

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE  
REGULAR SESSION, 2021  
TWENTY-THIRD DAY

---

Charleston, West Virginia, Thursday, March 4, 2021

The Senate met at 11:01 a.m.

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

Prayer was offered by Grover Miller, Senate Assistant Doorkeeper, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mark R. Maynard, a senator from the sixth district.

Pending the reading of the Journal of Wednesday, March 3, 2021,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 12**, Relating to local health department accountability.

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

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

On page four, section six, by removing §16-2-6 from the bill in its entirety.

On page five, section seven, by removing §16-2-7 from the bill in its entirety.

On page five, section eight, by removing §16-2-8 from the bill in its entirety.

On page six, section nine, line five, by removing “A member of the appointing authority shall serve as a nonvoting, ex officio member and this member shall not be counted against any criteria for board appointment set forth in this section.”.

On page seven, line twelve, by striking out the words “gross immorality”.

On page seven, line sixteen, by removing the words “gross immorality”.

On page ten, line sixty-six, by striking out subdivision (3) and inserting a new subdivision (3) to read as follows:

“(3) (A) Adopt and promulgate and from time to time amend rules consistent with state public health laws and the rules of the West Virginia State Department of Health and Human Resources, that are necessary and proper for the protection of the general health of the service area and the prevention of the introduction, propagation, and spread of disease;

(B) The commissioner shall establish a procedure by which adverse determinations by local health departments may be appealed, unless otherwise provided for, for the purpose of ensuring a consistent interpretation of state public health laws and rules of the Department of Health and Human Resources.

(C) When rules are adopted, promulgated, or amended, the local board of health shall place notice in the State Register and on their organization’s web page, setting forth a notice of proposed action, including the text of the new rule or the amendment and the date, time, and place for receipt of public comment.

(D) All rules shall be approved, disapproved or amended and approved by the county commission or appointing entity within 30 days of approval from the local board of health.

(E) All rules of a combined local board of health shall be approved, disapproved or amended and approved by each appointing entity within 30 days of approval from the combined local board of health. If one appointing entity approves and another other does not approve a rule from a combined local board health department, the rule is only in effect in the jurisdiction of the appointing entity which approved the rule.

(F) An approved rule shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate book as public records:

(G) A rule currently in effect is not subject to approval, unless amended, from the county commission or appointing authority.

(H) If there is an imminent public health emergency, approval of the county commission or appointing authority is not necessary before the rule goes into effect but shall be approved or disapproved by the county commission or appointing authority within 30 days after the rules are effective;”.

On page thirteen, line one hundred thirty-seven, by removing the words “the Governor may direct”.

On page thirteen, line one hundred thirty-eight, by removing the word “to” and inserting the word “may”;

And,

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

**Eng. Com. Sub. for Senate Bill 12**—A Bill to amend and reenact §16-2-2, §16-2-9, and §16-2-11 of the Code of West Virginia, 1931, as amended, all relating to local health departments; defining terms; permitting an appointing entity to remove a board member; creating an appeal process for adverse determinations; requiring rules by a local board of health to be published; requiring rules to be approved, disapproved or amended and approved by an appointing entity; providing that a rule currently in effect is not subject to approval, unless amended; providing an emergency rule process; requiring that an approved rule shall be filed with the appropriate entity; clarifying that a rule is only effective in the jurisdiction where the appointing entity grants approval; requiring rules shall be kept as public records; establishing an emergency health rule process; and permitting the state health officer to develop policies that each of the local departments must comply with when a statewide public health emergency is declared.

Senator Takubo moved that the Senate concur in the House of Delegates amendments to the bill.

Following discussion,

The question being on the adoption of Senator Takubo’s aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 12, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—21.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

Absent: Maroney and Stover—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 12) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for House Bill 2012**, Relating to public charter schools.

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 2093**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5E-3a; and to amend and reenact §16-49-1 of said code, all relating to the regulation of medical foster homes; defining terms; providing an exemption to medical foster homes from the requirements for unlicensed health care homes; and requiring an annual report.

Referred to the Committee on Health and Human Resources.

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

**Eng. House Bill 2791**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-15g, relating to requiring county boards of education to permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school at no additional cost beyond any costs charged to public school students.

Referred to the Committee on Education.

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

**Senate Bill 39**, Prohibiting insurance coverage from requiring prior authorization for tests to stage cancer.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair*

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

Your Committee on Health and Human Resources has had under consideration

**Senate Bill 334**, Establishing license application process for harm reduction programs.

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

**Com. Sub. for Senate Bill 334** (originating in the Committee on Health and Human Resources)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, §16-63-5, §16-63-6, §16-63-7, §16-63-8, §16-63-9, §16-63-10, and §16-63-11, all relating to Needle Exchange Programs;

defining terms; establishing licensure application process for Needle Exchange Programs; creating program requirements; establishing revocation process; setting forth the reconsideration process; setting forth the administrative due process provision; providing for administrative and judicial appeal; establishing reporting requirements and renewal provisions; providing for immunity; setting requirements for continuum of care; and establishing civil penalties and injunctive relief.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Com. Sub. for Senate Bill 339** (originating in the Committee on Agriculture and Rural Development), Expanding types of agricultural operations that are protected from nuisance and other legal actions.

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

**Com. Sub. for Com. Sub. for Senate Bill 339** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §19-19-2 and §19-19-7 of the Code of West Virginia, 1931, as amended, all relating to the right to farm; defining terms; expanding protection of agricultural operations from nuisance and other legal actions to agricultural and horticultural practices allowed within municipalities, including aquaponics and hydroponics; requiring compliance with local laws, regulations, and ordinances for protection from nuisance and other legal actions; and making technical changes.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Finance has had under consideration

**Senate Bill 344**, Relating to credit for qualified rehabilitated buildings investment.

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

**Com. Sub. for Senate Bill 344** (originating in the Committee on Finance)—A Bill to amend and reenact §11-21-8a of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a of said code, all relating to the credit for qualified rehabilitated buildings

investment; providing for carryback and carryforward provisions for the tax credit; eliminating the termination date of the tax credit; eliminating the maximum allowable amount of the tax credit; and making technical modifications.

And,

**Senate Bill 383**, Relating to exempting certain organizations from property taxation.

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

**Com. Sub. for Senate Bill 383** (originating in the Committee on Finance)—A Bill to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempt property from taxation used exclusively for divine worship and the operation of a pre-K school, primary school, middle school, secondary school, daycare center, or church camp for children, which school, daycare center, or church camp is operated by the church which owns the property or is operated by another not-for-profit organization or entity; and providing that motor vehicles subject to a lease for at least one year by the United States, the state, any county, municipality, political subdivision, college or university of this state and used for public purposes is deemed public property and exempt from ad valorem taxation.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Blair (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

**Eng. Com. Sub. for Senate Bill 368**, Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program.

And has amended same.

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

Respectfully submitted,

Craig Blair,  
*Chair ex officio.*

At the request of Senator Weld, unanimous consent being granted, the bill (Eng. Com. Sub. for S. B. 368) contained in the preceding report from the Committee on Rules was taken up for immediate consideration and read a second time.

The following amendment to the bill, from the Committee on Rules, was reported by the Clerk:

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

**ARTICLE 15. SOLID WASTE MANAGEMENT ACT.****§22-15-11. Solid waste assessment fee; penalties.***(a) Imposition. –*

(1) A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of \$1.75 per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(2) Effective July 1, 2021, in addition to the fee set forth in subdivision (1) of this subsection, an additional solid waste assessment fee shall be levied and imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state. This additional fee shall be in the amount of 20 cents per ton beginning July 1, 2021, 40 cents per ton beginning July 1, 2022, 60 cents per ton beginning July 1, 2023, 80 cents per ton beginning July 1, 2024, and \$1.00 per ton beginning July 1, 2025, thereafter or like ratio on any part of a ton of solid waste. The additional fee set forth in this subdivision shall be distributed on a per capita basis to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau. The proceeds from this fee are to expended for the reasonable costs of administration of the county or regional solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, recycling programs, litter control programs, or any other locally important solid waste programs deemed necessary to fulfill its duties. The Tax Commissioner may promulgate interpretive rules to provide for the distribution of funds as provided by this subdivision.

*(b) Collection, return, payment and records. —* The person disposing of solid waste at the solid waste disposal facility shall pay the ~~fee~~ fees imposed by this section, whether or not such person owns the solid waste, and the ~~fee~~ fees shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner.

(1) The ~~fee~~ fees imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the ~~fee~~ fees imposed by this section to the Tax Commissioner on or before the fifteenth day of the month next succeeding the month in which the ~~fee~~ fees accrued. Upon remittance of the ~~fee~~ fees, the operator is required to file returns on forms and in the manner as prescribed by the Tax Commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until remitted to the Tax Commissioner.

(4) If any operator fails to collect the ~~fee~~ fees imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the ~~fee~~ fees or file returns with the ~~fee~~ fees as required in this section, the Tax Commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the Tax Commissioner, in a separate account,

in trust for and payable to the Tax Commissioner and to keep the amount of such fees in such account until remitted to the Tax Commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the ~~fee~~ fees imposed by this section and the owner is secondarily liable for remittance of the ~~fee~~ fees imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the ~~fee~~ fees imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the ~~fee~~ fees and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the ~~fee~~ fees imposed by this section shall keep complete and accurate records in such form as the Tax Commissioner may require in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The ~~fee~~ fees imposed by this section and section twenty-two, article five, chapter seven of this code is considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within fourteen days, reflect the cost of said ~~fee~~ fees in said motor carrier's rates for solid waste removal service. In calculating the amount of said ~~fee~~ fees to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definition of solid waste disposal facility.* — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste disposal facility within this state that collects the ~~fee~~ fees imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the ~~fee~~ fees imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;



(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the secretary is exempt from the solid waste assessment ~~fee fees~~; ~~and~~

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request and;

(f) *Procedure and administration.* — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code shall apply to the ~~fee fees~~ imposed by this section with like effect as if said act were applicable only to the ~~fee fees~~ imposed by this section and were set forth in extenso herein.

(g) *Criminal penalties.* — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the ~~fee fees~~ imposed by this section with like effect as if said sections were applicable only to the ~~fee fees~~ imposed by this section and were set forth in extenso herein.

(h) *Dedication of proceeds.* — Except as provided in subsection (a)(2) of this section the net proceeds of the ~~fee fees~~ collected by the Tax Commissioner pursuant to this section shall be deposited at least monthly in an account designated by the secretary. The secretary shall allocate \$0.25 for each ton of solid waste disposed of in this state upon which the ~~fee fees~~ imposed by this section is collected and shall deposit the total amount so allocated into the “Solid Waste Reclamation and Environmental Response Fund” to be expended for the purposes hereinafter specified. The first \$1 million dollars of the net proceeds of the ~~fee fees~~ imposed by this section collected in each fiscal year shall be deposited in the “Solid Waste Enforcement Fund” and expended for the purposes hereinafter specified. The next \$250,000 of the net proceeds of the ~~fee fees~~ imposed by this section collected in each fiscal year shall be deposited in the “Solid Waste Management Board Reserve Fund”, and expended for the purposes hereinafter specified: *Provided*, That in any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause no less than \$50,000 nor more than \$250,000 to be deposited to the fund: *Provided, however*, That in any year in which the water development authority determines that the Solid Waste Management Board Reserve Fund is inadequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause not less than \$250,000 nor more than \$500,000 to be deposited in the fund: *Provided further*, That if a facility owned or operated by the state of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the Solid Waste Management Board, then in that event the Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the State Treasury:

(1) The “Solid Waste Enforcement Fund” which shall be expended by the secretary for administration, inspection, enforcement and permitting activities established pursuant to this article;

(2) The “Solid Waste Management Board Reserve Fund” which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to article three, chapter twenty-two-c of this code;

(3) The “Solid Waste Reclamation and Environmental Response Fund” which may be expended by the secretary for the purposes of reclamation, cleanup and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

(i) *Findings.* — In addition to the purposes and legislative findings set forth in section one of this article, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting such solid waste;

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.

(j) The “Gas Field Highway Repair and Horizontal Drilling Waste Study Fund” is hereby created as a special revenue fund in the State Treasury to be administered by the West Virginia Division of Highways and to be expended only on the improvement, maintenance, and repair of public roads of three lanes or less located in the ~~watershed from which the revenue was received~~

Division of Highways district where the waste is deposited that are identified by the Commissioner of Highways as having been damaged by trucks and other traffic associated with horizontal well drilling sites or the disposal of waste generated by such sites, and that experience congestion caused, in whole or in part, by such trucks and traffic that interferes with the use of said roads by residents in the vicinity of such roads: *Provided*, That up to \$750,000 from such fund shall be made available to the Department of Environmental Protection from the same fund to offset contracted costs incurred by the Department of Environmental Protection while undertaking the horizontal drilling waste disposal studies mandated by the provisions of subsection (j), section eight of this article. Any balance remaining in the special revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section. The fund shall consist of the fee provided for in subsection (k) of this section.

(k) Horizontal drilling waste assessment fee— An additional solid waste assessment fee is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal well sites in the amount of \$1 per ton, which fee is in addition to all other fees and taxes levied by this section or otherwise and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility: *Provided*, That the horizontal drilling waste

assessment fee shall be collected and administered in the same manner as the solid waste assessment fee imposed by this section, but shall be imposed only upon the disposal of drill cuttings and drilling waste generated by horizontal well sites.

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.**

**§22-15A-1. Legislative findings and purpose.**

(a) The Legislature finds that litter is a public nuisance and distracts from the beauty of the state and its natural resources. It is therefore necessary to establish and implement a litter control program to coordinate public and private litter control efforts; to establish penalties for littering; to provide for litter pickup programs; to create education programs; and to provide assistance to local solid waste authority litter control efforts.

(b) The Legislature further finds that the improper management of commercial and residential solid waste and the unlawful disposal of such waste ~~creates~~ create open dumps that adversely ~~impacts~~ impact the state's natural resources, public water supplies, and the public health, safety, and welfare of the citizens of the state. It is therefore necessary to establish a program to promote pollution prevention and to eliminate and remediate open dumps.

(c) The Legislature further finds that waste tire piles are a direct product of state citizens' use and enjoyment of state roads and highways, and proper tire waste disposal is a necessary component of maintenance of the transportation system. The accumulation of waste tires has also become a significant environmental and public health hazard to the state, and the location and number of waste tires are directly related to the efficiency of travel, by citizens, visitors, and commerce, along public highways in West Virginia. In particular, the Legislature recognizes that waste tires are widespread in location and in number throughout the state; waste tires physically touch and concern public highways, including, but not limited to, state roads, county roads, park roads, secondary routes, and orphan roads, all of which interferes with the efficiency of public highways; and further that the existence of waste tires along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.

(d) The Legislature also recognizes and declares that waste tires are a public nuisance and hazard; that waste tires serve as harborage and breeding places for rodents, mosquitoes, fleas, ticks, and other insects and pests injurious to the public health, safety, and general welfare; that waste tires collected in large piles pose an excessive risk to public health, safety, and welfare from disease or fire; that the environmental, economic, and societal damage resulting from fires in waste tire piles can be avoided by removing the piles; and that tire pile fires cause extensive pollution of the air and surface and groundwater for miles downwind and downstream from the fire.

(e) Therefore, in view of the findings relating to waste tires, the Legislature declares it to be the public policy of the State of West Virginia to eliminate the present danger resulting from discarded or abandoned waste tires and to eliminate the visual pollution resulting from waste tire piles and that in order to provide for the public health, safety, welfare, and quality of life, and to reverse the adverse impacts to the proper maintenance and efficiency of public highways, it is necessary to enact legislation to those ends by providing expeditious means and methods for effecting the disposal of waste tires.

(f) The Legislature further finds that abandoned and dilapidated structures statewide have become a significant hazard and can result in the formation of open dumps or solid waste not disposed of in a proper or lawful manner. In particular, the Legislature recognizes that damage to the environment, natural resources, and the public health, safety, and welfare may result from abandoned and dilapidated structures. Abandoned and dilapidated structures are widespread in location and in number throughout the state; and further, that the existence of abandoned and dilapidated structures along and near public highways is sometimes accompanied by other hazards and, in turn, adversely impacts the proper maintenance and efficiency of public highways for citizens.

(g) In view of the findings relating to abandoned and dilapidated structures, the Legislature declares it to be the public policy of the State of West Virginia to establish a program to eliminate and remediate abandoned and dilapidated structures.

~~(f)~~ (h) The Legislature finds that many citizens desire a recycling program in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of solid waste landfills, reduce the need for new landfills, and create markets for recyclable materials. It is therefore necessary to establish goals for recycling solid waste; to require certain municipalities to implement recycling programs; to authorize counties to adopt comprehensive recycling programs; to encourage source separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.

~~(g)~~ (i) The Legislature finds that the effectiveness of litter control, open dump, tire cleanup programs and recycling programs have been made less efficient by fragmented implementation of the various programs by different agencies. It is therefore necessary to coordinate all such programs under one program managed by the department to ensure that all current and future litter, open dump, waste tire, and recycling issues are managed and addressed efficiently and effectively.

~~(h)~~ (j) This article implements the A. James Manchin Rehabilitation Environmental Action Plan, a coordinated effort to address litter, waste, open dump, tire cleanup, and recycling programs.

### **§22-15A-30. Reclamation of Abandoned and Dilapidated Properties Program.**

(a) To assist county commissions or municipalities in their efforts to remediate abandoned and dilapidated structures as provided by §7-1-3ff and §8-38-5 of this code, the Department of Environmental Protection may develop a program called the Reclamation of Abandoned and Dilapidated Properties Program. Using the fund established in subsection (b) of this section, the Department of Environmental Protection may work with county commissions or municipalities and implement redevelopment plans which will, at a minimum, establish prioritized inventories of structures eligible to participate in the program, offer reuse options for high-priority sites, and recommend actions county commissions or municipalities may take to remediate abandoned and dilapidated structures in their communities.

(b) There is created in the State Treasury a special revenue fund known as the Reclamation of Abandoned and Dilapidated Properties Program Fund. The fund shall be comprised of any money granted by charitable foundations, allocated by the Legislature, allocated from federal agencies, and earned from the investment of money held in the fund, and all other money designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General

Revenue Fund but shall remain in the account and be available for expenditure in succeeding fiscal years.

(c) The fund, to the extent that money is available, may be used solely to assist county commissions or municipalities in remediating abandoned and dilapidated structures in their communities by demolishing or deconstructing them and other activities as authorized by a charitable grant or legislative appropriation. The fund may also be used to defray costs incurred by the Department of Environmental Protection in administering the provisions of this section. However, no more than five percent of money transferred from the Solid Waste Facility Closure Cost Assistance Fund may be used for administrative purposes.

(d) The Department of Environmental Protection may promulgate rules, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to govern the disbursement of money from the fund, establish the Reclamation of Abandoned and Dilapidated Properties Program, direct the distribution of money from the fund, and establish criteria for eligibility to receive money from the fund.

(e) Nothing in this section shall be construed to limit, restrain, or otherwise discourage this state and its political subdivisions from disposing of abandoned and dilapidated structures in any other manner provided by the laws of this state.

## **ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.**

### **§22-16-4. Solid waste assessment fee; penalties.**

(a) *Imposition.* — A solid waste assessment fee is levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of ~~3.50~~ \$3.30 per ton beginning July 1, 2021, \$3.10 per ton beginning July 1, 2022, \$2.90 per ton beginning July 1, 2023, \$2.70 per ton beginning July 1, 2024, and \$2.50 per ton beginning July 1, 2025, and thereafter or like ratio on any part of a ton of solid waste, except as provided in subsection (e) of this section: *Provided*, That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that the facility is required by the Public Service Commission to set aside for the purpose of closure of that portion of the facility required to close by article fifteen of this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) *Collection, return, payment and records.* — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not that person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner:

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility;

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the Tax Commissioner;

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner;

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code;

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner;

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section;

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers of the association or corporation are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent; and

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in the form required by the Tax Commissioner in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within fourteen days, reflect the cost of the fee in the motor carrier's rates for solid waste removal service. In calculating the amount of the fee to the motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States environmental protection agency.

(d) *Definitions.* — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing in this section authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by that person in the person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times designated by the director as exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler shall keep accurate records of incoming and outgoing waste by weight. The records shall be made available to the appropriate inspectors from the division, upon request.

(f) *Procedure and administration.* — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if the act were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(g) *Criminal penalties.* — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if the sections were applicable only to the fee imposed by this section and were set forth in extenso in this section.

(h) *Dedication of proceeds.* — (1) The proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to section twelve of this article: *Provided*, That the director may transfer up to 50¢ for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected on or after July 1, 1998, to the solid waste enforcement fund established pursuant to section eleven, article fifteen of this chapter.

(2) Fifty percent of the proceeds of the fee collected pursuant to this article in excess of thirty thousand tons per month from any landfill which is permitted to accept in excess of thirty thousand tons per month pursuant to section nine, article fifteen of this chapter shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to section twelve of this article.

## **ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.**

### **§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.**

(a) The Solid Waste Facility Closure Cost Assistance Fund continues as a special revenue account in the State Treasury. The fund operates as a special fund in which all deposits and payments do not expire to the General Revenue Fund, but remain in the account and are available for expenditure in the succeeding fiscal year. Separate subaccounts may be established within

the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in the fund, including moneys collected and deposited into the fund pursuant to §22-16-4 of this code;

(2) Contributions, grants, and gifts from any source, both public and private, which may be used by the secretary for any project or projects;

(3) Amounts repaid by permittees pursuant to §22-15-18 of this code; and

(4) All interest earned on investments made by the state from moneys deposited in this fund.

(d) The Solid Waste Management Board, upon written approval of the secretary, has the authority to pledge all or part of the revenues paid into the Solid Waste Facility Closure Cost Assistance Fund as needed to meet the requirements of any revenue bond issue or issues of the Solid Waste Management Board authorized by this article, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues where other moneys pledged may be insufficient. Any pledge of moneys in the Solid Waste Facility Closure Cost Assistance Fund for revenue bonds is a prior and superior charge on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a cash basis. Expenditures from the fund, other than for the retirement of revenue bonds, may only be made in accordance with this article.

(e) The amounts deposited in the fund may be expended only on the cost of projects as provided in §22-16-3 and §22-16-15 of this code, as provided in subsection (f) of this section, and for payment of bonds and notes issued pursuant to §22-16-5 of this code. No more than two percent of the annual deposits to the fund may be used for administrative purposes.

(f) Notwithstanding any provision of this article, upon request of the Solid Waste Management Board, and with the approval of the projects by the Secretary of the Department of Environmental Protection, the secretary may pledge and place into escrow accounts up to an aggregate of \$2 million of the fund to satisfy two years debt service requirement that ~~permittees~~ permittees of publicly owned landfills and transfer stations are required to meet in order to obtain loans. Pledges shall be made on a project-by-project basis, may not exceed \$500,000 for a project, and are made available after loan commitments are received. The secretary may pledge funds for a loan only when the following conditions are met:

(1) The proceeds of the loan are used only to perform construction of a transfer station or a composite liner system that is required to meet Title 47, Series 38, Solid Waste Management Rules;

(2) The permittee dedicates all yearly debt service revenue, as determined by the Public Service Commission, to meet the repayment schedule of the loan, before it uses available revenue for any other purpose; and



(3) That any funds pledged may only be paid to the lender if the permittee is in default on the loan.

(g) Notwithstanding any provision of this code to the contrary, the Elkins-Randolph County Landfill, located in Randolph County, and the Webster County Landfill, located in Webster County, are eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to complete their closure upon the filing of appropriate application. Upon the filing of an appropriate application, the Department of Environmental Protection shall work with the applicant to ensure the application meets the department's requirements.

(h) The Department of Environmental Protection is required to file, by January 1 of each year, an annual report with the Joint Committee on Government and Finance providing details on the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

(i) The Prichard Landfill in Wayne County is eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to complete post-closure maintenance and monitoring upon the filing of an appropriate application. In the event of a permit transfer, neither the state nor the Wayne County Economic Development Authority or entity may assume any liability from the private landfill other than post-closure maintenance and monitoring costs.

(k)(1) Notwithstanding any other provision of this code, upon completion of the landfill closure-related services at all eligible landfills pursuant to §22-16-3 of this code, the secretary may transfer excess money from the Solid Waste Facility Closure Cost Assistance Fund to the Reclamation of Abandoned and Dilapidated Properties Program Fund created by §22-15A-30 of this code. However, the secretary may not transfer moneys from the Solid Waste Facility Closure Cost Assistance Fund that are required to be maintained so that the department can conduct post-closure activities authorized by this article and the legislative rules promulgated thereunder. The department shall maintain in the Solid Waste Facility Closure Cost Assistance Fund a minimum balance of twice the total cost of post-closure expenses projected for the fiscal year as a buffer for unanticipated necessary post-closure activities.

(2) Contingent upon the Department of Environmental Protection securing private foundation funding to establish the Reclamation of Abandoned and Dilapidated Properties Program, and prior to the completion of the landfill closure-related services at all eligible landfills, the secretary may expend money from the Solid Waste Facility Closure Cost Assistance Fund for pilot projects conducted by the Department of Environmental Protection demonstrating the function of the Reclamation of Abandoned and Dilapidated Properties Program.

Following discussion,

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

The bill (Eng. Com. Sub. for S. B. 368), as amended, was again ordered to engrossment and third reading.

Senator Roberts, from the Committee on the Workforce, submitted the following report, which was received:

Your Committee on the Workforce has had under consideration

**Senate Bill 370**, Requiring certain documents that contain wage records be considered confidential.

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

**Com. Sub. for Senate Bill 370** (originating in the Committee on the Workforce)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-22-4; and to amend and reenact §21-1C-5 of said code, all relating to requiring certain documents that include records of wages be considered confidential; prohibiting governmental entity that requires private company contracting with, or seeking to contract with, a governmental entity for a construction project to submit any document that includes records of actual wages paid to employees from disclosing document or information contained therein to any other entity or person; permitting disclosure of such document or information to state or federal agency; providing that any such document containing records of actual wages paid to employees shall be considered confidential and proprietary and may not be considered a public record; defining “governmental entity”; defining contents of certified payroll document; providing that any document containing records of actual wages paid to employees filed or submitted pursuant to the West Virginia Jobs Act may not be disclosed by the Division of Labor or a public authority to any other entity or person other than to a state or federal agency; and providing that any document submitted or filed pursuant to the West Virginia Jobs Act that includes records of actual wages paid to employees or information contained therein shall be considered confidential and proprietary and may not be considered a public record.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Rollan A. Roberts,  
*Chair.*

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

Your Committee on Economic Development has had under consideration

**Senate Bill 445**, Reinstating film investment tax credit.

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

**Com. Sub. for Senate Bill 445** (originating in the Committee on Economic Development)—A Bill to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-11, §11-13X-12, and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; reinstating the film investment tax credit; providing the coordination and management by the West Virginia Development Office; defining “Development Office” and “multi-state distribution”; excluding short-term depreciation from credit; raising the minimum threshold of cumulative annual expenditures necessary to qualify for credit; establishing an annual limit in credits available; requiring the Development Office to develop a database of locations, music, and other resources to be made available to film production teams; requiring state agencies to solicit bids from West Virginia vendors for film or video projects if available; and giving retroactive effect to film investment tax credit program.

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

Respectfully submitted,

Chandler Swope,  
*Chair.*

The bill (Com. Sub. for S. B. 445), under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on Pensions has had under consideration

**Senate Bill 456**, Relating to Natural Resources Police Officers Retirement System.

And,

**Senate Bill 467**, Relating to WV Municipal Police Officers and Firefighters Retirement System.

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

Respectfully submitted,

Eric Nelson, Jr.,  
*Chair.*

At the request of Senator Tarr, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee references of the bills contained in the foregoing report from the Committee on Pensions.

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

Your Committee on Pensions has had under consideration

**Senate Bill 460**, Relating to Deputy Sheriff Retirement System Act.

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

**Com. Sub. for Senate Bill 460** (originating in the Committee on Pensions)—A Bill to amend and reenact §7-14D-2, §7-14D-11, §7-14D-13, §7-14D-19, and §7-14D-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-14D-32, all relating to the Deputy Sheriff Retirement System Act; defining terms; amending and removing conflicting statutory provisions; clarifying preretirement death benefits; and adding a severability clause.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Eric Nelson, Jr.,  
*Chair.*

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

Your Committee on Economic Development has had under consideration

**Senate Bill 464**, Developing and implementing program to regulate source-separated organic material waste.

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

**Com. Sub. for Senate Bill 464** (originating in the Committee on Economic Development)—A Bill to amend and reenact §22-15-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-15-24, all relating to the development and implementation of a program to regulate source-separated organic material waste; requiring permits for the facilities and general operation; providing for general handling of organic material waste; authorizing the secretary to promulgate rules; and authorizing the secretary to provide exemptions.

With the recommendation that the committee substitute do pass; but with the further recommendation that it first be referred to the Committee on Finance.

Respectfully submitted,

Chandler Swope,  
*Chair.*

On motion of Senator Swope, the bill (Com. Sub. for S. B. 464) contained in the foregoing report from the Committee on Economic Development was then referred to the Committee on Finance.

The Senate proceeded to the sixth order of business.

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

**By Senator Grady:**

**Senate Bill 559**—A Bill to amend and reenact §37-13A-1 of the Code of West Virginia, 1931, as amended, relating to protecting landowners who allow others to access cemeteries from their private property or roadway; and ensuring that those persons who damage private property are solely responsible for any costs of repair associated therein.

Referred to the Committee on the Judiciary.

**By Senator Rucker:**

**Senate Bill 560**—A Bill to amend and reenact §29-22A-10b of the Code of West Virginia, 1931, as amended, relating to changes in distribution of net terminal income.

Referred to the Committee on Finance.

Senator Smith offered the following resolution:

**Senate Concurrent Resolution 12**—Applying to the Congress of the United States to call a convention for proposing amendments pursuant to Article V of the United States Constitution limited to proposing amendments that impose limits to the power and jurisdiction of the federal government by allowing the state legislatures of the United States to pass legislation to override certain federal laws deemed too onerous or restrictive.

Whereas, Some federal laws have a disproportionate impact on the several states in the Union; and

Whereas, The concentration of power at the federal level has had the effect of making federal officials less responsive to the will of the people and more readily influenced by lobbyists, wealthy corporations, and special interests in Washington, D.C.; and

Whereas, Much of federal law is now enacted by federal bureaucrats who were never chosen by the people and have no accountability to the people whatsoever; and

Whereas, Policy decisions made at the state level tend to be more responsive to the needs and desires of the people; and

Whereas, The federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, many of which are unfunded to a great extent; and

Whereas, The states have the ability to restore the responsiveness of government to the people and to restrain abuses of federal power by proposing amendments to the Constitution of the United States through a limited Convention of the States under Article V; therefore, be it

*Resolved by the Legislature of West Virginia:*

That it hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments to the Constitution of the United States that limit the power and jurisdiction of the federal government by allowing a vote of three-fifths of the several state legislatures to repeal certain federal laws and regulation they deem to be too onerous or restrictive; and, be it

*Further Resolved*, The West Virginia Legislature adopts this application expressly subject to the following reservations, understandings, and declarations:

1. An application to the Congress of the United States to call an amendment convention of the states pursuant to Article V of the United States Constitution confers no power to Congress other than the power to call such a convention. The power of Congress to exercise this ministerial duty consists solely of the authority to name a reasonable time and place for the initial meeting of a convention;

2. Congress shall perform its ministerial duty of calling an amendment convention of the states only upon the receipt of applications for an amendment convention for the substantially same purpose as this application from two-thirds of the legislatures of the several states;

3. Congress does not have the power or authority to determine any rules for the governing of an amendment convention of the states called pursuant to Article V of the United States Constitution. Congress does not have the power to set the number of delegates to be sent by any state to such a convention, nor does it have the power to name delegates to such a convention. The power to name delegates remains exclusively within the authority of the legislatures of the several states;

4. By definition, an amendment convention of the states means that states shall vote on the basis of one state, one vote;

5. A convention of the states convened pursuant to this application shall be limited to consideration of the topics specified herein and no other. This application is made with the express understanding that an amendment that in any way seeks to amend, modify, or repeal any provision of the Bill of Rights shall not be authorized for consideration at any stage. This application shall be void ab initio if ever used at any stage to consider any change to any provision of the Bill of Rights;

6. Pursuant to Article V of the United States Constitution, Congress may determine whether proposed amendments shall be ratified by the legislatures of the several states or by special state ratification conventions. The West Virginia Legislature recommends that Congress select ratification by the legislatures of the several states; and

7. The West Virginia Legislature may provide further instructions to its delegates and may recall its delegates at any time for a breach of a duty or a violation of the instructions provided; and, be it

*Further Resolved*, That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made applications on the same subject; and, be it

*Further Resolved*, That the Clerk of the Senate forward a copy of this resolution, Legislative Call, and application to the President and Secretary of the United States Senate and to the Speaker and Clerk of the United States House of Representatives, and copies to the members of the said Senate and House of Representatives from this state; also to transmit copies hereof to the presiding officers of each of the legislative houses in the several states, requesting their cooperation.

Which, under the rules, lies over one day.

Senators Woelfel and Plymale offered the following resolution:

**Senate Concurrent Resolution 13**—Urging the Adjutant General to establish an Honor Guard in each National Guard unit to provide military funeral honors to honorably discharged veterans in West Virginia.

Whereas, Per capita, more citizens from West Virginia have served in our nation's armed forces than from any other state and we are proud of our citizens who, despite danger, have done what they must for peace and freedom; and

Whereas, Providing military funeral honors is one of the last ways to honor those who served; and

Whereas, Military funeral honors are normally provided by the veterans organization of the state, however, because of the limited number of members and the age of the veterans available, there are many communities unable to provide these services; and

Whereas, With the West Virginia National Guard having some 6,000 members, there should be a designated Honor Guard trained and made available to provide military funeral honors when requested by the family or funeral director, assuring that no West Virginia veteran would be denied their proper honors; and

Whereas, It is always important that we honor the many brave West Virginians who have faced the enemy, been wounded, and have given their lives not only for our freedom but for freedom around the world; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature urges the Adjutant General to establish an Honor Guard in each National Guard unit to provide military funeral honors to honorably discharged veterans in West Virginia; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Honorable Jim Justice, Governor of the State of West Virginia, and to BG William E. Crane.

Which, under the rules, lies over one day.

Senators Blair (Mr. President), Unger, Rucker, Trump, Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Weld, Woelfel, and Woodrum offered the following resolution:

**Senate Resolution 12**—Memorializing the life of John W. Small, Jr., of Berkeley County, West Virginia's longest serving elected official and dedicated public servant.

Whereas, John W. Small, Jr., began his public service career on December 8, 1956, as an employee of the Berkeley County Clerk's Office; and

Whereas, John W. Small, Jr., was appointed Chief Deputy Clerk of Berkeley County on January 2, 1957; and

Whereas, John W. Small, Jr., was appointed Berkeley County Clerk on September 17, 1971, to fill the vacancy created by the death of Clerk Eugene Dunham; and

Whereas, John W. Small, Jr., was elected to his first full six-year term in 1974 and was reelected for his seventh consecutive six-year term in 2016; and

Whereas, John W. Small, Jr., resigned as Berkeley County Clerk on January 18, 2021, ending over 60 years of dedicated public service to the citizens of Berkeley County; and

Whereas, John W. Small, Jr., took an active interest in the civic and cultural welfare of his community as a member of the Martinsburg Lions Club, where he served as the club secretary for more than 35 years and was the recipient of the Melvin Jones Fellows Award for dedicated

humanitarian services from Lions Club International and the Leonard Jarrett Award, the highest honor given by the West Virginia Lions Sight Conservation Foundation. In addition, he was the founder of the Mountain State Apple Harvest Parade in 1979, and continued his involvement for over thirty years; and

Whereas, Sadly, John W. Small, Jr., passed away on February 24, 2021, ending a distinguished life of public service; and

Whereas, It is fitting that the Senate pay tribute to the life and legacy of John W. Small, Jr., for his many contributions to his community, county, and state; therefore, be it

*Resolved by the Senate:*

That the Senate hereby memorializes the life of John W. Small, Jr., of Berkeley County, West Virginia's longest serving elected official and dedicated public servant.; and, be it

*Further Resolved*, That the Senate extends its most sincere condolences to the family of John W. Small, Jr., on his passing; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the family of John W. Small, Jr.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 8**, Fire Chief Kenneth Junior Russell Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

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 and request concurrence therein.

**Senate Concurrent Resolution 9**, Haynie Family Veterans Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

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 and request concurrence therein.

**Senate Resolution 11**, Designating Sexual Assault Awareness Day in WV.

On unfinished business, coming up in regular order, was reported by the Clerk.

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



Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Weld, Woelfel, Ihlenfeld, and Rucker regarding the adoption of Senate Resolution 11 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 263**, Permitting online raffles to benefit charitable and public service organizations.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Roberts—1.

Absent: Maroney and Stover—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 263) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Roberts—1.

Absent: Maroney and Stover—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 263) takes effect from passage.

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

**Eng. Com. Sub. for Senate Bill 332**, Providing procedure for WV to select delegates to Article V Convention.

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

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 332 pass?”

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—21.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

Absent: Maroney and Stover—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 332) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 345**, Expanding alcohol test and lock program to include offenders with drug-related offense.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Maroney and Stover—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 345) passed with its title.

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

The Senate proceeded to the ninth order of business.

**Senate Bill 381**, Creating nonresident three-day fishing license.

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

**Com. Sub. for Senate Bill 434**, Requiring training for law-enforcement officers responsible for investigating crimes of sexual assault.

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

**Senate Bill 463**, Consolidating position of Inspector General of former Workers' Compensation Fraud and Abuse Unit and position of Director of Insurance Fraud Unit.

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

**Senate Bill 501**, Continuing and indexing of license and stamp fees.

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

**Senate Bill 537**, Relating generally to kidnapping.

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

The Senate proceeded to the tenth order of business.

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

**Com. Sub. for Com. Sub. for Senate Bill 294**, Relating generally to savings and investment programs offered by state.

**Senate Bill 305**, Providing exemption from consumers sales and service tax for certain aircraft maintenance.

**Com. Sub. for Senate Bill 343**, Authorizing DMV to process online driver's license or identification card change of address.

**Com. Sub. for Senate Bill 375**, Relating to county boards of education policies for open enrollment.

**Senate Bill 376**, Removing obsolete provisions regarding DOH standards for studded tires and chains.

**Senate Bill 390**, Reorganizing Health Care Authority under DHHR and clarifying responsibilities for all-payer claims database.

**Senate Bill 397**, Relating to health care provider tax.

**Senate Bill 404**, Modifying well work permits issued by DEP Office of Oil and Gas.

**Com. Sub. for Senate Bill 421**, Authorizing Workforce West Virginia to hire at-will employees.

**Com. Sub. for Senate Bill 429**, Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts.

**Com. Sub. for Senate Bill 435**, Requiring county superintendents to authorize certain school principals or administrators at nonpublic schools to issue work permits for enrolled students.

**Com. Sub. for Senate Bill 439**, Allowing use or nonuse of safety belt as admissible evidence in civil actions.

And,

**Com. Sub. for Senate Bill 469**, Permitting and establishing requirements for appearance by video for purpose of notarial acts.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Plymale and Phillips.

At the request of Senator Plymale, and by unanimous consent, the Senate stood in observance of a moment of silence in recognition of the passing of Jeff Gilbert, brother of Dr. Jerry Gilbert, President of Marshall University.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following bill on March 3, 2021:

**Senate Bill 353:** Senator Weld.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on March 3, 2021:

**Senate Bill 3:** Senator Smith;

**Senate Bill 39:** Senators Phillips and Ihlenfeld;

**Senate Bill 54:** Senator Rucker;

**Senate Bill 305:** Senator Woelfel;

**Senate Bill 329:** Senator Smith;

**Senate Bill 344:** Senator Baldwin;

**Senate Bill 357:** Senator Smith;

**Senate Bill 383:** Senator Phillips;

**Senate Bill 504:** Senator Karnes;

**Senate Bill 539:** Senators Woelfel, Lindsay, and Caputo;

**Senate Bill 543:** Senators Phillips, Smith, Caputo, Roberts, Beach, and Clements;

**Senate Bill 551:** Senator Roberts;

**Senate Bill 555:** Senator Roberts;

**Senate Bill 557:** Senator Beach;

**Senate Joint Resolution 11:** Senator Karnes;

And,

**Senate Resolution 11:** Senators Woelfel, Ihlenfeld, Lindsay, Caputo, Beach, Hamilton, and Plymale.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:17 p.m., the Senate adjourned until tomorrow, Friday, March 5, 2021, at 11 a.m.

---

## **SENATE CALENDAR**

**Friday, March 05, 2021  
11:00 AM**

### **UNFINISHED BUSINESS**

- S. C. R. 12 - Applying to Congress to call convention to propose amendments allowing state legislatures to pass legislation overriding certain restrictive federal laws
- S. C. R. 13 - Urging Adjutant General to establish Honor Guard in each unit to perform military funeral honors
- S. R. 12 - Memorializing life of John W. Small, Jr., WV's longest serving elected official and dedicated public servant

### **THIRD READING**

- Eng. Com. Sub. for S. B. 368 - Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program - (Com. title amend. pending)
- Eng. S. B. 381 - Creating nonresident three-day fishing license
- Eng. Com. Sub. for S. B. 434 - Requiring training for law-enforcement officers responsible for investigating crimes of sexual assault
- Eng. S. B. 463 - Consolidating position of Inspector General of former Workers' Compensation Fraud and Abuse Unit and position of Director of Insurance Fraud Unit
- Eng. S. B. 501 - Continuing and indexing of license and stamp fees
- Eng. S. B. 537 - Relating generally to kidnapping

### **SECOND READING**

- Com. Sub. for Com. Sub. for S. B. 294 - Relating generally to savings and investment programs offered by state
- S. B. 305 - Providing exemption from consumers sales and service tax for certain aircraft maintenance
- Com. Sub. for S. B. 343 - Authorizing DMV to process online driver's license or identification card change of address
- Com. Sub. for S. B. 375 - Relating to county boards of education policies for open enrollment
- S. B. 376 - Removing obsolete provisions regarding DOH standards for studded tires and chains (original similar to HB2668)
- S. B. 390 - Reorganizing Health Care Authority under DHHR and clarifying responsibilities for all-payer claims database
- S. B. 397 - Relating to health care provider tax
- S. B. 404 - Modifying well work permits issued by DEP Office of Oil and Gas

Com. Sub. for S. B. 421 - Authorizing Workforce West Virginia to hire at-will employees

Com. Sub. for S. B. 429 - Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts (original similar to HB2745)

Com. Sub. for S. B. 435 - Requiring county superintendents to authorize certain school principals or administrators at nonpublic schools to issue work permits for enrolled students

Com. Sub. for S. B. 439 - Allowing use or nonuse of safety belt as admissible evidence in civil actions (original similar to HB2809)

Com. Sub. for S. B. 469 - Permitting and establishing requirements for appearance by video for purpose of notarial acts

### **FIRST READING**

S. B. 39 - Prohibiting insurance coverage from requiring prior authorization for tests to stage cancer

Com. Sub. for S. B. 334 - Establishing license application process for harm reduction programs

Com. Sub. for Com. Sub. for S. B. 339 - Expanding types of agricultural operations that are protected from nuisance and other legal actions

Com. Sub. for S. B. 344 - Relating to credit for qualified rehabilitated buildings investment

Com. Sub. for S. B. 370 - Requiring certain documents that contain wage records be considered confidential

Com. Sub. for S. B. 383 - Relating to exempting certain organizations from property taxation

S. B. 456 - Relating to Natural Resources Police Officers Retirement System

Com. Sub. for S. B. 460 - Relating to Deputy Sheriff Retirement System Act

S. B. 467 - Relating to WV Municipal Police Officers and Firefighters Retirement System

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2021**

---

**Friday, March 5, 2021**

9 a.m.

Judiciary

(Room 208W)