse T. McPeake Memorial Road"; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the stretch of highway as the "U.S. Army First Sergeant Jesse T. McPeake Memorial Road"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of Highways and to Manuel Horeluck.

Which, under the rules, lies over one day.

Senators Karnes, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, Leonhardt, Maynard, Mullins and Trump offered the following resolution:

**Senate Concurrent Resolution 10**—Urging Congress call a convention of the states, under the authority reserved to the states in Article V of the United States Constitution, limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government and limit the terms of office for its officials and for members of Congress.

Whereas, Article IV, Section 4 of the Constitution of the United States guarantees to every state a republican form of government which gives each state equal standing when calling for an amendments convention. Article V of the Constitution of the United States reserves to the several states the right to call for a convention for the purpose of amending the United States Constitution when Congress or the courts or both Congress and the courts refuse to address an egregious wrong suffered by the people; and

Whereas, The states alone have the authority to "limit" the agenda and authority of a convention. The states alone can call for a "Single Issue" convention by agreeing among themselves the purpose, terms, conditions, duration and agenda for the convention. Congress does not have the authority to define a "Single Issue" convention. The authority of Congress, under Article V of the United States Constitution, empowers it to convene a convention as called for and defined by the several states; and

Whereas, The founders of our constitution empowered state legislators to be guardians of liberty against future abuses of power by the federal government which has created a crushing national debt through improper and imprudent spending; and

Whereas, The federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, most of which are unfunded to a great extent, and the federal government has ceased to live under a proper interpretation of the Constitution of the United States; and

Whereas, It is the solemn duty of the states to protect the liberty of our people—particularly for the generations to come—by proposing amendments to the Constitution of the United States through a Convention of the States under Article V for the purpose of restraining these and related abuses of power; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby urges Congress call a convention of the states, under the authority reserved to the states in Article V of the United States Constitution, limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government and limit the terms of office for its officials and for members of Congress; and, be it

*Further Resolved*, That the State of West Virginia hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government and limit the terms of office for its officials and for members of Congress and absolutely no other business will be authorized at this convention; and, be it

*Further Resolved*, That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two thirds of the several states have made applications on the same subject; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution and application to the President and Secretary of the United States Senate, to the Speaker and Clerk of the United States House of Representatives, to the members of West Virginia's congressional delegation and to the presiding officers of each of the legislative houses in the several states requesting their cooperation.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 6**, USMC PFC Marshall Lee King Memorial Bridge.

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

**Senate Concurrent Resolution 7**, Rosie the Riveters Memorial Bridge.

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

**Senate Concurrent Resolution 8**, U.S. Army PFC Ernest D. Marcum Bridge.

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

The Senate proceeded to the eighth order of business.

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

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

Pending extended discussion,

The question being "Shall Engrossed Senate Bill 1 pass?"

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—17.

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

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 1) passed with its title.

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

Thereafter, at the request of Senator Woelfel, and by unanimous consent, the remarks by Senators Trump, Kessler, Snyder, Kirkendoll, Miller, Romano, Beach, Laird, Blair, Boso, Karnes, Facemire and Carmichael regarding the passage of Engrossed Senate Bill 1 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the ninth order of business.

**Senate Bill 253**, Exempting drug treatment and drug recovery facilities from county and municipal ordinances.

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.

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 13**, Increasing penalties for overtaking and passing stopped school buses.

**Senate Bill 32**, Relating to withdrawal of candidates for office and filling vacancies.

**Com. Sub. for Senate Bill 102**, Conforming to federal Law-Enforcement Officers Safety Act.

**Com. Sub. for Senate Bill 157**, Alcohol Beverage Control Commission rule relating to nonintoxicating beer licensing and operations and procedures.

**Senate Bill 311**, Allowing permanent exception for mortgage modification or refinancing loan under federal Making Home Affordable program.

And,

**Senate Bill 323**, Correcting statute subsection designations regarding trespassing on property.

At the request of Senator Romano, the name of Senator Romano was removed as a sponsor of **Senate Concurrent Resolution 4** (*Petitioning Congress to call convention for proposing amendments to U.S. Constitution*).

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Friday, January 22, 2016, at 10 a.m.

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## **SENATE CALENDAR**

**Friday, January 22, 2016  
10:00 AM**

### **UNFINISHED BUSINESS**

- S. C. R. 9 - U.S. Army First Sergeant Jesse T. McPeake Memorial Road.
- S. C. R. 10 - Urging Congress call convention to amend constitution of United States.

### **SECOND READING**

- Com. Sub. for S. B. 13 - Increasing penalties for overtaking and passing stopped school buses.
- S. B. 32 - Relating to withdrawal of candidates for office and filling vacancies - (Com. amend. pending).
- Com. Sub. for S. B. 102 - Conforming to federal Law-Enforcement Officers Safety Act.
- Com. Sub. for S. B. 157 - Alcohol Beverage Control Commission rule relating to nonintoxicating beer licensing and operations and procedures.
- S. B. 253 - Exempting drug treatment and drug recovery facilities from county and municipal ordinances.
- S. B. 311 - Allowing permanent exception for mortgage modification or refinancing loan under federal Making Home Affordable program.
- S. B. 323 - Correcting statute subsection designations regarding trespassing on property - (Com. title amend. pending).

### **FIRST READING**

- S. B. 107 - Uniform Interstate Depositions and Discovery Act - (Com. title amend. pending).
- Com. Sub. for S. B. 195 - DHHR rule relating to WV clearance for access, registry and employment screening.