

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2016
TWENTY-FOURTH DAY

Charleston, W. Va., Friday, February 5, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Seth Polk, Lead Pastor, Cross Lanes Baptist Church, Cross Lanes, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert D. Beach, a senator from the thirteenth district.

Pending the reading of the Journal of Thursday, February 4, 2016,

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

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

The Clerk presented a communication from the Geological and Economic Survey, submitting its annual report, in accordance with §29-2-6 of the Code of West Virginia.

Which communication and report were received and filed with the Clerk.

The Senate then proceeded to the third order of business.

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

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

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

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

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

That §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7 all to read as follows:

ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

§21-1A-3. Rights of employees.

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities, ~~except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in subdivision (3), subsection (a), section four of this article~~ including the right to refrain from paying any dues, fees, assessments or other similar charges however denominated of any kind or amount to a labor organization or to any third party including, but not limited to, a charity in lieu of a payment to a labor organization.

§21-1A-4. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three of this article;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay;

(3) ~~By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization. *Provided, however*, That nothing contained in this article, or in any other statute of this state, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this section as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section five of this article, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in subsection (d), section five of this article, within one year preceding the effective date of such agreement, the board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;~~

(4) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this article; and

(5) To refuse to bargain collectively with the representatives of his or her employees, subject to the provisions of subsection (a), section five of this article.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in section three of this article: *Provided*, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) To refuse to bargain collectively with an employer, provided it is the representative of his or her employees subject to the provisions of subsection (a), section five of this article;

(4) (i) To engage in or induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person, where in either case an object thereof is:

(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) Forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his or her employees unless such labor organization has been certified as the representative of such employees under the provisions of section five of this article: *Provided*, That nothing contained in this ~~clause (B)~~ paragraph may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his or her employees if another labor organization has been certified as the representative of such employees under the provisions of section five of this article;

(D) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection ~~(b)~~ shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his or her own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required by law to recognize;

(5) To require of employees covered by an agreement authorized under subdivision (3), subsection (a) of this section, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all the

circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his or her employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) Where the employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under subsection (c), section five of this article;

(B) Where within the preceding twelve months a valid election under subsection (c), section five of this article has been conducted; or

(C) Where such picketing has been conducted without a petition under subsection (c), section five of this article being filed within a reasonable period of time not to exceed fifteen days from the commencement of such picketing: *Provided*, That when such a petition has been filed the board shall forthwith, without regard to the provisions of said subsection (c), section five or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this subdivision (7) of this subsection shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection. ~~(b)~~

(c) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice, or be prohibited under this article, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification:

(1) Gives a written notice to the other party of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) Notifies the commissioner of labor of the existence of a dispute;

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later. The duties imposed upon employers, employees, and labor organizations by subdivisions (2), (3) and (4) of this subsection ~~(d)~~ shall become inapplicable upon an intervening certification of the board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of subsection (a), section five of this article, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his or her status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections three, four and five of this article, but such loss of status for such employee shall terminate if and when he or she is redeployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person and any such contract or agreement entered into heretofore or hereafter shall be to such extent unenforceable and void.

ARTICLE 5G. WEST VIRGINIA WORKPLACE FREEDOM ACT.

§21-5G-1. Definitions.

As used in this article, the following terms have the following definitions:

(a) The term "person" means any individual, proprietorship, partnership, firm, association, corporation, labor organization or any other legal entity.

(b) The term "labor organization" means any organization, agency, union or employee representation committee of any kind, that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

(c) The term "employer" means any person employing at least one individual in the state, or any agent of an employer employing at least one individual in the state.

(d) The term "state" means any officer, board, branch, commission, department, division, bureau, committee, agency, authority or other instrumentality of the State of West Virginia.

§21-5G-2. Individual's right to refrain from affiliating with a labor organization.

A person may not be required, as a condition or continuation of employment, to:

(1) Become or remain a member of a labor organization;

(2) Pay any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to any labor organization; or

(3) Pay any charity or third party, in lieu of those payments, any amount that is equivalent to or a pro rata portion of dues, fees, assessments or other charges required of members of a labor organization.

§21-5G-3. Contracting for exclusion from employment because of affiliation or nonaffiliation with a labor organization.

Any agreement, contract, understanding or practice, either written or oral, implied or expressed, between any labor organization and an employer or public body which provides for the exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor organization or employee organization of any kind is hereby declared to be unlawful, null and void, and of no legal effect.

§21-5G-4. Criminal penalty.

Any person who knowingly requires another person, as a condition or continuation of employment, to perform any of the conduct enumerated in section two of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000.

§21-5G-5. Civil relief; damages.

Any person injured as a result of any violation or threatened violation of this article shall have a cause of action, and, if proven in a court of competent jurisdiction, may be entitled to the following relief against a person or persons violating or threatening to violate this article:

(1) Compensatory damages;

(2) Costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails;

(3) Punitive damages in accordance with the provisions of section twenty-nine, article seven, chapter fifty-five of this code;

(4) Preliminary and permanent injunctive relief; and

(5) Any other appropriate equitable relief.

§21-5G-6. Exceptions.

This article does not apply:

(1) To any employee or employer covered by the federal Railway Labor Act, 45 U.S.C. 151, et. seq.;

(2) To any employee of the United States or a wholly owned corporation of the United States;

(3) To any employee who is employed on property over which the United States government has exclusive jurisdiction for purposes of labor relations; or

(4) Where the provisions of this article would otherwise conflict with, or be preempted by, federal law.

§21-5G-7. Construction; applicability; severability.

(a) Construction. — Except to the extent expressly prohibited by the provisions of this article, nothing in this article is intended, or should be construed, to change or affect any law concerning collective bargaining or collective bargaining agreements in the building and construction industry.

(b) Applicability. — This article applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016: *Provided*, That the provisions of this article shall

not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

(c) Severability. — If any provision of this act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.;

And,

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

Eng. Senate Bill 1—A Bill to amend and reenact §21-1A-3 and §21-1A-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6 and §21-5G-7, all relating to establishing the West Virginia Workplace Freedom Act; removing certain provisions under the Labor-Management Relations Act for the Private Sector to be consistent with the West Virginia Workplace Freedom Act; clarifying what constitutes an unfair labor practice under the Labor-Management Relations Act for the Private Sector to be consistent with the West Virginia Workplace Freedom Act; eliminating the statutory provisions that allow an employment agreement to require membership in a labor organization as a condition of employment; granting employees the right to refrain from paying any dues, fees, assessments, or other similar charges, however denominated, of any kind or amount to a labor organization as a condition or continuation of employment; granting employees the right to refrain from paying any dues, fees, assessments, or other similar charges, however denominated, of any kind or amount to any third party, including a charity, in lieu of payment to a labor organization as a condition or continuation of employment; eliminating statutory provisions that allow, as an exception to the prohibitions against unfair labor practices by an employer, an employment agreement to require membership in a labor organization as a condition of employment; eliminating statutory provisions that allow an employer to justify discrimination against an employee for nonmembership in a labor organization in certain circumstances; prohibiting any requirement that a person become or remain a member of a labor organization as a condition or continuation of employment; prohibiting any requirement that a person pay any dues, fees, assessments, or other similar charges, however denominated, of any kind or amount to a labor organization as a condition or continuation of employment; prohibiting any requirement that, as a condition or continuation of employment, a person pay any charity or third party in lieu of paying dues, fees, assessments, or other similar charges, however denominated, of any kind or amount that is equivalent to or a pro rata portion of dues, fees, assessments or other charges required of members of a labor organization; providing that any agreement, contract, understanding or practice of any kind between any labor organization and an employer or public body which provides for the exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor organization or employee organization of any kind to be unlawful, null and void, and of no legal effect; creating a criminal offense for any person who knowingly requires another person, as a condition or continuation of employment, to perform any conduct prohibited by the West Virginia Workplace Freedom Act; providing for criminal penalties; providing for civil relief; establishing a civil cause of action which, if proven in a court of competent jurisdiction, may permit a person to recover damages including compensatory and punitive damages, costs and attorney's fees, injunctive relief or other appropriate equitable relief against any person or persons violating or threatening to violate the West Virginia Workplace Freedom Act; providing for exceptions to the application of the West Virginia Workplace Freedom Act; defining terms; establishing provisions addressing the construction, applicability and severability of the West Virginia Workplace Freedom Act; clarifying application of the West Virginia Workplace Freedom Act to collective bargaining or collective bargaining agreements in the building and construction industry; and providing that the West Virginia Workplace Freedom Act applies to any written or oral contract or agreement entered into, modified, renewed or extended after

July 1, 2016 and shall not otherwise apply or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

Senator Carmichael moved that the Senate concur in the House of Delegates amendments to the bill.

Senator Kessler then moved that the bill (Eng. S. B. 1) be recommitted to the Committee on the Judiciary, and on this question, Senator Kessler demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—14.

The nays were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—20.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Kessler's motion had not prevailed.

The question now being on the adoption of Senator Carmichael's motion to concur in the House amendments to the bill, the same was put and prevailed.

Engrossed Senate Bill 1, as amended by the House of Delegates, was then put upon its passage.

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

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

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 1) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for House Bill 4311—A Bill to amend and reenact §30-22-5 of the Code of West Virginia, 1931, as amended, relating to the Board of Landscape Architects; changing the qualifications for membership on the board; providing for continued service of qualifying board members; and providing for the disqualification of certain members who become licensees.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 4313—A Bill to amend and reenact §30-12-1 and §30-12-11 of the Code of West Virginia, 1931, as amended, all relating the Board of Architects; changing the qualifications for membership on the board; providing for continued service of qualifying board

members; providing for the disqualification of certain members who become licensees; and exempting certain non-practicing architects from the prohibition against using certain titles.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 4th day of February, 2016, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

(S. B. No. 364), Supplemental appropriation expiring funds from General Revenue.

Respectfully submitted,

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

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 6, Requiring drug screening and testing of applicants for TANF program.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 39, Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.

And,

Com. Sub. for Senate Bill 43, Clarifying means of posting to prohibit hunting or trespassing.

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

Respectfully submitted,

Charles S. Trump IV,
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 246, Providing certain government entities option to extend the term of tax increment financing district from 30 to 40 years.

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

Com. Sub. for Senate Bill 246 (originating in the Committee on Government Organization)—A Bill to amend and reenact §7-11B-7, §7-11B-10 and §7-11B-22 of the Code of West Virginia, 1931, as amended, all relating generally to tax increment financing districts; authorizing the county commission or municipality to modify the termination time of certain districts; extending length of certain districts; providing for the discharge of any tax increment financing obligations outstanding on the termination date of a district; and extending maturation of tax increment financing obligations.

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,

Craig Blair,
Chair.

The bill (Com. Sub. for S. B. 246), under the original double committee reference, was then referred to the Committee on Finance.

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 309, Exempting county park and recreation commissions from child-care center licensure requirements.

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

Com. Sub. for Senate Bill 309 (originating in the Committee on Government Organization)—A Bill to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended, relating to child care center licensing requirements; and exempting county parks and recreation commissions, boards and municipalities from licensure.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Finance has had under consideration

Senate Bill 345, Relating to parking on state-owned or leased property.

And,

Senate Bill 346, Updating projects managed by Project Management Office.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Finance has had under consideration

Senate Bill 349, Updating meaning of federal adjusted gross income.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Finance has had under consideration

Senate Bill 419, Terminating taxes imposed under Workers' Compensation Debt Reduction Act of 2005.

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

Respectfully submitted,

Mike Hall,
Chair.

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 425, Expanding definition of underground facility in One-Call System Act.

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,

Gregory L. Boso,
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 Energy, Industry and Mining pending.

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 426, Continuing Office of Coalfield Community Development.

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 Government Organization.

Respectfully submitted,

Gregory L. Boso,
Chair.

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

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 Gaunch, Trump, Ashley, Prezioso and Blair:

Senate Bill 520—A Bill to amend and reenact §5-16-12 and §5-16-12a of the Code of West Virginia, 1931, as amended, all relating to willful misrepresentation to gain benefits or payment under the Public Employees Insurance Act; authorizing set-off by the director to recover overpayment; authorizing investigation by the director of misrepresentations by an employer, employee or providers under the Public Employees Insurance Act; authorizing the director to issue administrative subpoenas; providing requirements for service of subpoenas; authorizing fees for service and witnesses; establishing a process to compel obedience with a subpoena; authorizing the agency to recover benefits or claims obtained by fraud through administrative hearing; providing for the confidentiality of data; and providing criminal penalties.

Referred to the Committee on the Judiciary.

By Senators Hall, Blair, Prezioso, Kessler, Facemire, Boley, Romano, Beach, Trump, Plymale, Williams, Miller and Gaunch:

Senate Bill 521—A Bill to repeal §7-18-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-18-1 and §7-18-3 of said code, all relating to eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days; redefining certain terms; and exempting hotel rooms occupied by government officials on official business under certain circumstances.

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

By Senators Snyder and Unger:

Senate Bill 522—A Bill to amend and reenact §24-2-2 of the Code of West Virginia, 1931, as amended, relating generally to public service districts; and prohibiting shifting future development costs onto existing public service district customers.

Referred to the Committee on Government Organization.

By Senator Sypolt (By Request):

Senate Bill 523—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-3f, relating to taxing water that is used in natural gas hydraulic fracturing; creating a special fund; and establishing how proceeds from that fund may be used.

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

By Senator Blair:

Senate Bill 524—A Bill to amend and reenact §30-27-1, §30-27-3, §30-27-4, §30-27-5, §30-27-8, §30-27-8a, §30-27-9, §30-27-10, §30-27-11, §30-27-12, §30-27-13, §30-27-14, §30-27-16, §30-27-17, §30-27-18 and §30-27-19 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-27-8b, all relating to the Board of Barbers and Cosmetologists; and making various changes throughout the article.

Referred to the Committee on Government Organization.

By Senators Gaunch, Hall, Trump, Ashley, Mullins, Plymale, Prezioso and Stollings:

Senate Bill 525—A Bill to amend and reenact §33-26-2, §33-26-3, §33-26-4, §33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-26-12, §33-26-13, §33-26-14 and §33-26-18 of the Code of West Virginia, 1931, as amended, all relating generally to West Virginia Insurance Guaranty Association Act; clarifying scope and construction of act; adding and amending definitions of certain terms; clarifying powers and duties of association; providing for effect of paid claims, exhaustion of coverage and prevention of insolvencies; changing due date of annual financial report; providing for stays of proceeding and reopening of default judgments; and making technical corrections and technical changes.

Referred to the Committee on Banking and Insurance.

By Senators Sypolt (By Request) and Stollings:

Senate Bill 526—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3pp, relating to authorizing county commissions to add a surcharge to county property tax bill of all residential property owners for the service of trash collection; and limiting disbursement of moneys collected.

Referred to the Committee on Government Organization.

By Senator Blair:

Senate Bill 527—A Bill to repeal §5A-3-37 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-5-4 of said code, relating generally to eliminating preference for resident vendors bidding on state contracts for commodities or printing.

Referred to the Committee on Government Organization.

By Senators Walters, Boso, Carmichael and Ferns:

Senate Bill 528—A Bill to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating to altering the power of the Higher Education Policy Commission over academic programs of institutions under its jurisdiction.

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

By Senators Ferns, Blair, Carmichael, Palumbo, Prezioso, Stollings, Trump, Woelfel and Plymale:

Senate Bill 529—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §47-28-1 and §47-28-2, all relating to fantasy games; defining fantasy game; providing that fantasy games are lawful; and exempting fantasy games from regulation.

Referred to the Committee on the Judiciary.

By Senators Gaunch, Miller and Laird:

Senate Bill 530—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-1-16, relating to authorizing a Community Health Equity Initiative Demonstration Project; authorizing the Commissioner of the Bureau for Public Health to establish a Community Health Equity Initiative Demonstration Project; establishing eligibility requirements; providing for the administration of the demonstration project; establishing the Minority Health Advisory Team including its composition and duties; establishing requirements for a demonstration project plan and the selection of a community for participation; establishing reporting requirements; and establishing the date on which the demonstration project terminates.

Referred to the Committee on Health and Human Resources.

Senators Kirkendoll, Stollings, Unger and Plymale offered the following resolution:

Senate Concurrent Resolution 23—Requesting Division of Highways name bridge number 30-3/5-1.60 (30A182) (37.81271, -82.27014), locally known as Lower Canterbury Box Beam Bridge, carrying County Route 3/5 over Laurel Creek in Mingo County, the “Johnny Mack Bryant Memorial Bridge”.

Whereas, Johnny Mack Bryant was born July 19, 1977, to John and Linda (Colley) Bryant; and

Whereas, Johnny Mack Bryant was married to the love of his life Leeann Hammond and had two children, Johnny and Mackenzie; and

Whereas, Johnny Mack Bryant worked for Buck Deskins and Randy Akers doing carpentry and installing metal roofs until he went to work for Coal River Mining where he died in a mining accident on July 27, 2012; and

Whereas, Johnny Mack Bryant loved to hunt, fish, ride four wheelers, dirt bikes and hill climbing. He won National Championships for hill climbing in West Virginia and Massachusetts and traveled as far as Minnesota to hill climb; and

Whereas, Johnny Mack Bryant had two sisters, Mattie Cassidy and Lori Williams of Ohio. He had a niece Allyson and many aunts, uncles and cousins who love and miss him; and

Whereas, Johnny Mack Bryant’s two best friends were Wes Maynard and Brandon Urban who have memorial rides and golf tournaments every year in his name to honor him; and

Whereas, Johnny Mack Bryant always had a smile on his face no matter what and about one thousand people attended his wake and funeral; and

Whereas, It is fitting that the bridge which is located at the beginning of the hollow where Johnny Mack Bryant lived and his body is now buried be named for him; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways name bridge number 30-3/5-1.60 (30A182) (37.81271, -82.27014), locally known as Lower Canterbury Box Beam Bridge, carrying County Route 3/5 over Laurel Creek in Mingo County, the “Johnny Mack Bryant Memorial Bridge”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the “Johnny Mack Bryant Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Commissioner of the Division of Highways and the family of Johnny Mack Bryant.

Which, under the rules, lies over one day.

Senators Mullins, Stollings, Unger and Plymale offered the following resolution:

Senate Concurrent Resolution 24—Requesting Division of Highways name bridge number 41-77-42.30 NB and SB (41A226, 41A227) (37.76241, -81.21447), locally known as TPK. OVER WV 16 CONN, carrying Interstate 77 Northbound and Southbound over WV 16 Connector in Raleigh County, West Virginia, the “U. S. Army PFC Arland W. Hatcher Memorial Bridge”.

Whereas, Arland W. Hatcher was born in Fitzpatrick, Raleigh County, West Virginia, February 2, 1924; and

Whereas, Arland W. Hatcher married Rachael Walker in Beckley, West Virginia, November 5, 1942, and the couple raised five children; and

Whereas, Arland W. Hatcher entered the United States Army and served in the 37th Infantry as a combat military policeman during World War II; and

Whereas, Arland W. Hatcher’s duties included service at New Caledonia, Guadalcanal, Bougainville, Luzon, the Philippines and Japan; and

Whereas, Arland W. Hatcher’s military duties at one time included protecting General Douglas MacArthur and the General’s home in the Philippines; and

Whereas, Following the war, Arland W. Hatcher worked in Ohio and enjoyed such hobbies as working with wood, camping and golfing; and

Whereas, Arland W. Hatcher died April 7, 2005; and

Whereas, It is fitting that an enduring structure commemorate Arland W. Hatcher’s service to his country during World War II; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways name bridge number 41-77-42.30 NB and SB (41A226, 41A227) (37.76241, -81.21447), locally known as TPK. OVER WV 16 CONN, carrying Interstate 77 Northbound and Southbound over WV 16 Connector in Raleigh County, West Virginia, the “U. S. Army PFC Arland W. Hatcher Memorial Bridge”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the “U. S. Army PFC Arland W. Hatcher 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.

Which, under the rules, lies over one day.

Senators Plymale, Woelfel and Stollings offered the following resolution:

Senate Resolution 24—Honoring the life and legacy of Dr. Carter G. Woodson, a native of Huntington, West Virginia, who is known as the Father of Black History Month.

Whereas, Dr. Carter Godwin Woodson was a distinguished author, editor, publisher, educator and historian, and is widely considered the “Father of Black History Month”; and

Whereas, Dr. Carter Godwin Woodson was born in 1875 in New Canton, Virginia, a son of former slaves, Anne Eliza (Riddle) and James Henry Woodson, a carpenter who relocated in 1870 to help complete the C&O Railroad in what became Huntington, West Virginia, and helped build the town; and

Whereas, Dr. Carter Godwin Woodson mastered the fundamentals of common school subjects by the time he was seventeen, largely by self-instruction, and overcame other obstacles to become a leading twentieth-century intellectual; and

Whereas, Dr. Carter Godwin Woodson spent six years working in the West Virginia coal mines and moved to Huntington after his parents moved back from Virginia. In Huntington, Dr. Woodson and two of his sisters graduated from Douglass School; and

Whereas, Dr. Carter Godwin Woodson took his first steps toward becoming one of the most outspoken advocates of improving education for all Americans when he was a West Virginian. He began his teaching career in Winona, Fayette County, West Virginia, and became the principal of Douglass School in 1900, just four years after graduating. He received a degree from Berea College in 1903 and left near the end of that year for the Philippines, where he was hired as a school supervisor. He traveled the world and studied at the Sorbonne University in Paris; and

Whereas, Dr. Carter Godwin Woodson also earned a B.A. and a M.A. in History from the University of Chicago and his Ph.D. in History from Harvard University, becoming the second African-American to earn a doctorate from Harvard and the first child of former slaves to earn a doctorate in History from any university; and

Whereas, In 1915, Dr. Carter Godwin Woodson and several friends in Chicago established the Association for the Study of Negro Life and History (now the Association for the Study of African-American Life and History), and it remains a century later as the oldest learned society for African-Americans. In 1916, Dr. Woodson founded The Journal of Negro History (now The Journal of African-American History), a scholarly publication which helped him return African-American contributions to history books. In 1926, he developed Negro History Week which was renamed Black History Month in 1976 and his public campaign to increase knowledge of black contributions in history has become one of the great cultural achievements of the past 90 years; and

Whereas, Dr. Carter Godwin Woodson returned to West Virginia in 1920 as the dean of the West Virginia Collegiate Institute, now West Virginia State University. The position was his last professional appointment in West Virginia. He still maintained his family ties, owned property in Huntington and visited for speaking engagements until his passing; and

Whereas, Dr. Carter Godwin Woodson passed away on April 3, 1950 at his home, which is now a National Park Service National Historic Site in Washington, D. C., his scholarly legacy continues through the annual celebrations of black history in schools and other public gatherings across the United States; and

Whereas, Marshall University's John Deaver Drinko Academy has sought to reintroduce Dr. Carter G. Woodson to Huntington and West Virginia through a project called Remembering Dr. Carter G. Woodson, through scholarships and public endeavors; and

Whereas, February is Black History Month, a legacy of Dr. Carter Godwin Woodson and an achievement many cite as his greatest accomplishment; therefore, be it

Resolved by the Senate:

That the Senate hereby honors the life and legacy of Dr. Carter Godwin Woodson, a native of Huntington, West Virginia, and who is known as the Father of Black History Month; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Marshall University's John Deaver Drinko Academy.

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

Thereafter, at the request of Senator Prezioso, and by unanimous consent, the remarks by Senator Plymale regarding the adoption of Senate Resolution 24 were ordered printed in the Appendix to the Journal.

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

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

Senators Mullins, Walters, Beach, Stollings, Woelfel, Unger, Miller, Plymale, Kessler and Blair offered the following resolution:

Senate Resolution 25—Recognizing Down Syndrome Awareness Day at the Capitol.

Whereas, Every year, one in every 700 babies is born with Down syndrome. Individuals with Down syndrome, like all others, have the right to live, work and fully participate in their communities in order to attain their goals and dreams; and

Whereas, Individuals with Down syndrome have the right to a free and appropriate public education alongside their peers without disabilities so they can learn and develop to their fullest potential; and

Whereas, Individuals with Down syndrome have the right to an equal opportunity to live full productive lives as valued community members in the neighborhoods of their choice; and

Whereas, People with Down syndrome have the right to receive the support they need to exercise self-determination, achieve independence and become productive employees; and

Whereas, The Down Syndrome Network of WV has become a statewide organization to enhance the lives of individuals with Down syndrome and to increase awareness and acceptance of individuals with Down syndrome;

Whereas, The purpose of Down Syndrome Awareness Day is to increase awareness and understanding of our legislators, administrators, policymakers and the public about the issues that are important to individuals with Down syndrome; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes Down Syndrome Awareness Day at the Capitol; and, be it

Further Resolved, That the Clerk is hereby requested to forward a copy of this resolution to the representatives of Down Syndrome Awareness Day.

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

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senator Mullins regarding the adoption of Senate Resolution 25 were ordered printed in the Appendix to the Journal.

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

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

Petitions

Senator Kessler presented a petition from Elliot Kendle and numerous Wetzel County education employees, urging the Legislature to increase funding for the Public Employees Insurance Agency.

Referred to the Committee on Finance.

Senator Ashley presented a petition from the Convention of States Action and numerous third senatorial district citizens, supporting an Article V convention to impose fiscal restraints, term limits and limitations on the power and jurisdiction of the federal government.

Referred to the Committee on the Judiciary.

Senator Sypolt presented a petition from the Convention of States Action and numerous fourteenth senatorial district citizens, supporting an Article V convention to impose fiscal restraints, term limits and limitations on the power and jurisdiction of the federal government.

Referred to the Committee on the Judiciary.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 22, Trautwein Family 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. Senate Bill 29, Tolling statute of limitations in certain cases.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 29) 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 159, Authorizing promulgation of legislative rules by miscellaneous boards and commissions.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 159) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

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. 159) 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 265, Allowing library volunteers necessary access to user records.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 265 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 265) 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 270, Repealing code relating to insurance policies.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 270) 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 330, Requiring automobile liability insurers provide 10 days' notice of intent to cancel due to nonpayment of premium.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)—27.

The nays were: Facemire, Kessler, Laird, Romano, Snyder, Unger and Yost—7.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 330) passed with its title.

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

Eng. Senate Bill 385, Allowing defendants 180 days to identify nonparties wholly or partially at fault in civil actions.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 385) 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 Com. Sub. for Senate Bill 387, Shared animal ownership agreements to consume raw milk.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 387 pass?”

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Laird, Leonhardt, Maynard, Miller, Plymale, Sypolt, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—22.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Mullins, Palumbo, Prezioso, Romano, Snyder, Stollings, Takubo and Yost—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 387) 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 Snyder, and by unanimous consent, the remarks by Senators Stollings regarding the passage of Engrossed Committee Substitute for Committee Substitute for Senate Bill 387 were ordered printed in the Appendix to the Journal.

At the request of Senator Miller, unanimous consent being granted, the remarks by Senator Beach regarding the passage of Engrossed Committee Substitute for Committee Substitute for Senate Bill 387 were ordered printed in the Appendix to the Journal.

Eng. Senate Bill 415, Lengthening maximum term of negotiable certificates of deposit municipal funds can hold.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 415) passed with its title.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 68, Disallowing Health Care Authority to conduct rate review and set rates for hospitals.

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 326, Repeal and recodify law relating to contributing to delinquency of minor child.

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 361, Prohibiting persons who have committed crimes against elderly from performing community service involving elderly.

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

Eng. Com. Sub. for House Bill 4007, Relating generally to appointment of attorneys to assist the Attorney General.

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

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

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

ARTICLE 3. ATTORNEY GENERAL.

§5-3-3. Assistants to Attorney General.

(a) The Attorney General may appoint such deputy or assistant attorneys general as may be necessary to properly perform the duties of his or her office. The total compensation of all such deputies or assistants shall be within the limits of the amounts appropriated by the Legislature for personal services. All deputy or assistant attorneys general so appointed shall serve at the will and pleasure of the Attorney General and shall perform such duties as ~~he~~ the Attorney General may require of them.

(b) The Attorney General may appoint such special assistant attorneys general as may be necessary to properly perform the duties of his or her office: *Provided*, That if the appointment relates to a contingency fee legal arrangement or contract as defined in W. Va. Code §5-3-3a(a)(1), then the appointment must be in accordance with the procedures and compensation set forth in W. Va. Code §5-3-3a. All special assistant attorneys general appointed shall serve at the will and pleasure of the

Attorney General and shall perform such duties as the Attorney General may require of them.

(c) All laws or parts of laws inconsistent with the provisions hereof are hereby amended to be in harmony with the provisions of this section.

§5-3-3a. Competitive bidding required for private attorneys, special assistant attorneys general.

(a) The following terms, wherever used or referred to in this section, have the following meanings:

(1) “Contingency fee legal arrangement or contract” means any legal fee arrangement that provides for a private attorney or special assistant Attorney General to be paid a percentage of any recovery associated with any claims brought by the private attorney or special assistant Attorney General on behalf of the state or to be paid through a court-approved award of attorney’s fees.

(2) “Deputy or assistant Attorney General” means an attorney employed by the state as a staff attorney in the Attorney General’s office.

(3) “Private attorney” means any attorney who is neither an assistant Attorney General on the Attorney General’s staff nor an employee of another state agency.

(4) “Special assistant Attorney General” means an attorney that has been retained or appointed by the Attorney General to assist in the legal representation of the state.

(5) “State” means the State of West Virginia, including state officers, departments, boards, commissions, divisions, bureaus, councils and units of organization, however designated, of the executive branch of state government and any of its agents.

(b) The state may not enter into any contingency fee legal arrangement or contract with a private attorney unless the Attorney General, or his or her designee, makes a written determination prior to entering into such a contract that the legal representation is both cost-effective and in the best interest of the public. Any written determination shall include specific findings for each of the following factors:

(1) Whether sufficient and appropriate legal and financial resources exist within the Attorney General’s office to handle the matter;

(2) The time and labor required; the novelty, complexity and difficulty of the questions involved; and the skill requisite to perform the attorney services properly;

(3) The geographic area where the attorney services are to be provided, as well as any potential costs associated with providing legal services in that geographic area; and

(4) The amount of experience desired for the particular kind of legal services to be provided and the need for a private attorney’s experience with similar issues or cases.

(c) If the Attorney General, or his or her designee, makes the written determination described in subsection (b) of this section, the Attorney General shall request proposals from private attorneys to represent the state accordingly on the basis of a fee arrangement as set forth in subsection (h) of this section, unless the Attorney General, or his or her designee, makes a written determination that one of the following factors applies:

(1) An emergency situation exists that requires time-sensitive legal services that cannot be adequately provided by the Office of Attorney General and for which insufficient time exists to complete the customary competitive bidding process;

(2) An appointment, or the continuation of an appointment, is necessary to avoid disruption in pending legal matters by allowing previously appointed outside counsel to continue providing legal representation; or

(3) The legal services are to be provided on a pro bono basis and, therefore, will not benefit from a competitive bidding process.

(d) Any requests for proposal shall be posted to the website of the Office of the Attorney General. The time period under which the proposal is open should be clearly stated.

(e) When soliciting proposals from private attorneys to represent the state on the basis of a fee arrangement as set forth in subsection (h) of this section, the Attorney General, or his or her designee, shall consider the following factors when determining the most competitive proposal for legal services and make a written determination as to the application of these factors, prior to entering into any contract for outside legal services:

(1) Whether the private attorneys possess the requisite skills and expertise needed to handle the legal matters in question;

(2) Whether the private attorneys possess requisite staffing and support to handle the scope of the litigation or matter;

(3) Whether the private attorneys or any members of the private attorneys' law firm have been subject to discipline by the West Virginia State Bar, or other entities, for unethical conduct;

(4) Whether the private attorneys have been peer rated and, if so, what peer ratings they have received, along with any other recognitions or awards for legal services;

(5) The estimated fees, costs and expenses of the private attorneys to perform the legal services requested;

(6) The willingness of the private attorneys to enter into alternative billing arrangements;

(7) Whether the private attorneys are in compliance with all applicable laws of the State of West Virginia;

(8) Any potential disqualifying conflicts of interest between the private attorneys and the state;

(9) Any relevant input from the state entity client, if applicable, regarding the needed legal services; and

(10) Any such other relevant factors as may be identified by the Attorney General or his or her designee.

(f) If, after soliciting proposals for legal services, the Attorney General, or his or her designee, determines that the proposals received are insufficient based on an application of the factors set forth in subsection (e) of this section, additional proposals may be solicited pursuant to subsections (b), (c) and (e) of this section.

(g) The state shall not enter into a contingency fee legal arrangement or contract as defined herein for private attorney services unless the following requirements are met throughout the contract period and any extensions thereof:

(1) The Attorney General, or the deputy or assistant Attorney General involved in the case, shall retain control over the course and conduct of the case;

(2) The Attorney General, or the deputy or assistant Attorney General with supervisory authority, is personally involved in overseeing the litigation;

(3) The Attorney General, or the deputy or assistant Attorney General involved in the case, retains veto power over any decisions made by any appointed private attorneys; and

(4) Decisions regarding settlement of the case are reserved exclusively to the discretion of the state or other client entity. An appropriate representative of the Attorney General's office shall attend settlement conferences whenever possible.

(h) The state may not enter into any fee arrangement that provides for the private attorney to receive an aggregate fee in excess of:

(1) Twenty-five percent of the first \$10 million recovered; plus

(2) Twenty percent of any portion of the recovery between \$10 million and \$15 million; plus

(3) Fifteen percent of any portion of the recovery between \$15 million and \$20 million; plus

(4) Ten percent of any portion of the recovery between \$20 million and \$25 million; plus

(5) Five percent of any portion of the recovery exceeding \$25 million.

In no event shall the aggregate fee for any legal matter exceed \$50 million for any matters arising from a single event or occurrence, exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery. Any legal fees shall not be based on penalties or fines awarded or any amounts attributable to penalties or fines.

To the extent that any private attorneys are to be paid through a court-approved award of attorney's fees, their appointment to represent the state is contingent upon the acceptance of the fee limitations set forth herein. To the extent that any award of attorney fees is subject to judicial discretion, the private attorneys appointed pursuant to this section may not accept an award of attorney fees greater than the fee limitations outlined in this subsection.

(i) The Attorney General shall develop a standard addendum to every contract for private attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the Attorney General's office, including, without limitation, the requirements listed in subsection (h) of this section.

(j) Subject to the provisions of subsection (l) of this section, the Attorney General's written determination to enter into any legal arrangement or contract with a private attorney shall be posted on the Attorney General's website for public inspection within ten business days after the selection of a private attorney and shall remain posted on the website for the duration of the contract for legal services, including any extensions or amendments thereto. Any and all written determinations made pursuant to subsection (b) or (c) of this section shall also be posted on the Attorney General's website for public inspection within ten business days after the issuance of the written determination. Any payment of fees as set forth in subsection (h) of this section shall be posted on the Attorney General's website within thirty calendar days after the payment of such fees to the private attorney and shall remain posted on the website for at least three hundred sixty-five calendar days thereafter.

(k) Any private attorney under contract to provide services to the state shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such

legal services. In conjunction with the Attorney General's office, the private attorney shall make all such records that are not covered by the attorney-client privilege or otherwise confidential in nature available for inspection and copying upon request in accordance with the West Virginia Freedom of Information Act, sections one through seven, inclusive, article one, chapter twenty-nine-b of this code. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys, other professionals and paraprofessionals working on the matter for a period of at least four years and shall promptly provide these records to the Attorney General upon request.

(l) The Attorney General retains the right to temporarily waive the disclosure requirements set forth in subsection (j) of this section upon making a written determination that:

(1) A waiver is necessary to protect attorney-client or privileged information; or

(2) Immediate disclosure of the existence of an arrangement or contract with a private attorney, or any other sensitive information, could compromise the initiation, handling or conclusion of any investigation or case matter handled by the office of Attorney General.

Once any risks to the attorney-client privilege or confidential work product are no longer present, the office of Attorney General shall make any and all suspended disclosures as soon as possible and all subsequent disclosures in accordance with the time frame and manner set forth by subsection (j) of this section.

(m) Once a private attorney is appointed pursuant to this section, he or she may thereafter be designated as a special assistant Attorney General, and, upon such appointment, shall provide representation subject to the terms contained in subsection (g) of this section.

(n) If the Attorney General's office chooses to not be involved in a legal matter as a result of a conflict of interest, and thus cannot implement in good faith the provisions of this section as a result of the conflict, then the process set forth herein shall be implemented by the client state entity needing representation, with the assistance of the Department of Administration if necessary.

(o) Nothing in this section expands the authority of any state agency or state agent to enter into contracts nor shall it be deemed to change any existing law that authorizes a state agency or state agent to employ its own counsel or enter into contracts for legal services.

§5-3-4. Annual report to Governor, President of the Senate and Speaker of the House.

(a) The Attorney General shall annually, on or before November 1, deliver to the Governor, President of the Senate and Speaker of the House a report of detailing:

(1) The state and condition of the several causes, in which the state is a party, pending in courts mentioned in section two of this article.

(2) The use of any fee arrangements as provided in subsection (h), section three-a of this article with private attorneys in the preceding year. At a minimum, the report shall:

(A) Identify all new fee arrangements entered into during the year and all previously executed fee arrangements that remain current during any part of the year and for each contract describe:

(i) The name of the private attorney with whom the state has contracted, including the name of the attorney's law firm;

(ii) The nature and status of the legal matter;

(iii) The name of the parties to the legal matter;

(iv) The amount of the recovery; and

(v) The amount of any legal fees paid.

(B) Include copies of any written determinations made pursuant to section three-a of this article during the year.

(b) The Attorney General's annual report shall be posted on the Attorney General's website within thirty days of submitting the report to the Governor, President of the Senate and Speaker of the House and shall remain posted on the website for at least two years thereafter.

(c) Nothing in this section shall be considered to require the Attorney General to report or disclose any information protected by the attorney-client or other privilege.

The bill (Eng. Com. Sub. for H. B. 4007), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

Com. Sub. for Senate Bill 278, Clarifying physicians' mutual insurance company is not state or quasi-state actor.

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

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

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on February 4, 2016, he had approved **Enr. Senate Bill 364**.

Pending announcement of meetings of standing committees of the Senate, including a majority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Saturday, February 6, 2016, at 10 a.m.

SENATE CALENDAR

**Saturday, February 06, 2016
10:00 AM**

UNFINISHED BUSINESS

- S. C. R. 23 - Johnny Mack Bryant Memorial Bridge.
S. C. R. 24 - U.S. Army PFC Arland W. Hatcher Memorial Bridge.

THIRD READING

- Eng. Com. Sub. for S. B. 68 - Disallowing Health Care Authority to conduct rate review and set rates for hospitals.
Eng. Com. Sub. for S. B. 326 - Repeal and recodify law relating to contributing to delinquency of minor child.
Eng. Com. Sub. for S. B. 361 - Prohibiting persons who have committed crimes against elderly from performing community service involving elderly.
Eng. Com. Sub. for H. B. 4007 - Relating generally to appointment of attorneys to assist the Attorney General - (Com. title amend. pending).

SECOND READING

- Com. Sub. for S. B. 278 - Clarifying physicians' mutual insurance company is not state or quasi-state actor.

FIRST READING

- Com. Sub. for S. B. 6 - Requiring drug screening and testing of applicants for TANF program - (Com. amend. pending).
Com. Sub. for S. B. 39 - Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.
Com. Sub. for S. B. 43 - Clarifying means of posting to prohibit hunting or trespassing.
Com. Sub. for S. B. 309 - Relating to child-care center licensing and exempting county parks and recreation from licensure.
S. B. 345 - Relating to parking on state-owned or leased property.
S. B. 346 - Updating projects managed by Project Management Office.
S. B. 349 - Updating meaning of federal adjusted gross income.
S. B. 419 - Terminating taxes imposed under Workers' Compensation Debt Reduction Act of 2005.
S. B. 426 - Continuing Office of Coalfield Community Development.

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Saturday, February 6, 2016

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| 9 a.m. | Finance | (Room 451M) |
| Upon Adjournment | Government Organization | (Room 208W) |

Tuesday, February 9, 2016

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|-----------|-----------------------|-----------------|
| 4:30 p.m. | Joint Water Resources | (House Chamber) |
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