

West Virginia Legislature

JOURNAL
of the
HOUSE of DELEGATES

Eighty-Second Legislature
First Extraordinary Session

Held at Charleston
Published by the Clerk of the House



June 11, 2016
FOURTEENTH DAY

Saturday, June 11, 2016

FOURTEENTH DAY

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

Pursuant to H. C. R. 1, adopted on the second day of June, 2016, the House of Delegates met at 2:00 p.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 following letter was read by the Clerk:

West Virginia Legislature
State Capitol
Charleston, West Virginia 25305

June 9, 2016

The Honorable Clark Barnes, Clerk
West Virginia Senate
Building 1, Room 211-M
1900 Kanawha Boulevard, East
Charleston, West Virginia, 25305

The Honorable Stephen J. Harrison, Clerk
West Virginia House of Delegates
Building 1, Room 212-M
1900 Kanawha Boulevard, East
Charleston, West Virginia, 25305

Dear Clerk Barnes and Clerk Harrison:

Pursuant to the provisions of House Concurrent Resolution 1 adopted by the Senate and House on June 2, 2016, we do hereby call the Legislature back into session on Saturday, June 11, 2016. The Senate will convene at 11:00 a.m. and the House of Delegates will convene at 2:00 p.m.

Sincerely,

William P. Cole III
President
Tim Armstead
Speaker

The Clerk proceeded to read the Journal of Thursday, June 2, 2016, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Committee Reports

Delegate McCuskey, 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 7th day of June, 2016, 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:

Com. Sub. for H. B. 101, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution,

Com. Sub. for H. B. 117, Relating generally to the promulgation of administrative rules by the Department of Environmental Protection,

And,

H. B. 118, Department of Environmental Protection, Air Quality, rule relating to standards of performance for new stationary sources (45 CSR 16).

Messages from the Executive and other Communications

The Speaker laid before the House of Delegates the Proclamation of His Excellency, the Governor, as amended, convening the Legislature in extraordinary session, which was read by the Clerk as follows:

STATE OF WEST VIRGINIA EXECUTIVE DEPARTMENT Charleston

A P R O C L A M A T I O N

By the Governor

I, **EARL RAY TOMBLIN**, by virtue of the authority vested in the Governor by Section 7, Article VII of the Constitution of West Virginia, do hereby **AMEND** the Proclamation dated the twelfth day of May, Two Thousand Sixteen, calling the Legislature of West Virginia to convene in Extraordinary Session at twelve o'clock noon on the sixteenth day of May, Two Thousand Sixteen, and amended by subsequent Proclamation dated the first day of June, Two Thousand Sixteen, by adding item ten, as follows:

TENTH: A bill reducing the deposit to the West Virginia Infrastructure Fund to \$20,000,000 for fiscal year 2017.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol in the City of Charleston, State of West Virginia, this tenth day of June, in the year of our Lord, Two Thousand Sixteen, and in the One Hundred Fifty-Third year of the State.

EARL RAY TOMBLIN
GOVERNOR

By the Governor

NATALIE E. TENNANT
SECRETARY OF STATE

A communication was received from His Excellency, the Governor, advising that on June 8, 2016, he approved **Com. Sub. for H. B. 117 and H. B. 118**.

At 2:22 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 3:30 p.m.

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Afternoon Session

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Messages from the Executive

The Speaker then laid before the House of Delegates a communication from His Excellency, the Governor, setting forth his disapproval of a bill heretofore passed by both houses, as follows:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

June 8, 2016

Veto Message

The Honorable Tim Armstead
Speaker, West Virginia House of Delegates
Room 228M, Building 1
State Capitol Complex
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Re: Enrolled Committee Substitute for House Bill 101

Dear Speaker Armstead:

Pursuant to section fifty-one, article VI of the Constitution of West Virginia, I hereby veto—in its entirety—the Enrolled Committee Substitute for House Bill 101 (the “Budget Bill”).

When I convened the West Virginia Legislature in Extraordinary Session last month, I submitted a Budget Bill for fiscal year 2017 that not only was balanced, but fiscally sound and forward-looking. My Budget Bill acknowledged the reality that we must downsize state government sensibly and increase state revenues if West Virginia is to remain a torchbearer of fiscal responsibility. My Budget Bill therefore cut, in targeted fashion, \$86,000,000 from the annual base budget structure that operates state government. But it also strengthened the foundation of that structure by proposing essential, on-going revenue enhancements. These components of my Budget Bill would have closed next year’s projected shortfall of approximately \$270,000,000 and put West Virginia in good stead moving forward.

Significantly, my Budget Bill did not raid one penny from the Revenue Shortfall Reserve Fund (“Rainy Day Fund”). The Rainy Day Fund is a tool to help the state weather the unanticipated revenue shortfalls that occur from time to time; its principal balance should not be invaded, to any great degree, to backfill a budget that is structurally unsound for lack of revenue. Further, a robust Rainy Day Fund supports our competitive bond ratings on Wall Street. It would be reckless and irresponsible to deplete substantially our Rainy Day Fund and jeopardize our bond ratings simply because we wish to avoid or delay taking necessary action to enhance revenues.

The Budget Bill the West Virginia Legislature has presented for my signature bears no resemblance to my responsible proposal of a month ago. Among other reckless measures, the Legislature's Budget Bill uses \$292,000,000 in "one-time" line items, including spending approximately \$190,000,000 from the Rainy Day Fund, to "balance" the 2017 fiscal year budget. The Legislature's Budget Bill, moreover, includes \$0 in revenue enhancements to the annual base budget structure. As a consequence, the Legislature's Budget Bill fails to remedy, to any extent, the structural imbalance in our state budget. Signing this misguided blueprint into law would expose West Virginia to projected budget gaps of at least \$380,000,000 in both fiscal years 2018 and 2019. I believe the Legislature should address our very real structural budget problem now, rather than saddle the next administration with an even greater deficit.

In light of the foregoing, I hereby veto the Budget Bill in its entirety. In issuing this veto, I urge the Legislature—in the strongest of terms—to return to the Capitol immediately and work with me to tailor a responsible Budget Bill for fiscal year 2017. With the specter of a July 1, 2016, government shutdown looming, time is of the essence. Nevertheless, time remains for compromise and responsible action. I respectfully request the Legislature to achieve compromise and take responsible action.

Sincerely,

Earl Ray Tomblin,
Governor.

Delegate Cowles moved to proceed to reconsider the bill notwithstanding the objection of the Governor in accordance with section 51, Article VI of the Constitution.

Delegate Folk was recognized and moved to postpone the motion offered by Delegate Cowles one day, which motion was not adopted.

The question before the House being the motion to proceed to reconsider the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 701**), and there were—yeas 55, nays 29, absent and not voting 16, with the yeas and absent and not voting being as follows:

Nays: Bates, Blackwell, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hicks, Hornbuckle, Longstreth, Marcum, Miley, Moore, Morgan, Moye, Perry, Pethel, Phillips, Pushkin, Rodighiero, Rowe, Shaffer, Skinner and P. White.

Absent and Not Voting: Cadle, Ellington, Faircloth, Flanigan, Gearheart, Hill, Householder, Lynch, Manchin, J. Nelson, Perdue, Reynolds, Sponaugle, Storch, Trecost and B. White.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

The Speaker then propounded, "Shall the bill pass, notwithstanding the objections of the Governor?"

On this question, the yeas and nays were taken (Roll No. 702), and there were—yeas 55, nays 29, absent and not voting 16, with the yeas, nays and absent and not voting being as follows:

Yeas: Ambler, Anderson, Arvon, Atkinson, Azinger, Blair, Border, Butler, Canterbury, Cooper, Cowles, Deem, Duke, Espinosa, A. Evans, D. Evans, Fast, Folk, Foster, Frich, Hamilton, Hamrick,

Hanshaw, Howell, Ihle, Ireland, Kelly, Kessinger, Kurcaba, Lane, McCuskey, McGeehan, Miller, Moffatt, E. Nelson, O'Neal, Overington, Rohrbach, Romine, Rowan, Shott, P. Smith, R. Smith, Sobonya, Stansbury, Statler, Summers, Upson, Wagner, Walters, Waxman, Weld, Westfall, Zatezalo and Mr. Speaker, Mr. Armstead.

Nays: Bates, Blackwell, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hicks, Hornbuckle, Longstreth, Marcum, Miley, Moore, Morgan, Moye, Perry, Pethel, Phillips, Pushkin, Rodighiero, Rowe, Shaffer, Skinner and P. White.

Absent and Not Voting: Cadle, Ellington, Faircloth, Flanigan, Gearheart, Hill, Householder, Lynch, Manchin, J. Nelson, Perdue, Reynolds, Sponaule, Storch, Trecoast and B. White.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 101) rejected.

Messages from the Senate

A message from the Senate, by

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

S. B. 1011 — “A Bill to amend and reenact §29-22-18d of the Code of West Virginia, 1931, as amended, relating to the West Virginia Infrastructure Fund; reducing the distributions to the West Virginia Infrastructure Fund to \$20 million for fiscal year 2017”; which was referred to the Committee on Finance.

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. 1012 — “A Bill to amend and reenact §11-17-3, §11-17-4 and §11-17-4a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-17-4b, all relating to increasing the tax rate on cigarettes and other tobacco products; requiring a physical inventory of tax stamps and tobacco products upon the effective date of tax imposition and upon any tax rate increase; applying tax rate changes to inventories; requiring a report of such inventory be filed within sixty days after the effective date of the tax imposition or tax rate change; levying the excise tax on e-cigarette liquid; defining terms; providing for administration of the tax on e-cigarette liquid; barring imposition of regulations or prohibitions by municipalities or other governmental subdivisions regarding tobacco product promotions and certain other activities; providing for administration of the tax on e-cigarette liquid; providing for examination of records and stocks and examination of witnesses; declaring a presumption in absence of evidence of payment; specifying penalty for failure to file required reports; specifying criminal sanctions; and specifying effective date”; which was referred to the Committee on Finance.

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”; which was referred to the Committee on Finance.

Delegate Rowe arose to inquire regarding a procedural motion to have a bill which was referred to committee read a first time and subsequently obtained unanimous consent to withdraw his motion.

Resolutions Introduced

Mr. Speaker, Mr. Armstead, offered the following resolution, which was read by the Clerk as follows:

H. R. 2 — “Authorizing the Committee on Rules to arrange a Special Calendar and providing for making public the vote on certain questions in connection with the preparation thereof.”

Resolved by the House of Delegates:

That beginning on Sunday, June 12, 2016, and for the remainder of this First Extraordinary Session of the Legislature, the Committee on Rules is hereby authorized to arrange a Special Calendar as provided by House Rule 70. Daily after the eighth order of business shall have been passed, the Special Calendar shall be called, and until this calendar is disposed of each day, no item of business on the regular House Calendar shall be considered or take precedence over any item of business on the Special Calendar, except by a suspension of this Rule.

All bills or resolutions or other matters of business reported from Committee, and having no additional committee reference, shall automatically be placed by the Clerk on the Special Calendar, and no bill, resolution, or other matter of business shall be removed from the Special Calendar and placed on the regular House Calendar except by a majority vote of the Committee on Rules, a quorum being present. Once removed from the Special Calendar, any resolution, bill or other matter of business may only be again placed on the Special Calendar by a majority vote of the Committee on Rules, a quorum being present, or by a suspension of this Rule. In making up the Calendar, the Committee on Rules may hear any Delegate or other person in behalf of any resolution or bill he may desire placed upon such calendar and the committee shall give due consideration to the merits of bills and resolutions pending in the House of Delegates, and take cognizance of measures which affect the public interest generally; and, be it

Further Resolved, That the committee shall cause to be kept a record of all roll call votes on all questions pertaining to preparation of the Special Calendar and removing the same therefrom. This record of votes shall show those voting in the affirmative or those voting in the negative, whichever shall be the smaller number, and those absent and not voting. These vote records shall be prepared and following the adjournment of each meeting made available to House members and to the public.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 2) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

Leaves of Absence

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Cadle, Ellington, Faircloth, Flanigan, Gearheart, Hill, Householder, Lynch, Manchin, J. Nelson, Perdue, Reynolds, Sponaule, Storch, Trecost and B. White.

Miscellaneous Business

Delegate Morgan asked and obtained unanimous consent that the inquiry of Delegate Deem regarding the S. B. 1012 be printed in the Appendix to the Journal.

Delegate Kucaba asked and obtained unanimous consent that the remarks of Delegate Folk regarding the budget, be printed in the Appendix to the Journal.

At 4:47 p.m., the House of Delegates adjourned until 2:00 p.m., Sunday, June 12, 2016.

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**

SUNDAY, JUNE 12, 2016

HOUSE CONVENES AT 2:00 P.M.

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