

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE  
REGULAR SESSION, 2017  
FIFTY-FIRST DAY

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Charleston, West Virginia, Thursday, March 30, 2017

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Matt Friend, Bible Center Church, Charleston, West Virginia.

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

Pending the reading of the Journal of Wednesday, March 29, 2017,

At the request of Senator Maroney, 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 passage by that body and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 2129**—A Bill to amend and reenact §60-7-10 of the Code of West Virginia, 1931, as amended, relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs; clarifying that the grant of authority to the Alcohol Beverage Control Commissioner and his or her agents to enter and inspect the premises of a private club does not limit or restrict the authority of local law enforcement to enter any area open to the general public in or adjacent to a facility with a private club license, or from undertaking other appropriate action or investigation to enforce the underage drinking laws set forth in section twelve-a of 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 2195**—A Bill to amend and reenact §18-2-7b of the Code of West Virginia, 1931, as amended, relating to requiring comprehensive drug awareness and prevention program in all public schools; requiring county boards to implement no later than 2018-2019 school year; specifying purposes of program; requiring county boards to coordinate delivery of instruction to meet program purposes with educators, drug rehabilitation specialists and law-enforcement agencies; requiring instruction relating to interactions with law-enforcement officers; and requiring instruction in any of the grades six through twelve in the subject of health on dangers, and addictive nature of opioid use and safer alternatives to treat pain.

Referred to the Committee on Education.

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 2363**—A Bill to amend and reenact §17E-1-9 of the Code of West Virginia, 1931, as amended, relating to commercial driver's licenses; and requiring that state, county, city, and other local government employees with commercial driver's licenses have valid and current medical evaluation certification statuses and, if applicable, medical waivers.

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 from passage, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 2428**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-53-1 and §16-53-2, all relating to ensuring that an additional six hundred beds for purposes of providing substance abuse treatment services are made available in locations throughout the state; providing duties of the Secretary of the Department of Health and Human Resources; creating the Ryan Brown Addiction Prevention and Recovery Fund; and directing the transfer of money recovered on behalf of the state arising out of the settlement of a certain civil action.

Referred to the Committee on Health and Human Resources; 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 2483**—A Bill to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday; requiring transfer of juvenile in adult jurisdiction upon reaching eighteen years of age if he or she has either been convicted or is in a pretrial status; directing the Division of Juvenile Services to notify the circuit court of a juvenile reaching the age of eighteen years of age; authorizing the circuit court to conduct a hearing as to alternative placement; mandating that the position of victim be taken under consideration by the court in considering disposition or alternative placement; prohibiting juveniles that commit an adult offense while under the custody of the Division of Juvenile Services from returning back to the placement in a juvenile facility if the juvenile has attained the age of eighteen years; and requiring the court to conduct a hearing as

to placement of a juvenile that has turned eighteen years of age and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence.

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 2851**—A Bill to amend and reenact §32-2-202 of the Code of West Virginia, 1931, as amended; to amend and reenact §32-3-305 of said code; and to amend and reenact §32-4-413 of said code, all relating to increasing fees assessed by the Auditor's Securities Division.

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. Com. Sub. for House Bill 3062**—A Bill to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-3A-5 and §5-3A-6, all relating to creating the State Settlement and Recovered Funds Accountability Act; providing a short title; setting forth legislative findings; directing that recovered funds and assets to be deposited into the state treasury in the general revenue fund of the state, and exceptions; directing that certain recovered funds and assets be held in trust to be deposited into a special revenue account in the State Treasury; prohibiting agreements to settlement or agreement terms that are contrary to the depositing of funds in the State Treasury; establishing a special fund to be known as the Consumer Protection Recovery Fund; requiring quarterly transfer of funds from the to the general revenue fund; authorizing the deposit and expenditure of attorney fees, expenses and costs awarded to the Attorney General from the fund; prohibiting agreements to settlement or agreement terms that are contrary to the provisions of law; requiring quarterly reporting by the Attorney General as to the disposition of matters; and repealing provisions governing the disposition of certain fees of the Attorney General taxed as costs in legal proceedings.

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. Com. Sub. for House Bill 3080**—A Bill to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to recognition of "Celebrate Freedom Week" in all public, private, parochial and denominational schools; stating purpose; providing for instructional elements; exempting from state accountability measures; requiring administration to public school students of civics portion of test the same or substantially similar to certain naturalization test in any grades nine through twelve beginning 2018-2019 school year; report of aggregate results to county board; and exempting from state accountability measures.

Referred to the Committee on Education.

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 3102**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-26, relating to the selling of a certain state owned health care facility and appurtenances by the Secretary of the Department of Health and Human Resources; ensuring the transfer of existing patients and the construction of a replacement facility; exempting certain laws; creating a fund; implementing a benefits package for employees; and providing statutory construction.

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

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

**House Concurrent Resolution 109**—Extending the Committee of Conference relating to consideration of **Com. Sub. for H. B. 2099**, Defining the act of leaving the scene of a crash involving death or serious bodily injury as a felony; Erin's Law.

*Resolved by the Legislature of West Virginia:*

That pursuant to Rule No. 3 of the Joint Rules of the Senate and House of Delegates, the Committee of Conference is hereby extended for a period of three day for the express purpose of consideration of matters of disagreement between the two houses as to Com. Sub. for H. B. 2099.

At the request of Senator Ferns, and by unanimous consent, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

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

*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 adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 110**—Extending the Committee of Conference relating to consideration of **Com. Sub. for H. B. 2028**, Relating to the venue for suits and other actions against the state.

*Resolved by the Legislature of West Virginia:*

That pursuant to Rule No. 3 of the Joint Rules of the Senate and House of Delegates, the Committee of Conference is hereby extended for a period of three day for the express purpose of consideration of matters of disagreement between the two houses as to Com. Sub. for H. B. 2028.

At the request of Senator Ferns, and by unanimous consent, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

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

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

**Executive Communications**

Senator Carmichael (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:

**Jim Justice**  
**Governor of West Virginia**

March 29, 2017

**Senate Executive Message No. 6**  
**Regular Session 2017**

TO: The Honorable Members of the  
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Director, Division of Homeland Security, James J. Gianato, Kimball, McDowell County, to serve at the will and pleasure of the Governor.
2. For Secretary, Department of Military Affairs and Public Safety, Jeff Sandy, Vienna, Wood County, to serve at the will and pleasure of the Governor.
3. For Secretary, Department of Environmental Protection, Austin Caperton, Daniels, Raleigh County, to serve at the will and pleasure of the Governor.
4. For Secretary, Department of Revenue, Dave Hardy, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
5. For Commissioner, Division of Tourism, Chelsea A. Ruby, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
6. For Superintendent, West Virginia State Police, Jan Cahill, Lewisburg, Greenbrier County, to serve at the will and pleasure of the Governor.
7. For Secretary, Department of Health and Human Resources, Bill J. Crouch, Poca, Putnam County, to serve at the will and pleasure of the Governor.
8. For Secretary, West Virginia Department of Veterans Assistance, Dennis Davis, Dunbar, Kanawha County, to serve at the will and pleasure of the Governor.
9. For Director, West Virginia Lottery, Alan H. Larrick, Daniels, Raleigh County, to serve at the will and pleasure of the Governor.
10. For Secretary, Department of Education and the Arts, Gayle C. Manchin, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

11. For Secretary, Department of Administration, John A. Myers, Scott Depot, Putnam County, to serve at the will and pleasure of the Governor.
12. For Commissioner, West Virginia Division of Motor Vehicles, Pat Reed, Beckley, Raleigh County, to serve at the will and pleasure of the Governor.
13. For Commissioner, Tax Division, Dale Steager, South Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
14. For Secretary, Department of Commerce, H. Wood Thrasher, Bridgeport, Harrison County, to serve at the will and pleasure of the Governor.
15. For Adjutant General, Major General James A. Hoyer, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
16. For Member, West Virginia Board of Physical Therapy, Robert A. Haas, Lewisburg, Greenbrier County, for the term ending June 30, 2019.
17. For Executive Director, School Building Authority, Frank L. Blackwell, Mullens, Wyoming County, to serve at the will and pleasure of the Governor.
18. For Director, Miners' Health, Safety and Training, James G. Norman, Pineville, Wyoming County, to serve at the will and pleasure of the Governor.
19. For Secretary/Commissioner, Department of Transportation/Division of Highways, Thomas J. Smith, Hurricane, Putnam County, to serve at the will and pleasure of the Governor.
20. For Member, Pierpont Community and Technical College Board of Governors, L. Eugene Weaver, Fairmont, Marion County, for the term ending June 30, 2020.
21. For Member, West Virginia Investment Management Board of Trustees, Randy E. Snider, Parkersburg, Wood County, for the term ending January 31, 2023.
22. For Member, West Virginia Investment Management Board of Trustees, Jack Rossi, Charleston, Kanawha County, for the term ending January 31, 2023.
23. For Member, West Virginia Racing Commission, Anthony E. Figaretti, Wheeling, Ohio County, for the term ending April 1, 2020.
24. For Member, West Virginia Racing Commission, Kenneth F. Lowe, Jr., Shepherdstown, Jefferson County, for the term ending April 1, 2020.
25. For Member, West Virginia Board of Education, Miller Hall, Beckley, Raleigh County, for the term ending November 4, 2019.
26. For Member, West Virginia Board of Education, Harold L. Hatfield, Jr., Hurricane, Putnam County, for the term ending November 4, 2025.
27. For Member, West Virginia Board of Education, Barbara Whitecotton, Moorefield, Hardy County, for the term ending November 4, 2024.

28. For Member, West Virginia Parole Board, Mike McCarthy, Huntington, Cabell County, for the term ending June 30, 2022.
29. For Member, West Virginia Board of Education, The Honorable David G. Perry, Oak Hill, Fayette County, for the term ending November 4, 2020.
30. For Member, West Virginia Board of Physical Therapy, Jack Spatafore, Bridgeport, Harrison County, for the term ending June 30, 2019.
31. For Member, West Virginia Board of Physical Therapy, Jack Brautigam, Morgantown, Monongalia County, for the term ending June 30, 2018.
32. For Member, West Virginia Board of Physical Therapy, Steve Young, Summersville, Nicholas County, for the term ending June 30, 2017.
33. For Director, Division of Natural Resources, Stephen S. McDaniel, Hendricks, Tucker County, to serve at the will and pleasure of the Governor.
34. For Member, Aeronautics Commission, Scott Miller, Charleston, Kanawha County, for the term ending June 30, 2020.
35. For Member, Southern West Virginia Community and Technical College Board of Governors, Latisha Marcum, Williamson, Mingo County, for the term ending June 30, 2018.
36. For Member, Family Protection Services Board, Emily S. Larkins, Parkersburg, Wood County, for the term ending June 30, 2019.
37. For Member, West Virginia Board of Architects, Adam Krason, Charleston, Kanawha County, for the term ending June 30, 2017.
38. For Executive Director, Housing Development Fund, Erica L. Boggess, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
39. For Member, Housing Development Fund, David Gardner, Charleston, Kanawha County, for the term ending October 30, 2020.
40. For Member, Housing Development Fund, John B. Gianola, Charleston, Kanawha County, for the term ending October 30, 2020.
41. For Member, Housing Development Fund, Robert L. Nistendirk, Charleston, Kanawha County, for the term ending October 30, 2020.
42. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Gary L. Poling, Beckley, Raleigh County, for the term ending June 30, 2019.
43. For Commissioner, Division of Labor, David Mullins, Ripley, Jackson County, to serve at the will and pleasure of the Governor.
44. For Commissioner, Alcohol Beverage Control Commission, Fredric L. Wooton, Beckley, Raleigh County, to serve at the will and pleasure of the Governor.

45. For Member, Water Development Board, Marie L. Prezioso, Charleston, Kanawha County, for the term ending June 30, 2018.
46. For Member, West Virginia Council for Educational Opportunity for Military Children, Christopher P. Cmiel, Belle, Kanawha County, for the term ending June 30, 2019.
47. For Member, West Virginia Housing Development Fund, Mary Agnes Kern, Charleston, Kanawha County, for the term ending October 30, 2018.
48. For Member, West Virginia Library Commission, Betty Gunnoe, Martinsburg, Berkeley County, for the term ending June 30, 2020.
49. For Member, West Virginia Library Commission, Debra K. Sullivan, Charleston, Kanawha County, for the term ending June 30, 2020.
50. For Member, Fire Commission, Martin Hess, Sand Fork, Gilmer County, for the term ending June 30, 2018.
51. For Member, Southern West Virginia Community and Technical College Board of Governors, Mason E. White II, Logan, Logan County, for the term ending June 30, 2017.
52. For Member, Property Valuation Training and Procedures Commission, Harvey Young, Fayetteville, Fayette County, for the term ending June 30, 2020.
53. For Member, Property Valuation Training and Procedures Commission, Dick Waybright, Ravenswood, Jackson County, for the term ending June 30, 2020.
54. For Member, Property Valuation Training and Procedures Commission, Joseph M. Alongi, New Cumberland, Hancock County, for the term ending June 30, 2020.
55. For Member, Property Valuation Training and Procedures Commission, John P. Cavendish, Charleston, Kanawha County, for the term ending June 30, 2020.
56. For Member, Property Valuation Training and Procedures Commission, Drema B. Evans, Beckley, Raleigh County, for the term ending June 30, 2020.
57. For Chief Executive Officer, Center for Professional Development, Lorrie A. Smith, Gassaway, Braxton County, to serve at the will and pleasure of the Governor.
58. For Member, West Virginia Northern Community and Technical College Board of Governors, Eran T. Molz, Martins Ferry, Ohio, for the term ending June 30, 2017.
59. For Member, West Liberty University Board of Governors, Teresa C. Toriseva, Wheeling, Ohio County, for the term ending June 30, 2020.
60. For Member, West Virginia Board of Veterinary Medicine, William Ross Peery, Beckley, Raleigh County, for the term ending June 30, 2021.
61. For Member, Broadband Enhancement Council, Richard Cavender, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.

62. For Member, Veterans' Council, Kenneth D. Boggs, Keyser, Mineral County, for the term ending June 30, 2022.
63. For Member, West Virginia Municipal Bond Commission, Linda K. Epling, Beckley, Raleigh County, for the term ending July 7, 2017.
64. For Member, West Virginia Municipal Bond Commission, Stephen T. Williams, Huntington, Cabell County, for the term ending July 7, 2019.
65. For Member, Jobs Investment Trust Board, Gale L. Gray, Charleston, Kanawha County, for the term ending June 30, 2017.
66. For Member, Jobs Investment Trust Board, Ann R. Starcher, Charleston, Kanawha County, for the term ending June 30, 2018.
67. For Member, West Virginia Municipal Pensions Oversight Board, Emily R. Lambright, Charleston, Kanawha County, for the term ending January 1, 2022.
68. For Member, West Virginia Municipal Pensions Oversight Board, David W. Lanham, Charleston, Kanawha County, for the term ending January 1, 2020.
69. For Member, Board of Accountancy, Jon Cain, Sr., Parkersburg, Wood County, for the term ending June 30, 2019.
70. For Member, Board of Accountancy, Robin M. Baylous, Washington, Wood County, for the term ending June 30, 2019.
71. For Member, Board of Accountancy, Richard A. Riley, Jr., Morgantown, Monongalia County, for the term ending June 30, 2019.
72. For Commissioner, Division of Financial Institutions, Dawn E. Holstein, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
73. For Commissioner, Insurance Commission, Allan L. McVey, St. Albans, Kanawha County, to serve at the will and pleasure of the Governor.
74. For Member, West Virginia Board of Physical Therapy, Ashley Mason, Hurricane, Putnam County, for the term ending June 30, 2018.
75. For Member, Unemployment Compensation Board of Review, Les Facemyer, Ripley, Jackson County, for the term ending January 1, 2023.
76. For Member, Capitol Building Commission, Jenelle Armstrong, South Charleston, Kanawha County, for the term ending June 30, 2018.
77. For Member, West Virginia Board of Education, Frank S. Vitale, Morgantown, Monongalia County, for the term ending November 4, 2018.
78. For Member, West Virginia Board of Education, Jeffrey D. Flanagan, Dunbar, Kanawha County, for the term ending November 4, 2022.

79. For Member, Lottery Commission, The Honorable William R. Laird IV, Oak Hill, Fayette County, for the term ending June 30, 2021.
80. For Member, West Virginia Public Employees Grievance Board, William Burdette, Huntington, Cabell County, for the term ending June 30, 2019
81. For Member, West Virginia Public Employees Grievance Board, Kris Mallory, St. Albans, Kanawha County, for the term ending June 30, 2019.
82. For Member, West Virginia Public Employees Grievance Board, John Myers, Scott Depot, Putnam County, for the term ending June 30, 2018.
83. For Member, West Virginia Public Employees Grievance Board, Dale Lee, Princeton, Mercer County, for the term ending June 30, 2018.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,

Jim Justice  
Governor

cc: Clerk of the Senate  
Assistant Clerk of the Senate  
Senate Confirmations Chair

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Boley, consideration of the nominations immediately hereinbefore reported was made a special order of business for Saturday, April 8, 2017, at 11 a.m.

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

**Jim Justice**  
**Governor of West Virginia**

March 28, 2017

**VIA HAND DELIVERY**

The Honorable Mitch Carmichael  
President, West Virginia Senate  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

RE: Enrolled Senate Bill 330

Dear President Carmichael:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 330 due to pending litigation calling into question the constitutionality of this bill's underlying statute and for public policy reasons.

I disapprove this bill because its underlying legislation (SB1 2016 Regular Legislative Session) is currently being challenged as unconstitutional in Kanawha County Circuit Court and the injunctive relief issued by that Court has been appealed to the West Virginia Supreme Court of Appeals. The Attorney General has requested that the Circuit Court issue a final decision by May 1, 2017. A decision by the Supreme Court regarding the current appeal is expected after April 21, 2017. Any amendment to this statute before such time as a Court has finally determined its constitutionality is impudent and contrary to public policy.

For the foregoing reasons, I disapprove and return the bill.

Sincerely,

Jim Justice  
Governor

cc: The Hon. Tim Armstead  
Speaker of the House of Delegates  
The Hon. Mac Warner  
Secretary of State

Senator Ferns moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

**Enr. Senate Bill 330**, Relating to WV Workplace Freedom Act.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Ferns' motion that the Senate reconsider Enrolled Senate Bill 330.

Following discussion,

Senator Karnes moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the adoption of Senator Ferns' motion that the Senate reconsider Enrolled Senate Bill 330, the same was put and prevailed.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—21.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: Azinger—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. S. B. 330) passed with its title, 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.

The Senate proceeded to the fourth order of business.

Senator Boso, 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 13**, US Army CPL James Russell Carter Memorial Road.

**Senate Concurrent Resolution 24**, US Army PFC Joe Messe, Sr., Memorial Bridge.

**Senate Concurrent Resolution 31**, US Navy BT2 Mark Edward Hutchison Memorial Bridge.

**Senate Concurrent Resolution 32**, US Army SGT Denver E. Short Memorial Road.

**Senate Concurrent Resolution 41**, US Army PV2 Mandvial S. "Bunker" Bias Memorial Bridge.

**Senate Concurrent Resolution 43**, Eugene Lee "Gene" Burner Memorial Bridge.

**Senate Concurrent Resolution 44**, Tug Valley Students Memorial Bridge.

**Senate Concurrent Resolution 45**, Home of Anna Lindquist, 1996 NHSPA Hall of Fame Inductee highway sign.

And,

**House Concurrent Resolution 83**, U.S. Army SPC John R. Tennant Memorial Bridge.

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

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the resolutions (S. C. R. 13, 24, 31, 32, 41, 43, 44 and 45 and H. C. R. 83) 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 Boso, 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 23**, Johnny O'Dell Linville Memorial Bridge.

And reports back a committee substitute for same as follows

**Com. Sub. for Senate Concurrent Resolution 23** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways to name bridge number 30-52 2.73 (30A110), (37.82180, -82.39737), between Kermit and East Kermit, locally known as the Upper Burning Creek Bridge, carrying U. S. 52 over Upper Burning Creek and NS Railroad in Mingo County, the “Johnny O'Dell Linville Memorial Bridge”.

Whereas, Johnny O'Dell Linville was born April 29, 1947, to Lenhart and Hazel Lovejoy Linville in their home at Palermo, Lincoln County, West Virginia. The family moved to Kermit, West Virginia, when Johnny was three years of age. He had four brothers and two sisters; and

Whereas, Johnny O'Dell Linville was educated in Kermit. He married Dorothy Spaulding Linville on September 3, 1966. They had one daughter, Rhonda Linville Muncy; and

Whereas, Johnny O'Dell Linville served as the mayor in the Town of Kermit for more than 17 years, and he also served as a councilman for three years; and

Whereas, Johnny O'Dell Linville played a pivotal role in a multitude of projects, including the Kermit Community Park that serves to this day as a popular gathering place for social events and the town's new sewer system. He also planted trees and flowers throughout the town; and

Whereas, Johnny O'Dell Linville's love for the town was shown in his efforts to make Kermit the Cleanest Little Town in West Virginia. One of his slogans was: “If you litter in Kermit, you have had a bad day!” This resulted in the perpetrator receiving a hefty fine; and

Whereas, Johnny O'Dell Linville played a huge part in the creation of the baseball field at East Kermit. He would work the PA system for hours each day and announce the names of the baseball players from the press box. He would be there from opening day to the season finale, from the top to the bottom of the schedule each day, always with a smile on his face, knowing the benefits that the field provided for the community and its children; and

Whereas, Johnny O'Dell Linville died on March 1, 2016, following a two-year struggle with kidney disease. He is survived by his loving wife of 49 years Dorothy Spaulding Linville of Kermit, his daughter Rhonda Linville Muncy, son-in-law Gabe Muncy and grandson John Alex Muncy, who is a student at Marshall University; and

Whereas, Naming this bridge in his hometown is an appropriate recognition of Mayor Johnny O'Dell Linville's contributions to his community; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 30-52 2.73 (30A110), (37.82180, -82.39737), between Kermit and East Kermit, locally known as the Upper

Burning Creek Bridge, carrying U. S. 52 over Upper Burning Creek and NS Railroad in Mingo County, the “Johnny O’Dell Linville 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 “Johnny O’Dell Linville 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,

**Senate Concurrent Resolution 26**, US Marine Corps SSG Beecher J. Rhoades Memorial Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 26** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways to name bridge number 21-10-13.70 (21A028), (39.10653, -80.51671), locally known as Mare Run Arch, carrying county Route 10 over Mare Run in Lewis County, the “U. S. Marine Corps SSG Beecher J. Rhoades Memorial Bridge”.

Whereas, SSG Beecher J. Rhoades was born in Wheeling on March 15, 1926, a son of the late Beecher J. Rhoades and Grayce Long Rhoades; and

Whereas, SSG Beecher J. Rhoades married the former Betty Elizabeth Burnside on April 10, 1948, and they were married for more than 66 years; and

Whereas, SSG Beecher J. Rhoades was an honored veteran of the United States Marine Corps, having served in World War II and the Korean War. In 2006, he was recognized as the Marine Corps League’s Marine of the Year; and

Whereas, SSG Beecher J. Rhoades was an active volunteer who also served as the Marine Corps League, Department of West Virginia 21st Commandant; and

Whereas, SSG Beecher J. Rhoades retired from the Equitable Gas Company with 33 years of service, retiring in 1985. He was an outdoor enthusiast who enjoyed farming, fishing, traveling and flying his Cherokee airplane; and

Whereas, SSG Beecher J. Rhoades was also a member of the Masonic Lodge #10 AF and AM and the Freemansburg United Methodist Church; and

Whereas, SSG Beecher J. Rhoades passed away on May 22, 2014, and naming the bridge in Lewis County for him would be a fitting recognition of his service to his country, state and community; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 21-10-13.70 (21A028), (39.10653, -80.51671), locally known as Mare Run Arch, carrying county Route 10 over Mare Run in Lewis County, the “U. S. SSG Beecher J. Rhoades 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. Marine Corps SSG Beecher J. Rhoades 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.

With the recommendation that the two committee substitutes be adopted.

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

At the request of Senator Ferns, unanimous consent being granted, the resolutions (Com. Sub. for S. C. R. 23 and 26) 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 Boso, 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 46**, Requesting study on consumer complaints regarding safety of aftermarket crash parts.

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,

Gregory L. Boso,  
*Chair.*

On motion of Senator Boso, the resolution (S. C. R. 46) contained in the foregoing report from the Committee on Transportation and Infrastructure was then referred to the Committee on Rules.

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

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. Com. Sub. for House Bill 2180**, Authorizing the issuance of special "In God We Trust" motor vehicle registration plates.

And has amended same.

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

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senators Plymale, Woelfel, Prezioso, Stollings, Palumbo, Unger and Beach offered the following resolution:

**Senate Resolution 62**—Designating March 30, 2017, as Marshall University Day at the Legislature.

Whereas, The year 2017 marks the 180th anniversary of Marshall University, one of the oldest institutions of higher education in West Virginia, founded in 1837 as Marshall Academy in honor of Chief Justice John Marshall; and

Whereas, Marshall University has been educating sons and daughters of Marshall in the tradition of the great Chief Justice ever since; and

Whereas, Marshall University today is one of the state's premier institutions of higher education and educates more than 14,000 students at campuses in Huntington, Point Pleasant, South Charleston, Beckley, Logan and Gilbert; and

Whereas, Marshall University offers degrees at the associate, baccalaureate, master's and doctoral levels; and

Whereas, Marshall University has built a national reputation for research in biotechnology, forensics and medicine; and

Whereas, Marshall University's Health Sciences train hundreds of West Virginians to serve as doctors, nurses, therapists and health technicians each year; and

Whereas, Marshall University each year contributes nearly \$400 million and 3,200 jobs to West Virginia's economy; and

Whereas, The Robert C. Byrd Institute is dedicated to the productivity, growth and global competitiveness of West Virginia entrepreneurs and the Rahall Transportation Institute continues to set national standards in transportation; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates March 30, 2017, as Marshall University Day at the Legislature; and, be it

*Further Resolved,* That the Senate hereby recognizes Marshall University for its tremendous contributions to the State of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to Dr. Jerome A. Gilbert, President of Marshall University.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Woelfel, Plymale, Stollings and Maynard regarding the adoption of Senate Resolution 62 were ordered printed in the Appendix to the Journal.

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

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

Senators Cline, Stollings, Facemire, Palumbo, Beach and Plymale offered the following resolution:

**Senate Resolution 63**—Congratulating the Wyoming East High School golf team for winning the 2016 Class AA State Championship.

Whereas, The Wyoming East High School Warrior golf team made school and Wyoming County history this golf season by winning the school's and county's first state golf championship; and

Whereas, The Warrior golf team is led by head coach Robert 'Doc' Warner, and volunteer coach Kevin Hedinger, and is comprised of two seniors, Logan Cook and Brett Laxton; one junior, Patrick Smith; two sophomores, Michael Grove and Noah Quesenberry and two freshmen, Ethan Bradford and Matt Caldwell; and

Whereas, The Warrior golf team won the 2016 state championship held at Olgebay Resort in Wheeling, West Virginia, by four strokes with a team total of 492 strokes and Brett Laxton took the individual honors with a 2-day score of 151; and

Whereas, The 2016 Warrior golf team will go down in state history as one of the best high school golf teams ever assembled in the state of West Virginia; and

Whereas, The 2016 Warrior golf team is a shining example to all West Virginians of what can be accomplished with dedication, commitment and teamwork; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the Wyoming East High School golf team for winning the 2016 Class AA State Championship; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Wyoming East High School golf team.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Cline and Mullins regarding the adoption of Senate Resolution 63 were ordered printed in the Appendix to the Journal.

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

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

Senators Jeffries, Gaunch, Stollings, Facemire, Palumbo, Unger, Beach and Plymale offered the following resolution:

**Senate Resolution 64**—Congratulating the Herbert Hoover High School boys' basketball team for their outstanding athletic achievement.

Whereas, The Herbert Hoover High School building in Clendenin, West Virginia, was destroyed in the June 2016 flood and forced the Herbert Hoover High School boys' basketball team to hold morning practices at the Charleston YMCA and attend classes in the afternoon at Elkview Middle School; and

Whereas, Despite losing its school, gym and equipment in the flood, the Herbert Hoover High School boys' basketball team made a remarkable run at the end of its 2017 basketball season, which ended with it winning the Class AA Region 2 co-final and advancing to its first state tournament in school history; and

Whereas, The Herbert Hoover boys' basketball team was led by head coach Josh Daniel, and assistant coaches Terry Jarrett and Josh Stricker; and

Whereas, The Herbert Hoover boys' basketball team roster consists of players: Kody McGraw, Chase King, Jackson Myres, Austin Stafford, Gavin Robertson, Joah Payne, John Campbell, Evan McGraw, Rhett White, Josh Swecker, Grant Bonner, Maven Mullins, Joey Belcher, Ethan Knight, Andrew Justice and Hayden King; and

Whereas, The Herbert Hoover cheerleading team consists of Ellie Kinder, Raechel Stevens, A'sa Burcham, Brianna Salisbury, Bethany Roush, Chloe Curry, Kayley Robinson, Kristen Rager, Ava Young, Emma Bowles, Brooke Nelson, Cammy Casto, Alexis Anderson, Baylee Beaver, Miranda McCoy, Sarah Black, Cambria Caldwell, Haley McLaughlin, Candi Lewis, Lexcie Harper, Bethany Lucas, Katarina Mullins and Taylor Bennett; and

Whereas, With its amazing accomplishment, the Herbert Hoover boys' basketball team shined a light on a rebuilding city and gave hope to all the citizens of Clendenin and the surrounding areas; and

Whereas, The Herbert Hoover boys' basketball team is a shining example to all West Virginians of what can be accomplished with dedication, commitment, and teamwork; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the Herbert Hoover High School boys' basketball team for their outstanding athletic achievement; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to Herbert Hoover High School.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Jeffries and Gaunch regarding the adoption of Senate Resolution 64 were ordered printed in the Appendix to the Journal.

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

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

**Senate Concurrent Resolution 49**, Erecting signs in Kanawha County declaring Home of Ralph Maddox 1980 NHPA Hall of Fame.

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 eighth order of business.

**Eng. Com. Sub. for House Bill 2459**, Relating to regulation of health care and the certificate of need process.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2459 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Mullins, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—27.

The nays were: Facemire, Jeffries, Maroney, Miller, Ojeda and Romano—6.

Absent: Azinger—1.

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. 2459) passed.

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

**Eng. Com. Sub. for House Bill 2459**—A Bill to repeal §16-2D-5f of the Code of West Virginia, 1931, as amended; to repeal §16-5F-1; §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5, §16-5F-6 and §16-5F-7; to repeal §16-29B-6, §16-29B-7, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-17, §16-29B-18, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25, §16-25B-27, and §16-29B-29; to repeal §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10; to amend and reenact §5F-1-3a of said code; to amend and reenact §6-7-2a of said code; to amend and reenact §9-4C-7 and §9-4C-8 of said code; to amend and reenact §11-27-9 and §11-27-11 of said code; to amend and reenact §16-2D-2, §16-2D-3, §16-

2D-4, §16-2D-5, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13, §16-2D-15 and §16-2D-16 of said code; to amend and reenact §16-5B-17 of said code; to amend and reenact §16-29B-2, §16-29B-3, §16-29B-5, §16-29B-8, §16-29B-12, §16-29B-26 and §16-29B-28; to amend said code by adding thereto a new section, designated §16-29B-5a; to amend said code by adding thereto a new section, designated §16-29B-30; to amend said code by adding thereto a new section, designated §16-29G-1a; to amend and reenact §16-29G-4 of said code; to amend and reenact §21-5F-4 of said code; to amend and reenact §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-5, §33-4A-6, and §33-4A-7 of said code; and to amend and reenact §33-16D-16 of said code, all relating to regulation of health care; repealing redundant code section relative to neonatal abstinence facilities; repealing health care facility financial disclosure; repealing uniform system of financial reporting; repealing information gathering and coordination advisory group; updating the certificate of need process; placing certificate of need under Secretary of Department of Health and Human Resources; defining terms; adding exemptions to certificate of need; clarifying exemptions; modifying computed technology exemption from certificate of need; clarifying skilled nursing facility exemption for counties with no skilled nursing facility; allowing skilled nursing facility bed transfers; requiring skilled nursing facility beds retain identical certification status; clarifying appeals process; removing autonomy of Health Care Authority; placing Health Care Authority under direct supervision of Secretary of the Department of Health and Human Resources; repealing unnecessary code sections made unnecessary with transfer to Department of Health and Human Resources; eliminating powers related to insurance policies and health organizations; modifying health care provider tax relative to rate review; eliminating public disclosure; eliminating granting authority; eliminating unnecessary penalties; eliminating unnecessary severability section; eliminating three full time board members; replacing existing board with a five member board; appointment of board members; setting out qualifications of board members; setting out terms of offices, filling of vacancies and oath for board members; providing for payment of board member expenses; providing for appointment of a chairman; setting out meeting requirements; creating the position of Executive Director; setting out power and duties of the Executive Director; setting compensation for the Executive Director; eliminating certain powers of the Health Care Authority; eliminating hospital and health care facility assessments; updating authority power relative to cooperative agreements; providing for transfer of necessary duties of Health Care Authority to Department of Health and Human Resources; requiring a transition plan; setting forth necessary elements of transition plan; allowing transfer of West Virginia Health Information Network to private entity; granting access to West Virginia Health Information Network to Secretary of Department of Health and Human Resources; providing for transfer of encumbered amounts of West Virginia Health Information Network to private entity upon transfer date; providing for administrative penalties for nurses overtime be paid into the general revenue fund; eliminating discretionary spending of Health Care Authority for amounts from penalties for violation of the nurse overtime act; substituting executive director of Health Care Authority or Secretary of Department of Health and Human Resources for chair of Health Care Authority in various code sections; transferring authority of Health Care Authority regarding uninsured small group health benefit plans to the Insurance Commission; eliminating archaic revolving loan and grant fund; making conforming amendments; and setting effective date dates.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Mullins, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—27.

The nays were: Facemire, Jeffries, Maroney, Miller, Ojeda and Romano—6.

Absent: Azinger—1.

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 H. B. 2459) takes effect from passage.

*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.

**Eng. Com. Sub. for House Bill 2679**, Relating to the possession of firearms in parks and park facilities.

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

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

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

That §20-2-19a of the Code of West Virginia, 1931, as amended, be repealed; that §7-11-15 of said code be amended and reenacted; and that §20-2-5, §20-2-42g and §20-2-42h of said code be amended and reenacted, all to read as follows:

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.**

#### **§7-11-5. General powers of commission; rules ~~and regulations~~; misdemeanor offenses; park police authorized.**

The commission shall have the necessary powers and authority to manage and control all public parks and recreational properties and facilities owned by the county or commission and used as a part of such public parks and recreation system, including the right to promulgate rules and regulations concerning the management and control of such parks and recreational properties and facilities and to enforce any such rules and regulations so promulgated: *Provided*, That a commission shall not promulgate or enforce rules which prohibit the possession of firearms in such parks.

The commission shall also have plenary power and authority to prepare and submit to the county ~~court~~ commission for adoption rules ~~and regulations~~ regulating the use of any parks and recreational properties and facilities under the control of the commission and prohibiting any type of use of or activities in connection with any such properties or facilities, and any such rules, and regulations if so adopted, shall be duly entered of record in the order book of the county commission. The violation of any such rule and regulation so adopted by the county commission shall constitute a misdemeanor and, any person convicted of any such violation shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment in jail for a period not exceeding thirty days, or by both such fine and imprisonment. ~~Justices of the peace~~ The magistrate court of the county shall have concurrent jurisdiction with the circuit court and other courts of record (having criminal jurisdiction) of any misdemeanor offenses arising under this article. The violation of any such rule ~~and regulation~~ which also constitutes the violation of any

state law or municipal ordinance may be prosecuted and punished as a violation of such state law or municipal ordinance rather than under the provisions of this section. To enforce any such rules and regulations, to protect and preserve all properties and facilities under the control of the commission and to preserve law and order in connection therewith, the commission shall have plenary power and authority to provide in its bylaws procedures for the appointment, supervision and discharge of one or more park police officers. Whenever any such appointment is made, a copy of the order of appointment shall be ~~filed~~ maintained by the commission for review by members of the public ~~with the county court.~~

In any area under the jurisdiction and control of the commission, or in connection with any properties or facilities under the jurisdiction and control of the commission, or in pursuit of one or more individuals therefrom, any park police officer so appointed shall have all of the power and authority which a regularly appointed deputy sheriff of such county has in enforcing the criminal laws of the state. Notwithstanding any provisions of this code to the contrary, park police officers appointed as aforesaid shall not be required to obtain a state license to carry a weapon, as required by the provisions of section two, article seven, chapter sixty-one of this code. When any such commission has purchased one or more policies of public liability insurance providing the commission and its officers, agents and employees insurance coverage for legal liability of said commission and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said commission and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any acts or omissions of said commission, or its officers, agents or employees in the performance of their official duties, and so long as the coverage aforesaid remains in full force and effect as to such park police officers, then the bond specified in section five, article seven of said chapter sixty-one shall not be required as to such park police officers.

## CHAPTER 20. NATURAL RESOURCES.

### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

(a) Except as authorized by the director or by law, it is unlawful at any time for any person to:

(1) Shoot at any wild bird or wild animal unless it is plainly visible;

(2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;

(3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging or active illumination while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less than ten days nor more than one hundred days;

(4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear, wild turkey, ruffed grouse, pheasant or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas or state rail trails with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;

(B) A person hunting or taking unprotected species of wild animals, wild birds and migratory wild birds during the open season, in the open fields, open water and open marshes of the state where hunting is lawful;

(C) A person carrying a firearm pursuant to sections six and six-a of this article; or

(D) A person carrying a ~~firearm~~ handgun for self-defense who is not prohibited from possessing firearms under state or federal law; or by section seven, article seven, chapter sixty-one of this code;

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: *Provided, That this exception does not apply to an uncased rifle or shotgun carried in state park, state forest, or state wildlife management area recreational facilities and on marked trails within state park or state forest borders.*

(10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached, in or on any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached and no cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any unloaded firearm or crossbow may be carried only when in a case or taken apart and securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian to five o'clock ante meridian, Eastern Standard Time: *Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the post meridian times and one hour before the ante meridian times established in this subdivision, if a person is transporting or transferring the firearms to or from a hunting site, campsite, home or other abode*;

~~(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game~~

~~season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday and the person tending the traps may carry firearms for the purpose of humanely dispatching trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a \$100 fine;~~

~~(12)~~(11) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a ferret;

~~(13)~~(12) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

~~(14)~~(13) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers, carp, fallfish and creek chubs is lawful;

~~(15)~~(14) Employ, hire, induce or persuade, with money, things of value or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

~~(16)~~(15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations;

~~(17)~~(16) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any wild bird other than a game bird including the plumage, skin or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may be killed at any time;

~~(18)~~(17) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

~~(19)~~(18) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

~~(20)~~(19) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

~~(21)~~(20) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

~~(22)~~(21) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

~~(23)~~(22) Shoot an arrow across any public highway;

~~(24)~~(23) Permit any dog owned or under his or her control to chase, pursue or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds;

~~(25)~~(24) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

~~(26)~~(25) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during open seasons;

~~(27)~~(26) Hunting ~~Hunt~~ on public lands on Sunday after five o'clock ante meridian is prohibited;

~~(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian: *Provided*, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.~~

~~On the local option election ballot shall be printed the following:~~

~~Shall hunting on Sunday be authorized on private lands only with the consent of the land owner in \_\_\_\_\_ County?~~

~~Yes~~

~~No~~

~~(Place a cross mark in the square opposite your choice.)~~

~~(29)~~(28) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia.

(29) Catch, take, kill, or attempt to catch, take or kill any fish by any means within two hundred feet of division personnel engaged in stocking fish in public waters.

(b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt throughout the State of West Virginia on private lands on Sundays after the hour of five o'clock ante meridian with the written consent of the private landowner pursuant to section seven, article two of this chapter.

**§20-2-42g. Class H nonresident small game hunting license.**

A Class H license is a nonresident small game hunting license and entitles the licensee to hunt small game in all counties of the State, except as prohibited by rules of the director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, ~~excluding Sunday in counties closed to Sunday hunting.~~ The fee for the license is \$25. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

**§20-2-42h. Class J nonresident small game shooting preserve license.**

A Class J license is a nonresident small game shooting preserve license and entitles the licensee to hunt small game on designated shooting preserves, except as prohibited by rules of the director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, ~~excluding Sunday in counties closed to Sunday hunting.~~ The fee for the license is \$10. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

The bill (Eng. Com. Sub. for H. B. 2679), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2721**, Removing the cost limitation on projects completed by the Division of Highways.

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

On motion of Senator Hall, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page four, section five, lines seventy-six and seventy-seven, by striking out the words "is in excess of \$10 million and is contained in the division's six-year plan";

On page seven, section nine, lines sixty and sixty-one, by striking out all of subsection (g);

And by relettering the remaining subsections;

And,

On pages seven and eight, section nine, line sixty-four, after the word "Finance." by striking out the remainder of the bill.

The bill (Eng. Com. Sub. for H. B. 2721), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2722**, Eliminating the financial limitations on utilizing the design-build program for highway construction.

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

On motion of Senator Hall, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page one, section two, lines five through twelve, by striking out all of subsection (b);

And,

On page one, section two, line seventeen, after the word "program" by striking out the comma and the words "but shall not be included in expenditure limits provided by subsection (b) of this section".

Following discussion,

The question being on the adoption of Senator Hall's amendments to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2722), as amended, was then ordered to third reading.

**Eng. House Bill 3106**, Relating to increasing the number of limited video lottery terminals.

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

The Senate proceeded to the tenth order of business.

**Eng. Com. Sub. for House Bill 2329**, Prohibiting the production, manufacture or possession of fentanyl.

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

**Eng. House Bill 2878**, Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply.

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

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senators Ojeda and Weld.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Weld were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Friday, March 31, 2017, at 11 a.m.

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## **SENATE CALENDAR**

**Friday, March 31, 2017  
11:00 AM**

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### **SPECIAL ORDER OF BUSINESS**

**Saturday, April 08, 2017 – 11:00 AM**

Consideration of executive nominations

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### **THIRD READING**

Eng. Com. Sub. for H. B. 2679 - Relating to the possession of firearms in parks and park facilities  
- (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2721 - Removing the cost limitation on projects completed by the  
Division of Highways

Eng. Com. Sub. for H. B. 2722 - Eliminating the financial limitations on utilizing the design-build  
program for highway construction

Eng. H. B. 3106 - Relating to increasing the number of limited video lottery terminals

### **SECOND READING**

Eng. Com. Sub. for H. B. 2329 - Prohibiting the production, manufacture or possession of fentanyl  
- (Com. amend. and title amend. pending)

Eng. H. B. 2878 - Increasing amount of authorized Federal Grant Anticipation Notes for which  
Division of Highways may apply

### **FIRST READING**

Eng. Com. Sub. for H. B. 2180 - Authorizing the issuance of special "In God We Trust" motor  
vehicle registration plates - (Com. amend. and title amend. pending)

## **ANNOUNCED SENATE COMMITTEE MEETINGS**

### **Regular Session 2017**

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**Friday, March 31, 2017**

8:30 a.m.	Pensions	(Room 451M)
9:30 a.m.	Finance	(Room 451M)
9:30 a.m.	Judiciary	(Room 208W)
1 p.m.	Confirmations	(Room 208W)