

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2016
FIFTY-FIRST DAY

Charleston, W. Va., Thursday, March 3, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Terry Swanson, Gideons International, Camp President of the Charleston North Camp, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable C. Edward Gaunch, a senator from the eighth district.

Pending the reading of the Journal of Wednesday, March 2, 2016,

At the request of Senator Gaunch, 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 third order of business.

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

Eng. Com. Sub. for Senate Bill 421, Terminating behavioral health severance and business privilege tax.

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

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

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

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.**§11-13A-3. Imposition of tax ~~or~~ on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.**

(a) *Imposition of tax.* — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) *Rate and measure of tax.* — ~~The~~ Subject to the provisions of subsection (g) of this section, the tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article. In the case of coal, this five percent rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(c) *“Certain health care services” defined.* — For purposes of this section, the term “certain health care services” means, and is limited to, behavioral health services.

(d) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section and shall be in addition to all other taxes imposed by law.

(e) *Effective date.* — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

(f) *Reduction of severance tax rate.* — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

(i) (1) For coal mined by underground methods from seams with an average thickness of thirty-seven inches to forty-five inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than thirty-seven inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(ii) (2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than forty-five inches in average thickness or any existing mine that has not produced coal from seams forty-five inches or less in thickness in the one hundred eighty days immediately preceding the effective date of this subsection.

~~(iii)~~ (3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

(g)(1) Termination, and expiration of the behavioral health severance and business privilege tax. — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate, and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection shall not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) Refunds made. — The Tax Commissioner will issue a requisition on the treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

ARTICLE 15. CONSUMERS SALE AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices, all as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article: Provided, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended for the period beginning on and after July 1, 2016, and continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

(b) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase of durable medical equipment, as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription by a health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax imposed by this article: Provided, That the durable medical equipment is purchased by an individual for exclusive use by the purchaser or another individual and used predominantly by the recipient individual in his or her home environment.

(1) Effective Dates. — The provisions of this subsection shall apply to purchases made on and after July 1, 2016.

(2) Per se exemption. — The exemption set forth by this subsection shall be given without the necessity of an exemption certificate, direct pay permit or refund or credit request.

(c) Definitions. — The following definitions shall apply:

(1) For purposes of this section, “used predominantly by the recipient individual in his or her home environment”, with reference to durable medical equipment, means that the equipment is sold to an individual for use by the individual purchaser or by another individual at home, regardless of where the individual resides. For purposes of this definition, the term “home” means and includes facilities such as nursing homes, assisted care centers and school dormitories, of which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified from the exemption because the equipment is incidentally used on the streets, in commercial establishments, in public places and in locations other than the home, so long as use in the home is the predominant use. For purposes of this definition, the term “individual” means and is limited to a single, separate human being and

specifically excludes any health care provider, or provider of nursing services, personal care services, behavioral care services, residential care or assisted living care, or any entity or organization other than a human being.

(2) When the equipment is sold to a facility such as a hospital, nursing home, medical clinic, dental office, chiropractor or optician office, then this shall not constitute a use of the equipment by the recipient individual in his or her home environment. The fact that a nursing home may use the equipment only for its residents does not make the equipment exempt for home use: *Provided*, That nothing in this section shall be interpreted to void or abrogate lawful assertion and application of the purchases for resale exemption as it may apply to any purchaser of durable medical equipment.

~~(b)~~ (3) For purposes of this ~~exemption section~~, “health care provider” means any person licensed to prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this section, the term “health care provider” includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services or veterinary services: *Provided*, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.

~~(e)~~ (4) The term “durable medical goods”, as used in this article, means “durable medical equipment” as defined in section two, article fifteen-b of this chapter.

(5) For purposes of this section, the term “nursing home or facility” means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation: *Provided*, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article.

(6) For purposes of this section, the term “assisted care center” means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: *Provided*, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

(7) For purposes of this section, the term “school dormitory” means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education, and shall be synonymous with the term “residence hall.”;

And,

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

Eng. Com. Sub. for Senate Bill 421—A Bill to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-9i of said code, all relating to the termination of behavioral health severance and business privilege tax; specifying effective date of the termination; establishing method of payment of outstanding refund claims; generating replacement revenue stream by suspending exemption of certain purchases of durable medical equipment from consumer sales and service tax for certain period; continuing the exemption for specified purchases of durable medical equipment; specifying effective dates; providing method to claim the exemption; and providing definitions and conditions for exemption.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 421, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 421) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for House Bill 4035—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-46-7; relating to permitting pharmacists to furnish opioid antagonists in accordance with standardized procedures developed and approved by both the West Virginia Board of Pharmacy and the West Virginia Board of Medicine; and granting rule-making authority.

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

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

Eng. Com. Sub. for House Bill 4163, Providing the authority and procedure for municipalities to give notice to, and publish the names of, entities delinquent in paying business and occupation taxes.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4168—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17A-6F-1, §17A-6F-2 and §17A-6F-3, all relating to authorizing the commissioner of the division of motor vehicles to issue a special motor

vehicle collector license plate; defining terms; establishing requirements for issuance; establishing fees; and providing requirements and conditions for use of the plate on a collector motor vehicle.

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

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

Eng. Com. Sub. for House Bill 4196—A Bill to amend and reenact §17-24A-1 and §17-24A-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-4-10 of said code; and to amend said code by adding thereto a new section, designated §17-24A-6a, all relating to abandoned antique vehicles; adding new definitions; allowing automobile auctions to obtain title to abandoned vehicles; creating a process by which an automobile auction may obtain a salvage certificate or a nonrepairable motor vehicle certificate for vehicles abandoned on its property; establishing a process by which automobile auctions may obtain title to and sell certain abandoned vehicles; allowing an insurance company to obtain a salvage certificate or a cosmetic total loss salvage certificate after paying a total loss claim on a vehicle; creating a special procedure for a person in possession of an abandoned antique vehicle to apply for and receive title to the vehicle; creating a procedure for the Division of Motor Vehicles to search for the owner of the vehicle and provide notice of the application for title to vehicle; creating a procedure for the owner to reclaim the vehicle within 30 days of notice of an application for title to the vehicle; establishing fees to accompany an application for title to the vehicle; establishing fees for reclamation of the vehicle by owner; creating a misdemeanor and imposing fines for interfering with an owner's attempt to reclaim a vehicle; and directing the division to promulgate rules and forms to effectuate new procedure.

Referred to the Committee on Transportation and Infrastructure.

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

Eng. Com. Sub. for House Bill 4239—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-8d, relating to development of a highway project plan for the extension of the state of Kentucky's Mountain Parkway Expansion project from the eastern Kentucky border with West Virginia into Mercer County and Raleigh County; legislative findings; requiring the commissioner of highways to develop the highway project plan; requiring quarterly progress and status reports; requiring a full report to the Legislature by the first day of the 2017 regular session.

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

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

Eng. House Bill 4246—A Bill to amend and reenact chapter 83, Acts of the Legislature, regular session, 1970, relating to changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library; creating a library board with the power to operate the public library; and providing a stable method of financing the operation of the Martinsburg-Berkeley County Public Library.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 4301—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-36, relating to a framework for initiating comprehensive transformation of school leadership; making legislative findings that provide a context for leadership that promotes instructional improvement; stating purpose of section as framework for development of needed statutory and policy changes; stating further purpose to initiate transformation through general statement of legislative intent; providing certain expectations; stating intent for process of broad stakeholder input; requiring convening of stakeholders to assist state board; listing minimum issues to be considered for state recommendations; and requiring reports and recommendations to Legislature and Governor.

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

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

Eng. Com. Sub. for House Bill 4308—A Bill to amend and reenact §36-1-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §42-4-2 of said code, all relating generally to barring persons who are convicted of certain criminal offenses from acquiring property from their victims through joint tenancy or inheritance; and creating exceptions.

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 4345—A Bill to repeal §5A-6A-1, §5A-6A-2, §5A-6A-3, §5A-6A-4, §5A-6A-5, §5A-6A-6, §5A-6A-7, §5A-6A-8 and §5A-6A-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Permitting and Licensing Information Act.

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 4364—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5G-1, §21-5G-2, §21-5G-3 and §21-5G-4, all relating to employment and privacy protection; prohibiting an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through certain electronic communications devices; prohibiting an employer from taking or threatening to take, certain disciplinary actions for an employee's refusal to disclose certain password and related information; prohibiting an employer from failing or refusing to hire an applicant as a result of the applicant's refusal to disclose certain password and related information; prohibiting an employee from downloading certain unauthorized information or data to certain websites or web-based accounts; providing that an employer is not prevented from conducting certain investigations for certain purposes, including gathering information needed for compliance with mandatory state or federal regulations; and duties not created under this article.

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. Com. Sub. for House Bill 4435—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-11, relating to modernization and improvement of coal-fired boilers at electric power plants; providing procedure for expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects deemed just and reasonable and in the public interest; and providing rulemaking authority.

Referred to the Committee on Energy, Industry and Mining.

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

Eng. Com. Sub. for House Bill 4537—A Bill to amend and reenact §16-5H-2, §16-5H-5 and §16-5H-7 of the Code of West Virginia, 1931, as amended, all relating to the regulation of chronic pain clinics; updating definitions; deleting an exemption; and clarifying the process for hearing notices regarding license suspension or revocation.

Referred to the Committee on Health and Human Resources; and then 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. Com. Sub. for House Bill 4586—A Bill to amend and reenact §54-2-4 of the Code of West Virginia, 1931, as amended, relating to representation in condemnation proceedings where a property owner or other party is under a legal disability; providing that the court shall protect the rights of any person who is under a legal disability because he or she is a protected person, incarcerated, or whose ownership interest, lien, or other claim to property requires them to be a party in a condemnation action; providing that a protected person who is a party in a condemnation action may be represented by a conservator or guardian or by a limited guardian appointed by the court; providing that an incarcerated person who is a party in a condemnation action and has an attorney or committee shall be represented by the attorney or committee; providing that an incarcerated person who is a party in a condemnation action who does not have an attorney or committee shall be represented by a court appointed attorney; providing that the court shall appoint a guardian ad litem to defend the interests of an unknown owner or owners of property subject to condemnation; clarifying that the statutory procedures for condemnation actions control; and authorizing payment for court appointed attorneys to be paid in an amount to be fixed by the court or judge, to be taxed as costs and paid by the applicant.

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 4616—A Bill to amend and reenact §7-7-9 of the Code of West Virginia, 1931, as amended, relating to permitting county commissions the option of paying the salaries of county officials and their employees on a bi-weekly basis.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2016, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4668—A Bill to amend and reenact §11-13A-6 of the Code of West Virginia, 1931, as amended, relating to raising the allowable threshold of the coal severance

tax revenue fund budgeted for personal services from one fourth to one half; and directing State Auditor report of county special budgets to Joint Committee on Government and Finance.

Referred to the Committee on Finance.

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 4724—A Bill to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation.

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 4728—A Bill to amend and reenact §60A-2-208 of the Code of West Virginia, 1931, as amended, relating to schedule three controlled substances; designating human chorionic gonadotropin as a schedule three controlled substance; and allowing human chorionic gonadotropin solely for injection or implantation in cattle and other nonhuman species.

Referred to the Committee on Health and Human Resources.

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 4738—A Bill to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to the offense of driving in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight; adding influence of substances in definition of impaired state; and providing for penalties.

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 4740—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §52-1-11b, relating to jury service; permitting that current members of the National Guard or Reserves may be excused from jury duty.

Referred to the Committee on the Judiciary.

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 2, 2016, he had approved **Enr. Committee Substitute for Senate Bill 7, Enr. Committee Substitute for Senate Bill 14, Enr. Committee Substitute for Senate Bill 146, Enr. Committee Substitute for Senate Bill 150, Enr. Senate Bill 351, Enr. Committee Substitute for Senate Bill 369 and Enr. Committee Substitute for Senate Bill 462.**

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 3rd day of March, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for S. B. No. 10), Creating Unborn Child Protection from Dismemberment Abortion Act.

(S. B. No. 558), Maintaining solvency of Unemployment Compensation Fund.

And,

(Com. Sub. for H. B. 4366), Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

Respectfully submitted,

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

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 7, Rosie the Riveters Memorial Bridge.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution 7 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name bridge design number 11186 that will carry University Town Center Drive over Interstate 79, at mile marker 153, approximate latitude and longitude of 39.63966, -80.00394, crossing Interstate 79 in Monongalia County, the “Rosie the Riveters Memorial Bridge”.

Whereas, Rosie the Riveter is a cultural icon of the United States, representing the American women who worked in factories and shipyards during World War II, many of whom produced munitions and war supplies. American women sometimes took entirely new jobs replacing the male workers who were in the military. Rosie the Riveter is commonly used as a symbol of feminism and women’s economic power. Similar images of women war workers appeared in other countries such as Great Britain and Australia. Images of women workers were widespread in the media as government posters and commercial advertising was heavily used by the government to encourage women to volunteer for wartime service in factories; and

Whereas, Nearly 19 million women held jobs during World War II. Many of these women had already been working. Only 3 million new female workers entered the workforce during the time of the war. Although most women took on male dominated trades during World War II, they were expected to return to their everyday housework once men returned from the war; and

Whereas, Rosie the Riveter became most closely associated with another real woman, Rose Will Monroe, who was born in Pulaski County, Kentucky. In 1920 Ms. Monroe moved to Michigan and during World War II she worked as a riveter at the Willow Run Aircraft Factory in Ypsilanti, Michigan, building B-24 bombers for the U. S. Army Air Forces. She was asked to star in a promotional film about the war effort at home. The song “Rosie the Riveter” was popular at the time and Ms. Monroe happened to best fit the description of the worker depicted in the song. “Rosie” went on to become perhaps the most widely recognized icon of that era. The films and posters she appeared in were used to encourage women to go to work in support of the war effort. At the age of 50, Ms. Monroe realized her dream of flying when she obtained a pilot’s license. In 1978, she crashed in her small propeller plane when the engine failed during takeoff. The accident resulted in the loss of one kidney and the sight in her left eye, and ended her flying career. She died from kidney failure on May 31, 1997, age of 77, in Clarksville, Indiana, where she was a resident; and

Whereas, According to the Encyclopedia of American Economic History, “Rosie the Riveter” inspired a social movement that increased the number of working American women from 12 million to 20 million by 1944, a 57% increase from 1940. By 1944 only 1.7 million unmarried men between the ages of 20 and 34 worked in the defense industry, while 4.1 million unmarried women between those ages did so. Although the image of “Rosie the Riveter” reflected the industrial work of welders and riveters during World War II, the majority of working women filled nonfactory positions in every sector of the economy. What unified the experiences of these women was that they proved to themselves and the country that they could do a “man’s job” and could do it well. In 1942, just between the months of January and July, the estimates of the proportion of jobs that would be “acceptable” for women was raised by employers from 29 to 85%; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge design number 11186 that will carry University Town Center Drive over Interstate 79, at mile marker 153, approximate latitude and longitude of 39.63966, -80.00394, crossing Interstate 79 in Monongalia County, the “Rosie the Riveters Memorial Bridge”; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Rosie the Riveters Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and the Rosie the Riveters state organization.

And,

Senate Concurrent Resolution 37, US Army PFC Willie Paul Wilson Bridge.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution 37 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways to name bridge numbers 22-119-0.04 NB & SB (22A102 & 22A103), latitude 38.18215, longitude -81.84941, on U. S. Route 119, otherwise known as the North Pinnacle Rock Creek Bridge, in Lincoln County, the “U. S. Army PFC Willie Paul Wilson Memorial Bridge”.

Whereas, Willie Paul Wilson, known to his family and friends as “Jenkie”, was born on November 11, 1925, in Julian, West Virginia, to John and Elsie Wilson; and

Whereas, Willie Paul Wilson enlisted in the U. S. Army on February 29, 1944, and was assigned to Company K, 1st Platoon, 262nd Regiment; and

Whereas, PFC Willie Paul Wilson was killed on Christmas Eve, 1944, aboard the S. Leopoldville, a Belgian troopship being used in the English Channel to transport troops and supplies for the Allied war effort. On that evening, a German submarine torpedoed the S. Leopoldville when it was only five miles from the shore, killing at least eight hundred and two people in the most deadly tragedy to ever befall an American Infantry Division as the result of an enemy submarine attack; and

Whereas, PFC Willie Paul Wilson was awarded the Purple Heart on June 30, 1945, for the wounds that resulted in his death; and

Whereas, It is fitting that PFC Willie Paul Wilson be memorialized and honored for his great sacrifice in the area where he lived; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Division of Highways to name bridge numbers 22-119-0.04 NB & SB (22A102 & 22A103), latitude 38.18215, longitude -81.84941, on U. S. Route 119, otherwise known as the North Pinnacle Rock Creek Bridge, in Lincoln County, the "U. S. Army PFC Willie Paul Wilson Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Army PFC Willie Paul Wilson Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to the family of Willie Paul Wilson.

With the recommendation that the two committee substitutes be adopted.

Respectfully submitted,

Chris Walters,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (Com. Sub. for S. C. R. 7 and 37) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

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

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 38, Army PFC Denver Holly Memorial Bridge.

Senate Concurrent Resolution 39, Clifford Family Memorial Bridge.

Senate Concurrent Resolution 41, US Army SGT Philip Ray Casto Memorial Bridge.

Senate Concurrent Resolution 42, US Navy LCDR Helen Elizabeth Peck Memorial Bridge.

Senate Concurrent Resolution 44, US Marine Corps SGT Mike Plasha Memorial Bridge.

Senate Concurrent Resolution 45, US Army SGT Deforest Lee Talbert Memorial Bridge.

And,

Senate Concurrent Resolution 47, WV State Police SGT Harold E. Dailey Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Chris Walters,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (S. C. R. 38, 39, 41, 42, 44, 45 and 47) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

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

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 4235, Relating to the publication requirements of the administration of estates.

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.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4235) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 4362, Establishing a felony offense of strangulation.

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.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4362) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Pensions has had under consideration

Eng. Com. Sub. for House Bill 4487, Relating to state retirement systems.

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,

C. Edward Gaunch,
Chair.

At the request of Senator Gaunch, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4487) contained in the preceding report from the Committee on Pensions was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on Pensions has had under consideration

Eng. Com. Sub. for House Bill 4519, Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.

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,

C. Edward Gaunch,
Chair.

At the request of Senator Gaunch, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4519) contained in the preceding report from the Committee on Pensions was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Pensions 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

Eng. Com. Sub. for House Bill 4604, Relating to violations of the Ethics Act.

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 fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 11:37 a.m. today:

Eng. Senate Bill 509, Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

The Senate proceeded to the sixth order of business.

Senators Sypolt, Stollings, Williams Plymale, Cline and Unger offered the following resolution:

Senate Concurrent Resolution 60—Requesting the Joint Committee on Government and Finance conduct an interim study of the feasibility of public virtual online schools.

Whereas, A primary responsibility of the Legislature is to ensure a thorough and efficient education for the children of the state; and

Whereas, A variety of educational opportunities should be made available to students including those whose needs are not met in the in the traditional school setting; and

Whereas, There may be a desire to expand upon the use of virtual online programming currently available for West Virginia students who do not excel in a regular school setting and for whom a full-time virtual learning program would better meet their needs; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of public virtual online schools; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Joint Committee on Education its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Sypolt, Stollings, Plymale, Williams, Cline and Unger offered the following resolution:

Senate Concurrent Resolution 61—Requesting the Joint Committee on Government and Finance conduct a study on the best methods to enhance communication between teachers, parents and students to promote student success.

Whereas, The success of youth in grades prekindergarten through twelve is vital to their success as adults and to the future of our state; and

Whereas, Efficient and ongoing communication between teachers, parents and students is crucial to that success; and

Whereas, Internet technology and software resources may enhance communication in and among teachers, parents and students; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the best methods to enhance communication between teachers, parents and students to promote student success; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Carmichael, Beach, Williams, Prezioso, Stollings, Plymale, Ashley, Cline, Unger, Leonhardt and Kessler offered the following resolution:

Senate Resolution 59—Designating March 3, 2016, as Cancer Survivorship Day.

Whereas, West Virginia will experience 11,770 new cases of cancer this year; and

Whereas, In West Virginia, 4,750 people will die from cancer this year; and

Whereas, Cancer will cost the United States economy an estimated \$216 billion in medical costs and lost productivity; and

Whereas, Lawmakers play a key role in preventing cancer by passing policies to reduce tobacco use and exposure to secondhand smoke, increase healthy eating and active living, and limit indoor tanning; and

Whereas, Lawmakers can also advance policies that will increase access to lifesaving screenings, improve quality of life, fund research and expand access to care; and

Whereas, There are 14.5 million cancer survivors alive in the United States because of the efforts of researchers, doctors, volunteers and lawmakers; and

Whereas, This progress must continue through collaboration between lawmakers and citizens to end cancer as a major health issue; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 3, 2016, as Cancer Survivorship Day; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the American Cancer Society Cancer Action Network

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

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

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

Senators Karnes, Williams, Stollings, Plymale, Ashley, Cline, Unger and Leonhardt offered the following resolution:

Senate Resolution 60—Recognizing June 12, 2016, as the 75th Anniversary of the American Tree Farm System.

Whereas, Forests, covering one third of the land in the U. S., provide all Americans, including the residents of West Virginia, clean drinking water, clean air and an abundant wildlife habitat; and

Whereas, Forests provide renewable wood for buildings, furniture, energy and paper needs; and

Whereas, In West Virginia, forests provide people with over 30,000 jobs and contribute more than \$3.2 billion annually to West Virginia's economy; and

Whereas, Most of our nation's forests are owned by the people who make West Virginia and our country great, the citizens; and

Whereas, Seventy-five years ago, the American Tree Farm System was founded to help family and individual woodland owners sustain their forests and the benefits we all receive from them; and

Whereas, With more than 186 individuals and families, who combined own more than 116,000 acres in West Virginia, the American Tree Farm System remains a strong and essential program today to conserve our state's forests and their benefits, especially in the face of growing pressures such as wildfires, insects and diseases, and development pressures; and

Whereas, Tree farmers invest time, manpower and personal funds to practice sustainable forest management on their land so we can enjoy all the benefits these forests provide us; and

Whereas, The American Tree Farm System is made possible by volunteers from the local small woodlands associations, conservation organizations, forest products companies, university extensions and our own West Virginia Division of Forestry; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes June 12, 2016, as the 75th Anniversary of the American Tree Farm System; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the American Tree Farm System.

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

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

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fourth order of business.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution No. 62 (originating in the Committee on Transportation and Infrastructure)—Requesting Joint Committee on Government and Finance study the benefits of permitting the Division of Highways to continue to be able to enter into comprehensive agreements with a developer under the Public-Private Transportation Facilities Act.

Whereas, In 2008, the West Virginia Legislature passed the Public-Private Transportation Facilities Act and the act was signed into law; and

Whereas, The act allows the West Virginia Division of Highways to partner with a private company on the design and construction of otherwise public transportation facilities; and

Whereas, The act initially permitted the Division of Highways to enter into comprehensive agreements with developers until June 30, 2013; and

Whereas, The act was amended in 2013 to extend the time during which the Division of Highways may enter into comprehensive agreements with developers until June 30, 2017; and

Whereas, The Division of Highways has utilized the act to help finance three major initiatives: The Coalfields Expressway (Mullens Connector to East County Route 12/1); the upgrading of a fourteen-mile section of US 35 (WV 869 to Mason County Route 40); and a section of Corridor H (Kerens to US 219 Connector); and

Whereas, The Division of Highways has recently advertised a Public-Private-Partnership (P3) project for the construction of the Wellsburg Bridge; and

Whereas, The Division of Highways has indicated that the use of the Public-Private-Partnership project delivery allowed it to expedite project delivery, provided for the opening of sections of highway earlier than the traditional design-bid-build delivery method, allowed it to reduce costs for the engineering design for the project and provided stability in managing its cash by providing equal monthly payments to the successful bidder; and

Whereas, The Division of Highways has further indicated that allowing the act to be effective after June 30, 2017, would provide the Division of Highways and the State of West Virginia the necessary flexibility to take advantage of future public and private sector funding opportunities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the benefits of permitting the Division of Highways to continue to be able to enter into comprehensive agreements with a developer under the Public-Private Transportation Facilities Act; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with any drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Chris Walters,
Chair.

On motion of Senator Walters, the resolution (S. C. R. 62) contained in the foregoing report from the Committee on Transportation and Infrastructure was then referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 56, Judge Ronald G. Pearson Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

Senate Concurrent Resolution 57, Requesting study on county animal shelter dog and cat population and costs.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Government Organization; and then to the Committee on Rules.

Senate Concurrent Resolution 58, Requesting study on issue and advantages of tax map legislation.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Government Organization; and then to the Committee on Rules.

Senate Concurrent Resolution 59, U. S. Army SPC 4 Everette R. Johnson Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the tenth order of business.

Eng. Com. Sub. for House Bill 4146, Providing insurance cover abuse-deterrent opioid analgesic drugs.

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

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

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

February 17, 2016

VIA HAND DELIVERY

The Honorable Tim Armstead
Speaker, West Virginia House of Delegates
Room 228M, Building 1
State Capitol Complex
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 4007

Dear Speaker Armstead:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for House Bill 4007.

The general aim of this bill—establishing competitive bidding and qualification procedures for the hiring of private legal counsel by the Attorney General in cases in which the state and its agencies are plaintiffs—is commendable. I support wholeheartedly including procedures in the West Virginia Code to ensure that the state and its offices and agencies receive competent counsel at competitive rates.

My issue with the bill is the extent to which it permits, perhaps inadvertently, the Attorney General to ignore a state office or agency client's authority, decisions, and directives in a case, in contravention of the Rules of Professional Conduct governing West Virginia lawyers. For example, the following broad language appears in the bill's § 5-3-3(b): "All special assistant attorneys general appointed shall serve at the will and pleasure of the Attorney General and shall perform such duties as the Attorney General may require of them." See p. 2, lines 11-13. This statement disregards that there are circumstances where special assistant attorneys general are appointed for state offices and agencies, including the Governor's Office, because the Attorney General's Office has a conflict or has taken a contrary position in a case. In such circumstances, the special assistant attorneys general serve at the will and pleasure of their client state offices and agencies, not the Attorney General. As drafted and passed by the Legislature, § 5-3-3(b) is overbroad and could occasion conflicts of interest.

Furthermore, Enrolled Committee Substitute for House Bill 4007 provides that "[t]he Attorney General, or the deputy or assistant Attorney General involved in the case, shall retain control over the course and conduct of the case." See § 5-3-3a(g)(1), p. 5, lines 76-77. The bill also states that "[t]he Attorney General, or the deputy or assistant Attorney General involved in the case, retains veto power over any decisions made by any appointed private attorneys." *Id.* at § 5-3-3a(g)(3), p. 5, lines 80-81.

The Rules of Professional Conduct, however, make it clear that "a lawyer [whether it be the Attorney General, his assistant, or outside private counsel] *shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued.*" See Rule 1.2(a), Rules of Professional Conduct (emphasis added). Rule 1.2(a) thus "confers upon *the client* the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations." *Id.* at Comment [1] (emphasis added).

In other words, it is the state office or agency client—not the Attorney General—who retains control over the course and conduct of the case," and who "retains veto power over any decision made by any appointed private attorneys," subject, of course, to the law and applicable ethical obligations. See § 5-3-3(a)(g)(1) and (3), p. 5, lines 76-81.

Enrolled Committee Substitute for House Bill 4007 is problematic because it appears to cede state office and agency decision-making authority to the Attorney General. This problem is exacerbated because West Virginia Code § 5-3-3(c), which is implicated in the bill, expressly provides that the bill's language trumps all other laws that are inconsistent with its provisions, such as the Rules of Professional Responsibility. See § 5-3-3(c), p. 2, lines 14-15 ("All laws or parts of laws inconsistent with the provisions hereof are hereby amended to be in harmony with the provisions of this section.").

Finally, the bill contains a technical issue because it is silent as to its impact on existing private counsel contracts. The bill should contain a provision explicitly stating that it does not impair those contracts. See W. Va. Const. Art. 3, § 4 (prohibiting the passage of laws impairing contractual obligations.).

In sum, I believe Enrolled Committee Substitute for House Bill 4007 contains overly-general language that fails to account for those scenarios where special assistant attorneys general cannot—for practical and ethical reasons—serve at the will and pleasure of the Attorney General. The bill also infringes on state office and agency client decisions and directives and is at odds with the Rules of Professional Conduct adopted by our Supreme Court of Appeals. Lastly, the bill is flawed technically because it could be read to impair existing contracts. For these reasons, I must disapprove the bill and return it. However, I welcome the Legislature to repair the issues I have addressed herein and then return the bill to my desk for signature.

Sincerely,

Earl Ray Tomblin
Governor

cc: The Hon. William P. Cole III
President of the Senate
The Hon. Natalie E. Tennant
Secretary of State

A message from The Clerk of the House of Delegates announced the reconsideration, amendment and passage as amended, of a bill disapproved and returned by the Governor with his objections, and requested the concurrence of the Senate in the passage, of

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

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

Senator Carmichael then moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate reconsider the bill (Enr. Com. Sub. for H. B. 4007), heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Committee Substitute for House Bill 4007, the same was put and prevailed.

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

On page two, section three, line thirteen, after the word "them" by changing the period to a colon and inserting the following proviso: *Provided*, That the appointment of a special assistant Attorney General under this section shall not be construed to alter, inhibit or expand the attorney-client

relationship set forth in this article between the Attorney General and the state in the control or conduct of a cause of action.;

On page five, section three-a, lines seventy-six and seventy-seven, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

“(1) The Attorney General, or the deputy or assistant Attorney General involved in the case, shall retain management and supervisory authority over the private attorney;”;

On page five, section three-a, lines eighty and eighty-one, by striking out all of subdivision (3);

And by renumbering the remaining subdivision;

And,

On page eight, section three-a, after line one hundred fifty, by adding the following: (p) The requirements and procedures established in this section are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date of this section.

(q) The appointment of a special assistant Attorney General under this section shall not be construed to alter, inhibit or expand the attorney-client relationship set forth in this article between the Attorney General and the state in the control or conduct of a cause of action.

On motion of Senator Trump, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk:

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

Enr. Com. Sub. for House Bill 4007—An Act to amend and reenact §5-3-3 and §5-3-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-3-3a, all relating generally to appointment of attorneys to assist the Attorney General; authorizing the Attorney General to appoint special assistant attorneys general; establishing when special assistant attorneys general can be appointed; establishing competitive bidding process for the use of private attorneys on a contingency fee basis by the Attorney General; requiring written determinations for the Attorney General’s selection of private attorneys to represent the state on a contingency fee basis; setting fees for contingency fee legal arrangements or contracts between private attorneys and the Attorney General; requiring appointed private attorneys to accept an award of attorney fees in accordance with, and no greater than, the established fee limitations; establishing supervision requirements for private lawyers representing the state on a contingency fee basis; requiring the posting of certain documents relating to the Attorney General’s retention of private attorneys to represent the state on a contingency fee basis; providing for the designation as a special assistant attorney general upon appointment; requiring Attorney General reports on certain legal causes and matters to the Governor, President of the Senate and Speaker of the House; outlining contents of those reports; updating and removing outdated provisions; defining terms; clarifying that the appointment of a special assistant attorney general shall not be construed to alter, inhibit or expand the attorney-client relationship between the Attorney General and the state in the control or conduct of a cause of action; and providing that these new provisions are inapplicable to and shall not impair any contingency fee legal arrangement or contract awarded prior to the effective date.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill, as amended.

The question being on the passage of the bill, disapproved by the Governor, as amended.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel, Yost and Cole (Mr. President)—26.

The nays were: Beach, Facemire, Kirkendoll, Laird, Miller, Romano, Unger and Williams—8.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for H. B. No. 4007) passed with its title, as amended, as a result of the objections of the Governor.

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

A message from The Clerk of the House of Delegates announced the adoption by that body of the committee of conference report, passage as amended by the conference report with its conference amended title, and requested the concurrence of the Senate in the adoption thereof, as to

Eng. Com. Sub. for House Bill 2800, Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests.

Whereupon, Senator Ashley, from the committee of conference on matters of disagreement between the two houses, as to

Eng. Com. Sub. for House Bill 2800, Adding law-enforcement officers' contact information and names of family members to the list of exemptions from public records requests.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed Committee Substitute for House Bill No. 2800 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

That §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-2. Definitions.

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

(2) "Law-enforcement officer" shall have the same definition as this term is defined in W.Va. Code §30-29-1: *Provided*, That for purposes of this article, "law-enforcement officer" shall additionally include those individuals defined as "chief executive" in W.Va. Code §30-29-1.

~~(2)~~ (3) "Person" includes any natural person, corporation, partnership, firm or association.

~~(3)~~ (4) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

~~(4)~~ (5) "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.

~~(5)~~ (6) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body- ;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222; ~~and~~

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel; ~~;~~

(20) Information related to applications under section four, article seven, chapter sixty-one of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided:* That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however,* That information or other records exempted under this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes; ~~;~~ and

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, "personal information" means a law-enforcement officer's social security number, health information, home address, personal address, personal telephone numbers and personal email addresses and those of his or her spouse, parents and children as well as the names of the law-enforcement officer's spouse, parents and children.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

- (1) Intimidate or coerce the civilian population;
- (2) Influence the policy of a branch or level of government by intimidation or coercion;
- (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.;

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title as follows:

Eng. Com. Sub. for House Bill 2800—A Bill to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, all relating to law-enforcement officers’ personal information; defining terms; and adding personal information of law-enforcement officers and certain family members of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship to the list of exemptions from public records requests.

Respectfully submitted,

Patrick Lane, *Chair*, Roger Hanshaw, Steven Shaffer, *Conferees on the part of the House of Delegates*.

Bob Ashley, *Chair*, Robert Karnes, Michael A. Woelfel, *Conferees on the part of the Senate*.

Senator Ashley, Senate cochair of the committee of conference, was recognized to explain the report.

Thereafter, on motion of Senator Ashley, the report was taken up for immediate consideration and adopted.

Engrossed Committee Substitute for House Bill 2800, as amended by the conference report, was then put upon its passage.

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2800) passed with its conference amended title.

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

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Friday, March 4, 2016, at 11 a.m.

SENATE CALENDAR

**Friday, March 04, 2016
11:00 AM**

UNFINISHED BUSINESS

- S. C. R. 60 - Requesting interim study of feasibility of public virtual online schools.
- S. C. R. 61 - Requesting study on best methods to enhance communication between teachers, parents and students.

SECOND READING

- Eng. Com. Sub. for H. B. 4146 - Providing insurance cover abuse-deterrent opioid analgesic drugs - (Com. amend. pending) (original similar to SB304).
- Eng. H. B. 4235 - Relating to the publication requirements of the administration of estates - (Com. title amend. pending).
- Eng. H. B. 4362 - Establishing a felony offense of strangulation - (Com. amend. and title amend. pending) (original similar to SB482).

FIRST READING

- Eng. Com. Sub. for H. B. 4604 - Relating to violations of the Ethics Act - (Com. amend. and title amend. pending).

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Friday, March 4, 2016

9:30 a.m.	Finance	(Room 451M)
9 a.m.	Judiciary	(Room 208W)