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TWENTIETH DAY

Monday, February 27, 2017

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[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Tim Armstead, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Friday, February 24, 2017, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Committee Reports

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

H. B. 2646, Terminating the Women's Commission and discontinue its functions,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2646 – "A Bill to repeal §29-20-2, §29-20-3, §29-20-4, §29-20-5 and §29-20-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-20-1 of said code, all relating to termination of the Women's Commission,"

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

H. B. 2329, Prohibiting the production, manufacture or possession of fentanyl,

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. B. 2329 – "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-414, relating to prohibiting the manufacture, delivery, possession with intent to manufacture or deliver, and transport into state of fentanyl; defining terms; establishing increased penalties for manufacturing, delivering, possessing with intent to manufacture or deliver, and transporting into state with intent to deliver or manufacture in which fentanyl is a controlled substance involved in the offense; and establishing criminal penalties,"

H. B. 2620, West Virginia Drug Overdose Monitoring Act,

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. B. 2620 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-9C-1, §15-9C-2, §15-9C-3 and §15-9C-4, all relating to the collection of data pertaining to the prosecutions and overdoses of controlled substances; establishing an office of drug control policy; establishing the purpose and responsibilities of the office; declaring the office to be a law enforcement entity capable of receiving and sharing law enforcement information; directing that the office be operated, supervised and controlled by the Director of the Division of Justice and Community Services; setting for the staffing of the office, including the availability of future staffing, resources and equipment upon obtaining grant funding, federal funds, or other funding; setting forth the executive and administrative responsibilities of the office of drug control policy; establishing a reporting program for collection of criminal statistics; setting forth legislative purpose for collection of data; requiring the prosecuting attorney for each county to compile data relating to the criminal matters involving a violation of the uniform controlled substances act; directing the Division of Justice and Community Services to establish a reporting form to allow for reporting of information; setting forth information required to be reported; providing for data collection and reporting to the Division of Justice and Community Services; requiring that certain personally identifiable information about a specific defendant not be reported; establishing a reporting program for collection of data on overdoses; setting forth legislative purpose for collection of data; establishing a reporting program for collection of fatal and nonfatal overdoses in the state; directing the office of drug control policy establish a central repository for collection of data; directing the office to consult with affected entities in implementing the data collection program; establishing information required to be reported; directing the Division of Justice and Community Services to establish a reporting form to allow for reporting of information; setting forth information required to be reported; setting forth the entities required to report information; providing for data collection and reporting to the Division of Justice and Community Services through legislative rule; requiring that certain personally identifiable information about a specific defendant not be reported; and providing for rule-making authority,”

And,

H. B. 2648, Increasing penalties for manufacturing or transportation of a controlled substance in the presence of a minor,

And reports back a committee substitute therefor, with a new title, as follows:

Com. Sub. for H. B. 2648 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-406a; and to amend and reenact §61-8D-1 and §61-8D-4 of said code, all relating to increased penalties for manufacturing or transportation of a controlled substance in the presence of a minor; providing for mandatory minimum period of incarceration for adult persons convicted of manufacturing, delivering, or possessing with the intent to manufacture or deliver a controlled substance, which is a Schedule I or II narcotic, in the presence of a minor; providing for mandatory minimum period of incarceration for adult persons convicted of manufacturing, delivering, or possessing with the intent to manufacture or deliver a controlled substance, which is a Schedule I, II or III non-narcotic, in the presence of a minor; providing for mandatory minimum period of incarceration for adult persons convicted of transporting a controlled substance into this state with the intent to deliver or manufacture a controlled substance, which is a Schedule I or II narcotic, while being in the presence of a minor at the time of the offense; providing for mandatory minimum period of incarceration for adult persons convicted of transporting a controlled substance into this state with the intent to deliver or manufacture a controlled substance, which is a Schedule I, II or III non-narcotic, while being in the presence of a minor at the time of the offense; requiring certain information and findings to be included in indictment or presentment; requiring certain facts to be determined by the court or jury; adding to the definition of ‘neglect’; creating a crime of neglect by a parent, guardian or custodian in which the parent, guardian or custodian is under the influence of a controlled substance and knowingly causes or permits a minor

to be present in a location with the parent, guardian or custodian, and no bodily injury occurs to the minor child; and establishing criminal penalties,”

With the recommendation that the committee substitutes each do pass.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 41 - “A Bill to amend and reenact §62-12-11 of the Code of West Virginia, 1931, as amended, relating to extending the total number of years that a person may be subject to a period of probation”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 113 - “A Bill to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to awarding of matching grants for local litter control programs; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to alternative emission limitations during startup, shutdown and maintenance operations; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 325 – “A Bill to amend and reenact §20-2-42a, §20-2-42q, §20-2-42s and §20-2-42v of the Code of West Virginia, 1931, as amended, all relating to crossbow hunting; and clarifying use of crossbows with certain licenses and stamps”; which was referred to the Committee on Agriculture and Natural Resources then the Judiciary.

Resolutions Introduced

On motion for leave, a Joint Resolution was introduced, read by its title and referred as follows:

By Delegates Wilson, Paynter, Dean, Maynard, Higginbotham, Folk, N. Foster and Bates:

H. J. R. 21 – “Proposing an amendment to the Constitution of the State of West Virginia, amending section three, article VI thereof, all relating to limiting the number of years Senators and Delegates may serve; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment”; to the Committee on the Judiciary.

Mr. Speaker, Mr. Armstead and Delegate Rowan, on Behalf of all Members of the House of Delegates, offered the following resolution, which was read by the Clerk as follows:

H. R. 9 – “Memorializing the life and lamenting the death of Dr. Ken Hechler.”

Whereas, Ken Hechler was born on September 20, 1914, in Roslyn, New York, the son of Charles Henry and Catherine Elizabeth Hauhart Hechler and the grandson of German immigrant, George Hechler; and

Whereas, Ken Hechler received a bachelor’s degree from Swarthmore College in 1935, where he helped organize campus support for President Franklin D. Roosevelt’s New Deal, much to the chagrin of his staunchly Republican parents. He earned a master’s degree in 1936 and Ph.D. in political science in 1940, both from Columbia University; and

Whereas, Dr. Hechler was drafted into the United States Army in 1942 and was originally trained as an infantryman and then as a tank commander. He was eventually assigned as an Army combat historian in Europe and rose to the rank of Colonel; and

Whereas, After the war, Dr. Hechler taught politics at Princeton University before joining President Harry Truman’s administration as an adviser on local-level issues. He stayed throughout Truman’s administration and into the administration of President Dwight D. Eisenhower; and

Whereas, From 1953 to 1957, Dr. Hechler was Associate Director of the American Political Science Association in Washington, D.C.; and

Whereas, Ken Hechler was then appointed to the faculty of Marshall College (now Marshall University) where he was a longtime presence on campus; and

Whereas, In 1958, he ran for and won a seat in the United States House of Representatives where he served nine terms before running for governor in 1976 but lost to a fellow New York transplant, Jay Rockefeller; and

Whereas, In 1984, Dr. Hechler ran for and was elected Secretary of State where he served for sixteen years; and

Whereas, In addition to his public service, Dr. Ken Hechler was an accomplished author whose works included “The Bridge at Remagen”, “Goering and His Gang”, “West Virginia Memories of President Kennedy”, and “Working with Truman: A Personal Memoir of the White House Years”; and

Whereas, In his later years, Ken Hechler was a political activist in support of workplace safety and environmental issues. On June 23, 2009, then aged 94, Dr. Hechler participated in a protest near mountaintop removal mining sites in the West Virginia coalfields; and

Whereas, Unmarried for almost all of his life, Dr. Ken Hechler married Carol Kitzmiller, a longtime friend and fellow mountaintop removal protestor, on August 12, 2013; therefore

Resolved by the House of Delegates:

That the members of the House of Delegates hereby publicly memorialize the life of Dr. Ken Hechler, and collectively mourn his death, while remembering that he leaves behind a legacy of success and accomplishment; that this House of Delegates proclaims that although Dr. Ken Hechler has passed from this earthly life, he will continue to live in the hearts and minds of those who knew him; and, be it

Further Resolved, That the Clerk of the House of Delegates prepare a certified copy of this resolution for his wife.

At the request of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 9) to a committee was dispensed with, and it was taken up for immediate consideration.

The question now being on the adoption of the resolution, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 17**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Ellington and Lewis.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. R. 9) adopted.

Bills Introduced

On motions for leave, bills were introduced, read by their titles, and severally referred as follows:

By Delegates Hill, Kessinger, N. Foster, Martin, Dean, Wilson, Sobonya, Arvon, Blair and C. Miller:

H. B. 2710 - "A Bill to amend and reenact §61-8D-4a of the Code of West Virginia, 1931, as amended, relating to including unborn child or fetus in statute setting criminal penalties for child neglect resulting in death"; to the Committee on the Judiciary.

**By Mr. Armstead (Mr. Speaker), and Delegate Miley
[By Request of the Executive]:**

H. B. 2711 - "A Bill to amend and reenact §18-2-5b, §18-2-24, §18-2-26 and §18-2-26a of the Code of West Virginia, 1931, as amended; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-5-13 and §18-5-45 of said code; to amend and reenact §18-9A-8a of said code; to amend and reenact §18-9D-16 of said code; to amend and reenact §18A-4-2 and §18A-4-14 of said code; and to amend and reenact §30-31-11 of said code, all relating generally to education; abolishing regional educational service agencies and providing for the transfer of property and records; establishing the County Superintendents' Advisory Council; setting forth the council's authority and responsibilities, including the formation of four geographic quadrants to carry out the work of the council; requiring reports; removing requirement of county boards within regional educational service agency areas RESA to meet to identify areas of shared services; removing the requirement of the West Virginia School Board Association submit annual reports on recommended county level shared services and functions to the Legislative Oversight Committee on Education Accountability; requiring state summative assessments in English Language Arts and Math to be administered in grades three through eight and once in grades nine through twelve; requiring state summative assessment in science to be administered once in grades three through eight, six through nine and ten through twelve; requiring the State Board of Education to review or develop and approve a college-and career readiness assessment to be administered in eleventh grade; eliminating the office of Education

Performance Audits and transitioning to a process of continuous improvement and performance measures; amending school accreditation, accountability and school performance to include multiple measures; preventing the use of one measure for accreditation of schools and school systems; including student growth as a measure that may be used for school and school system accreditation; eliminating intervention at the school level; changing the county level intervention process by the State Board of Education; transferring coordination functions of RESA to county school systems; requiring the State Board of Education to set a minimum number of hours or minutes of instructional time per year to use to meet one hundred eighty separate days of instruction; providing up to five days in the school calendar that may be 'reimagined' and used to meet the one hundred eighty separate days of instruction requirement; reducing funding allowance for RESA; removing 'economies of scale' language from guidelines for the School Building Authority project proposals; providing for a pay raise for classroom teachers; requiring uninterrupted time for planning periods each week to be used for instructional planning; and removing the outdated requirement for the State Board of Education to conduct a study on planning periods and report findings to the Legislative Oversight Committee on Education Accountability"; to the Committee on Education then Finance.

By Delegates Wilson, Paynter, Maynard, Criss, Kelly, Dean and Folk:

H. B. 2712 - "A Bill to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended, relating to permitting persons who have been issued state licenses to carry concealed deadly weapons to carry those weapons on the grounds of the State Capitol Complex, except for the third and fourth floors of the east wing of Building One"; to the Committee on the Judiciary.

By Delegates Wilson, Paynter, N. Foster, Hill, Kelly, Higginbotham, Dean, Folk, Gearheart and Maynard:

H. B. 2713 - "A Bill to amend and reenact §18B-4-5a of the Code of West Virginia, 1931, as amended, relating to permitting the carrying of concealed weapons on the campus of a state institution of higher education"; to the Committee on Education then the Judiciary.

By Delegates Wilson, Paynter, Maynard, N. Foster, Hill, Criss, Higginbotham, Dean and Folk:

H. B. 2714 - "A Bill to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to permitting persons who have been issued state licenses to carry concealed deadly weapons pursuant to section four, article seven, chapter sixty-one of this code to possess a firearm or other deadly weapon on or in a private primary or secondary education building, structure or facility"; to the Committee on Education then the Judiciary.

By Delegates Wilson, Phillips, Paynter, Higginbotham, Dean and Maynard:

H. B. 2715 - "A Bill to repeal §61-11-2 of the Code of West Virginia, 1931, as amended; to repeal §62-3-15 of said code; to amend and reenact §61-2-2 of said code; to amend said code by adding thereto seven new sections, designated §61-2-2a, §61-2-2b, §61-2-2c, §61-2-2d, §61-2-2e, §61-2-2f and §61-2-2g; and to amend said code by adding thereto four new sections, designated §62-7-4, §62-7-5, §62-7-6 and §62-7-6a, all relating to the death penalty for first degree murder; procedures, standards and findings applicable to imposition thereof in certain instances including aggravating and mitigating circumstances; sentencing; providing automatic review of the death penalty by the Supreme Court of Appeals; providing for forensic deoxyribonucleic acid ('DNA') testing of biological material in death penalty cases; providing for execution of the death sentence by lethal injection; providing for delivery of sentence of death to officer retaining custody of person so sentenced; providing for transmission of indictment, order of conviction, sentence and judgment entered thereon to the warden of the state correctional facility; transfer of person sentenced to death to the state correctional facility; execution; providing presence of certain persons be requested for the execution; providing for certification that sentence of death has been executed; and providing for disposition of the body"; to the Committee on the Judiciary then Finance.

By Delegates Ward, Howell, McGeehan, Hamrick, Miley, Wilson, Hollen, Paynter, Frich, Butler and Arvon:

H. B. 2716 - "A Bill to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating to imposing an indefinite moratorium on new business and occupancy or privilege taxes in West Virginia municipalities; prohibiting municipalities that annex new territory from imposing preexisting business and occupancy or privilege taxes on businesses within the annexed territory; prohibiting municipalities from raising preexisting business and occupancy or privilege taxes; and permitting municipalities to lower preexisting business and occupancy or privilege taxes"; to the Committee on Political Subdivisions then Finance.

By Mr. Armstead (Mr. Speaker), and Delegate Miley

[By Request of the Executive]:

H. B. 2717 - "A Bill to repeal §17-16B-1, §17-16B-2, §17-16B-3, §17-16B-4, §17-16B-5, §17-16B-6, §17-16B-7, §17-16B-7a, §17-16B-7b, §17-16B-8, §17-16B-9, §17-16B-10, §17-16B-11, §17-16B-12, §17-16B-13, §17-16B-14, §17-16B-15, §17-16B-16, §17-16B-17, §17-16B-18, §17-16B-19, §17-16B-20, §17-16B-21, and §17-16B-22 of the Code of West Virginia, 1931, as amended; to repeal §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-3a, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-8, §29-2A-9, §29-2A-10, §29-2A-11, §29-2A-11a, §29-2A-11b, §29-2A-11c, §29-2A-11d, §29-2A-11e, §29-2A-11f, §29-2A-12, §29-2A-13, §29-2A-14, §29-2A-17, §29-2A-18, §29-2A-19, §29-2A-20, §29-2A-21, §29-2A-22, §29-2A-23, §29-2A-24, §29-2A-25, §29-2A-26, §29-2A-27 and §29-2A-28 of said code; to repeal §29-18-1, §29-18-2, §29-18-3, §29-18-4, §29-18-4a, §29-18-5, §29-18-6, §29-18-7, §29-18-8, §29-18-9, §29-18-10, §29-18-11, §29-18-12, §29-18-13, §29-18-14, §29-18-15, §29-18-16, §29-18-17, §29-18-18, §29-18-19, §29-18-20, §29-18-21, and §29-18-22, §29-18-23, §29-18-24, and §29-18-25 of said code; to amend and reenact §5F-2-1 of said code, and to amend said code by adding thereto a new article, designated §17-16F-1, §17-16F-2, §17-16F-3, §17-16F-4, §17-16F-5, §17-16F-6, §17-16F-7, §17-16F-8, §17-16F-9, §17-16F-10, §17-16F-11, §17-16F-12, §17-16F-13, §17-16F-14, §17-16F-15, §17-16F-16, §17-16F-17, §17-16F-18, §17-16F-19, §17-16F-20, §17-16F-21, §17-16F-22, §17-16F-23, §17-16F-24, §17-16F-25, §17-16F-26, §17-16F-27, §17-16F-28, §17-16F-29, §17-16F-30, §17-16F-31 and §17-16F-32, all relating to the creation of the division of multimodal transportation; combining the powers and duties and eliminating certain references to the Public Port Authority, the West Virginia State Rail Authority and the state Aeronautics Commission; providing for legislative findings and creation of the division; transferring employees, equipment, assets, liabilities, contracts, agreements, functions and duties to the division; providing for all property currently held by the Public Port Authority, the West Virginia State Rail Authority and the state Aeronautics Commission to be transferred to the division; authorizing the Secretary of the Department of Transportation to appoint the director; providing for qualifications for the director; establishing general powers and duties of the director; defining terms; establishing the powers and duties of the division generally; requiring division to promote, supervise and support safe, adequate and efficient transportation, preserve rail, water, highway and airway facilities and promote economic development and tourism; authorizing division to work cooperatively with similar entities within and without the state; providing for siting, development and operation of facilities; authorizing employment of trained and qualified staff and consultants and compensating therefor; providing the right to enter into contracts and agreements; authorizing acquisition of various types and interests in property to be held in the name of the state; authorizing use of eminent domain; authorizing acquisition and disposal of property by various means; authorizing interagency cooperation; authorizing division to act on behalf of the state in planning, financing, development, construction, and operation of port, railroad and aeronautic projects or facilities; reporting annually to Legislature on status of projects, operations, finances and related information; authorizing study and assessment of state transportation needs; authorizing use of various financing options including issuing revenue bonds and receipt of grants and loans; authorizing division to make grants and loans to governmental agencies and persons for multimodal transportation projects; permitting collection of reasonable fees and charges connected to making and servicing loans, notes, bonds and other obligations; granting

rule-making authority to the division; continuing all rules, policies and orders of the combined entities until revised and reissued by the division; requiring strategic plan and reports to the Governor and the Legislature; requiring collection and analysis of shipping through state ports; providing for confidentiality of collected information and providing criminal penalty for violation; providing that division employees may not have direct or indirect financial interest in contracts, sale of property of the division and providing criminal penalty for violation; providing that activities of division are for public purpose; authorizing the division to use certain property or facilities of a public utility, common carrier, public road, highway or railroad for certain public projects; requiring the division to relocate any such property or facilities; providing for rules regarding relocation or removal of railroad or public utility located on division property; requiring the division to pay for said relocation or removal; encouraging participation of private enterprise in construction and operation of facilities; authorizing lease back to division; authorizing development of foreign trade zones, free trade zones, ports of entry, and customs zones; providing for specific duties related to port projects; authorizing the division to act on behalf of the state in developing, operating, improving and maintaining ports; authorizing the division to coordinate and cooperate with other port entities; creating the West Virginia Multimodal Operations Fund and transference of funds and liabilities of the West Virginia Public Port Authority Operations Fund; eliminating local port authority districts; providing for specific duties related to rail projects; authorizing the exercise of powers necessary to qualify for federal subsidies; authorizing various means to carry out rail projects that are consistent with state plan with other entities; providing authority for the division to establish, fund, construct, reconstruct, acquire, repair, replace, operate, maintain and make available to other entities railroad projects; providing that research and development of railroads may be conducted; providing that contracts may be entered into to acquire various rolling stock, equipment or trackage and providing the requirements therefor; providing for the authority to enter into agreements that are beneficial to railroad projects notwithstanding other code provisions, including the authority to reject bids; authorizing division to purchase various types of insurance; authorizing the collection of fees for use of rail projects; providing for the administration and coordination of a state plan, including the distribution of federal subsidies; providing for investigation, research, promotion and development with public participation; authorizing the provision of fiscal assurances and adoption of accounting procedures necessary to continue subsidies; authorizing compliance with applicable federal regulations; authorizing all actions necessary to maximize federal assistance for rail subsidies; providing powers necessary to coordinate with the Maryland Transit Administration for continued operation in the state, including negotiation and contracting authority; providing that any commuter rail operation agreement will meet certain service standards; providing that any track access fees to be paid pursuant to the agreement shall be paid from the West Virginia Commuter Rail Access Fund; authorizing sale or transfer of interest in rail other property with federal approval when required; authorizing assistance to entities seeking federal railroad service certification, including the provision of any necessary assurances or guarantees; authorizing division to retain attorney or others to title ownership of rail properties within the state; requiring rail properties offered for sale within the state to be offered first to the state; providing that division may acquire railroad rights in other states and may cooperate with other states in so purchasing any rail properties; providing for the division to give consideration to county or municipality interest in acquiring abandoned property interest and providing for the division to acquire any such abandoned property for subsequent conveyance to a county or municipality; authorizing the division to apply for and utilize federal funds or loans in carrying out its purposes of this article; authorizing the purchase of any railroad rolling stock, equipment and machinery necessary for the operation and maintenance of state rail properties and authorizing contracts with the Division of Highways for maintenance or purchase of vehicles; authorizing maintenance, rebuilding or relocation of state rail properties and authorizing expenditures for the modernization, rebuilding and relocation of any rail properties owned by the state or private carrier; providing for contracting with domestic or foreign entities to provide, maintain or improve rail transportation service on state rail properties; providing for transfer of rail properties to other entities within the state when permitted by the Governor; authorizing the division to resolve conflicts when multiple entities want to utilize the same

rail property; providing for proceeds from the sale of state rail property to be deposited in Railroad Maintenance Fund; terminating Railroad Maintenance Authority Fund and creating a Railroad Maintenance Fund for proceeds and expenditures related to division's purpose; authorizing expenditure from any fund for study of proposed rail projects and use of funds from Railroad Maintenance Fund for study and engineering costs; authorizing the issuance of railroad maintenance revenue bonds and notes for costs of rail projects, including issuance of renewal notes and bond refund, with aggregate amount of all issues of bonds and notes outstanding at one time not exceeding amount capable of being serviced by revenues received; providing that issues of bonds or notes are negotiable instruments and are obligations of the division and are payable out of the its revenues which are pledged for such payment; providing for maturity date, terms of execution, sale, redemption and delivery; authorizing the establishment of various conditions necessary to secure sufficient funds to protect bonds or notes; providing that person executing bonds or notes is not personally liable therefor; providing for trust agreement to secure bonds issued by division and creating conditions therefor, not including mortgage of any rail project; allocating expenses of bond issuance or trust agreement to rail projects; providing for civil action for bondholders seeking to enforce rights granted; providing that bonds are payable from division revenues and are not a debt of state or political subdivision; restricting division from incurring debt on behalf of state or political subdivision; authorizing use of proceeds from bonds to carry out divisions powers and prohibiting commingling with other funds; providing for the investment of excess funds by West Virginia State Board of Investments; authorizing division to collect rents or revenues for use of rail projects; providing for cooperation with other governmental agencies to effect acquisition of rail project or bond issuance; authorizing division to maintain rail projects in good repair; providing that railroad maintenance bonds are lawful investments for various entities; continuing West Virginia Commuter Rail Access Fund which is administered by division director; requiring division to establish a state rail plan that complies with federal requirements for funding; providing for specific duties related to aeronautics projects; authorizing division to advance development of aeronautics in cooperation with municipalities; authorizing rules necessary for public safety related to airports and aeronautics; providing for the expenditure of funds for various needs of civil air patrol; authorizing division to fund grants for public airport authorities; authorizing division to receive federal funding to support airports or air navigation facilities; and providing for procedures and conditions for use of federal funds"; to the Committee on Government Organization then Finance.

By Mr. Armstead (Mr. Speaker), and Delegate Miley

[By Request of the Executive]:

H. B. 2718 - "A Bill to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating generally to severance taxes imposed on the privilege of producing coal for sale, profit or commercial use; specifying effective date; and making technical corrections"; to the Committee on Energy then Finance.

By Mr. Armstead (Mr. Speaker), and Delegate Miley

[By Request of the Executive]:

H. B. 2719 - "A Bill to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended, relating generally to severance tax imposed on privilege of severing natural gas for sale, profit or commercial use; specifying effective date; and making technical corrections"; to the Committee on Energy then Finance.

By Mr. Armstead (Mr. Speaker), and Delegate Miley

[By Request of the Executive]:

H. B. 2720 - "A Bill to amend and reenact §18-9D-8 of the Code of West Virginia, 1931, as amended; relating to allowing the School Building Authority to transfer funds allocated into the School Construction Fund to a special revenue account in the State Treasury"; to the Committee on Education then Finance.

By Mr. Armstead (Mr. Speaker), and Delegate Miley**[By Request of the Executive]:**

H. B. 2721 - "A Bill to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, all relating to the public-private transportation facilities act; removing the cost limitation on projects completed by the Division of Highways; and eliminating the sunset provision"; to the Committee on Roads and Transportation then Finance.

By Mr. Armstead (Mr. Speaker), and Delegate Miley**[By Request of the Executive]:**

H. B. 2722 - "A Bill to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating to eliminating the financial limitations on utilizing the design-build program for highway construction"; to the Committee on Roads and Transportation then Finance.

By Delegates Howell, Hamrick, Blair, Maynard, Paynter, Walters, Arvon, Hill, Queen, Criss and Ward:

H. B. 2723 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §3-5A-1, §3-5A-2, §3-5A-3, §3-5A-4, §3-5A-5, §3-5A-6, §3-5A-7 and §3-5A-8 all relating to elections generally; primary elections for nonpartisan offices including Justices of the Supreme Court, circuit court judges, family court judges, and magistrates; legislative findings; primary date; political parties presidential preference vote may be changed; election at primary under stated circumstances; municipal elections moved to general election dates and limitations of article"; to the Committee on the Judiciary.

By Mr. Armstead (Mr. Speaker), and Delegate Miley**[By Request of the Executive]:**

H. B. 2724 - "A Bill to amend and reenact §5-26-1 and §5-26-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §5-26-3 and §5-26-4, all relating to responsibilities and functions of the Herbert Henderson Office of Inclusion; changing the name of the Herbert Henderson Office of Minority Affairs to the Herbert Henderson Office of Inclusion; requiring the office to report to the Select Committee on Minority Affairs; requiring the director to review and consider any recommendations of the Select Committee on Minority Affairs; defining terms; continuing the Minority Affairs Fund under the name of the Office of Inclusion Fund; establishing a community-based pilot demonstration project; providing for operation and funding of a pilot project; setting forth objectives and goals of said pilot project; and requiring the leveraging of existing resources"; to the Committee on Political Subdivisions then Health and Human Resources.

By Delegates Howell, Hamrick, Atkinson, Householder, Arvon, Ellington, Walters, Shott, Hanshaw, Hill and Martin:

H. B. 2725 - "A Bill to amend and reenact §30-27-5 of the Code of West Virginia, 1931, as amended, relating to restricting the authority of the Board of Barbers and Cosmetologists to regulate the use of commonly available, retail beauty products"; to the Committee on Government Organization.

House Calendar**Third Reading**

Com. Sub. for H. B. 2001, Relating to ethics and transparency in government; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 18**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Ellington and Lewis.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2001) passed.

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

Com. Sub. for H. B. 2028, Relating to the venue for suits and other actions against the state; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 19**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Ellington and Lewis.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2028) passed.

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

Com. Sub. for H. B. 2359, Relating to offenses and penalties for practicing osteopathic medicine without a license; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 20**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Folk and McGeehan.

Absent and Not Voting: Ellington and Lewis.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2359) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 2359 – “A Bill to amend and reenact §30-14-12 of the Code of West Virginia, 1931, as amended, relating to offenses and penalties for practicing osteopathic medicine without a license; and creating a felony crime of practicing or attempting to practice osteopathic medicine without a license or permit and providing criminal penalties.”

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

Com. Sub. for H. B. 2479, Uniform Deployed Parents Custody and Visitation Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 21**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Ellington and Lewis.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2479) passed.

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

Second Reading

Com. Sub. for H. B. 2083, Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2123, Making the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2486, Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2542, Relating to public higher education personnel; on second reading, coming up in regular order, was read a second time.

Delegate Folk moved to amend the bill on page three, following the enacting section, by striking out the remainder of the bill inserting in lieu thereof the following:

“ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission abolished; transfer of powers and duties.

(a) The Higher Education Policy Commission is hereby abolished, effective July 1, 2017.

(b) All powers and duties of the Higher Education Policy Commission related to the internal governance of institutions of higher education shall be transferred to the governing boards of the institutions.

(c) All powers and duties of the Higher Education Policy Commission to provide, secure, or administer financial support for educational or research purposes, including, but not limited to, state or federal scholarships, grants, fellowships, and loans, shall be transferred to the respective institutions.

(d) All monetary assets of the Higher Education Policy Commission shall be transferred into the state's General Revenue Fund. All other property of the Higher Education Policy Commission shall

be disposed of or transferred in accordance with the requirements of section twelve, article ten, chapter four of this code.

(e) All powers and duties of the Higher Education Policy Commission to administer the Promise Scholarship program shall be transferred to the West Virginia State Treasurer's Office.

(f) All powers and duties of the Higher Education Policy Commission related to WVNET shall be transferred to West Virginia University: *Provided*, That no higher education institution or agency shall be mandated to use WVNET provided services."

Delegate Cowles arose to a point of order as to the germaneness of the amendment.

To the point of order, the Speaker replied that the purpose of the amendment went beyond the fundamental purpose of the bill and ruled that the amendment was not germane.

Delegate Fleischauer asked unanimous consent that the bill be advanced to third reading with amendments pending and the right to amend on third reading, which consent was not given, objection being heard.

On motion of Delegates Moye, Fleischauer, Caputo and Ferro the bill was amended on page fifteen, section three, line thirteen, following the words "after consultation with", by inserting the words "and providing 30 days written notice to".

On page twenty-one, section seven, line one, following the words "consulting with", by inserting the words "and providing 30 days written notice to".

And,

On page thirty-two, section one, line nine, following the word "consultation with", by inserting the words "and providing 30 days written notice to".

Delegates Moye, Fleischauer, Caputo and Ferro moved to amend the bill on page fourteen, section three, line fifteen, by reinserting the language "and for recall of employees laid off".

Delegate Marcum requested to be excused from voting on the amendment under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegate would be as a member of a class of persons possibly to be affected by the amendment and refused to excuse the Delegate from voting.

On the adoption of the amendment Delegate Caputo demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 22**), and there were—yeas 43, nays 54, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Baldwin, Barrett, Bates, Boggs, Brewer, Byrd, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Folk, Frich, Hamilton, Hartman, Hicks, Hornbuckle, Iaquinta, Isner, Kelly, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson, Wagner, Ward and Williams.

Absent and Not Voting: Ellington, Lewis and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Moye, Fleischauer, Caputo and Ferro moved to amend the bill on page fourteen, section three, lines six through nine, by reinserting the stricken language.

On the adoption of the amendment, Delegate Moye demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 23**), and there were—yeas 35, nays 62, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Baldwin, Barrett, Bates, Boggs, Brewer, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Folk, Hamilton, Hartman, Hicks, Hornbuckle, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Pushkin, Pyles, Rodighiero, Sponaugle, Thompson, White and Williams.

Absent and Not Voting: Ellington, Lewis and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

There being no further amendments, the bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

First Reading

Com. Sub. for H. B. 2420, Providing that the State Board of Education may delegate its Medicaid provider status and subsequent reimbursement to regional educational service agencies or county boards; on first reading, coming up in regular order, was read a first time and ordered to second reading.

Com. Sub. for H. B. 2506, Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria; on first reading, coming up in regular order, was read a first time.

Delegate Pushkin submitted a written motion that H. B. 2506 be rejected pursuant to House Rule 103.

On this question, the yeas and nays were demanded, which demand was sustained.

On this motion the yeas and nays were taken (**Roll No. 24**), and there were—yeas 25, nays 72, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Baldwin, Barrett, Bates, Byrd, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hornbuckle, Iaquinta, Isner, Longstreth, Love, Lovejoy, Lynch, Pushkin, Pyles, Robinson, Rowe, Sponaugle and Williams.

Absent and Not Voting: Ellington, Lewis and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the motion for the bill to be rejected did not prevail.

The bill was ordered to second reading.

Leaves of Absence

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Ellington and Lewis.

Miscellaneous Business

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Fluharty and Delegate Storch during Remarks by Members today be printed in the Appendix to the Journal.

Delegate N. Foster filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2329.

Delegate Isner filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2329.

Delegate C. Miller filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2329.

Delegate Ward filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2329.

Delegate Upson filed forms with the Clerk's Office per House Rule 94b to be removed as a cosponsor of H. B. 2418 and H. B. 2439.

Delegate Frich filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2475.

Delegate Ward filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2475.

Delegate Moore filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2475.

Delegate Westfall filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2475.

Delegate White filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2475.

Delegate Lovejoy filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. B. 2566.

Delegate R. Romine filed a form with the Clerk's Office per House Rule 94b to be removed as a cosponsor of H. B. 2688.

At 1:17 p.m., the House of Delegates adjourned until 11:00 a.m., Tuesday, February 28, 2017.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

HOUSE CALENDAR

Tuesday, February 28, 2017

21st Day

11:00 A. M.

THIRD READING

- Com. Sub. for H. B. 2083 - Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing (SHOTT) (REGULAR)
- H. B. 2123 - Making the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority (ROWAN) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2486 - Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2542 - Relating to public higher education personnel (ESPINOSA) (REGULAR)
- Com. Sub. for H. B. 2585 - Creating felony crime of conducting financial transactions involving proceeds of criminal activity (SHOTT) (REGULAR)

SECOND READING

- Com. Sub. for H. B. 2420 - Providing that the State Board of Education may delegate its Medicaid provider status and subsequent reimbursement to regional educational service agencies or county boards (WESTFALL) (REGULAR)
- Com. Sub. for H. B. 2506 - Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria (SHOTT) (REGULAR)

FIRST READING

- Com. Sub. for H. B. 2329 - Prohibiting the production, manufacture or possession of fentanyl (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2620 - West Virginia Drug Overdose Monitoring Act (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2646 - Terminating the Women's Commission and discontinue its functions (HOWELL) (REGULAR)
- Com. Sub. for H. B. 2648 - Increasing penalties for manufacturing or transportation of a controlled substance in the presence of a minor (SHOTT) (REGULAR)

**WEST VIRGINIA
HOUSE OF DELEGATES**

TUESDAY, FEBRUARY 28, 2017

HOUSE CONVENES AT 11:00 A.M.

**COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
9:00 A.M. – ROOM 215E**

**COMMITTEE ON INDUSTRY & LABOR
10:00 A.M. – ROOM 215E**

**COMMITTEE ON POLITICAL SUBDIVISION
1:00 P.M. – ROOM 434M**

**COMMITTEE ON HEALTH & HUMAN RESOURCES
2:00 P.M. – ROOM 215E**

**COMMITTEE ON PREVENTION & TREATMENT OF SUBSTANCE ABUSE
3:30 P.M. – ROOM 215E**

**COMMITTEE ON PENSIONS & RETIREMENT
4:00 P.M. – 460M**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470