

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE
REGULAR SESSION, 2019
NINTH DAY

Charleston, West Virginia, Thursday, January 17, 2019

The Senate met at 11:14 a.m.

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

Prayer was offered by Pastor Mike Harper, North Hills Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael J. Maroney, a senator from the second district.

Pending the reading of the Journal of Wednesday, January 16, 2019,

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

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

The Clerk presented the following communications from various state agencies as required by the provisions of law:

Environmental Protection, Department of (Waiver Report) (§22-6A-2)

Funeral Service Examiners, Board of (§30-1-12)

Hearing Aid Dealers, Board of (§30-1-12)

Natural Resources, Division of (§20-1-7)

Special Investigations, Commission on (§4-5-2)

The Senate proceeded to the third order of business.

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

Eng. House Bill 2164—A Bill to amend and reenact §58-5-1 of the Code of West Virginia, 1931, as amended, relating to appeals as a matter of right in the West Virginia Supreme Court of Appeals; and providing that all appeals shall be afforded a full and meaningful review, an opportunity to be heard, and a written decision on the merits.

Referred to the Committee on the Judiciary.

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

Eng. House Bill 2351—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-22, relating to regulating prior authorizations; defining terms; providing for electronically transmitted prior authorization forms; establishing procedures for submission and acceptance of forms; setting forth an effective date; providing for implementation applicability; and setting deadlines.

Referred to the Committee on Health and Human Resources.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

Senate Bill 29, Creating five-year tax credits for businesses on post-coal mine sites.

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 Finance.

Respectfully submitted,

Mark R. Maynard,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Economic Development pending.

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 62, Requiring participation in drug court program before discharge of certain first-time drug offenses.

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

Com. Sub. for Senate Bill 62 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-

4-407a relating to authorizing a court to require participation and successful completion of a drug court program or drug treatment program in order for a defendant, pleading or being found guilty of possession of a controlled substance which is or contains a controlled substance listed in §60A-2-204 of this code, other than marijuana or a controlled substance listed in §60-A-2-206, §60A-2-208, or §60A-2-210 containing an opioid or opiate to qualify for a final order of discharge and dismissal.

And,

Senate Bill 240, Repealing certain legislative rules no longer authorized or are obsolete.

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

Com. Sub. for Senate Bill 240 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §64-12-1, §64-12-2, §64-12-3, §64-12-4, §64-12-5, §64-12-6, and §64-12-7, all relating generally to repealing certain legislative rules promulgated by certain agencies, boards, and commissions which are no longer authorized or are obsolete; authorizing certain agencies and commissions under the Department of Administration, Department of Environmental Protection, Department of Military Affairs and Public Safety, Department of Tax and Revenue, Department of Transportation, miscellaneous agencies, boards, and commissions, and the Bureau of Commerce to repeal certain legislative rules; repealing the Department of Administration legislative rule relating to the state purchasing card program; repealing the Department of Environmental Protection legislative rule relating to abandoned mine lands reclamation; repealing the Department of Environmental Protection legislative rule relating to certification of gas wells; repealing the Regional Jail and Correctional Facility Authority legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the authority; repealing the Insurance Commission legislative rule relating to health insurance benefits for temporomandibular and craniomandibular disorders; repealing the Insurance Commission legislative rule relating to guaranteed loss ratios as applied to individual sickness and accident insurance policies; repealing the Insurance Commission legislative rule relating to external review of coverage denials; repealing the Insurance Commission legislative rule relating to mental health parity; repealing the Insurance Commission legislative rule relating to small employer eligibility requirements; repealing the Division of Motor Vehicles legislative rule relating to eligibility for reinstatement following suspension or revocation of driving privileges; repealing the Board of Social Work Examiners legislative rule relating to applications; repealing the Division of Labor legislative rule relating to hazardous chemical substances; and repealing the Division of Labor legislative rule relating to the Safety Glazing Act.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Finance has had under consideration

Senate Bill 180, State Tax Department rule relating to payment of taxes by electronic funds transfer.

Senate Bill 181, State Tax Department rule relating to aircraft operated under a fractional ownership program.

Senate Bill 182, State Tax Department rule relating to senior citizen tax credit for property taxes paid.

And,

Senate Bill 183, State Tax Department rule relating to administration of tax on purchases of wine and liquor inside and outside of municipalities.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Senator Sypolt, from the Committee on Agriculture and Rural Development, submitted the following report, which was received:

Your Committee on Agriculture and Rural Development has had under consideration

Senate Bill 191, Agriculture Commissioner rule relating to animal disease control.

And,

Senate Bill 192, Agriculture Commissioner rule relating to industrial hemp.

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

Respectfully submitted,

Dave Sypolt,
Chair.

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

Senator Azinger, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Senate Bill 296, Providing 11-month window to permit members of PERS to purchase credited service.

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,

Michael T. Azinger,
Chair.

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

The Senate proceeded to the sixth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills were considered introduced, read by their titles, and referred to the appropriate committees as shown on the Chamber Automation System:

By Senators Rucker, Boso, Cline, Maynard, Smith, Sypolt, Tarr, Unger, Jeffries, Woelfel, Stollings, Azinger, Swope, Roberts, Maroney, and Lindsay:

Senate Bill 338—A Bill to amend and reenact §61-7-2 of the Code of West Virginia, 1931, as amended, relating to dangerous weapons; defining “pepper spray”; exempting pepper spray from definition of “deadly weapons”; and providing that persons over 16 years of age may carry pepper spray for the purpose of self-defense.

Referred to the Committee on the Judiciary.

By Senators Rucker, Azinger, Boso, Cline, Maynard, Sypolt, Tarr, Swope, and Roberts:

Senate Bill 339—A Bill to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-7-2 of said code, all relating to defining “pepper spray”; exempting pepper spray from definition of “deadly weapons”; providing that persons over 16 years of age may carry pepper spray for the purpose of self-defense; and providing that such persons may carry pepper spray in the State Capitol Complex.

Referred to the Committee on the Judiciary.

By Senators Trump and Stollings:

Senate Bill 340—A Bill to repeal §33-20E-1, §33-20E-2, §33-20E-3, §33-20E-4, §33-20E-5, §33-20E-6, §33-20E-7, §33-20E-8, §33-20E-9, §33-20E-10, §33-20E-11, §33-20E-12, §33-20E-13, §33-20E-14, §33-20E-15, §33-20E-16, §33-20E-17, §33-20E-18, §33-20E-19, §33-20E-20, and §33-20E-21 of the Code of West Virginia, 1931, as amended; and to repeal §33-20F-1, §33-20F-1a, §33-20F-2, §33-20F-3, §33-20F-4, §33-20F-5, §33-20F-7, §33-20F-8, §33-20F-9, §33-20F-10, §33-20F-11, and §33-20F-12 of said code, relating to obsolete provisions for the initial formation and operation of the West Virginia Medical Professional Liability Insurance Joint Underwriting Association and the West Virginia Physicians’ Mutual Insurance Company.

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

By Senators Sypolt, Jeffries, Smith, Baldwin, Ihlenfeld, and Hamilton:

Senate Bill 341—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-22I; and to amend said code by adding thereto a new section, designated §18-7A-26w, all relating to establishing a minimum monthly retirement annuity of \$750 for those retirants with 20 or more years of credited service.

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

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Bill 342—A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exempting Social Security and tier one railroad retirement benefits from personal income tax; specifying an effective date; and removing obsolete language.

Referred to the Committee on Finance.

Senators Clements, Maroney, Boley, Azinger, Stollings, Sypolt, and Swope offered the following resolution:

Senate Resolution 10—Congratulating the Ritchie County High School boys' cross-country team for winning the 2018 Class AA/A Cross-Country State Championship.

Whereas, The 2018 Ritchie County High School boys' cross-country team had an extraordinary season which culminated in the school's first ever Class AA/A state championship; and

Whereas, In route to winning the state championship, the Ritchie County High School boys' cross-country team also captured the Region 1 Championship and the Little Kanawha Conference Championship; and

Whereas, The Ritchie County boys' cross-country team is led by head coach, Holli Haddox Vaughan, and assistant coaches, Paula Hogue and David Bee; and

Whereas, The Ritchie County High School boys' cross-country team roster consists of: Clayton Bee, Jarett Allender, Kent Bee, Adam Davis, Brady Layman, Gabriel Morrison, Isaac Slater, Huston Deem, Brenden Davis, Logan Hostuttler, Michael Jones, Dalton Hayes, Creed Knight, Zachary Bixman, J.D. Henderson, and Anden Keen; and

Whereas, The Ritchie County High School boys' cross-country team displayed its strong will and determination for an entire season and is a shining example of what can be accomplished with hard work, dedication, and spirit; and

Whereas, The 2018 Ritchie County High School boys' cross-country team will be remembered as one of the best cross-country teams ever assembled in West Virginia high school history; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Ritchie County High School boys' cross-country team for winning the 2018 Class AA/A Cross Country State Championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Ritchie County High School boys' cross-country team.

At the request of Senator Maroney, 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 Takubo, and by unanimous consent, the remarks by Senator Maroney regarding the adoption of Senate Resolution 10 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:27 a.m., the Senate recessed to present Senate Resolution 10.

The Senate reconvened at 11:32 a.m. and proceeded to the ninth order of business.

Com. Sub. for Senate Bill 61, Adding certain crimes for which prosecutor may apply for wiretap.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Trump, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Senate Bill 272, Updating code relating to Commission on Special Investigations.

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

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

Com. Sub. for Senate Bill 3, Establishing WV Small Wireless Facilities Deployment Act.

Com. Sub. for Senate Bill 17, Relating to probation eligibility.

Senate Bill 119, Specifying documents not subject to discovery in certain proceedings.

And,

Com. Sub. for Senate Bill 152, Relating generally to criminal offense expungement.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Clements, Hamilton, Weld, Roberts, Boso, Cline, Swope, Woelfel, Mann, Smith, and Tarr.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Hamilton, Weld, Roberts, Boso, Cline, Swope, Woelfel, Mann, Smith, and Tarr were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

At the respective requests of Senators Baldwin, Jeffries, and Lindsay, the names of Senators Baldwin, Jeffries, and Lindsay were removed as sponsors of **Senate Bill 92** (*Providing special license plate supporting adoption*).

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:02 p.m., the Senate adjourned until tomorrow, Friday, January 18, 2019, at 11 a.m.

SENATE CALENDAR

**Friday, January 18, 2019
11:00 AM**

THIRD READING

Eng. S. B. 272 - Updating code relating to Commission on Special Investigations (original similar to HB2434, SB71)

SECOND READING

Com. Sub. for S. B. 3 - Establishing WV Small Wireless Facilities Deployment Act

Com. Sub. for S. B. 17 - Relating to probation eligibility

Com. Sub. for S. B. 61 - Adding certain crimes for which prosecutor may apply for wiretap

S. B. 119 - Specifying documents not subject to discovery in certain proceedings

Com. Sub. for S. B. 152 - Relating generally to criminal offense expungement

FIRST READING

Com. Sub. for S. B. 62 - Requiring participation in drug court program before discharge of certain first-time drug offenses

Com. Sub. for S. B. 240 - Repealing certain legislative rules no longer authorized or are obsolete

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2019

Friday, January 18, 2019

12:30 p.m.

Agriculture & Rural Development

(Room 208W)