

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2016
SEVENTEENTH DAY

Charleston, W. Va., Friday, January 29, 2016

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend John Hagan, St. Matthew's Episcopal Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mark R. Maynard, a senator from the sixth district.

Pending the reading of the Journal of Thursday, January 28, 2016,

At the request of Senator Kirkendoll, 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 fourth order of business.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Bill 12, County Local Powers Act.

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

Com. Sub. for Senate Bill 12 (originating in the Committee on Transportation and Infrastructure)—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-eight 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, §7-20-51 and §7-20-52, 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 Commissioner of Highways 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 pay-as-you-go basis; providing that these powers are supplemental powers of county commissions and Commissioner of Highways; requiring reports; exempting public officials from personal liability; providing a severability clause; and effective dates.

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,

Chris Walters,
Chair.

The bill (Com. Sub. for S. B. 12), 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

Com. Sub. for Senate Bill 109, Repealing code provisions related to certain reports by trustees for property.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Senate Bill 123, Treatment for sexually transmitted diseases.

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 the Judiciary.

Respectfully submitted,

Ryan J. Ferns,
Chair.

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

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

Your Committee on Government Organization has had under consideration

Senate Bill 148, Board of Accountancy rules and rules of professional conduct.

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 the Judiciary.

Respectfully submitted,

Craig Blair,
Chair.

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

Senator Boso, from the Committee on Energy, Industry and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry and Mining, has had under consideration

Senate Bill 182, DEP, Water and Waste Management rule relating to surface mining reclamation.

Senate Bill 183, DEP, Water and Waste Management rule relating to administrative proceedings and civil penalty assessment.

And,

Senate Bill 185, DEP, Water and Waste Management rule relating to above ground storage tank administrative proceedings and civil penalty assessment.

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,

Gregory L. Boso,
Chair.

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

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

Your Committee on Government Organization has had under consideration

Senate Bill 254, Not allowing county park commissions to prohibit firearms in facilities.

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

Com. Sub. for Senate Bill 254 (originating in the Committee on Government Organization)—A Bill to amend and reenact §7-11-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting county parks and recreation commissions from promulgating or enforcing rules and regulations which prohibit possession of firearms; and providing magistrate courts with concurrent jurisdiction.

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

Respectfully submitted,

Craig Blair,
Chair.

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

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

Your Committee on Government Organization has had under consideration

Senate Bill 261, Bringing state code relating to daylight saving time in conformity with federal code.

And,

Senate Bill 306, Permitting sale of county or district property online.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Senate Bill 268, Abolishing Council of Finance and Administration.

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

Com. Sub. for Senate Bill 268 (originating in the Committee on Government Organization)—A Bill to repeal §5A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §4-11-5 of said code; to amend and reenact §12-1-12a of said code; to amend and reenact §12-6-6 of said code; and to amend and reenact §12-6C-15 of said code; all relating to the Council of Finance and Administration; eliminating requirement for the Governor to receive a recommendation from the Council on matters related to appropriation of federal funds; eliminating requirement for State Treasurer to submit reports to the Council; eliminating requirement for the West Virginia Investment Management Board to submit audits and information to the Council; and eliminating requirement for West Virginia Board of Treasury Investments to submit audits, reports and information to the Council.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Senate Bill 286, Creating Commission to Accelerate Statewide Coordination of Mental Health Services for Children and Adolescents.

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

Com. Sub. for Senate Bill 286 (originating in the Committee on Health and Human Resources)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-2-127, relating to creating the Commission to Accelerate Statewide Coordination of Mental Health Services for Children and Adolescents; and providing findings, requirements, reports, recommendations and termination.

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,

Ryan J. Ferns,
Chair.

The bill (Com. Sub. for S. B. 286), under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on Education has had under consideration

Senate Bill 369, Reducing legislative education reporting requirements.

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

Com. Sub. for Senate Bill 369 (originating in the Committee on Education)—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 repeal §18B-5-8 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-1-10 of said code; to amend and reenact §18B-1B-4 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; to amend and reenact §18B-1E-3 and §18B-1E-4 of said code; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-2C-3 of said code; to amend and reenact §18B-3D-2 of said code; to amend and reenact §18B-10-1 of said code; to amend and reenact §18B-13-5 of said code; to amend and reenact §18B-18-6 of said code; to amend and reenact §18C-3-4 of said code; to amend and reenact §18C-5-7 of said code; and to amend and reenact §18C-7-5 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; repealing section requiring Higher Education Policy Commission to report to commission on in-state and out-of-state contracts and purchases; 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 removing 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; removing reporting requirements on the cooperative relationship between Potomac State College and Eastern West Virginia Community and Technical College; removing requirement that the Higher Education Policy Commission report on its performance, capital investment priorities, and recommendations for statutory changes; 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; removing requirement that the commission and governing board provide to the commission a detailed summary of all revitalization project activities undertaken; removing requirement that the Community and Technical College Council report on its performance, capital investment priorities, and recommendations for statutory changes; removing requirement for report on community and technical college progress toward meeting statutory goals, and whether statewide independently accredited community and technical college should be created; removing requirement for status report on workforce development initiatives; removing requirement for annual report on auxiliary fees; removing requirement that Higher Education Policy Commission report on technical assistance and associated costs provided to qualified businesses within the higher education and industry partnership; removing requirement for annual status report on the Eminent Scholars Endowment Trust Fund; removing requirement of an annual report on the number of nursing scholarship recipients; removing requirement to report on the status of the Higher Education Adult Part-Time Student Grant Program; and removing requirement for the annual recommendation to encourage PROMISE recipients to live and work in West Virginia after graduation.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Dave Sypolt,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2101, Eliminating obsolete government entities.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

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 Hall, Boso and Plymale:

Senate Bill 423—A Bill to amend and reenact §36-8-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §36-8-2a, all relating to the specific escheat of United States savings bonds and all rights and legal title thereto; and defining terms.

Referred to the Committee on Finance.

By Senators Boso, Blair, Karnes, Kessler, Kirkendoll, Leonhardt, Miller, Mullins, Snyder, Stollings, Sypolt, Takubo, Unger, Walters, Williams, Woelfel, Gaunch and Ferns:

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

Referred to the Committee on Government Organization.

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

Senate Bill 425—A Bill to amend and reenact §24C-1-2 of the Code of West Virginia, 1931, as amended, relating to one-call system; and revising the definition of “underground facility”.

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

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

Senate Bill 426—A Bill to amend and reenact §5B-2A-3 and §5B-2A-4 of the Code of West Virginia, 1931, as amended, all relating to continuing Office of Coalfield Community Development within Department of Commerce; allowing Secretary of the Department of Commerce to appoint a chief; and defining term.

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

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

Senate Bill 427—A Bill supplementing and amending by decreasing an appropriation and making a supplementary appropriation from the balance of moneys remaining as an unappropriated balance the State Fund, State Excess Lottery Revenue Fund, to the Department of Revenue, Lottery Commission – Distributions to Statutory Funds and Purposes, fund 7213, fiscal year 2016, organization 0705, by supplementing and amending the appropriations for the fiscal year ending June 30, 2016.

Referred to the Committee on Finance.

By Senator Kessler (By Request of the Executive):

Senate Bill 428—A Bill to amend and reenact §29-22A-10 and §29-22A-10d of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-25-22 and §29-25-22b of said code, all relating to ending discretionary transfers to Licensed Racetrack Modernization Fund; transferring funds remaining in Licensed Racetrack Modernization Fund and Historic Resort Hotel Modernization Fund to the General Revenue Fund of the state during the fiscal year ending June 30, 2016; and closing Licensed Racetrack Modernization Fund and Historic Resort Hotel Modernization Fund.

Referred to the Committee on Finance.

By Senators Ashley and Gaunch:

Senate Bill 429—A Bill to amend and reenact §33-24-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-25-6 of said code; to amend and reenact §33-25A-24 of said code; to amend and reenact §33-25D-26 of said code; to amend and reenact §33-40-1, §33-40-2,

§33-40-3, §33-40-6 and §33-40-7 of said code; and to amend said code by adding thereto a new article, designated §33-40A-1, §33-40A-2, §33-40A-3, §33-40A-4, §33-40A-5, §33-40A-6, §33-40A-7, §33-40A-8, §33-40A-9, §33-40A-10, §33-40A-11 and §33-40A-12, all relating to risk-based capital reporting for health organizations; making health organizations subject to statutory provisions concerning risk-based capital reporting; defining terms associated with risk-based capital reporting for health organizations; requiring domestic health organization to file risk-based capital report with Insurance Commissioner; requiring health organization to perform certain actions if risk-based capital report indicates a negative financial trend or hazardous financial condition; requiring Insurance Commissioner to conduct certain actions if risk-based capital report of a health organization indicates negative financial trend or hazardous financial condition; providing health organization right to a confidential hearing with respect to its risk-based capital report; making risk-based capital reports confidential; prohibiting use of risk-based capital reports in rate-making of a health organization; granting Insurance Commissioner authority to promulgate rules; requiring foreign health organization to file a risk-based capital report with the Insurance Commissioner; and providing immunity to the Insurance Commissioner and his employees or agents for actions taken with respect to monitoring the financial stability of a health organization.

Referred to the Committee on Banking and Insurance.

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

Senate Bill 430—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17, §17-29-18 and §17-29-19, all relating to authorizing transportation network companies to operate in the state; providing that transportation network companies and transportation network company drivers are not common carriers or motor carriers; requiring permit from Division of Motor Vehicles to operate a transportation network company; setting forth requirements for obtaining permit; requiring an agent for service of process; authorizing transportation network companies to charge fare for services; setting forth requirements for fare collection; requiring identification of transportation network company vehicles and drivers; requiring an electronic receipt; requiring automobile insurance; requiring disclosures from transportation network company to transportation network company drivers; providing terms, conditions and allowable exclusions from insurance coverage; setting limitations on transportation network companies; providing zero tolerance policy for drug and alcohol use while working as transportation network company driver; setting minimum requirements to become transportation network company driver; requiring transportation network company vehicles to pass state inspection; prohibiting solicitation and street hails; prohibiting cash payments; requiring no-cash payment policy; requiring policy of nondiscrimination; requiring record keeping; providing for controlling authority to regulate transportation network companies; providing exemption from certain taxes, fees and licensing requirements; providing for limitations and restrictions; and defining terms.

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

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

Senate Bill 431—A Bill to amend and reenact §16-46-3, §16-46-5 and §16-46-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-46-3a, all relating to authorizing pharmacist or pharmacy intern to dispense, pursuant to a protocol, an opioid antagonist without a prescription; requiring Board of Pharmacy in consultation with Bureau for Public Health to develop a protocol; requiring patient counseling; requiring educational materials; requiring documentation of distribution of opioid antagonists in West Virginia Controlled Substances Monitoring Program database; revising existing reporting requirements; providing limited liability to pharmacist and pharmacy interns; revising reporting requirements; and reorganizing existing code language.

Referred to the Committee on Health and Human Resources.

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

Senate Bill 432—A Bill to amend and reenact §11-8-6a of the Code of West Virginia, 1931, as amended, relating to levies on classifications of property by Board of Public Works; removing antiquated language requiring Board of Public Works to levy property tax rates to meet requirements of state road bonds issued prior to November 8, 1932; and removing references to corresponding levy rates.

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

By Senators Takubo, Stollings and Plymale:

Senate Bill 433—A Bill to amend and reenact §16-5-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-30-3 and §16-30-25 of said code, all relating to allowing advance practice registered nurses and physician assistants to complete physician orders for scope of treatment; allowing advance practice registered nurses and physician assistants to sign death certificates; and defining terms.

Referred to the Committee on Health and Human Resources.

By Senators Karnes and Takubo:

Senate Bill 434—A Bill to amend and reenact §19-35-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-35-5, all relating to permitting sale of home-based, micro-processed foods at farmers markets; defining a term; establishing standards; permitting fees; and providing for rulemaking.

Referred to the Committee on Agriculture and Rural Development.

By Senators Leonhardt, Walters, Williams, Miller, Trump, Woelfel, Unger and Plymale:

Senate Bill 435—A Bill to amend and reenact §60-1-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §60-4-3b of said code; and to amend and reenact §60-8-3 of said code, all relating to permitting farm winery licensure as alternating wine proprietorships; and permitting farm wineries to provide samples and off-premises sales at separately licensed fairs and festivals.

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

Senators Maynard, Stollings, Woelfel and Plymale offered the following resolution:

Senate Concurrent Resolution 15—Requesting Division of Highways name bridge number 50-52-54.27 (50A115) (37.85563, -82.41411), locally known as Marrowbone Creek Bridge, carrying US 52 over Marrowbone Creek in Wayne County, as the “U. S. Army SFC Jesse Muncy Memorial Bridge”.

Whereas, Sergeant First Class Muncy was born in Mingo County on September 15, 1921, the son of Jeff and Sally (Sallie) Muncy. Growing up in Kermit with his sisters Lucy (later Marcum), Dicie (Hodge) and Mary (Waller), and his brother Birdie, he attended local schools through the elementary grades; and

Whereas, Following his July 17, 1941, enlistment, Sergeant First Class Muncy married Loda Lowe, with whom he had three children, Clyde, Sally (“Dot”) and Peggy Carol; and

Whereas, Serving with the Company G, 13th Infantry Regiment, 8th Infantry, Sergeant First Class Muncy received a Silver Star for gallantry in action on April 9, 1945, when, in the vicinity of Olpe,

Germany, his company encountered two German tanks during an attack and Sergeant First Class Muncy, along with four other men, knocked out the tanks; and

Whereas, On October 15, 1945, Sergeant First Class Muncy received the Silver Star. The citation reads, "By direction of the President, under the provisions of AR 600-45, 22 September 1943, as amended, the Silver Star is awarded to: Staff Sergeant Jesse Muncy, 35210666, Infantry, Company G, 13th Infantry Regiment, for gallantry in action on 9 April 1945 in the vicinity of Olpe, Germany. When his company encountered two German tanks during an attack, Sergeant Muncy, with four other men, proceeded into enemy lines in an attempt to knock out the tanks. Under direct enemy small arms, machine gun and tank fire, Sergeant Muncy, after directing his men to give him covering fire, maneuvered to within fifty yards of an enemy tank and, firing three rounds from his bazooka, knocked out the tank, captured seven enemy soldiers and wounded five others. Moving alone to another position, Sergeant Muncy placed fire upon a German convoy, capturing 23 enemy soldiers. Sergeant Muncy's outstanding courage and devotion to duty were in keeping with the highest traditions of the military service. Entered the military service from West Virginia"; and

Whereas, Sergeant First Class Muncy also received the Good Conduct Medal, the American Defense Service Medal, and the European-African-Middle Eastern Theater Service Medal, as well as a Bronze Star for heroic and meritorious service; and

Whereas, After his honorable discharge on October 18, 1945, Sergeant First Class Muncy returned to southern West Virginia and the coal mines and settled into a seemingly normal life. But life in the mines had its ups and downs, and when fighting erupted in Korea, Sergeant First Class Muncy willingly reenlisted. As a decorated war soldier and experienced infantryman, he became a participant in what is now known as "Bloody Ridge" in North Korea during August and September 1951; and

Whereas, Sergeant First Class Muncy was involved in fierce fighting – undoubtedly as harrowing as anything he had seen in World War II – had been going on for months, as reported in the following account: "After securing Hill 773 on the last day of August, the 9th Infantry struck anew at the two remaining peaks on 'Bloody Ridge', Hills 983 and 900. The hilly terrain made any forward movement difficult, to say the least, and the intense fighting had scorched the earth. But the 9th Infantry persevered: Dirty, unshaven, and miserable they backed down, tried again, circled, climbed, slid, suffered, ran, rolled, crouched and grabbed upward only to meet again the murderous fire, the blast of mortar and whine of bullets and jagged fragments. Minutes seemed like hours, hours like days, and days like one long, terrible, dusty, blood-swirled night-mare shivering at night, sweat clogged at day"; and

Whereas, It was in this hard-fought battle that Sergeant First Class Muncy lost his life on September 1, 1951. Sergeant First Class Muncy received a second Silver Star for his service in Korea, as well as the Purple Heart. His remains were interred in a family cemetery near Kermit on December 18, 1951. His funeral notice in the *Williamson Daily News*, December 17, 1951, described him as a "professional soldier"; and

Whereas, On August 10, 1951, less than a month before his death, Sergeant First Class Muncy wrote a letter to his wife and children reiterating his love for them but inserting his uneasy concern for what his unit was about to face: "I will drop you a few lines tonight to let you know I am well and I miss you and the babies a lot. Honey, I am moving up tonight and we are all pretty quiet. Nobody has got anything to say, but you can tell [what] they're thinking. Some of them are worried some, and I am for one, but they don't know it, and honey I am thinking of you and the babies and if I will get to see you anymore... Well, honey, if this should be the last letter, take good care of the babies and keep them together and tell them that I love them....So tell all the family hello and answer real soon, and tell Mom hello for me. So I will close with all my love... P.S. Take good care of my pup. Love, Dad"; and

Whereas, Sergeant First Class Muncy's widow, Loda Muncy, never remarried, preferring to raise her "babies" in the home where they planned to spend the rest of their lives. In a 2013 interview, Sally ("Dot") explained that she and Peggy Carol worked for many years at an Ohio packing plant. Peggy still lives in that state while Dot has returned in her retirement to the old home place on Jennie's Creek in Wayne County. Clyde, not yet retired, still works at a machine shop in Kenova. The family is determined that the legacy of Sergeant First Class Muncy and Loda Muncy not be forgotten and they recall with pride that anyone who claims to have met Sergeant First Class Muncy during his years in the service has offered thanks for his selfless sacrifice; and

Whereas, It is fitting that an enduring memorial be established to commemorate U. S. Army Sergeant First Class Muncy, a native son who gave the ultimate sacrifice for his state and his country, by naming bridge number 50-52-54.27 (50A115) (37.85563, -82.41411), locally known as Marrowbone Creek Bridge, carrying US 52 over Marrowbone Creek in Wayne County, as the "U. S. Army SFC Jesse Muncy Memorial Bridge"; therefore, be it

Resolved by the Senate:

That the Division of Highways name bridge number 50-52-54.27 (50A115) (37.85563, -82.41411), locally known as Marrowbone Creek Bridge, carrying US 52 over Marrowbone Creek in Wayne County, as the "U. S. Army SFC Jesse Muncy Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Army SFC Jesse Muncy Memorial Bridge"; 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 the Division of Highways and to the family members of U. S. Army Sergeant First Class Jesse Muncy.

Which, under the rules, lies over one day.

Senators Miller, Stollings, Woelfel, Yost, Kessler, Unger, Williams and Plymale offered the following resolution:

Senate Resolution 14—Designating January 29, 2016, as Earned Income Tax Credit Awareness Day at the Legislature.

Whereas, The Earned Income Tax Credit is one of the best tools we have for preventing poverty and expanding opportunity for low-income workers and their families; and

Whereas, The Earned Income Tax Credit has been expanded by every president in office since 1975 and now enjoys more than 40 years of helping workers keep more of what they have earned; and

Whereas, Despite the Earned Income Tax Credit's proven benefits, one out of every five eligible workers does not claim it. This is often due to a lack of awareness of the credit; and

Whereas, Those most at risk of overlooking their eligibility for the Earned Income Tax Credit include people with disabilities, grandparents raising children, English-language learners and workers in remote areas; and

Whereas, Volunteer Income Tax Assistance (VITA) programs offer free tax preparation for lower-income workers to help them make the most of their tax returns. VITA sites raise awareness of the Earned Income Tax Credit in their communities and help to ensure that all eligible workers receive the credit; therefore, be it

Resolved by the Senate:

That the Senate hereby designates January 29, 2016, as Earned Income Tax Credit Awareness Day at the Legislature; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives with Earned Income Tax Credit Awareness Day.

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

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

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

Senators Stollings, Yost, Kessler, Unger, Williams and Plymale offered the following resolution:

Senate Resolution 15—Designating January 29, 2016, as School Counselors Day at the Legislature.

Whereas, School counselors are vital members of the education system in West Virginia; and

Whereas, School counselors are employed in public and private schools to help students reach their full potential; and

Whereas, School counselors are actively committed to helping students explore their abilities, strengths, interests and talents as these traits relate to career awareness and development; and

Whereas, School counselors help parents focus on ways to further the educational, personal and social growth of the children; and

Whereas, School counselors work with teachers and other educators to help students explore their potential and set realistic goals for themselves; and

Whereas, School counselors seek to identify and utilize community resources that can enhance and complement comprehensive school counseling programs and help students become productive members of society; and

Whereas, Comprehensive developmental school counseling programs are considered an integral part of the educational process that enables all students to achieve success in school; therefore, be it

Resolved by the Senate:

That the Senate hereby designates January 29, 2016, as School Counselors Day at the Legislature; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia School Counselors Association.

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

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

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

Petitions

Senator Beach presented a petition from the West Virginia University Institute of Technology Faculty Assembly, endorsing the relocation of West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia.

Referred to the Committee on Education.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 2, Urging Congress provide funding for WV National Guard.

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

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.

Senate Concurrent Resolution 14, U.S. Marine Corps PFC Billy Joe Vickers Memorial 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.

Eng. Com. Sub. for Senate Bill 14, Limiting successor corporation asbestos-related liabilities.

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, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—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. 14) 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 146, Establishing instruction standards for early childhood education.

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, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—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. 146) passed with its title.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 146) takes effect July 1, 2016.

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 202, Authorizing Department of Commerce promulgate legislative rules.

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, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—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. 202) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 202) takes effect from passage.

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 216, Authorizing Human Rights Commission promulgate legislative rule relating to Pregnant Workers' Fairness 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, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—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. 216) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 216) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Senate Bill 15, Adopting learned intermediary doctrine as defense to civil action due to inadequate warnings or instructions.

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

Com. Sub. for Com. Sub. for Senate Bill 27, Permitting county commissions hire outside attorneys for collection of taxes through courts.

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 150, Authorizing Department of Transportation promulgate legislative rules.

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 288, Creating one-day special license for charitable events to sell nonintoxicating beer and wine.

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

Senate Bill 329, Eliminating sunset provision for commission to study residential placement of children.

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 338, Compiling and maintaining Central State Mental Health Registry.

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

Senate Bill 379, Relating to candidate filing fees.

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

The Senate proceeded to the tenth order of business.

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

Senate Bill 271, Conforming definition of attest services to Uniform Accountancy Act.

Senate Bill 333, Taking and registering of wildlife.

Senate Bill 334, Identifying coyote as fur-bearing animal and woodchuck as game animal.

Senate Bill 336, Relating to crossbow hunting.

And,

Com. Sub. for Senate Bill 343, Authorizing prosecuting attorneys designate law-enforcement officers and investigators as custodians of records.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Palumbo and Carmichael.

At the request of Senator Palumbo, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of the passing of Virginia M. Ellars, former Journal Editor for the West Virginia Senate.

At the request of Senator Romano, and by unanimous consent, the Senate returned to the eleventh order of business and the introduction of guests.

The Senate again proceeded to the twelfth order of business.

Remarks were made by Senator Plymale.

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

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until Monday, February 1, 2016, at 11 a.m.

SENATE CALENDAR

**Monday, February 1, 2016
11:00 AM**

UNFINISHED BUSINESS

S. C. R. 15 - U.S. Army SFC Jesse Muncy Memorial Bridge.

THIRD READING

Eng. S. B. 15 - Adopting learned intermediary doctrine as defense to civil action due to inadequate warnings or instructions.

Eng. Com. Sub. for Com. Sub. for S. B. 27 - Permitting county commissions hire outside attorneys for collection of taxes through courts.

Eng. Com. Sub. for S. B. 150 - Authorizing Department of Transportation promulgate legislative rules.

Eng. Com. Sub. for S. B. 288 - Creating one-day special license for charitable events to sell nonintoxicating beer and wine.

Eng. S. B. 329 - Eliminating sunset provision for commission to study residential placement of children.

Eng. Com. Sub. for S. B. 338 - Compiling and maintaining Central State Mental Health Registry.

Eng. S. B. 379 - Relating to candidate filing fees - (Com. title amend. pending).

SECOND READING

S. B. 271 - Conforming definition of attest services to Uniform Accountancy Act.

S. B. 333 - Taking and registering of wildlife - (Com. title amend. pending).

S. B. 334 - Identifying coyote as fur-bearing animal and woodchuck as game animal.

S. B. 336 - Relating to crossbow hunting.

Com. Sub. for S. B. 343 - Authorizing prosecuting attorneys designate law-enforcement officers and investigators as custodians of records.

FIRST READING

Com. Sub. for S. B. 109 - Repealing code provisions related to certain reports by trustees for property.

S. B. 123 - Treatment for sexually transmitted diseases.

Com. Sub. for S. B. 254 - Not allowing county park commissions to prohibit firearms in facilities.

- S. B. 261 - Bringing state code relating to daylight saving time in conformity with federal code.
- Com. Sub. for S. B. 268 - Abolishing Council of Finance and Administration.
- S. B. 306 - Permitting sale of county or district property online.
- Com. Sub. for S. B. 369 - Reducing legislative education reporting requirements.
- Eng. Com. Sub. for H. B. 2101 - Eliminating obsolete government entities - (Com. amend. and title amend. pending).

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Monday, February 1, 2016

9 a.m.	Government Organization	(Room 208W)
1 p.m.	Agriculture & Rural Development	(Room 451M)