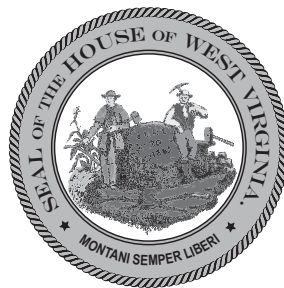


West Virginia Legislature

JOURNAL
of the
HOUSE of DELEGATES

Eighty-Third Legislature
Second-Extraordinary Session

Held at Charleston
Published by the Clerk of the House



June 26, 2018
FIRST DAY

West Virginia Legislature
Journal of the House of Delegates
Eighty-Third Legislature
Second Extraordinary Session

Charleston, Tuesday, June 26, 2018

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

Pursuant to the Proclamation of His Excellency, the Governor, issued the twenty-fifth day of June, 2018, and hereinafter set forth, convening the Legislature in Extraordinary Session on the twenty-sixth day of June, 2018 at 12:00 noon, the House of Delegates assembled in its Chamber in the Capitol Building in the City of Charleston and was called to order by the Speaker, the Honorable Tim Armstead.

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. 599**), and 87 members being present, the Speaker declared the presence of a quorum. The absent being as follows:

Absent: Barrett, Blair, Deem, Ellington, Fleischauer, Gearheart, Hanshaw, Hicks, Hornbuckle, Householder, Marcum, C. Miller and C. Romine.

Messages from the Executive

The Speaker laid before the House of Delegates a Proclamation of His Excellency, the Governor, convening the Legislature in extraordinary session, which was read by the Clerk.

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

By the Governor

I, JIM JUSTICE, by virtue of the authority vested in the Governor by Section 7, Article VII, of the Constitution of West Virginia, do hereby call the West Virginia Legislature to convene in Extraordinary Session at noon on the twenty-sixth day of June, Two Thousand Eighteen, in its chambers in the State Capitol, City of Charleston, for the limited purpose of considering and acting upon the following matters:

FIRST: Matters relating to the removal of one or more Justices of the Supreme Court of Appeals of West Virginia, including, but not limited to, censure, impeachment, trial, conviction, and disqualification; and

SECOND: Legislation authorizing and appropriating the expenditure of public funds to pay the expenses for the Extraordinary Session.

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 twenty-fifth day of June, in the year of our Lord, Two Thousand Eighteen, and in the One Hundred Fifty-Sixth year of the State.

Jim Justice,
Governor

By the Governor

Mac Warner,
Secretary of State

On motion of Delegate Cowles, the Speaker was authorized to appoint a committee of three to notify the Senate that the House of Delegates had assembled in extraordinary session and was ready to enter upon the business stated in the Proclamation by which it had been called together.

Whereupon,

The Speaker appointed as members of such committee:

Delegates Ambler, Sypolt and Lynch.

On motion of Delegate Cowles, the Speaker was authorized to appoint a committee of three, to join with a similar committee on the part of the Senate, to inform His Excellency, the Governor, that the Legislature had assembled in extraordinary session and was ready to enter upon the business stated in the Proclamation.

Whereupon,

The Speaker appointed as members of such committee:

Delegates Kelly, Sobonya and Hicks.

Speaker Pro Tempore Overington in the Chair

Resolutions Introduced

Pursuant to House Rule 109, Delegate Overington offered the following resolution which was reported by the Clerk:

H. R. 201 - "Relating to empowering the House Committee on the Judiciary to investigate allegations of impeachable offenses against the Chief Justice and Justices of the West Virginia Supreme Court of Appeals."

Whereas, The West Virginia Supreme Court of Appeals is composed of one Chief Justice and four Justices. Those positions are currently occupied by the Honorable Chief Justice Margaret L.

Workman, the Honorable Justice Robin Jean Davis, the Honorable Justice Allen H. Loughry II, the Honorable Justice Menis E. Ketchum II, and the Honorable Justice Elizabeth D. Walker; and

Whereas, On or about April 16, 2018, a Legislative Audit Report regarding the Supreme Court of Appeals of West Virginia was issued. The initial focus of the report concerned the use of state vehicles and other employer-provided benefits that may have not been treated properly for state and federal tax purposes. The issues discussed in the report raise serious questions about the administration of the Court and the conduct of the Justices; and

Whereas, On or about May 20, 2018, a Legislative Audit Report – Report 2 – regarding the Supreme Court of Appeals of West Virginia was issued. This report focused on the use of state vehicles and purchases of gift cards. The issues discussed in the report raise serious questions about the administration of the Court and the conduct of the Justices; and

Whereas, On June 6, 2018, the West Virginia Judicial Investigation Commission (“Commission”) filed a Formal Statement of Charges against Justice Allen H. Loughry II alleging that probable cause exists to formally charge him with violations of the Code of Judicial Conduct. The Formal Statement of Charges contains thirty-two charges against Justice Loughry that raises serious questions about the administration of the Court and the conduct of Justice Loughry;

Whereas, On June 19, 2018, Justice Loughry was indicted in the United States District Court for the Southern District of West Virginia. The indictment contains twenty-two counts against Justice Loughry that raise serious questions about the administration of the Court and the conduct of Justice Loughry; and

Whereas, The Court’s actions and/or inactions have raised concerns that require further consideration and investigation by this body. Some or all of the five members of the Court may be guilty of maladministration, corruption, incompetency, gross immorality, or high crimes or misdemeanors, and may be unfit to serve as Chief Justice or as Justices of the West Virginia Supreme Court of Appeals; therefore, be it

Resolved by the House of Delegates:

That the House Committee on the Judiciary be, and it is by this resolution, empowered:

(1) To investigate, or cause to be investigated, any allegations or charges related to the maladministration, corruption, incompetency, gross immorality, or high crimes or misdemeanors committed by any Justice of the West Virginia Supreme Court of Appeals;

(2) To meet during the adjournment of the House and to hold a hearing or hearings thereon if deemed necessary in the course of its investigation;

(3) To make findings of fact based upon such investigation and hearing(s);

(4) To report to the House of Delegates its findings of facts and any recommendations consistent with those findings of fact which the Committee may deem proper; and

(5) If the recommendation of the Committee be to impeach any or all of the five members of the West Virginia Supreme Court of Appeals, then to present to the House of Delegates a proposed resolution of impeachment and proposed articles of impeachment; and, be it

Further Resolved, That in carrying out its duties pursuant to this resolution, the House Committee on the Judiciary is authorized:

(1) To examine witnesses, to send for persons, papers, documents, and other physical or electronic evidence, to order the attendance of any witness(es) or the production of any paper, document, and any other physical or electronic evidence along with any witness(es) necessary to supervise, maintain, or explain that evidence, and to exercise all other powers described under the provisions of §4-1-5 of the Code of West Virginia;

(2) To issue summonses and subpoenas, including subpoenas duces tecum, and to enforce obedience to its summonses and subpoenas in accordance with the provisions of §4-1-5 of the Code of West Virginia or by invoking the aid of the courts of this state;

(3) To determine whether all or any portion of any meeting(s) or hearing(s) should be held in executive session, pursuant to the provisions of the House Rules; and, be it

Further Resolved, That in carrying out his duties pursuant to this resolution, the Chairman of the House Committee on the Judiciary is authorized:

(1) To establish or define rules of procedure for the conduct of any meeting(s) or hearing(s) held pursuant to this resolution;

(2) To issue summonses and subpoenas to accomplish the purpose of this Resolution;

(3) To employ, with the prior approval of the Speaker of the House or the Speaker Pro Tempore of the House, a court reporter or stenographer and such other professional or clerical employees as may be reasonably required;

(4) To designate any subcommittee(s) of the House Committee on the Judiciary to assist the Chairman or Committee in performing their duties pursuant to this resolution; and

(5) To determine the time and place of any meeting(s) or hearing(s) of the Committee and its designated subcommittee(s); and, be it

Further Resolved, That the House Committee on the Judiciary during its inquiry may entertain such procedural and dispositive motions as may be made in the case of any other bill or resolution referred to that Committee, or, in making its recommendations, if any, pursuant to this resolution, may include:

(1) A recommendation that the any or all of the five members of the West Virginia Supreme Court of Appeals not be impeached; or

(2) A recommendation that any or all of the five members of the West Virginia Supreme Court of Appeals be impeached for maladministration, corruption, incompetence, gross immorality, neglect of duty, and/or high crimes or misdemeanors, as set forth in Section 9, Article IV of the West Virginia Constitution; that those members subject to impeachment be removed from office and be thereafter disqualified from holding any office of public trust, honor, or profit in this State; that the House of Delegates adopt a resolution of impeachment and formal articles of impeachment as prepared by the Committee; and that the House of Delegates deliver the same to the Senate in accordance with the procedures of the House of Delegates, for consideration by the Senate according to law; and/or

(3) A recommendation of proposed legislation to correct any perceived statutory or constitutional deficiencies found by the Committee.

Delegate Cowles asked unanimous consent that reference of the resolution (H. R. 201) to a committee be dispensed with, and that it be taken up for immediate consideration and put upon its adoption.

Mr. Speaker, Mr. Armstead, arose from his seat and requested to be excused from voting on questions regarding H. R. 201 and any resolutions related to reconvening under the provisions of House Rule 49.

The Speaker Pro Tempore noted past House precedent and replied that any impact on Mr. Armstead would be as a member of a class of persons possibly to be affected and refused to excuse him from voting.

The Speaker Pro Tempore noted that a letter had been submitted by Delegate Miley regarding the provisions of House Rule 49 as they related to H. R. 201 for Delegates who are attorneys.

The Speaker Pro Tempore asked attorneys who wished to record a request to be excused from voting under the provisions of House Rule 49 to press their recognition button and the following members were recorded:

Delegates Armstead, Byrd, Canestraro, Capito, Fluharty, Fast, Isner, Lane, Lovejoy, Miley, Rowe and Sponaugle.

The Speaker Pro Tempore replied indicating the ruling would be like the ruling for Mr. Armstead, that any impact on the Delegates would be as members of a class of persons possibly to be affected, and refused to excuse the Members from voting.

Delegates Hamilton, Folk and Ambler requested to be excused from voting on H. R. 201 under the provisions of House Rule 49.

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

Delegate Rowe arose to a point of order regarding matters related to the constitutionality of voting on H. R. 201 and then running for the Supreme Court, to which the Speaker Pro Tempore responded ruling that this was a legal question beyond the scope of which could be answered by the Chair.

Delegate Hicks arose to state he was absent when the ruling was made regarding attorneys and requested to be excused from voting on H. R. 201 under the provisions of House Rule 49.

The Speaker Pro Tempore replied indicating that the ruling would be like the ruling for Mr. Armstead, 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 Member from voting.

On motion of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 201) to a committee was dispensed with, and it was taken up for immediate consideration.

The resolution was then read by the Clerk.

Delegates Sponaugle, Fluharty, Caputo and Bates moved to amend the resolution on page four, line twelve, following the words "the Committee", by striking out the period, inserting a semicolon, and the following:

"and, be it

Further Resolved, That the House Committee on the Judiciary shall submit its final recommendations on the Committee's recommendations to the House of Delegates on the impeachment of any Justices of the Supreme Court by on or before July 23, 2018."

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

The yeas and nays having been ordered, they were taken (**Roll No. 600**), and there were--yeas 32, nays 57, absent and not voting 11, with the yeas and absent and not voting being as follows:

Yeas: Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fluharty, Hartman, Hicks, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Miley, R. Miller, Moye, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson and Williams.

Absent and Not Voting: Barrett, Blair, Deem, Ellington, Fleischauer, Gearheart, Hanshaw, Hornbuckle, Householder, Marcum and C. Romine.

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

The question now being on the adoption of the resolution, Delegate Caputo demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 601**), and there were--yeas 89, nays none, absent and not voting 11, with the absent and not voting being as follows:

Absent and Not Voting: Barrett, Blair, Deem, Ellington, Fleischauer, Gearheart, Hanshaw, Hornbuckle, Householder, Marcum and C. Romine.

So, a majority of the members present and voting having voted in the affirmative, the Speaker Pro Tempore declared the resolution (H. R. 201) adopted.

Petitions

Delegate Pushkin presented a petition signed by more than two thousand residents requesting a special session of the Legislature be held relating to limitations on permits for growers, processors and dispensaries of medical cannabis; which was referred to the Committee on the Judiciary.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by the Clerk:

S. C. R. 201 - "Authorizing adjournments of the Senate and House of Delegates."

Resolved by the Legislature of West Virginia:

That during this Second Extraordinary Session of the Legislature in 2018, both the Senate and House of Delegates are hereby authorized to adjourn, as needed, for more than three days, pursuant to Section 23, Article VI of the Constitution of the State of West Virginia.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (S. C. R. 201) to a committee was dispensed with, and it was taken up for immediate consideration and put upon its adoption.

The resolution was then adopted.

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

Leaves of Absence

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Barrett, Blair, Deem, Ellington, Fleischauer, Gearheart, Hanshaw, Hornbuckle, Householder, Marcum and C. Romine.

Miscellaneous Business

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of all Members during the debate regarding the amendment offered to H. C. R. 201 in the Appendix to the Journal.

At the request of Delegate Cowles, and by unanimous consent, the applicable provisions of House Rule 83 were suspended relating to the announcement of committee meetings from the floor of the House and the Chair of the Committee was authorized to announce, or have announced, the time and place of the next meeting of the committee.

Pursuant to S. C. R. 201, at 1:39 p.m., the House of Delegates adjourned until called back into session by the Speaker Pro Tempore.

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

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