

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 1, 2016  
TWELFTH DAY



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Wednesday, June 1, 2016

**TWELFTH 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. 689**), and 84 members being present, the Speaker declared the presence of a quorum. The absent being as follows:

Absent: Bates, Boggs, Hanshaw, Hicks, Hill, Kurcaba, Manchin, Marcum, Miley, J. Nelson, Perdue, Phillips, Sponaugle, Storch, Trecoast and Westfall.

The Clerk proceeded to read the Journal of Tuesday, May 31, 2016, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Messages from the Executive**

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:

**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, by adding items eighth and ninth, as follows:

**EIGHTH:** A bill authorizing the Department of Environmental Protection to promulgate legislative rules;

**NINTH:** A bill appropriating \$2,174,591 to fund 0313, fiscal year 2016, organization 0402 of the Department of Education account.

**IN WITNESS WHEREOF**, I have unto 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 first day of June, in the year of our Lord, Two Thousand Sixteen, and in the One Hundred Fifty-third year of the State.

By the Governor:

NATALIE E. TENNANT,  
*Secretary of State.*

### Motions

Delegate Eldridge filed a written motion pursuant to House Rule 82, that H. B. 114, be discharged from committee.

Delegate Cowles then moved to table the motion.

The question being on the motion to table Delegate Eldridge's motion to discharge H. B. 114 from committee, the yeas and nays were demanded, which demand was sustained.

Delegate McCuskey arose to a point of inquiry as to whether the bill was within the purview of the Governor's Proclamation for the Extraordinary Session. Delegate McCuskey subsequently withdrew his inquiry.

The yeas and nays having been ordered, they were taken (**Roll No. 690**), and there were--yeas 61, nays 23, absent and not voting 16, with the nays and absent and not voting being as follows:

Nays: Byrd, Caputo, Eldridge, Faircloth, Ferro, Flanigan, Fleischauer, Fluharty, Folk, Guthrie, Hornbuckle, Ihle, Longstreth, Lynch, McGeehan, Moore, Morgan, Pushkin, Reynolds, Rodighiero, Rowe, Shaffer and Skinner.

Absent and Not Voting: Bates, Boggs, Hanshaw, Hicks, Hill, Kurcaba, Manchin, Marcum, Miley, J. Nelson, Perdue, Phillips, Sponaugle, Storch, Trecost and Westfall.

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

### Bills Introduced

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

**By Mr. Speaker, Mr. Armstead, and Delegate Miley**  
**[By Request of the Executive]:**

**H. B. 117** — "A Bill to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of

Environmental Protection; legislatively mandating or authorizing for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, boards and commissions which are no longer authorized or are obsolete; repealing certain legislative, procedural and interpretive rules promulgated by certain agencies and boards under the Department of Environmental Protection; repealing the Department of Environmental Protection legislative rule relating to requiring the submission of emission statements for volatile organic compound emissions and oxides; repealing the Department of Environmental Protection legislative rule relating to bona fide future use; repealing the Department of Environmental Protection legislative rule relating to abandoned wells; repealing the Department of Environmental Protection legislative rule relating to the Environmental Excellence Program; repealing the Department of Environmental Protection legislative rule relating to oil and gas operations – solid waste; repealing the Department of Environmental Protection legislative rule relating to the Recycling Assistance Fund Grant Program; repealing the Department of Environmental Protection legislative rule relating to commercial hazardous waste management facility siting fees; repealing the Department of Environmental Protection legislative rule relating to groundwater protection standards; repealing the Department of Environmental Protection legislative rule relating to Underground Storage Tank Insurance Trust Fund; repealing the Department of Environmental Protection legislative rule relating to hazardous waste management; repealing the Department of Environmental Protection legislative rule relating to solid waste management; repealing the Department of Environmental Protection legislative rule relating to waste tire management; repealing the Department of Environmental Protection legislative rule relating to sewage sludge management; repealing the Department of Environmental Protection legislative rule relating to Hazardous Waste Emergency Response Fund regulations; repealing the Department of Environmental Protection interpretive rule relating to initial inspection, certification and spill prevention response plan requirements; repealing the Department of Environmental Protection legislative rule relating to the Office of the Environmental Advocate; repealing the Department of Environmental Protection legislative rule relating to coal refuse; repealing the Department of Environmental Protection procedural rule relating to administrative procedures and civil administrative penalty assessment – Water Resources Protection Act; repealing the Department of Environmental Protection procedural rule relating to procedures and practice before the Department of Energy; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of annual sulfur dioxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank fee assessments; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tanks, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; repealing the Commercial Hazardous Waste

Management Facility Siting Board legislative rule relating to certification requirements; repealing the Environmental Quality Board legislative rule relating to requirements governing water quality standards; repealing the Environmental Quality Board procedural rule relating to requests for information; repealing the Environmental Quality Board procedural rule relating to rules governing the notice of open meetings under the Open Governmental Proceedings Act; repealing the Miner Training, Education and Certification Board legislative rule relating to certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board legislative rule relating to standards for certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board procedural rule relating to temporary suspension of certificates issued to persons pending full hearing before the board of appeals; repealing the Water Resources Board legislative rule relating to the State National Pollutant Discharge Elimination System Program; repealing the Water Resources Board legislative rule relating to requirements governing the State National Pollutant Discharge Elimination System; repealing the Air Quality Board procedural rule relating to requests for information; and repealing the Oil and Gas Inspectors Examining Board procedural rule relating to matters pertaining to the rules and regulations dealing with the Oil and Gas Inspectors Examining Board"; to the Committee on the Judiciary.

### **Miscellaneous Business**

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Flanigan regarding H. B. 114 be printed in the Appendix to the Journal.

At 11:52 a.m., on motion of Delegate Cowles, the House of Delegates recessed until 5:00 p.m.

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### **Evening Session**

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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 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 1<sup>st</sup> day of June, 2016, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**(S. B. 1002)**, Expiring funds from various accounts to unappropriated balance in State Fund, General Revenue.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

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

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub for H. B. 117** — “A Bill to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Environmental Protection; legislatively mandating or authorizing for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, boards and commissions which are no longer authorized or are obsolete; repealing certain legislative, procedural and interpretive rules promulgated by certain agencies and boards under the Department of Environmental Protection; repealing the Department of Environmental Protection legislative rule relating to requiring the submission of emission statements for volatile organic compound emissions and oxides; repealing the Department of Environmental Protection legislative rule relating to bona fide future use; repealing the Department of Environmental Protection legislative rule relating to abandoned wells; repealing the Department of Environmental Protection legislative rule relating to the Environmental Excellence Program; repealing the Department of Environmental Protection legislative rule relating to oil and gas operations – solid waste; repealing the Department of Environmental Protection legislative rule relating to the Recycling Assistance Fund Grant Program; repealing the Department of Environmental Protection legislative rule relating to commercial hazardous waste management facility siting fees; repealing the Department of Environmental Protection legislative rule relating to groundwater protection standards; repealing the Department of Environmental Protection legislative rule relating to Underground Storage Tank Insurance Trust Fund; repealing the Department of Environmental Protection legislative rule relating to hazardous waste management; repealing the Department of Environmental Protection legislative rule relating to solid waste management; repealing the Department of Environmental Protection legislative rule relating to waste tire management; repealing the Department of Environmental Protection legislative rule relating to sewage sludge management; repealing the Department of Environmental Protection legislative rule relating to Hazardous Waste Emergency Response Fund regulations; repealing the Department of Environmental Protection interpretive rule relating to initial inspection, certification and spill prevention response plan requirements; repealing the Department of Environmental Protection legislative rule relating to the Office of the Environmental Advocate; repealing the Department of Environmental Protection legislative rule relating to coal refuse; repealing the Department of Environmental Protection procedural rule relating to administrative procedures and civil administrative penalty assessment – Water Resources Protection Act; repealing the Department of Environmental Protection procedural rule relating to procedures and practice before the Department of Energy; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of annual sulfur dioxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to administrative proceedings and civil penalty assessment; authorizing the Department of

Environmental Protection to promulgate a legislative rule relating to above ground storage tank fee assessments; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tanks, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; repealing the Commercial Hazardous Waste Management Facility Siting Board legislative rule relating to certification requirements; repealing the Environmental Quality Board legislative rule relating to requirements governing water quality standards; repealing the Environmental Quality Board procedural rule relating to requests for information; repealing the Environmental Quality Board procedural rule relating to rules governing the notice of open meetings under the Open Governmental Proceedings Act; repealing the Miner Training, Education and Certification Board legislative rule relating to certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board legislative rule relating to standards for certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board procedural rule relating to temporary suspension of certificates issued to persons pending full hearing before the board of appeals; repealing the Water Resources Board legislative rule relating to the State National Pollutant Discharge Elimination System Program; repealing the Water Resources Board legislative rule relating to requirements governing the State National Pollutant Discharge Elimination System; repealing the Air Quality Board procedural rule relating to requests for information; and repealing the Oil and Gas Inspectors Examining Board procedural rule relating to matters pertaining to the rules and regulations dealing with the Oil and Gas Inspectors Examining Board,”

With the recommendation that the committee substitute do pass.

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (H. B. 117) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 116**, Authorizing the Governor to issue executive orders to furlough state employees and pay certain obligations,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 116) was referred to the Committee on Finance.

### **Leaves of Absence**

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Bates, Boggs, Hanshaw, Hicks, Hill, Kurcaba, Marcum, Miley, Perdue, Phillips, Sponaugle, Storch, Trecost and Westfall.



**Miscellaneous Business**

Delegates Manchin and J. Nelson were present in the evening session.

At 5:15 p.m., the House of Delegates adjourned until 11:00 a.m., Thursday, June 2, 2016.

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

**HOUSE CALENDAR**

**Thursday, June 2, 2016**

**13<sup>th</sup> Day**

**11:00 A. M.**

**SECOND READING**

Com. Sub. for H. B. 117 - Relating generally to the promulgation of administrative rules by the Department of Environmental Protection (EFFECTIVE FROM PASSAGE)

**WEST VIRGINIA  
HOUSE OF DELEGATES**

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**THURSDAY, JUNE 2, 2016**

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**HOUSE CONVENES AT 11:00 A.M.**

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**COMMITTEE ON GOVERNMENT ORGANIZATION  
9:00 A.M. – ROOM 215E**

**COMMITTEE ON FINANCE  
9:30 A.M. – ROOM 462M**

**COMMITTEE ON THE JUDICIARY  
9:30 A.M. – ROOM 418M**

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