

West Virginia Legislature

JOURNAL
of the
HOUSE of DELEGATES

Eighty-Fifth Legislature
First Regular Session

Held at Charleston
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February 18, 2021
NINTH DAY

Thursday, February 18, 2021

NINTH DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Wednesday, February 17, 2021, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for H. B. 2014, on Second reading, House Calendar, had been transferred to the Special Calendar.

Committee Reports

Delegate Capito, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

H. B. 2260, Relating to procurement of child placing services,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2260 - "A Bill to amend and reenact §49-2-111a of the Code of West Virginia, 1931, as amended, relating to the department's obligations to enter into performance-based contracts with child-placing agencies; extending a deadline; and exempting the contract from purchasing,"

With the recommendation that the committee substitute do pass.

Delegate Capito, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

H. J. R. 1, Supervision of Free Schools Modification Amendment,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. J. R. 1 - "Proposing an amendment to the Constitution of the State of West Virginia, amending section 2, article 12 thereof, relating to education and the supervision of free schools; clarifying that the general supervisory authority of the State Board of Education is subject to

legislative enactments; allowing the board to promulgate rules; requiring rules to be submitted to the Legislature for its review and approval, amendment, or rejection; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment,”

With the recommendation that the committee substitute be adopted.

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

H. B. 2500, Create an act for Statewide Uniformity for Auxiliary Container Regulations,

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

Delegate Phillips, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

H. B. 2338, Adding pasteurized milk and other dairy foods produced or processed in West Virginia to the list of items required to be purchased by all state-funded institutions,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2338) was referred to the Committee on Finance.

Delegate Zatezalo, Chair of the Committee on Workforce Development, submitted the following report, which was received:

Your Committee on Workforce Development has had under consideration:

H. B. 2290, Initiating a State Employment First Policy to facilitate integrated employment of disabled persons,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (H. B. 2290) was referred to the Committee on Government Organization.

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for S. B. 216 - “A Bill to amend and reenact §64-10-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified, and as

amended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Commerce to promulgate a legislative rule relating to tourism development districts; authorizing the Division of Labor to promulgate a legislative rule relating to high pressure steam boiler and forced flow steam generator requirements; authorizing the Office of Miners' Health, Safety, and Training to promulgate a legislative rule relating to rule governing the submission and approval of a comprehensive mine safety program for coal mining operations in the State of West Virginia; authorizing the Division of Natural Resources to promulgate a legislative rule relating to Cabwaylingo State Forest trail system two-year pilot program permitting ATV's and ORV's; authorizing the Division of Natural Resources to promulgate a legislative rule relating to defining the terms used in all hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting rule; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special migratory game bird hunting; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting"; which was referred to the Committee on the Judiciary.

Bills Introduced

On motions for leave, bills were introduced, read by their titles, and severally referred as follows:

By Delegates Keaton and Holstein:

H. B. 2591 - "A Bill to amend and reenact §62-15-4 of the Code of West Virginia, 1931, as amended, relating to allowing drug courts to establish their own process for accrediting community drug recovery programs in certain cases"; to the Committee on the Judiciary.

By Delegates Summers, Howell, Phillips, J. Jeffries, Sypolt, Riley, Haynes, G. Ward, Higginbotham, Kimble and Keaton:

H. B. 2592 - "A Bill to amend and reenact §3-1-31 of the Code of West Virginia, as amended, relating to bringing uniformity to local elections by ensuring that all counties and municipalities have their local elections held on a date that a statewide election is already taking place, on a primary, general, or special election date"; to the Committee on Political Subdivisions then the Judiciary.

By Delegates Keaton, Haynes, Pinson, Wamsley, L. Pack, Burkhammer and B. Ward:

H. B. 2593 - "A Bill to amend and reenact §55-7-29 of the Code of West Virginia, 1931, as amended, relating to modifying the definition of punitive damages in West Virginia and increasing the threshold for awarding such damages in civil litigation"; to the Committee on the Judiciary.

By Delegates Keaton, Wamsley and Holstein:

H. B. 2594 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, and §55-19-7, all relating to creating the 'Unborn Infants Wrongful Death Act', stating legislative findings and purposes; defining terms; creating a cause of action with exceptions; stating that article does not condone abortion, nor make abortion legal by this act; and right of intervention to defend constitutionality of this act"; to the Committee on the Judiciary.

By Delegates Keaton, Holstein, Barnhart and Wamsley:

H. B. 2595 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-11-9B; to amend said code by adding thereto a new section, designated §18-2-44; and to amend said code by adding a new section, designated §11B-2-33, all relating to prohibiting discriminatory 'divisive acts' in the workplace and adding to the definition of the Human Rights Act; prohibiting the teaching of 'divisive acts' in West Virginia schools; and prohibiting state funding to agencies who promote 'divisive acts'"; to the Committee on Workforce Development then Education then the Judiciary.

By Delegate Keaton:

H. B. 2596 - "A Bill to amend and reenact §15-2A-6 of the Code of West Virginia, 1931, as amended, relating to increasing the West Virginia State Police 2021 Retirement annuity from three to four percent"; to the Committee on Pensions and Retirement then Finance.

By Delegates J. Jeffries, Dean, J. Pack, Horst, Mazzocchi, Kimble, Pinson, Martin and Summers:

H. B. 2597 - "A Bill to amend and reenact §8-29A-3 of the Code of West Virginia, 1931, as amended, relating to prohibiting county airport authorities from making or adopting rules prohibiting possession of firearms in public, nonsecure areas"; to the Committee on Technology and Infrastructure then the Judiciary.

By Delegates J. Kelly, Anderson, Mandt, Horst, Barnhart, Conley, Cooper, Zatezalo, Queen, Rohrbach and Graves:

H. B. 2598 - "A Bill to amend and reenact §22-30-3 of the Code of West Virginia, 1931, as amended, relating to modifying an exception to the definition of aboveground storage tank by removing a location requirement for small devices having a capacity of 210 barrels or less"; to the Committee on Energy and Manufacturing.

By Delegate Doyle:

H. B. 2599 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-15-24, relating to establishing a fee that wholesalers must pay the West Virginia Solid Waste Management Board for each plastic bag supplied to retailers for consumer purchases"; to the Committee on Small Business, Entrepreneurship and Economic Development then Finance.

Special Calendar**Third Reading**

Com. Sub. for H. B. 2007, Provide for occupational licenses or other authorization to practice by recognition for qualified applicants from other states; on third reading, coming up in regular order, was read a third time.

Delegates Riley and Gearheart requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill and directed the Members to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 32**), and there were—yeas 65, nays 33, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barach, Barrett, Bates, Boggs, Booth, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Paynter, Pethtel, Pushkin, Riley, Rohrbach, Rowe, Skaff, Statler, Storch, Thompson, Toney, Walker, G. Ward, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Ellington and Linville.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2007) passed.

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

Com. Sub. for H. B. 2013, Relating to the Hope Scholarship Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 33**), and there were, including pairs—yeas 60, nays 39, absent and not voting 1, with the paired, nays and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Ellington Nay: J. Kelly

Nays: Anderson, Barach, Barnhart, Barrett, Bates, Boggs, Booth, Brown, Cooper, Dean, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, D. Kelly, Lovejoy, McGeehan, Paynter, Pethtel, Pushkin, Reynolds, Rohrbach, Rowan, Rowe, Skaff, Storch, Thompson, Toney, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Linville.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2013) passed.

On motion of Delegates Ellington and Higginbotham, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 2013 – “A Bill to amend and reenact §18-8-1 and §18-8-1a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9A-25; and to amend said code by adding thereto a new article, designated §18-31-1, §18-31-2, §18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7, §18-31-8, §18-31-9, §18-31-10, §18-31-11, §18-31-12, and §18-31-13, all relating to establishing the Hope Scholarship Program; creating exemptions from compulsory school attendance requirements under certain conditions; providing a parent of a prospective kindergarten student the option of applying to the program on his or her child’s behalf; providing funding for the program and the parameters thereof; providing a title for the act and the program; providing definitions; creating the West Virginia Hope Scholarship Board and providing for membership qualifications therein; establishing powers of the board; establishing the application process for the award of Hope Scholarships; creating the West Virginia Hope Scholarship Program Trust Fund and the West Virginia Hope Scholarship Program Expense Fund and the funding mechanisms and parameters therefore; establishing qualifying expenses for Hope Scholarship Accounts; creating a renewal process for accounts; providing for a Hope Scholarship student’s participation in the public school system; providing for administration of accounts; providing for the auditing of the program, suspension of accounts and providers under certain circumstances, and creating a right of appeal; establishing requirements for and rights of education service providers; establishing responsibilities of resident school districts; and providing for legal proceedings and severability.”

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

Second Reading

Com. Sub. for H. B. 2003, Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency; on second reading, coming up in regular order, was read a second time.

Delegate Brown moved to amend the bill on page two, section two, line thirty-three, following the semi-colon by inserting the following:

“House of worship” means a church, temple, synagogue, mosque, or other building or space set apart primarily for the purpose of worship, devotion, veneration or religious study;”.

And,

On page nine, section six, line one hundred twenty-three, following the period, by inserting a new subsection to read as follows:

“(i) The emergency powers granted under this section do not authorize the Governor to close or dictate religious practices in a house of worship during a state of preparedness or state of emergency.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 34**), and there were—yeas 94, nays 4, absent and not voting 2, with the yeas and absent and not voting being as follows:

Nays: Doyle, Griffith, Nestor and Reed.

Absent and Not Voting: Ellington and Linville.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegate McGeehan moved to amend the bill on page nine, line one hundred twenty-three, following the word “section” and the period, by inserting the words “Upon passage, any state of emergency or state of preparedness currently in effect are subject to the provisions of this section.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 35**), and there were—yeas 47, nays 51, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Barach, Barrett, Bates, Boggs, Booth, Bridges, Brown, Dean, Diserio, Doyle, Evans, Fast, Fleischauer, Fluharty, Garcia, Gearheart, Griffith, Hanna, Hansen, Hardy, Holstein, Hornbuckle, Horst, J. Jeffries, Jennings, Kimble, Longanacre, Lovejoy, Mandt, Martin, McGeehan, Paynter, Pethel, Phillips, Pritt, Pushkin, Rowe, Skaff, Statler, Thompson, Toney, Walker, G. Ward, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Ellington and Linville

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2009, Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Capito, the bill was amended on page 5, line 91, after the word "person", by inserting the word "intentionally".

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2014, Relating to role of the Legislature in appropriating federal funds; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for H. B. 2325, Removing the requirement of continuing education for barbers and cosmetologists; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2366, Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

First Reading

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

Com. Sub. for H. B. 2008, Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers,

And,

H. B. 2253, Relating to forgery and other crimes concerning lottery tickets.

Delegate Miller asked and obtained unanimous consent to be removed as a cosponsor of Com. Sub. for H. B. 2008.

Leaves of Absence

At the request of Delegate Summers, and by unanimous consent, leaves of absence for the day were granted Delegates Ellington and Linville.

Miscellaneous Business

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Barach regarding Com. Sub. for H. B. 2013
- Delegate McGeehan regarding the amendment he offered to Com. Sub. for H. B. 2003

Pursuant to House Rule 94b, forms were filed with the Clerk's Office to be added as a cosponsor of the following:

H. B. 2047: Delegate Nestor;

H. B. 2059: Delegate Hamrick;

H. B. 2081: Delegate Young;

H. B. 2093: Delegates Clark, Jennings, Longanacre, Smith, Toney and Wamsley;

H. B. 2094: Delegates Burkhammer, Capito, Espinosa, Hanna, J. Pack, L. Pack, Pritt, Summers and B. Ward;

H. B. 2113: Delegate Walker;

H. B. 2117: Delegate Walker;

H. B. 2120: Delegate Barach;

H. B. 2122: Delegate Barach;

H. B. 2120: Delegate Walker;

H. B. 2184: Delegate L. Pack;

H. B. 2194: Delegate Walker;

H. B. 2225: Delegate Walker;

H. B. 2226: Delegate Barach;

H. B. 2256: Delegate Foster;

H. B. 2287: Delegate Barach;

H. B. 2266: Delegate Young;

H. B. 2290: Delegate Conley, Ferrell; Horst, D. Jeffries, Jennings, Kimble, Mazzocchi, Tully, B. Ward and G. Ward;

H. B. 2308: Delegates Higginbotham and Hornbuckle;

H. B. 2531: Delegate Young;

H. B. 2538: Delegate Young;

H. B. 2542: Delegate Young;

H. B. 2547: Delegate Young;

H. B. 2588: Delegate Barach;

And,

H. J. R. 12: Delegate Barach.

At 1:42 p.m., the House of Delegates adjourned until 11:00 a.m., Friday, February 19, 2021.

**HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470**

SPECIAL CALENDAR

Friday, February 19, 2021

10th Day

11:00 A. M.

THIRD READING

- Com. Sub. for H. B. 2003 - Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2009 - Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2014 - Relating to role of the Legislature in appropriating federal funds (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2325 - Removing the requirement of continuing education for barbers and cosmetologists (STEELE) (REGULAR)
- H. B. 2366 - Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note (STEELE) (REGULAR)

SECOND READING

- Com. Sub. for H. B. 2008 - Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers (STEELE) (REGULAR)
- H. B. 2253 - Relating to forgery and other crimes concerning lottery tickets (CAPITO) (REGULAR)

FIRST READING

- Com. Sub. for H. J. R. 1 - Supervision of Free Schools Modification Amendment (CAPITO)
- Com. Sub. for H. B. 2260 - Relating to procurement of child placing services (CAPITO) (REGULAR)
- H. B. 2500 - Create an act for Statewide Uniformity for Auxiliary Container Regulations (STEELE) (REGULAR)

HOUSE CALENDAR

Friday, February 19, 2021

10th Day

11:00 A. M.

SECOND READING

- Com. Sub. for H. B. 2004 - Permit a licensed health care professional from another state to practice in this state through telehealth when registered with the appropriate West Virginia board (J. PACK) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2015 - Requiring rules of local boards of health to be approved by the county commission except in cases of a public health emergency (J. PACK) (EFFECTIVE FROM PASSAGE)
- H. B. 2536 - Relating to expressions of legislative intent regarding equivalent instruction time (ELLINGTON) (REGULAR)

FIRST READING

- H. J. R. 2 - Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate (CAPITO)
- H. B. 2582 - Relating to creating a third set of conditions for the professional teaching certificate (ELLINGTON) (REGULAR)

**WEST VIRGINIA
HOUSE OF DELEGATES**

FRIDAY, FEBRUARY 19, 2021

HOUSE CONVENES AT 11:00 A.M.

**COMMITTEE ON THE JUDICIARY
9:00 A.M. – ROOM 215 E**

**COMMITTEE ON FINANCE
9:00 A.M. – HOUSE CHAMBER**

**COMMITTEE ON RULES
10:45 A.M. – ROOM 418 M**

**COMMITTEE ON EDUCATION
2:00 P.M. – HOUSE CHAMBER**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470