

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
REGULAR SESSION, 2017
THIRD DAY

Charleston, West Virginia, Friday, February 10, 2017

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Shaun Scott, The Sanctuary at Fairview, Ripley, West Virginia.

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

Pending the reading of the Journal of Thursday, February 9, 2017,

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

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

The Senate then proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 114, 150 and 151, BRIM rule relating to Patient Injury Compensation Fund.

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

Com. Sub. for Senate Bill 151 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §64-2-1 and §64-2-2 of the Code of West Virginia, 1931, as amended, all relating to authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to the patient injury compensation fund; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to mine subsidence insurance; and authorizing the Ethics Commission to promulgate a legislative rule relating to the use of office for private gain, including nepotism.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Senate Bill 169, Repealing article providing assistance to Korea and Vietnam veterans exposed to certain chemical defoliants.

Senate Bill 170, Repealing state hemophilia program.

And,

Senate Bill 171, Repealing Programs of All-Inclusive Care for Elderly.

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

Respectfully submitted,

Tom Takubo,
Chair.

At the request of Senator Hall, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee references of the bills contained in the foregoing report from the Committee on Health and Human Resources.

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

Your Committee on Government Organization has had under consideration

Senate Bill 174, Exempting transportation of household goods from PSC jurisdiction.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Senate Bill 176, Repealing article concerning detection of tuberculosis, high blood pressure and diabetes.

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

Respectfully submitted,

Tom Takubo,
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 185, Allowing spending units designate fund into which proceeds from sale of surplus property must be deposited.

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

Respectfully submitted,

Craig Blair,
Chair.

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

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

Your Committee on the Judiciary has had under consideration

Senate Bill 237, Repealing obsolete rules of Department of Revenue.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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 Ferns, Boso, Weld, Cline and Rucker:

Senate Bill 240—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-8G-1, §61-8G-2 and §61-8G-3, all relating to creating the crime of dissemination of sexual images; defining terms; setting forth elements of the crime; and providing for criminal penalties.

Referred to the Committee on the Judiciary.

By Senators Trump, Boso, Stollings, Blair, Cline and Rucker:

Senate Bill 241—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-3F-1, §29-3F-2, §29-3F-3, §29-3F-4, §29-3F-5, §29-3F-6 and §29-3F-7, all relating to creating the West Virginia Volunteer Fire and Rescue Act of 2017; providing a short title; making findings; stating a purpose; establishing certification requirements for ambulance drivers, emergency medical technicians and paramedics; providing a waiver of certain fees; and establishing a tax credit.

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

By Senators Mullins, Boso and Cline:

Senate Bill 242—A Bill to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to primary and secondary school instructional terms; removing the word “separate” throughout the section as it relates to the number of instructional days in the school calendar; requiring that the instructional term for students begin no earlier than August 10 and end no later than June 10 except for schools operating on a balanced calendar; removing preparation for opening and closing school from mandatory list of areas for which remaining noninstructional days may be designated by county school board; designating one noninstructional day for teachers as a preparation day; allowing teacher preparation day to be used for other purposes only at teacher’s discretion; increasing number of two-hour blocks for faculty senate meetings from four to six; removing requirement that faculty senate meetings be held once every forty-five days; permitting accrued minutes to be used for lost instructional days; designating time frames within which faculty senate meetings may take place; requiring county boards to first use accrued minutes for early dismissals and late arrivals; and requiring that any reimagining student instructional days be exhausted prior to using accrued minutes for lost instructional days.

Referred to the Committee on Education.

By Senators Gaunch and Boso:

Senate Bill 243—A Bill to repeal §44-10-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-6-301 of said code; and to amend and reenact §48-9-205, §48-9-206 and §48-9-402 of said code, all relating to domestic relations; relief in absence of an agreement; repealing language authorizing a minor over the age of fourteen years to nominate a guardian; allocation of responsibilities of the parties in parenting plans; spousal support; providing an alimony guideline worksheet calculation for determining monthly payments; removing from the matters considered in a permanent parenting plan a description of the allocation of caretaking and other parenting responsibilities performed by each person during the twenty-four months preceding the filing of an action; and requiring a substantive, affirmative and independent analysis by the court as to which parent is more likely to keep the noncustodial parent involved in the child’s life prospectively, and an evidentiary evaluation on the issue as to whether a parent has

engaged in alienation of the affections of a child toward the other parent, either pre-or post-divorce when allocating custodial responsibility.

Referred to the Committee on the Judiciary.

By Senators Blair, Mullins, Carmichael (Mr. President) and Cline:

Senate Bill 244—A Bill to amend and reenact §37-7-2 of the Code of West Virginia, 1931, as amended, relating to encouraging and facilitating the efficient and economic development of oil and gas resources; preventing waste by co-tenants; providing that consent to a lawful use of mineral property by a majority of co-tenants is not waste and does not constitute trespass; providing that co-tenant is liable for damages as a result of the lawful use of mineral property consented to by a majority of the ownership interest when an accounting is provided and a pro rata share of revenues and costs are distributed to or reserved for each co-tenant, as applicable; allowing joint development of oil and natural gas wells by horizontal drilling under certain circumstances; addressing production royalties where multiple contiguous leases are developed; and providing for severability of provisions.

Referred to the Committee on the Judiciary.

By Senator Blair:

Senate Bill 245—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §54-1-3b, relating to permitting natural gas companies to enter private property without prior consent from the owner for the limited purposes of obtaining data to comply with regulatory requirements or to survey land for pipeline or pipeline facility development; requiring natural gas companies to request permission to inspect property prior to entry; requiring natural gas companies to provide owner notice of intent to enter property prior to entry; and preempting entries authorized under this section from being deemed a trespass or a taking.

Referred to the Committee on the Judiciary.

By Senators Boso, Plymale, Cline and Rucker:

Senate Bill 246—A Bill to amend and reenact §22-11-7b and §22-11-11 of the Code of West Virginia, 1931, as amended, all relating to the implementation of water quality standards for the protection of drinking water in permits; and providing draft permits to applicants prior to public notice.

Referred to the Committee on the Judiciary.

By Senators Trump, Carmichael (Mr. President), Hall, Palumbo, Woelfel and Blair:

Senate Bill 247—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §52-2-11, relating to grand juries generally; authorizing prosecuting attorneys to designate law-enforcement officers and investigators to receive evidence subpoenaed and received by a prosecuting attorney under the authority of a grand jury; authorizing designated custodians to use subpoenaed records, documents and other evidence for investigative purposes; requiring custodians execute disclosure statements to preserve grand jury secrecy; authorizing custodian to share subpoenaed materials with other law-enforcement officers and agencies; limiting law-enforcement use of such subpoenaed materials to legitimate investigative and prosecutorial purposes relevant to investigation underlying the issuance of subpoena; allowing custodians to retain subpoenaed material until conclusion of investigation or prosecution; and defining terms.

Referred to the Committee on the Judiciary.

By Senators Trump, Carmichael (Mr. President), Hall, Palumbo, Woelfel, Blair, Plymale and Gaunch:

Senate Bill 248—A Bill to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4 and §4-5-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §4-5-7 and §4-5-8, all relating to Commission on Special Investigations; clarifying composition and chairmanship of commission; redefining what constitutes a quorum for voting procedures of commission; clarifying contents of commission's annual report; listing existing and necessary commission staff positions; granting power to conduct interviews and request production of books, records, documents, papers, or any other tangible thing, computers, laptops, computer hard drives, electronic records (including emails, files, documents and metadata), or any other thing, in any form in which they may exist; authorizing the commission and director to order or direct that all or a portion of the information communicated to the commission at the commission's request, including the existence of the investigation, be confidential and not made public; establishing requirements for commission to enter into executive session; establishing procedures for conducting executive session; removing requirement that Joint Committee on Government and Finance approve expenses of commission; establishing procedure for commission retention and disposal of records; defining new offense of impersonating a commission member or staff member and of obstructing a commission member or staff; setting penalties; allowing the commission to award duty weapons to certain members on retirement; exempting the commission from the jurisdiction of the agency for surplus property within the Purchasing Division of the Department of Administration with respect to the disposal of the commission's primary and secondary duty weapons; and authorizing sale of surplus weapons to active and retired members of the commission's investigative staff.

Referred to the Committee on the Judiciary.

By Senator Trump:

Senate Bill 249—A Bill to amend and reenact §38-3-4 of the Code of West Virginia, 1931, as amended, relating to information required in an abstract of judgment.

Referred to the Committee on the Judiciary.

By Senators Takubo, Stollings, Blair and Cline:

Senate Bill 250—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-13DD-6, §11-13DD-7, §11-13DD-8 and §11-13DD-9, all relating to establishing a tax credit for certain physicians who locate in this state to practice; providing for criteria for the tax credit; establishing education requirements; setting forth a time limit to claim the tax credit; setting forth length or residency requirements; setting forth findings; defining terms; authorizing the credit; specifying the amount of the tax credit; providing how the credit may be asserted; specifying no tax credit carryover; allowing forms and schedules to be established by the Tax Commissioner in rule; setting maximum amount per taxpayer per year; authorizing the Tax Commissioner to promulgate rules; and setting effective date.

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

By Senators Woelfel, Ojeda and Miller:

Senate Bill 251—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-5-9, relating to creating a pilot program for expansion of school-based mental health and school-based diversion; defining terms; detailing eligibility for schools to take part in the pilot program; setting requirements for schools that participate in the pilot program; authorizing mental health providers to provide certain services; requiring notice to parents and students of the pilot project; authorizing parents to opt out in certain circumstances; requiring the collection of certain data in relation to the pilot project; explicitly stating that the pilot project does not require additional expenditures; authorizing rulemaking; and requiring that the pilot project may not begin until the Legislature approves the relevant rules.

Referred to the Committee on Education.

By Senator Hall:

Senate Bill 252—A Bill to amend and reenact §18-2-26 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-5-13 of said code, all relating to allowing county boards of education and regional education service agencies to purchase computer technology from other than a statewide contract if certain conditions are met.

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

By Senators Takubo, Blair and Miller:

Senate Bill 253—A Bill to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-4 of said code, all relating to licensing requirements for physicians and osteopathic physicians in this state; setting forth the licensing requirements relating to an applicant's ability to communicate in the English language; and placing increased emphasis on an applicant's clinical background, education and expertise.

Referred to the Committee on Government Organization.

By Senators Blair and Sypolt:

Senate Bill 254—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-25-19, relating to termination of the West Virginia Nursing Home Administrators Licensing Board.

Referred to the Committee on Government Organization.

By Senator Blair:

Senate Bill 255—A Bill to amend and reenact §3-10-7 and §3-10-8 of the Code of West Virginia, 1931, as amended, all relating to vacancies on county commissions and in offices of prosecuting attorney, sheriff, assessor and surveyor.

Referred to the Committee on the Judiciary.

By Senators Trump, Boso, Cline, Gaunch and Woelfel:

Senate Bill 256—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-4-22, relating to prohibiting aiding and abetting of sexual abuse by school personnel; prohibiting individuals from assisting school employees, contractors or agents in obtaining a new job if the individual knows, or has probable cause to believe, that the person engaged in sexual misconduct with a minor or student; providing exceptions to this

requirement; and clarifying the relationship between this prohibition and other statutes, regulations or policies.

Referred to the Committee on the Judiciary.

By Senators Boso, Weld, Cline and Miller:

Senate Bill 257—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-1K-1, §15-1K-2, §15-1K-3, §15-1K-4, §15-1K-5, §15-1K-6 and §15-1K-7, all relating to Civil Air Patrol leave and protection of employees performing Civil Air Patrol missions.

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

By Senators Beach and Cline:

Senate Bill 258—A Bill to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to safety of tow trucks, wreckers and tilt-bed vehicles; authorizing red flashing warning lights on said vehicles under certain circumstances; and titling this bill in honor of Jeff Clovis.

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

By Senators Trump and Cline:

Senate Bill 259—A Bill to amend and reenact §44-1-6, §44-1-7 and §44-1-14a of the Code of West Virginia, 1931, as amended, all relating to requiring potential administrators of intestate estates to give bond and take oath in the county commission before being granted the administration; waiving bond requirements for administrators of intestate estates where grantee is sole beneficiary or sole distributee of the decedent; and requiring interested parties objecting to the qualifications of a personal representative or venue to file notice with the county commission sixty days after the date of first publication.

Referred to the Committee on the Judiciary.

By Senators Gaunch, Mullins, Boso and Cline:

Senate Bill 260—A Bill to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended, relating to providing whenever average wholesale price of motor fuel is less than \$2 per gallon the tax on that fuel is increased by 5 cents.

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

By Senator Trump:

Senate Bill 261—A Bill to amend and reenact §38-5B-2 of the Code of West Virginia, 1931, as amended, relating to suggestions of salary and wages of persons engaged in public employment; increasing the amount of salary or wages of persons engaged in public employment that are protected from a suggestee execution from thirty times the federal minimum hourly wage then in effect to fifty times the federal minimum hourly wage then in effect; requiring judgment creditor to provide additional personal information about the judgment debtor including the last four digits of Social Security number and date of birth; and making technical changes.

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

Senators Stollings, Takubo, Plymale, Boso, Prezioso, Cline and Ojeda offered the following resolution:

Senate Resolution 11—Designating February 10, 2017, as Dental Hygienists Day.

Whereas, Dental hygienists, as licensed oral healthcare professionals, actively promote oral healthcare and prevention of oral disease. West Virginia currently has 966 total active dental hygienists; and

Whereas, As preventative specialists, dental hygienists contribute to the oral health of West Virginia residents and provide an essential service contributing to their total health; and

Whereas, Dental hygienists give their time and effort in order to provide oral healthcare to individuals of need, such as children, senior citizens, individuals with low income and individuals with disabilities; and

Whereas, These services are essential in dental offices, public health facilities, schools, private organizations and research facilities in providing the best possible oral healthcare for all citizens; and

Whereas, Promoting the importance of the issues and celebrating the successes of the profession and contributions of dental hygienists will lead to increased public awareness; therefore, be it

Resolved by the Senate:

That the Senate hereby designates February 10, 2017, as Dental Hygienists Day; and, be it

Further Resolved, That the Senate is pleased to join with the students representing BridgeValley Community and Technical College, West Liberty University and West Virginia University in promoting good oral health; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of Dental Hygienists Day.

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

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

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

Senate Concurrent Resolution 7, US Army PFC Floyd H. Edmonds Memorial Road.

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 thirteenth order of business.

At the request of Senator Ojeda, the name of Senator Ojeda was removed as a sponsor of **Senate Bill 178** (*Requiring license plates on front and back of vehicles*).

On motion of Senator Ferns, the Senate adjourned until Monday, February 13, 2017, at 11 a.m.

SENATE CALENDAR

**Monday, February 13, 2017
11:00 AM**

SPECIAL ORDER OF BUSINESS Thursday, March 09, 2017 – 11:00 AM

Consideration of executive nominations

FIRST READING

- Com. Sub. for S. B. 151 - Authorizing Department of Administration promulgate legislative rules (original similar to HB2284)
- S. B. 169 - Repealing article providing assistance to Korea and Vietnam veterans exposed to certain chemical defoliants
- S. B. 170 - Repealing state hemophilia program
- S. B. 171 - Repealing Programs of All-Inclusive Care for Elderly
- S. B. 174 - Exempting transportation of household goods from PSC jurisdiction - (Com. amend. pending)
- S. B. 176 - Repealing article concerning detection of tuberculosis, high blood pressure and diabetes
- S. B. 237 - Repealing obsolete rules of Department of Revenue - (Com. title amend. pending)