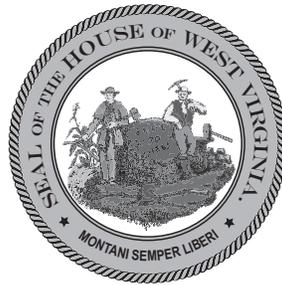


West Virginia Legislature

JOURNAL
of the
HOUSE of DELEGATES

Eighty-Third Legislature
First Extraordinary Session

Held at Charleston
Published by the Clerk of the House



June 13, 2017
SEVENTEENTH DAY

Tuesday, June 13, 2017

SEVENTEENTH DAY

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

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

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

Delegate Cowles arose to suggest the absence of a quorum, the Clerk opened the machine for the roll to be taken (**Roll No. 645**), and 82 members being present, the Speaker declared the presence of a quorum. The absent being as follows:

Absent: Ambler, Bates, Byrd, Deem, Ellington, A. Evans, Fast, Folk, N. Foster, Hill, Hornbuckle, Householder, Marcum, Rohrbach, Summers, Upson, Williams and Wilson.

The Clerk proceeded to read the Journal of Monday, June 12, 2017, being the first order of business, when the further reading thereof was dispensed with and the same approved.

At 11:14 a.m., on motion of Delegate Cowles, the House of Delegates recessed until 4:00 p.m.

* * * * *

Afternoon Session

* * * * *

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Messages from the Executive

The following communication from His Excellency, the Governor, was laid before the House of Delegates and reported by the Clerk:

State of West Virginia
OFFICE OF THE GOVERNOR
Charleston, WV

June 13, 2017

**HOUSE EXECUTIVE MESSAGE NO. 1
2017 FIRST EXTRAORDINARY SESSION**

The Honorable Tim Armstead
Speaker, West Virginia House of Delegates
Building 1, Room M-228
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Speaker Armstead:

The following amends and replaces the "FY 2018 Official Estimate General Revenue – Statement of Revenues by Source" which I submitted to you on February 8, 2017 as part of my Budget Document for the fiscal year ending June 30, 2018:

General Revenue Fund
Statement of Revenues by Source
(Expressed in Thousands)

<u>Source of Revenue</u>	<u>FY 2018 Official Estimate Revised</u>
Business and Occupation Tax	\$ 114,500
Consumers Sales and Use Tax	1,259,000
Personal Income Tax	1,860,000
Liquor Profit Transfers	20,800
Beer Tax and Licenses	7,600
Tobacco Products Tax (Cigarette & Other)	194,000
Business Franchise Fees	650
Charter Tax	0
Property Transfer Tax	10,200
Property Tax	7,000
Insurance Tax	121,100
Departmental Collections	23,000
Corporate Income/Business Franchise Tax	109,000
Miscellaneous Transfers	500
Interest Income	16,000
Severance Tax	361,000
Miscellaneous Receipts	12,700
HB102 - Lottery Transfers	65,000
Special Revenue Transfer	33,000
Senior Citizen Tax Credit Reimbursement	10,000
Total	<u>\$ 4,225,050</u> ¹

Thank you for your cooperation in this matter.

Sincerely,

Jim Justice
Governor

¹ These estimates are contingent on the revenues and projected economic activity associated with the passage of Engrossed Senate Bill 1003, Relating generally to WV Parkways Authority, and Engrossed Senate Bill 1006, Increasing funding for State Road Fund, as recommended by the Governor.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 106, Relating generally to the furlough of public employees during declared fiscal emergency.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §4-1-24; that said code be amended by adding thereto a new section, designated §4-3-6; that said code be amended by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5, §5-30-6 and §5-30-7; and that said code be amended by adding thereto a new section, designated §51-3-19, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE I. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-24. Furlough of employees of the Senate and House of Delegates during a declared fiscal emergency.

(a) Notwithstanding any provision of law to the contrary, when the Governor declares a fiscal emergency pursuant to section two, article thirty, chapter five of this code, the President of the Senate may furlough employees of the Senate.

(b) Notwithstanding any provision of law to the contrary, when the Governor declares a fiscal emergency pursuant to section two, article thirty, chapter five of this code, the Speaker of the House of Delegates may furlough employees of the House of Delegates.

(c) The applicable provisions of article thirty, chapter five of this code shall govern furloughs ordered under this section.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-6. Furlough of employees of the Joint Committee on Government and Finance during a declared fiscal emergency.

(a) Notwithstanding any provision of law to the contrary, when the Governor declares a fiscal emergency pursuant to section two, article thirty, chapter five of this code, the President of the Senate and the Speaker of the House of Delegates may jointly grant the Legislative Manager the authority to furlough one or more employees of the joint legislative agencies under the Joint Committee on Government and Finance, as provided for in section three-c of this article.

(b) The applicable provisions of article thirty, chapter five of this code shall govern furloughs ordered under this section.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 30. FURLOUGH OF STATE EMPLOYEES.

§5-30-1. Definitions.

As used in this article:

(1) 'Budgetary fiscal emergency' means a fiscal emergency based on the circumstances in paragraph (B), subdivision (5) of this section.

(2) 'Declared fiscal emergency' means a period of time commencing upon the Governor's issuance of a proclamation declaring that a fiscal emergency, as defined in subdivision (5) of this section, exists.

(3) 'Employer' means:

(A) The Governor or his or her designee with regard to employees of departments and agencies under the supervision and control of the Governor;

(B) The President of the Senate or the Speaker of the House of Delegates or their designees as to employees of the Senate and of the House of Delegates, respectively;

(C) The President of the Senate and the Speaker of the House of Delegates or their designees as to employees of the Joint Committee on Government and Finance;

(D) The Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General or their designees in their individual capacities as to their respective employees; and

(E) The Supreme Court of Appeals or a designee thereof as to employees of the Judiciary.

(F) The presidents of state institutions of higher learning and the chancellors of the Higher Education Policy Commission and the Council for Community and Technical College Education or their designees as to their respective employees.

(4) 'Executive branch' means departments, agencies and entities under the supervision and control of the Governor, including the Department of Education, but not including the offices of the Secretary of State, Auditor, Treasurer, Commissioner of Agriculture or Attorney General or their employees.

(5) 'Fiscal emergency' means that either of the following circumstances exists:

(A) At any point in time during a fiscal year, general revenue collection amounts for the fiscal year to date are three percent or more below the official revenue estimate upon which the budget is based at the same point in time for that fiscal year; or

(B) No budget has been enacted for the current fiscal year.

(6) 'Furlough' means a mandatory, temporary, unpaid leave of absence conducted subject to the provisions of this article.

(7) 'Revenue-based fiscal emergency' means a fiscal emergency based on the circumstances in paragraph (A), subdivision (5) of this section.

§5-30-2. Declaration of fiscal emergency.

(a) Upon determination that one or more of the circumstances in subdivision (5), section one of this article exists, the Governor is hereby authorized to declare a fiscal emergency: *Provided*, That the Governor shall declare a fiscal emergency if no budget bill has been enacted for the current fiscal year.

(b) The declaration shall be made by proclamation and shall set forth the specific circumstances supporting the declaration of a fiscal emergency. The declaration shall identify whether the fiscal emergency is a revenue-based fiscal emergency or a budgetary fiscal emergency.

(c) A declared fiscal emergency may only remain in effect for thirty consecutive calendar days. The Governor may not declare a subsequent fiscal emergency in the same fiscal year based on the same facts and circumstances that led to the issuance of a prior declaration of fiscal emergency, unless the Legislature is in session or has been reconvened.

(d) After thirty consecutive calendar days have elapsed, or the fiscal emergency is sooner resolved, the Governor shall issue a proclamation declaring that the fiscal emergency has ended.

§5-30-3. Furlough of executive branch employees under the supervision and control of the Governor during a fiscal emergency.

When the Governor declares a fiscal emergency pursuant to section two of this article, he or she may, by executive order, furlough employees under his or her supervision and control as an alternative to a reduction in force including, but not limited to, employees of the Department of Education and the State Board of Education.

§5-30-4. Furlough of employees by other elected executive officers.

Notwithstanding any provision of law to the contrary, upon a declaration by the Governor of a fiscal emergency pursuant to section two of this article, the Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General are authorized to furlough employees within their offices and under their supervision and control pursuant to the provisions of this article.

§5-30-5. Generally applicable furlough provisions.

(a) When the Governor declares a fiscal emergency, the following shall apply:

(1) The furlough must be applied uniformly as to all employees within a designated department, agency, division, office or program, regardless of the source of funds or place of work, subject to the following exceptions:

(A) Individuals determined by the employer to be essential personnel may be exempted from furlough or may be furloughed on a different schedule than others within the designated department, agency, division, office or program;

(B) If an organizational unit or classification of workers within a designated department, agency, division, office or program can be identified, then that particular organizational unit or classification of workers may be furloughed on a different schedule than others within the designated department, agency, division, office or program;

(C) Individuals who voluntarily accept furlough for a full week or weeks may be furloughed on a different schedule than others within the designated department, agency, division, office or program; and

(D) Individuals who are at will employees or who are not classified civil service employees may be furloughed on a different schedule than others within a designated department, agency, division, office or program.

(2) When a furlough has been ordered, the head of an affected department, agency, division, office or program shall create a schedule for furlough weeks, furlough days or portions of furlough days.

(3) For any furlough implemented pursuant to this article, the employer may permit an employee's reduction in compensation to be allocated over the balance of the fiscal year rather than solely in the pay period or pay periods in which the furlough occurs.

(b) During the period of any furlough, the following shall apply with respect to the benefits of employees, whether furloughed or not furloughed:

(1) Employees participating in the public employee health insurance program will remain participants therein during the period of fiscal emergency. Payment of the employer portion of premiums shall remain the responsibility of the employer: *Provided*, That if a furloughed employee's wages for a pay period are insufficient to allow for the deduction therefrom of the employee's share of the health insurance premium, the employer shall be responsible for payment of the amount of the employee's share to the Public Employee's Insurance Agency: *Provided, however*, That upon the termination of the fiscal emergency, the employer shall recover any such moneys paid on the employee's behalf from the employee's pay at the maximum rate permissible under law not to exceed fifteen percent of the employee's net pay per pay period;

(2) Days, portions of days or weeks during a declared fiscal emergency shall be considered days employed or days worked for purposes of calculating retirement eligibility and state service credit: *Provided*, That employer and employee contributions are made for the period of fiscal emergency within thirty days of the termination of the fiscal emergency on the base salary the employee would have received if the Governor had not declared a fiscal emergency: *Provided, however*, That if the period of employment for which an employee's retirement benefit is calculated includes periods during a declared fiscal emergency, the employee's average pay upon which the benefit is computed shall be deemed to have been paid during the periods of fiscal emergency at his or her rate of pay in effect at the times of furlough;

(3) Days, portions of days or weeks for which employees are furloughed shall not be considered days employed or days worked for purposes of accruing sick leave or annual leave; and

(4) No employee who has been furloughed may use accrued annual leave or accrued sick leave for days on which he or she is scheduled to be furloughed pursuant to this section unless at the time of furlough he or she is on employer approved annual leave or sick leave or has sick leave approved by the employer prior to the declaration of the fiscal emergency.

(c) The Governor shall have no authority to furlough elected executive officers or their employees, or members or employees of the legislative branch, or officials or employees of the judicial branch.

§5-30-6. Rule-making.

(a) The Secretary of the Department of Administration may promulgate emergency rules and shall propose rules for legislative approval to effectuate the purposes of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) Rules promulgated or proposed for legislative approval pursuant to subsection (a) of this section related to the furloughing of employees shall provide procedures and practices to ensure minimum disruption of government services and the lawful application of furlough decision-making.

§5-30-7. Applicability of other laws.

(a) The provisions of article five, chapter twenty-one of this code are inapplicable to individuals furloughed or those remaining actively employed during a declared fiscal emergency.

(b) Placement of an employee on furlough under this article shall not give rise to the right of a grievance or appeal to the West Virginia Public Employees Grievance Board.

(c) Placement of an employee on furlough under this section shall have no effect on an employee's right to apply for and receive unemployment compensation as provided by law.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 3. COURTS IN GENERAL.

§51-3-19. Furlough of judicial employees during a declared fiscal emergency.

(a) Notwithstanding any provision of law to the contrary, upon declaration by the Governor of a fiscal emergency pursuant to section two, article thirty, chapter five of this code, the Supreme Court of Appeals is authorized to furlough employees and personnel of the judiciary under the Supreme Court of Appeals, including employees and personnel of the circuit courts, family courts and magistrate courts.

(b) Furloughs shall not completely close a court or court office.

(c) Nothing in this section shall be construed as granting authority for the furlough of elected judicial officers, nor shall it be construed as restricting or otherwise limiting the plenary authority of the Supreme Court of Appeals or the lower courts.

(d) The applicable provisions of article thirty, chapter five of this code shall govern furloughs ordered under this section."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 106 – "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §4-1-24; to amend said code by adding thereto a new section, designated §4-3-6; to amend said code by adding thereto a new article, designated §5-30-1,

§5-30-2, §5-30-3, §5-30-4, §5-30-5, §5-30-6 and §5-30-7; and to amend said code by adding thereto a new section, designated §51-3-19, all relating to furloughing of state government employees generally; defining terms; authorizing the Governor to declare a fiscal emergency under certain circumstances; requiring the Governor to declare a fiscal emergency under certain circumstances; establishing criteria which constitute a fiscal emergency; establishing limits on the length of time a declared fiscal emergency may be in effect; requiring the Legislature to be convened prior to the declaration of a subsequent fiscal emergency on the same circumstance or circumstances as a previous fiscal emergency in the same fiscal year; authorizing the Governor to order furloughs of state employees under his or her supervision and control during a declared fiscal emergency; clarifying that the Governor has authority to furlough employees of the Department of Education and the State Board of Education; authorizing presiding legislative officers to furlough employees of their respective houses during a declared fiscal emergency; authorizing the furloughing of employees of the Joint Committee on Government and Finance during a declared fiscal emergency by the joint agreement of the President of the Senate and the Speaker of the House of Delegates; authorizing state elected constitutional officers to furlough employees under their respective supervision and control during a declared fiscal emergency; authorizing the Supreme Court of Appeals to furlough judicial employees under its supervision and control during a declared fiscal emergency; establishing protections related to employees health insurance and retirement during a fiscal emergency; setting conditions of and procedures for any furlough implemented; prohibiting use of accrued annual leave and sick leave by employees during the time they are furloughed and creating exemptions thereto; prohibiting time while on furlough status from being used to accrue sick and annual leave; clarifying that time on furlough shall count for purposes of retirement service credit; authorizing the Secretary of Administration to promulgate emergency rules regarding the furlough of state employees and requiring the proposal of legislative rules thereto applicable; clarifying the applicability of other laws related to eligibility for unemployment compensation and wage payment collection to employees during a fiscal emergency; authorizing employers to designate employees and positions exempt from furlough and establishing the criteria for such exemptions; and exempting being furloughed from giving rise to a right of grievance or appeal.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 117, Relating to West Virginia Health Care Authority.

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

H. B. 115, Budget Bill,

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

Com. Sub. for H. B. 115 – “A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution,”

With the recommendation that the committee substitute do pass.

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (Com. Sub. for H. B. 115) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Hanshaw, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 13th day of June, 2017, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

H. B. 111, Relating generally to tax procedures and administration,

And,

S. B. 1014, Relating generally to physician assistants.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

S. B. 1006, Increasing funding for State Road Fund,

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

Delegate Cowles asked unanimous consent that the bill (S. B. 1006) be taken up for immediate consideration, read a first time and ordered to second reading, which consent was not given, objection being heard.

Delegate Cowles then so moved and the bill (S. B. 1006) was read a first time and ordered to second reading.

Remarks by Members

Delegate Pushkin was recognized and moved, pursuant to House Rule 82, that H. B. 110, be discharged from the Committee on Finance.

Delegate Cowles moved that the motion be tabled.

The question before the House being the motion to table the motion to discharge H. B. 110, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 646**), and there were—yeas 49, nays 35, absent and not voting 16, with the yeas and absent and not voting being as follows:

Nays: Baldwin, Boggs, Brewer, Byrd, Canestraro, Caputo, Eldridge, Fleischauer, Fluharty, Hartman, Hicks, Hornbuckle, Iaquina, Isner, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum,

Miley, R. Miller, Moye, Pethtel, Phillips, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Sypolt, Thompson, Wagner and Williams.

Absent and Not Voting: Ambler, Anderson, Bates, Diserio, Ellington, A. Evans, E. Evans, Ferro, N. Foster, Householder, Queen, Sobonya, Summers, Upson, Walters and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the motion to discharge H. B. 110 from committee was tabled.

Speaker Pro Tempore Overington in the Chair

Mr. Speaker, Mr. Armstead, arose from his seat and addressed the House.

Mr. Speaker, Mr. Armstead in the Chair

Miscellaneous Business

Delegate Rohrbach asked and obtained unanimous consent that the remarks of Delegate Armstead during Remarks by Members today be printed in the Appendix to the Journal.

Delegate Eldridge asked and obtained unanimous consent that the remarks of Delegate Marcum during Remarks by Members today be printed in the Appendix to the Journal.

Delegate Frich asked and obtained unanimous consent that the remarks of Delegate Longstreth during Remarks by Members today be printed in the Appendix to the Journal.

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Pushkin during Remarks by Members today be printed in the Appendix to the Journal.

Delegate Caputo asked unanimous consent that the remarks of Delegate Robinson during Remarks by Members today be printed in the Appendix to the Journal, which consent was not given, objection being heard.

Delegate Caputo then so moved and the motion was rejected.

At 6:16 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 8:30 p.m.

* * * * *

Evening Session

* * * * *

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for H. B. 106, Relating generally to the furlough of public employees during declared fiscal emergency.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Trump, Swope and Romano.

On motion of Delegate Cowles, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Shott, Hanshaw and Lovejoy.

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

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

S. B. 1013 — “A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.”

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the bill (S. B. 1013) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Upson was present during the evening session.

Leaves of Absence

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Ambler, Bates, Ellington, A. Evans, N. Foster, Householder, Summers and Wilson.

Miscellaneous Business

Delegate Kelly asked and obtained unanimous consent that the remarks of Delegate Cowles during Remarks by Members today be printed in the Appendix to the Journal.

Delegate Folk asked and obtained unanimous consent that the remarks of Delegate Shott during the evening session be printed in the Appendix to the Journal.

At 9:02 p.m., the House of Delegates adjourned until 11:00 a.m., Wednesday, June 14, 2017.

SPECIAL CALENDAR

Wednesday, June 14, 2017

18th Day

11:00 A. M.

SECOND READING

- S. B. 1006 - Increasing funding for State Road Fund (NELSON) (EFFECTIVE FROM PASSAGE) (FINANCE COMMITTEE AMENDMENT PENDING)
- S. B. 1013 - Budget Bill (NELSON) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 115 - Budget Bill (NELSON) (EFFECTIVE FROM PASSAGE)

**WEST VIRGINIA
HOUSE OF DELEGATES**

WEDNESDAY, JUNE 14, 2017

HOUSE CONVENES AT 11:00 A.M.

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