

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

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

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Charleston, W. Va., Wednesday, February 3, 2016

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Father Matthew Moore, St. John Greek Orthodox Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Gregory L. Boso, a senator from the eleventh district.

Pending the reading of the Journal of Tuesday, February 2, 2016,

At the request of Senator Laird, 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 concurrence by that body in the passage of, to take effect from passage, of

**Eng. Senate Bill 364**, Supplemental appropriation expiring funds from General Revenue.

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 4175**—A Bill to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating generally to home schooling; clarifying that student who is home schooled may not be classified as habitually absent; requiring superintendent to show probable cause when seeking order to deny home instruction; changing requirement that parent of child who is to be

home schooled notify county superintendent annually of intent to home school to a one time notification; requiring notice upon change in county of residence; requiring notice of intent to home school to include certain assurances; removing requirement for notice of intent two weeks prior to withdrawal from school; removing requirement that person providing home instruction have a high school diploma or equivalent; removing requirement that person providing home instruction outline plan of instruction for ensuing year; removing requirement to submit results of required student assessments to superintendent annually; removing requirement for parent or legal guardian to pay assessment cost when given outside public school; requiring use of test normed within ten years; permitting parent to administer required nationally normed standardized test; providing that student has made acceptable academic progress if it is within or above the fourth stanine rather than fiftieth percentile, or if below that stanine then the student must show improvement from the previous year; removing requirement to provide written narrative of portfolio assessment to superintendent annually; requiring certified teacher to review a student's progress and provide written narrative; removing requirement to provide certification number of the certified teacher; requiring parent or legal guardian to keep academic assessments for three years; providing that county board may only notify parent or legal guardian of availability of certain special education assistance and services if parent or legal guardian requests it; and requiring parent or legal guardian to submit to superintendent results of required assessments at grade levels three, five, eight and eleven by certain date.

Referred to the Committee on Education.

The Senate proceeded 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 Bill 45**, Tourist-Oriented Directional Sign Program.

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,

Chris Walters,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Transportation and Infrastructure pending.

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

Your Committee on Health and Human Resources has had under consideration

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

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

**Com. Sub. for Senate Bill 68** (originating in the Committee on Health and Human Resources)—  
A Bill to repeal §16-29B-19, §19-29B-19a, §16-29B-20, §16-29B-21 and §16-29B-21a of the Code of

West Virginia, 1931, as amended; and to amend and reenact §16-29B-10 of said code, relating generally to powers and duties of the Health Care Authority; eliminating authority of the Health Care Authority to conduct rate review and set rates for hospitals; and eliminating antiquated studies to be conducted by the Health Care Authority.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

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

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 Bill 141**, Removing CDL requirement when towing vehicle is below certain gross vehicle weight rating.

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

Respectfully submitted,

Chris Walters,  
*Chair.*

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

Senator Boso, from the Committee on Energy, Industry and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry and Mining has had under consideration

**Senate Bill 184**, DEP, Water and Waste Management rule relating to above ground storage tank fee assessments.

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 the Judiciary.

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

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

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

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

**Com. Sub. for Senate Bill 326** (originating in the Committee on the Judiciary)—A Bill to repeal §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-8D-10, relating to repealing the criminal offense of contributing to the delinquency or neglect of a child; creating the criminal offense of contributing to the delinquency of a minor; establishing elements of offense; setting penalties; allowing for additional terms and conditions to be imposed upon conviction; and authorizing restitution.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

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

**Com. Sub. for Senate Bill 361** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §61-2-10a of the Code of West Virginia, 1931, as amended, relating to limiting applicability of sentence suspension with a condition of public service to misdemeanor assault and battery offenses against the elderly and eliminating language affording the possibility of public service for malicious wounding, unlawful wounding and violence to an elderly person during commission of a felony; prohibiting persons convicted of misdemeanor assault or battery where the victim is elderly from performing public service involving the elderly and removing provision relating to the section's applicability to persons convicted of certain felonies.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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 5**, Coach Bill Stewart Exit.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Chris Walters,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

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

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills and joint resolution were introduced, read by their titles, and referred to the appropriate committees:

**By Senators Karnes, Maynard, Plymale and Boso:**

**Senate Bill 485**—A Bill to amend and reenact §20-7-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §20-14A-1, §20-14A-2, §20-14A-3, §20-14A-4, §20-14A-5, §20-14A-6, §20-14A-7, §20-14A-8, §20-14A-9, §20-14A-10 and §20-14A-11; and to amend and reenact §20-15-1, §20-15-2, §20-15-3, §20-15-4 and §20-15-5 of said code, all relating to establishing regional recreation authorities and regional recreation areas; providing for law-enforcement services to be provided by natural resources police officers or county sheriffs under reimbursement by regional recreation authority; authorizing creation of regional recreation authority as joint development entity formed by contiguous counties; setting forth definitions; establishing powers and composition of governing board; providing for financial review and oversight of public funds; prohibiting certain conduct in recreation area; establishing requirements for bidding and purchasing; prohibiting conflicts of interest; limiting liability; clarifying duties and responsibilities of participants to landowners and lessors in the regional recreation area; and establishing criminal penalties and civil remedies.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

**By Senators Walters and Gaunch:**

**Senate Bill 486**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §64-5-2, relating to reauthorizing, with amendment, as one rule, the legislative rules contained in title sixty-four, series eleven and series seventy-four of the Code of State Rules relating to licensure of behavioral health centers (64 CSR 11) and behavioral health consumer rights (64 CSR 74).

Referred to the Committee on the Judiciary.

**By Senators Plymale, Stollings, Prezioso, Williams and Unger:**

**Senate Bill 487**—A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as

amended, relating to personal income tax; and exempting social security benefits from personal income tax.

Referred to the Committee on Finance.

**By Senators Takubo, Stollings and Plymale:**

**Senate Bill 488**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25b, relating to establishing protocols and protections to limit and treat injury to youth athletes and students; creating Leland's Law; setting out legislative findings; establishing requirement for an emergency action plan at all high school and middle school athletic activities; defining certain terms; requiring promulgation of certain rules; and setting forth certain minimum provisions of rules.

Referred to the Committee on Education.

**By Senators Takubo, Stollings, Plymale and Ferns:**

**Senate Bill 489**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-13DD-6, §11-13DD-7, §11-13DD-8 and §11-13DD-9, all relating to establishing tax credit for certain physicians who relocate to this state to practice; providing for criteria for the tax credit; establishing education requirements; setting forth time limit to claim tax credit; setting forth length or residency requirements; setting forth finding; defining terms; authorizing the credit; specifying amount of tax credit; providing how credit may be asserted; specifying no tax credit carryover; allowing forms and schedules to be established by Tax Commissioner in rule; setting maximum amount per taxpayer per year; authorizing Tax Commissioner to promulgate rules; and setting effective date.

Referred to the Committee on Finance.

**By Senators Takubo and Stollings:**

**Senate Bill 490**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-25H-1, §33-25H-2 and §33-25H-3, all relating to requiring managed care programs to participate with any willing health provider who provides delivery of services to persons receiving Medicaid; providing exclusions; allowing for a plan or correction; and defining terms.

Referred to the Committee on Health and Human Resources.

**By Senators Takubo, Stollings and Plymale:**

**Senate Bill 491**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §47-11A-12b, relating to noncompete clauses in contracts; providing that contract which restrains lawful profession, trade or business is void; and including exceptions.

Referred to the Committee on the Judiciary.

**By Senators Hall, Plymale and Boso:**

**Senate Bill 492**—A Bill to amend and reenact §15-2-4 of the Code of West Virginia, 1931, as amended, relating to establishing a fee schedule; and collecting fees for recovering costs associated with the West Virginia State Police Forensic Laboratory providing forensic service to all law-enforcement agencies.

Referred to the Committee on Finance.

**By Senator Trump:**

**Senate Bill 493**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto three new sections, designated §44D-5-503a, §44D-5-503b and §44D-5-503c; and to amend and reenact §44D-5-505 of said code, all relating to allowing the creation of self-settled spendthrift trusts.

Referred to the Committee on the Judiciary.

**By Senators Beach and Plymale:**

**Senate Bill 494**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4 and §17-29-5, all relating to creating the Legislative Oversight Commission on Department of Transportation Accountability; setting forth findings, purpose and intent; defining terms; designating makeup and compensation of commission; authorizing meetings of the commission; stating powers and duties of commission; providing a limited subpoena power to the commission; and requiring certain legislative reports.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Government Organization.

**By Senator Walters:**

**Senate Bill 495**—A Bill to amend and reenact §55-2-3 of the Code of West Virginia, 1931, as amended, relating to entry upon or recovery of lands by infants, insane persons, military personnel or reservists.

Referred to the Committee on the Judiciary.

**By Senators Gaunch, Ferns and Palumbo:**

**Senate Bill 496**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-11G-1, §62-11G-2, §62-11G-3, §62-11G-4, §62-11G-5, §62-11G-6, §62-11G-7, §62-11G-8 and §62-11G-9, all relating to the creation of the 24/7 Sobriety Program to be administered by the Office of the Attorney General; establishing the 24/7 Sobriety Fund, and to make an appropriation for the fund; providing that sheriffs, the Division of Corrections and the Administrative Office of the Supreme Court of Appeals may participate in the 24/7 Sobriety Program for electronic alcohol monitoring device testing of persons under their control; promulgation of rules and distribution of fees from the program; providing that participation in program may be made a condition of bond or pretrial release, of suspended sentence or probation, as condition of child placement or return or as condition of parole; when fees are to be paid; sanctions for failure to pay electronic alcohol monitoring or ignition interlock device testing fees; and providing for an annual review of the 24/7 Sobriety Program fees and collection procedures.

Referred to the Committee on the Judiciary.

**By Senators Takubo, Trump, Palumbo, Stollings, Williams, Gaunch and Blair:**

**Senate Bill 497**—A Bill to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-11 of said code; and to amend and reenact §60-6-7 and §60-6-8 of said code, all relating to banning and providing for criminal penalties for the manufacture, possession, use, sale and furnishing of powdered alcohol; and defining a term.

Referred to the Committee on the Judiciary.

**By Senators Gaunch, Ashley and Trump:**

**Senate Bill 498**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24A-2-2b, relating to additional duties of the Public Service Commission; requiring commission to review complaint process; setting forth burden of proof on carrier; developing process for aggrieved parties to recover charges; establishing factor for commissioner to consider whether charges are fair, just and reasonable; providing commission authority to establish civil penalties for violations; prohibiting indemnification in certain instances; requiring commercial driver's license for towing services; requiring carriers to list rates on invoices; authorizing commission to suspend or revoke operating authority; and requiring commission to update Legislature.

Referred to the Committee on Government Organization.

**By Senators Boley, Blair, Ferns, Karnes, Sypolt, Trump and Cole (Mr. President):**

**Senate Bill 499**—A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating generally to academic content standards and assessments in schools; removing a reference to the No Child Left Behind Act; addressing education standards; defining “learning standards”; defining “college and career ready”; making certain findings with respect to the state board’s adoption of Common Core State Standards; establishing a designated name to refer to West Virginia educational standards; requiring the state board to replace the current content standards and objectives for English language arts and mathematics with educational standards in effect prior to adoption of the Common Core State Standards; requiring the state board to withdraw from a Memorandum of Agreement relating to adoption of Common Core State Standards; requiring the state board to withdraw as a governing state in the Smarter Balanced Assessment Consortium; requiring the state board to withdraw any pending or effective policies and regulations aligning West Virginia’s educational standards with Common Core State Standards; prohibiting the state board from entering into any agreement, memorandum of understanding or contract which cedes or limits constitutional authority and obligation to provide a thorough and efficient system of education; requiring the state board to provide a report to the Legislative Oversight Commission on Education Accountability; requiring the state board to adopt new or revised educational standards that meet certain criteria; specifying that a certain process be followed prior to adopting new or revised educational standards; requiring that waivers for instructional resources be granted to teach new or revised standards; requiring guidelines be developed for county boards of education on informing the public and providing input at the local level; prohibiting evaluation of teachers based upon student achievement until training completed; requiring removal of Common Core based instructional resources from the state multiple list; establishing a process of notification and input for future changes to educational standards; addressing overlap of West Virginia educational standards with Common Core State Standards; addressing requests for waiver from federal law; requiring consultation prior to adopting a comprehensive statewide student assessment program that is aligned with West Virginia educational standards; requiring that student assessments be limited to once a year in certain grades; establishing the minimum criteria for student assessments; prohibiting use of Common Core aligned assessments; and providing for assessment in transition period to new or revised West Virginia educational standards.

Referred to the Committee on Education.

**By Senator Hall:**

**Senate Bill 500**—A Bill to amend and reenact §15-2-3 of the Code of West Virginia, 1931, as amended, relating to authorizing the Superintendent of the State Police to hold training classes for certification to access and use the West Virginia Automated Police Network; authorizing a fee to be charged for the training; creating a fund in which the fees are to be deposited; and addressing the use of the funds.

Referred to the Committee on Finance.

**By Senator Trump:**

**Senate Bill 501**—A Bill to amend and reenact §38-1-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §44D-1-103 and §44D-1-107 of said code; to amend said code by adding thereto a new section, designated §44D-1-113; to amend and reenact §44D-3-303 of said code; to amend and reenact §44D-4-403, §44D-4-405, §44D-4-409 and §44D-4-414 of said code; to amend and reenact §44D-5-505 of said code; to amend and reenact §44D-6-604 of said code; and to amend and reenact §44D-8-817 of said code, all relating generally to trusts and their administration; and making technical improvements and updates.



Referred to the Committee on Banking and Insurance.

**By Senators Sypolt, Boso, Gaunch, Karnes, Trump and Walters:**

**Senate Bill 502**—A Bill to amend and reenact §11-21-21 of the Code of West Virginia, 1931, as amended, relating to changing the qualifier for low income to three hundred percent or less of the federal poverty guideline from one hundred fifty percent or less of the federal poverty guideline for a senior citizens' homestead tax credit.

Referred to the Committee on Finance.

**By Senators Sypolt, Boso, Trump, Plymale and Williams:**

**Senate Bill 503**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9o, relating generally to consumers sales and service tax liability of homeowners' associations and their members; and exempting from tax dues, fees and assessments paid to homeowners' associations by members thereof which are to be used by the homeowners' associations acting in its representative capacity for all members to purchase for the members, rather than sell to the members, the goods and services.

Referred to the Committee on Finance.

**By Senators Ashley, Laird, Maynard, Miller, Romano, Walters and Plymale:**

**Senate Bill 504**—A Bill to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §62-6B-2 of said code; and to amend said code by adding thereto a new section, designated §62-6B-6, all relating to confidentiality of juvenile records; providing that a videotaped or otherwise recorded interview is prohibited from disclosure; defining the term "interviewed child"; defining "recorded/videotaped interview"; providing that videotaped or otherwise recorded interviews of children are confidential and not subject to disclosure; providing that in a criminal proceeding the prosecuting attorney must disclose the existence of a recorded interview; providing in child abuse and neglect proceedings that the prosecuting attorney, or if no prosecuting attorney is involved in the proceeding, then the petitioner therein, disclose the existence of a videotaped or otherwise recorded interview; providing that in a circuit court, family court or magistrate court proceeding the party in possession of a videotaped or otherwise recorded interview disclose the existence of the interview contemporaneously with the disclosure of witnesses; and providing the prosecuting attorney or other party in possession of a recorded interview disclose for viewing to counsel for a criminal defendant or, in the case of a child abuse and neglect proceeding, to the counsel for the respondent parents, the guardian ad litem and the court appointed special advocate for the child the existence of the recorded interview.

Referred to the Committee on the Judiciary.

**By Senators Sypolt, Boley, Boso, Gaunch, Karnes, Walters, Plymale, Leonhardt and Unger:**

**Senate Joint Resolution 10**—Proposing an amendment to the Constitution of the State of West Virginia, amending section one-b, article X thereof, relating to homestead exemption increase; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

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

Senators Stollings, Plymale and Unger offered the following resolution:

**Senate Concurrent Resolution 19**—Requesting Division of Highways to name bridge number 03-20-3.30 (03A059) (37.98919, -81.84550), locally known as Six-mile Creek Bridge (BR No. 3940), carrying County Route 20 over Six-mile Creek in Boone County, as the "Rev. Rexford Montgomery Workman Memorial Bridge".

Whereas, Reverend Rexford Montgomery Workman was born on April 7, 1916, and died on July 1, 2012; and

Whereas, Reverend Workman received seminary training and a degree from Emory University; and

Whereas, Reverend Workman was an ordained Methodist minister for fifty-seven years and preached for over sixty-five years; and

Whereas, Reverend Workman pastored five local churches in Boone County throughout his ministry; and

Whereas, Reverend Workman preached thousands of revivals locally and broadly; and

Whereas, Reverend Workman conducted thousands of funerals in Boone County; and

Whereas, Reverend Workman was a reserve funeral preacher at Handley Funeral Home; and

Whereas, Reverend Workman was a member of the Independent Order of Odd Fellows; and

Whereas, Reverend Workman owned Wiggly's Grocery in downtown Madison and co-founded and co-owned Van Home Outfitting with Reverend John Hager in Van; and

Whereas, Reverend Workman had an infectiously jovial demeanor and that joy was never abated and affected everyone with whom he was acquainted; and

Whereas, It is fitting and proper to honor the life of Reverend Rexford Montgomery Workman for his dedicated service to his community and county by naming this bridge in his memory; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name bridge number 03-20-3.30 (03A059) (37.98919, -81.84550), locally known as Six-mile Creek Bridge (BR No. 3940), carrying County Route 20 over Six-mile Creek in Boone County, as the "Rev. Rexford Montgomery Workman 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 "Rev. Rexford Montgomery Workman 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 Secretary of the Department of Transportation and to the family members of Reverend Rexford Montgomery Workman.

Which, under the rules, lies over one day.

Senators Ashley, Stollings and Plymale offered the following resolution:

**Senate Concurrent Resolution 20**—Requesting Division of Highways name bridge on Interstate 77 over County Route 19 and Allen Fork, bridge number 20-77-117.30 northbound and southbound (20A236 20A453) (38.56209, -81.63631) in Kanawha County, the "U. S. Army CPL Troy Matthews Memorial Bridge".

Whereas, Troy Matthews was born July 8, 1914, in Putnam County, West Virginia, the son of Ed and Hulda Matthews. As a young man, the family lived on Cabin Creek in Kanawha County where his father worked in the coal mines. After the coal mine wars in the late 20s, his parents bought a small farm in Sissonville and moved the family there. Troy enlisted in the United States Army on June

8, 1941, and was sent to Ft. Knox, Kentucky where he was trained as a tank mechanic and served in Headquarters Company, 2nd Battalion, 3rd Armored Division. He served in Northern France, the Ardennes (Belgium) and Rhineland (Germany — European Theater of Operations) where he was wounded as a result of enemy action on September 15, 1944. His wounds resulted in paralysis to his right arm and hand and serious wounds to his back and leg. He spent over a year in several military hospitals and was discharged from the Army as a Tec 5 (Corporal) from Northington General Hospital in Tuscaloosa, Alabama, on October 11, 1945. His decorations include the European Theater Ribbon, Good Conduct Medal, three Bronze Battle Stars and a Purple Heart. Although his injuries were severe, and his right hand and arm paralyzed, he learned to write again with his left hand and to do most anything he could do before. He farmed, worked on equipment and in March 1950 he went to work for the Department of the Navy at the Naval Ordnance Plant in South Charleston, West Virginia, where he helped to make tracked military vehicles. He worked there until the plant was decommissioned and closed in 1961 after being sold to FMC. At that time, he applied for and received his disability retirement based on his service record and related disability. Although retired, he continued to work for many years as a dispatcher for Point Express, a trucking company in Charleston. Troy was married to the late Glyda Boggess Matthews. They had three children, Linda, Dennis and Jay. Troy passed away on May 20, 1974, at the age of 69; and

Whereas, Naming the bridge on Interstate 77 over County Route 19 and Allen Fork, bridge number 20-77-117.30 northbound and southbound (20A236 20A453) (38.56209, -81.63631) in Kanawha County, the “U. S. Army CPL Troy Matthews Memorial Bridge” is an appropriate recognition of his contributions to his country, state, community and Kanawha County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the bridge on Interstate 77 over County Route 19 and Allen Fork, bridge number 20-77-117.30 northbound and southbound (20A236 20A453) (38.56209, -81.63631) in Kanawha County, the “U. S. Army CPL Troy Matthews Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “U. S. Army CPL Troy Matthews 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 any surviving members of the family of CPL Troy Matthews.

Which, under the rules, lies over one day.

Senators Ashley, Stollings and Plymale offered the following resolution:

**Senate Concurrent Resolution 21**—Requesting Division of Highways name bridge on County Route 21 over Mill Creek in Jackson County, bridge number 18-21-19.61 (18A234) (38.80123, -81.69929), locally known as the Hardman Bridge, the “U. S. Army S/SGT Delmer R. Jones Memorial Bridge”.

Whereas, Staff Sergeant Delmer R. Jones, a native of Ripley, West Virginia, served in the U. S. Army during the Vietnam War. He began his tour in Vietnam on October 4, 1967; and

Whereas, Staff Sergeant Delmer R. Jones was killed in battle on January 7, 1968, in Quang Tin, South Vietnam, by multiple fragmentation wounds; and

Whereas, It is fitting that an appropriate memorial recognizing this soldier's service and sacrifice be established in the area where he lived; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the bridge on County Route 21 over Mill Creek in Jackson County, bridge number 18-21-19.61 (18A234) (38.80123, -81.69929), locally known as the Hardman Bridge, the "U. S. Army S/SGT Delmer R. Jones Memorial Bridge"; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the "U. S. Army S/SGT Delmer R. Jones Memorial Bridge"; and, be it

*Further Resolved,* That the Clerk of the Senate forward a certified copy of this resolution to the Commissioner of Highways and the family of the late Staff Sergeant Delmer R. Jones.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 18,** Wilbur Lee Clayton 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 then proceeded to the eighth order of business.

**Eng. Senate Bill 123,** Treatment for sexually transmitted diseases

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 123) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 254,** Not allowing county park commissions to prohibit firearms in facilities.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 254) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 254) takes effect from passage.

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

**Eng. Senate Bill 261**, Bringing state code relating to daylight saving time in conformity with federal code.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 261) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 268**, Abolishing Council of Finance and Administration.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 268) passed with its title.

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

**Eng. Senate Bill 306**, Permitting sale of county or district property online.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 306) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 369**, Reducing legislative education reporting requirements.

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

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

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 369) passed with its title.

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 40**, Changing definition of facilities eligible for funding assistance from Courthouse Facilities Improvement Authority.

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

**Com. Sub. for Senate Bill 109**, Repealing code provisions related to certain reports by trustees for property.

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

On motion of Senator Snyder, the following amendment to the bill was reported by the Clerk and adopted:

On pages eleven and twelve, section ten, lines three through thirty-eight, by striking out all of subsection (a) and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk's certificate of recordation thereon and indexing in a proper index, the clerk of the county commission shall charge and collect the following fees:

(1) Fifteen dollars for a deed of conveyance (with or without a plat), trust deed, fixture filing or security agreement concerning real estate lease.

(2) ~~Forty Twenty~~ dollars for a trustee's report of sale for any residential property. ~~for which additional information and filing requirements are required by section eight-a, article one, chapter thirty-eight of this code. Twenty dollars of each recording fee received pursuant to this subdivision shall be deposited into the county's General Revenue Fund and \$20 paid quarterly by the clerk of the county commission to the West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code.~~

(3) Ten dollars for a financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code.

(4) Ten dollars for a plat or map (with no deed of conveyance).

(5) No charge for a service discharge record.

(6) Ten dollars for any document or writing other than those referenced in subdivisions (1), (2), (3), (4) and (5) of this subsection.

(7) One dollar for each additional page for documents or writings containing more than five pages.

For any of the documents admitted to record pursuant to this subsection, if the clerk of the county commission has the technology available to receive these documents in electronic form or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost for filing paper documents.

(8) Of the fees collected pursuant to subdivision (1) of this subsection, \$10 shall be deposited in the county general fund in accordance with section twenty-eight of this article and \$1 shall be deposited in the county general fund and dedicated to the operation of the county clerk's office. Four dollars of the fees collected pursuant to subdivision (1) of this subsection and \$5 of the fees collected pursuant to subdivision (6) of this subsection shall be paid by the county clerk into the State Treasury and deposited in equal amounts for deposit into the Farmland Protection Fund created in article twelve, chapter eight-a of this code for the benefit of the West Virginia Agricultural Land Protection Authority and into the Outdoor Heritage Conservation Fund created in article two-g, chapter five-b of this code. The funds deposited in the State Treasury pursuant to this subdivision may only be used for costs, excluding personnel costs, associated with purpose of land conservation, as defined in subsection (f), section seven, article two-g, chapter five-b of this code.

The bill (Com. Sub. for S. B. 109), as amended, was then ordered to engrossment and third reading.

**Eng. Com. Sub. for House Bill 2101**, Eliminating obsolete government entities.

Having been read a second time on yesterday, Tuesday, February 2, 2016, and now coming up in regular order with the Government Organization committee amendment pending (*shown in the Senate Journal of that day, page 22*), was reported by the Clerk.

The question being on the adoption of the Government Organization committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2101), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4005**, Repealing prevailing hourly rate of wages requirements.

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

On motion of Senator Snyder, the following amendment to the bill was reported by the Clerk:

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

That §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10, §21-5A-11 and §21-5A-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §21-5A-2 of said code be amended and reenacted to read as follows:

## **ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.**

### **§21-5A-2. Policy declared; adoption of the federal Davis Bacon Act wage rates.**

It is hereby declared to be the policy of the State of West Virginia that a wage of no less than the prevailing hourly rate of wages ~~for work of a similar character in the regions of this state in which the construction is performed~~ shall be paid to all workers employed by or on behalf of any public authority engaged in the construction of public improvements. The state hereby adopts and incorporates the federal prevailing wage laws established pursuant to the Davis Bacon Act, 40 U. S. C. §3141, et seq., and any associated federal law or regulation. All workers employed by or on behalf of any public authority engaged in the construction of public improvements shall be paid the prevailing hourly rate of wages established under federal law as if the public improvement was federally funded.

Following discussion,

The question being on the adoption of Senator Snyder's amendment to the bill, and on this question, Senator Snyder demanded the yeas and nays.

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

The nays were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Snyder's amendment to the bill (Eng. H. B. 4005) rejected.

Senator Unger arose to the following point of order:

SENATOR UNGER: Thank you, Mr. President. Point of order. I ask that . . . .

MR. PRESIDENT: State your point.

SENATOR UNGER: Sorry?

MR. PRESIDENT: State your point.



SENATOR UNGER: I ask that you enforce Rule Number 37, Senate Rule Number 37.

MR. PRESIDENT: Senate will be at ease.

MR. PRESIDENT: Senator, in regard to whom, in regard to whom, who are, who are you talking about? In Rule 37, who are you talking about?

SENATOR UNGER: Yeah, Mr. President. Rule 37 says "No member or other person except the Clerk and the Clerk's assistants shall visit or remain by the Clerk's table while the yeas and nays are being taken."

MR. PRESIDENT: And so who is those?

SENATOR UNGER: And we have, we have individuals that are not assistants to the Clerk that are remaining at the Clerk's table while the yeas and nays are taken. And I ask that Number 37, Rule Number 37, be enforced.

MR. PRESIDENT: Thank you. Your point's not well, well taken. I believe they are assistants to the Clerk. Thank you.

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Thereafter, on motion of Senator Romano, the following amendment to the bill (Eng. H. B. 4005) was next reported by the Clerk:

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

That §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10, §21-5A-11 and §21-5A-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §21-5A-1 of said code be amended and reenacted to read as follows:

## **ARTICLE 5A. CONSTRUCTION OF PUBLIC IMPROVEMENTS WORKERS.**

### **§21-5A-1. Preference to state citizens in construction of public improvements; enforcement of violations.**

(a) In the employment of laborers, workers or mechanics in connection with any public improvement, including, but not limited to, construction, reconstruction, improvement, enlargement or repairing of any public facility, structure, building, road, highway, bridge, street, alley, sewer, ditch, sewage disposal plant, waterworks, airport and all other structures upon which construction may be let to contract by the State of West Virginia or any political subdivision thereof or any of its agents or by persons contracting therewith, preference shall be given to residents of the state, and, if they cannot be obtained in sufficient numbers, then to citizens of the United States.

(b) Each contract where subsection (a) of this section applies, under the supervision of the state or any of its agents, shall contain the following provisions: "In the employment of labor to perform the work specified herein, preference shall be given to citizens of the United States, who have continuously resided in the state at least three months prior to the date hereof." In no event shall said provisions or anything in this section be deemed to abrogate or supersede, in any manner, any provision regarding residence requirements contained in a collective bargaining agreement to which the contractor is a party.

(c) No person who receives an award or contract from the state under subsection (a) of this section, or who receives an order or contract under said subsection for which a portion of funds is derived from the state, shall knowingly employ nonresidents of the state while residents who may

qualify for such work are reasonably available for employment. In the employment of nonresidents, the construction supervisor or construction inspector assigned to the project shall verify that the contracting employer, by reasonable efforts, sought to obtain construction job applicants from existing employment sources in West Virginia. The agent contracting on behalf of the state or any political subdivision thereof shall investigate promptly any alleged violation of this section. If the investigating agent finds evidence of such a violation, he or she shall immediately notify the alleged violator of such evidence and allegations. If the alleged violator fails to take corrective action within one week, or to produce evidence which satisfies the agent that no violation has occurred, the agent shall notify the Division of Labor, which shall institute a civil action to recover as liquidated damages for the violation of the contract an amount equal to the wages paid to any employees employed in violation of this section and the costs of litigation, including reasonable attorney's fees and costs.

(d) The provisions of this section shall not apply where the state or any subdivision thereof may suffer the loss of revenue granted or to be granted from any agency or department of the federal government as a result of applying this section.

Following discussion,

The question being on the adoption of Senator Romano's amendment to the bill, and on this question, Senator Romano demanded the yeas and nays.

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

The nays were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—18.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendment to the bill rejected.

The bill (Eng. H. B. 4005) was then ordered to third reading.

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senators Snyder, Carmichael, Romano, Trump, Kirkendoll, Karnes, Walters and Woelfel regarding the adoption of the respective amendments offered by Senators Snyder and Romano to Engrossed House Bill 4005 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Senate Bill 29**, Tolling statute of limitations in certain cases.

**Com. Sub. for Senate Bill 159**, Authorizing promulgation of legislative rules by miscellaneous boards and commissions.

**Com. Sub. for Senate Bill 265**, Allowing library volunteers necessary access to user records.

**Com. Sub. for Senate Bill 270**, Repealing code relating to insurance policies.

**Com. Sub. for Senate Bill 330**, Requiring automobile liability insurers provide 10 days' notice of intent to cancel due to nonpayment of premium.

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

**Com. Sub. for Com. Sub. for Senate Bill 387**, Shared animal ownership agreements to consume raw milk.

And,

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

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

Pending announcement of meetings of standing committees of the Senate,

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

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## **SENATE CALENDAR**

**Thursday, February 04, 2016  
11:00 AM**

### **UNFINISHED BUSINESS**

- S. C. R. 5 - Coach Bill Stewart Exit.  
S. C. R. 19 - Rev. Rexford Montgomery Workman Memorial Bridge.  
S. C. R. 20 - U.S. Army CPL Troy Matthews Memorial Bridge.  
S. C. R. 21 - U.S. Army S/SGT Delmer R. Jones Memorial Bridge.

### **THIRD READING**

- Eng. Com. Sub. for S. B. 40 - Changing definition of facilities eligible for funding assistance from Courthouse Facilities Improvement Authority.  
Eng. Com. Sub. for S. B. 109 - Repealing code provisions related to certain reports by trustees for property.  
Eng. Com. Sub. for H. B. 2101 - Eliminating obsolete government entities.  
Eng. H. B. 4005 - Repealing prevailing hourly rate of wages requirements.

### **SECOND READING**

- S. B. 29 - Tolling statute of limitations in certain cases.  
Com. Sub. for S. B. 159 - Authorizing promulgation of legislative rules by miscellaneous boards and commissions.  
Com. Sub. for S. B. 265 - Allowing library volunteers necessary access to user records.  
Com. Sub. for S. B. 270 - Repealing code relating to insurance policies.  
Com. Sub. for S. B. 330 - Requiring automobile liability insurers provide 10 days' notice of intent to cancel due to nonpayment of premium.  
S. B. 385 - Allowing defendants 180 days to identify nonparties wholly or partially at fault in civil actions.  
Com. Sub. for Com. Sub. for S. B. 387 - Shared animal ownership agreements to consume raw milk.  
S. B. 415 - Lengthening maximum term of negotiable certificates of deposit municipal funds can hold.

### **FIRST READING**

- Com. Sub. for S. B. 68 - Disallowing Health Care Authority to conduct rate review and set rates for hospitals.

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

## **ANNOUNCED SENATE COMMITTEE MEETINGS**

### **Regular Session 2016**

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**Thursday, February 4, 2016**

9:30 a.m.	Finance	(Room 451M)
1 p.m.	Health & Human Resources	(Room 451M)
1 p.m.	Energy, Industry & Mining	(Room 208W)
2 p.m.	Education	(Room 451M)
2 p.m.	Government Organization	(Room 208W)
3 p.m.	Finance	(Room 451M)