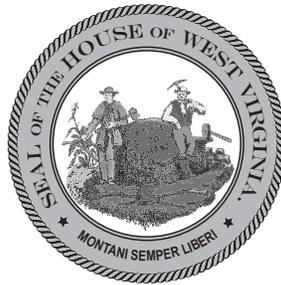


West Virginia Legislature

JOURNAL
of the
HOUSE of DELEGATES

Eighty-Third Legislature
First Extraordinary Session

Held at Charleston
Published by the Clerk of the House



May 19, 2017
SEVENTH DAY

Friday, May 19, 2017

SEVENTH 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.

The Clerk proceeded to read the Journal of Thursday, May 18, 2017, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Bills Introduced

A bill was introduced, pursuant to House Rule 92, and referred as follows:

By Delegates Pushkin and Rowe:

H. B. 110 - "A Bill to amend and reenact §11-15-2, §11-15-3, §11-15-9, §11-15-9b and §11-15-9h of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §11-15-3d and 11-15-3e; to amend and reenact §11-15A-2 and §11-15A-10 of said code; to amend and reenact §11-21-8, §11-21-8a, §11-21-8e and §11-21-12 of said code; to amend said code by adding thereto two new sections, designated §11-21-4g and §11-21-22d; and to amend and reenact §11-24-4 of said code, all relating to taxation; defining certain terms; increasing rate of consumers sales and service tax as of specified date; imposing tax on digital code and digital products as of specified date; eliminating certain exemptions from consumers sales and service tax as of specified date; increasing rate of use tax as of specified date; authorizing consumer sales and service tax on certain personal services after a certain date; applying consumer sales and service tax to certain contractor services after a certain date; creating a fair share income surcharge on certain high income earners; providing a tax credit for full-time classroom teachers; creating a West Virginia earned income tax credit for residents who receive the United States earned income tax credit; granting rule-making authority to State Tax Department; exempting monetary benefits derived from military retirement from personal income tax; and increasing rate of corporate net income tax as of specified date"; to the Committee on Finance.

Special Calendar

Second Reading

Com. Sub. for H. B. 107, Relating generally to the Tax Reform Act of 2017; on second reading, coming up in regular order, was read a second time.

Delegates Robinson, Storch, Barrett, Fluharty and Lovejoy moved to amend the bill on page thirty-one, section eight-a, lines twenty-seven through thirty, by striking out "The credit authorized pursuant to this section may not exceed the greater of \$3.75 million for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in the state in the taxable year, or \$3.75 million for each building that is a component of a certified historic structure for which a credit is claimed under this section."

And

On page thirty-six, section twenty-three-a, lines twenty-seven through thirty, by striking out “The credit authorized pursuant to this section may not exceed the greater of \$3.75 million for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in the state in the taxable year, or \$3.75 million for each building that is a component of a certified historic structure for which a credit is claimed under this section.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 618**), and there were—yeas 35, nays 54, absent and not voting 11, with the yeas and absent and not voting being as follows:

Yeas: Baldwin, Barrett, Byrd, Capito, Diserio, E. Evans, Ferro, Fluharty, Hartman, Hicks, Hill, Isner, Kessinger, Lane, Longstreth, Love, Lovejoy, Lynch, Marcum, Martin, McGeehan, R. Miller, Moye, Paynter, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Sponaule, Storch, Thompson, Ward and Williams.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley, Moore and Walters.

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

Delegates Robinson, Storch, Barrett, Fluharty and Lovejoy moved to amend the bill on page thirty-one, section eight-a, line thirty, after the word “than”, by striking out “\$20 million” and inserting in lieu thereof “\$30 million”.

And,

On page thirty-six, section twenty-three a, line thirty, after the word “than”, by striking out “\$20 million” and inserting in lieu thereof “\$30 million”.

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

The yeas and nays having been ordered, they were taken (**Roll No. 619**), and there were—yeas 37, nays 52, absent and not voting 11, with the yeas and absent and not voting being as follows:

Yeas: Baldwin, Barrett, Brewer, Byrd, Capito, Diserio, E. Evans, Ferro, Fluharty, Hamilton, Hartman, Hicks, Hill, Iaquina, Isner, Kessinger, Lane, Love, Lovejoy, Lynch, Marcum, Martin, McGeehan, R. Miller, Moye, Paynter, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaule, Storch, Thompson, Ward and Williams.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley, Moore and Walters.

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

Delegate Paynter moved to amend the bill on page two, line three of the enacting section, by striking out “that said code be amended by adding thereto a new section, designated §11-15-3d” and the semi-colon.

And,

On page four, by striking out section three-d in its entirety.

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

The yeas and nays having been ordered, they were taken (**Roll No. 620**), and there were—yeas 15, nays 74, absent and not voting 11, with the yeas and absent and not voting being as follows:

Yeas: Arvon, Butler, Gearheart, Hill, Howell, Kessinger, Marcum, Martin, McGeehan, Paynter, Sobonya, Thompson, Upson, Ward and Wilson.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley, Moore and Walters.

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

Delegate Paynter moved to amend the bill on page thirty-three, section sixteen, line ten, by striking out the dollar amount “\$2,500” and inserting in lieu thereof the dollar amount “\$2,750”.

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

The yeas and nays having been ordered, they were taken (**Roll No. 621**), and there were—yeas 30, nays 59, absent and not voting 11, with the yeas and absent and not voting being as follows:

Yeas: Arvon, Baldwin, Barrett, Butler, Byrd, Dean, Diserio, Eldridge, E. Evans, Ferro, Gearheart, Hicks, Hill, Householder, Howell, Kessinger, Longstreth, Love, Marcum, Martin, McGeehan, O’Neal, Paynter, Phillips, Summers, Sypolt, Thompson, Ward, White and Wilson.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley, Moore and Walters.

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

Delegate Kessinger moved to amend the bill on page five, section eight-a, line twenty-four, by striking out the year “2017” and inserting in lieu thereof the year “2018”.

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

The yeas and nays having been ordered, they were taken (**Roll No. 622**), and there were—yeas 33, nays 56, absent and not voting 11, with the yeas and absent and not voting being as follows:

Yeas: Arvon, Baldwin, Butler, Byrd, Dean, Eldridge, E. Evans, Fast, Gearheart, Hamilton, Hicks, Hill, Howell, Isner, Kessinger, Lane, Love, Lovejoy, Marcum, Martin, McGeehan, R. Miller, Paynter, Phillips, Rodighiero, Sobonya, Statler, Summers, Sypolt, Thompson, Upson, Ward and Wilson.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley, Moore and Walters.

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

On motion of Delegates Nelson and Frich, the bill was amended on page twenty-eight, following line sixty-two, by inserting a new section to read as follows:

“§11-15-35. Administrative rules.

Legislative rules; emergency rules. — The tax commissioner shall propose for promulgation legislative rules explaining and implementing the amendments to this article enacted in the year 2017 in accordance with the provisions of article three, chapter twenty-nine-a of this code. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the state register before October 1, 2017, those rules may be promulgated as emergency legislative rules as provided in article three, chapter twenty-nine-a of this code.”

And,

On page two, following the enacting clause, by striking out the enacting section and inserting in lieu thereof the following:

“That §11-15-3, §11-15-8a, §11-15-9, §11-15-9b and §11-15-9h of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §11-15-3d and §11-15-35; that §11-15A-2 of said code be amended and reenacted; that §11-21-8a, §11-21-8e and §11-21-16 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §11-21-12j and §11-21-12k; and that §11-24-23a and §11-24-23e of said code be amended and reenacted, all to read as follows” and a colon.

Delegates Butler and Summers moved to amend the bill on page thirty-two, section twelve-k, beginning on line one, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

“(a) For taxable years beginning on and after January 1, 2020, for a resident individual with a federal adjusted gross income of less than \$100,000 for the taxable year, one hundred percent of federal social security benefits income that is included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification of federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article.”

Delegates Kelly, Shott, Hamilton, Fast, Howell, Arvon, Espinosa, Statler, Summers, Overington, Cooper, Ambler, Iaquina, Ferro, Pethel, Love, Lynch, Lovejoy, Zatezalo, Anderson, Westfall, R. Miller, Lane, Ward and Thompson requested to be excused from voting on adoption of the amendment under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as members of a class of persons possibly to be affected by the adoption of the amendment and passage of the bill, and refused to excuse the Members from voting.

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

The yeas and nays having been ordered, they were taken (**Roll No. 623**), and there were—yeas 20, nays 69, absent and not voting 11, with the yeas and absent and not voting being as follows:

Yeas: Arvon, Barrett, Blair, Butler, Dean, Hill, Householder, Howell, Kessinger, Marcum, Martin, McGeehan, Paynter, Phillips, Summers, Sypolt, Thompson, Upson, Ward and Wilson.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley, Moore and Walters.

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

Delegates Butler and Summers moved to amend the bill on page twenty-two, section nine, following line three hundred eighty-four, by reinserting subdivision (6) as follows:

“(6) Sales of construction and maintenance materials acquired by a second party for use in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to the Division of Highways for deposit into the State Road Fund of the state reimbursement for the tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing of highways projects with the amount of funds expended for highway construction and maintenance. The Commissioner of Highways shall request reimbursement of the tax based on an estimate that forty percent of the total gross funds expended by the agency during the fiscal period were for the acquisition of materials used for highway construction and maintenance. The amount of the reimbursement shall be calculated at six percent of the forty percent.”

And,

On page twenty-two, section nine, following line three hundred ninety-seven, following the words “after that date”, by striking out the colon and the remainder of the subsection and inserting a period.

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

The yeas and nays having been ordered, they were taken (**Roll No. 624**), and there were—yeas 16, nays 74, absent and not voting 10, with the yeas and absent and not voting being as follows:

Yeas: Blair, Butler, Dean, Hill, Howell, Kessinger, Marcum, Martin, McGeehan, Paynter, Statler, Summers, Thompson, Ward, White and Wilson.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley and Moore.

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

Delegates Byrd and Williams moved to amend the bill on page sixteen, section nine, following line two hundred forty-three, by inserting a new subdivision, designated subdivision (33), to read as follows:

~~“(34) (33) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs”~~ and a semicolon.

And,

By renumbering the remaining subdivisions.

Delegate Marcum requested to be excused from voting on the amendment under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegate would be as a member of a class of persons possibly to be affected, and refused to excuse the Gentleman from voting.

The Speaker put the question on the adoption of the foregoing amendment, and the same did not prevail.

Delegates Kessinger and Baldwin moved to amend the bill on page five, section eight-a, line five, immediately following the word “That”, by inserting “this exemption shall continue to be allowable on the first \$40,000 of the labor component for the consideration paid for the portion of the contracting services furnished when such contracting services have been made necessary as a result of a disaster as defined in section two of article five of chapter fifteen of this code; when such disaster resulted in a state of emergency being declared pursuant to the provisions of section six, article five, chapter fifteen of this code, or, in a major disaster declaration or emergency declaration being issued pursuant to the provisions of 42 U. S. C. § 5122: *Provided further, That*”.

Speaker Pro Tempore Overington in the Chair

Mr. Speaker, Mr. Armstead, requested to be excused from voting on the amendment to Com. Sub. for H. B. 107 under the provisions of House Rule 49.

The Speaker Pro Tempore replied that any impact on the Delegate would be as a member of a class of persons possibly to be affected by the adoption of the amendment and passage of the bill, and refused to excuse the Member from voting.

Mr. Speaker, Mr. Armstead, in the Chair

The Speaker put the question on the adoption of the foregoing amendment, and the same was adopted.

The bill was then ordered to engrossment and third reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 625**), and there were—yeas 90, nays none, absent and not voting 10, with the absent and not voting being as follows:

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley and Moore.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

Having been engrossed, the bill was read a third time and put upon its passage.

Delegates Wilson, Cooper, Hartman, Kelly, Hollen, Lewis and Upson requested to be excused from voting on the passage of Com. Sub. for H. B. 107 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as members of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 626**), and there were, including pairs—yeas 74, nays 17, absent and not voting 9, with the paired, nays and absent and not voting being as follows:

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

Paired:

Yea: Canestraro Nay: Wilson

Nays: Arvon, Baldwin, Blair, Butler, Gearheart, Hill, Householder, Howell, Kessinger, Martin, McGeehan, Paynter, Phillips, Sobonya, Summers, Upson.

Absent and Not Voting: Bates, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley and Moore.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 107) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 107 – “A Bill to amend and reenact §11-15-3, §11-15-8a, §11-15-9, §11-15-9b and §11-15-9h of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §11-15-3d and §11-15-35; to amend and reenact §11-15A-2 of said code; to amend and reenact §11-21-8a, §11-21-8e and §11-21-16 of said code; to amend said code by adding thereto two new sections, designated §11-21-12j and §11-21-12k; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating generally to taxation; imposing taxes on telecommunication services and ancillary telecommunication services beginning on a specified date; eliminating exemptions from consumers sales and service tax as of July 1, 2017, on the first \$40,000 of consideration paid for the portion of the labor component for contracting services furnished that is not otherwise exempt from the sales tax for a contract for contracting services entered into on or after a specified date, and providing exceptions in the event of certain declarations of disasters; eliminating exemptions from sales and services tax beginning on specified dates on sales of electronic data processing services and related software, on charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs, on sales of certain primary opinion research services, and on sales of services, machinery, supplies and materials directly used or consumed in the business activity of communication, but exempting all sales of services, machinery, supplies and materials directly used or consumed in the business activities of the buildout of broadband infrastructure in the state from the tax; eliminating the transfers of sales tax revenues to the State Road Fund that are collected from sales of construction and maintenance materials acquired by a second party for use in the construction or maintenance of a highway project beginning on specified date; providing for legislative and emergency rules; exempting all military retirement from personal income tax beginning on specified date; phasing in an exemption of federal social security benefits income from personal income tax for certain resident individuals beginning on specified date; increasing the personal income tax personal exemption of certain

resident individuals beginning on specified date; increasing amount of credit allowed against personal and corporation net income taxes for qualified building rehabilitation expenditures made after specified date; and establishing limitations on carryback and carryforward of credit for qualified building rehabilitation expenditures; and making technical corrections in various sections.”.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 627**), and there were—yeas 87, nays 3, absent and not voting 10, with the nays and absent and not voting being as follows:

Nays: Marcum, McGeehan and Wilson.

Absent and Not Voting: Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley and Moore.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 107) takes effect from its passage.

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

Leaves of Absence

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Bates, Canestraro, Caputo, Ellington, A. Evans, Folk, N. Foster, Hornbuckle, Miley and Moore.

Miscellaneous Business

Delegate Frich noted to the Clerk that she be recorded as having voted “Yea” on the amendment to Com. Sub. for H. B. 107 offered by Delegates Byrd and Williams.

Delegate Martin asked and obtained unanimous consent that the remarks of Delegate Paynter regarding the coal mining fatality in Wyoming County be printed in the Appendix to the Journal.

At 1:36 p.m., the House of Delegates adjourned until 4:00 p.m., Tuesday, May 23, 2017.

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

**WEST VIRGINIA
HOUSE OF DELEGATES**

TUESDAY, MAY 23, 2017

HOUSE CONVENES AT 4:00 P.M.

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