

WEST VIRGINIA LEGISLATURE
SENATE JOURNAL
EIGHTIETH LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2011
FIRST DAY

Charleston, W. Va., Thursday, August 18, 2011

Pursuant to the proclamation of His Excellency, the Governor, the Honorable Earl Ray Tomblin, dated the seventeenth day of August, two thousand eleven, convening the eightieth Legislature of West Virginia in extraordinary session today (Thursday, August 18, 2011), under the provisions of section seven, article seven of the Constitution of West Virginia, the Senate assembled in its chamber in the state capitol in the City of Charleston at 12 o'clock Noon, and was called to order by its Acting President, the Honorable Jeffrey V. Kessler.

Prayer was offered by the Honorable Mike Hall, a senator from the fourth district.

On the call of the roll, the following answered to their names:

Senators Barnes, Beach, Boley, Browning, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Green, Hall, Helmick, Laird, McCabe, Miller, Minard, Nohe, Plymale, Prezioso, Snyder, Stollings, Sypolt,

Tucker, Unger, Williams, Wills and Kessler (Acting President).

Twenty-seven members having answered to their names, the Acting President declared the presence of a quorum.

Executive Communications

Senator Kessler (Acting President) laid before the Senate the following proclamation from His Excellency, the Governor, convening the Legislature in extraordinary session, which was read by the Clerk:

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 call the Legislature of West Virginia to convene in Extraordinary Session at twelve o'clock noon on the eighteenth day of August, two thousand eleven, in its chambers in the State Capitol, City of Charleston, for the sole purpose of considering and acting upon the following matters:

FIRST: Legislation relating to and implementing the decennial redistricting of the House of Delegates of the Legislative Department.

SECOND: Legislation authorizing and appropriating the expenditure of public moneys to pay the expenses of this 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 the seventeenth
day of August, in the year of our
Lord, Two Thousand Eleven, and in
the One Hundred Forty-Ninth year
of the State.

EARL RAY TOMBLIN,
Governor.

By the Governor:

NATALIE E. TENNANT,
Secretary of State.

Senator Kessler (Acting President) then laid before the Senate the following supplement to the proclamation dated August 18, 2011, from His Excellency, the Governor, which was read by the Clerk:

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 state and proclaim that the Legislature, in the Extraordinary Session commencing at twelve o'clock noon on the eighteenth day of August, two thousand eleven, in its chambers in the State Capitol, City of Charleston, consider, in addition to the items of business stated and proclaimed in my Proclamation of the seventeenth day of August, two thousand eleven, the following items of business:

THIRD: A supplemental appropriation bill expiring up to \$15,000,000.00 from fund 7209, fiscal year 2012, organization 0705, of the Department of Revenue, Lottery Commission - Revenue Center Construction Fund account to the balance of fund 9017, fiscal year 2012, organization 0803, of the Department of Transportation - Division of Highways account.

FOURTH: A supplemental appropriation bill appropriating up to \$15,000,000.00 to fund 9017, fiscal year 2012, organization 0803, of the Department of Transportation - Division of Highways account.

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 the eighteenth day
of August, in the year of our
Lord, Two Thousand Eleven, and in
the One Hundred Forty-Ninth year
of the State.

EARL RAY TOMBLIN,

Governor.

By the Governor:

NATALIE E. TENNANT,

Secretary of State.

Senator Unger offered the following resolution:

Senate Resolution No. 201--Raising a committee to inform the
House of Delegates the Senate has assembled in extraordinary
session.

Resolved by the Senate:

That a committee of three be appointed by the Acting President
to inform the House of Delegates that the Senate has assembled in
extraordinary session, with a quorum present, and is ready to
proceed with the business for which the extraordinary session was
called by His Excellency, the Governor.

At the request of Senator Unger, unanimous consent being
granted, the resolution was taken up for immediate consideration,

reference to a committee dispensed with, and adopted.

Whereupon, the Acting President appointed as members of such committee the following:

Senators Laird, Tucker and Nohe.

Subsequently, Senator Laird, from the committee to notify the House of Delegates the Senate has assembled in extraordinary session, and is ready to proceed with the business of the session, announced that the committee had discharged its duties.

A message from the House of Delegates, by

Delegates Hall, Craig and Martin, announced that the House of Delegates has assembled in extraordinary session, with a quorum present, and is ready to proceed with the business stated in the proclamation convening the Legislature.

Senator Unger then offered the following resolution:

Senate Resolution No. 202--Raising a committee to wait upon the Governor.

Resolved by the Senate:

That a committee of three on the part of the Senate, to join with a similar committee on the part of the House of Delegates, be appointed by the Acting President to notify His Excellency, the Governor, that at his call the Legislature has assembled in extraordinary session, with a quorum of each house present; and is ready to receive any communication or message he may be pleased to

present under section seven, article seven of the Constitution of West Virginia, which provides that no business except that stated in his proclamation be considered.

At the request of Senator Unger, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

Whereupon, the Acting President appointed as members of such committee the following:

Senators Miller, Stollings and Hall.

A message from the House of Delegates, by

Delegates Staggers, Walker and Border, announced that the Speaker had appointed them a committee of three to join with a similar committee on the part of the Senate to wait upon the Governor, under the provisions of Senate Resolution No. 202. Senate and House members of this select committee then proceeded to the executive offices.

Subsequently, Senator Miller reported that the joint Senate and House committee had performed the duty assigned to it.

The Senate proceeded to the third order of business.

Executive Communications

The following communication from His Excellency, the Governor, was reported by the Clerk:

STATE OF WEST VIRGINIA

OFFICE OF THE GOVERNOR

CHARLESTON

August 18, 2011

Senate Executive Message No. 1

The Honorable Jeffrey V. Kessler
Acting President, West Virginia Senate
State Capitol
Charleston, West Virginia

Dear Mr. Acting President:

The following amends and replaces the "FY 2012 Official Estimate" "State Road Fund -- Statement of Revenues by Source" which I submitted to you on January 12, 2011, as part of my Executive Budget Document for the fiscal year ending June 30, 2012.

State Road Fund

Statement of Revenues by Source

(Expressed in Thousands)

Source of Revenue	FY 2012 Official Estimate
Gasoline and Motor Carrier Road Tax.. \$	380,700
Registration Fees..	88,988
Registration Fee: Highway Litter Control.. . . .	1,680
Sales (Privilege) Tax..	151,114

Less Transfer to Industrial Access Road Fund. . .	(3,000)
Miscellaneous Income.	54,110 ¹
Federal Reimbursement:	
Interstate Construction.	135,000
Other Federal Aid Programs.. . . .	246,000
Appalachian Program.	92,000
Federal Economic Stimulus.	<u>20,000</u>
Total.	<u><u>\$ 1,166,592</u></u> ²

¹ Revised from \$ 39,110 to \$ 54,110 - Increase of \$ 15,000.

² Revised from 1,151,592 to 1,166,592 - Increase of 15,000.

The increase of Miscellaneous Income of \$15,000,000 is due to a transfer of funds from the Lottery Commission - Revenue Center Construction Fund.

Net effect of the above change is a \$15,000,000 increase in revenue projections.

Sincerely,

Earl Ray Tomblin,

Governor.

State Road Fund

Statement of Revenues, Expenditures and Changes in Cash Balance

(Nearest Dollar)

	Balance July 1, 2011	\$ 125,892,797	
Plus:	Revenue Estimate FY 2012 (revised 8/18/11)	<u>1,166,591,998</u>	
	Available for FY 2012 Appropriations	\$ 1,292,484,795	
Less:	Regular Appropriations FY 2012 - Division of Highways	(1,126,224,821)	
	Regular Appropriations FY 2012 - Division of Motor Vehicles	(40,578,725)	
	Regular Appropriations FY 2012 - Office of Administrative Hearings	(1,951,979)	
	Claims Against the State Road Fund	(2,390,821)	
	FY 2012 Supplemental Appropriations (2011 1st Extraordinary Session)	(62,500,000)	
Less:	Recommended FY 2012 Supplemental Appropriation (2011 2nd Extraordinary Session)	<u>(15,000,000)</u>	
	Estimated Unappropriated Balance @ June 30, 2012		<u>\$43,838,449</u>

In compliance with Article VI, Section 51 of the Constitution, the Senate consented to receive the foregoing amendments to the Budget Bill, which were referred to the Committee on Finance.

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills were introduced, read by their titles, and referred to the appropriate committees:

Senators Kessler (Acting President) and Hall (By Request of the Executive):

Senate Bill No. 2001--A Bill expiring funds to the balance of the Department of Transportation, Division of Highways, fund 9017, fiscal year 2012, organization 0803, for the fiscal year ending June 30, 2012, in the amount of \$15,000,000 from the Department of Revenue, Lottery Commission - Revenue Center Construction Fund, fund 7209, fiscal year 2012, organization 0705.

Referred to the Committee on Finance.

Senators Kessler (Acting President) and Hall (By Request of the Executive):

Senate Bill No. 2002--A Bill supplementing, amending and increasing an item of the existing appropriation from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2012, organization 0803, for the fiscal year ending June 30, 2012.

Referred to the Committee on Finance.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Unger, the Senate recessed until 2:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Unger, unanimous consent being granted, returned to the fourth order of business.

Senator Prezioso, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Senate Bill No. 2001, Expiring funds from Department of Revenue, Lottery Commission - Revenue Center Construction Fund, to Department of Transportation, Division of Highways.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Roman W. Prezioso, Jr.,

Chair.

At the request of Senator Unger, unanimous consent being granted, the bill (S. B. No. 2001) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Unger, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Barnes, Beach, Boley, Browning, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Hall, Helmick, Laird, McCabe, Miller, Minard, Nohe, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills and Kessler (Acting President)--26.

The nays were: None.

Absent: Chafin, Green, Jenkins, Klempa, Palumbo, Wells, Yost and Tomblin (Mr. President)--8.

The bill was read a second time and ordered to engrossment and third reading.

Engrossed Senate Bill No. 2001 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Barnes, Beach, Boley, Browning, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Hall, Helmick, Laird, McCabe, Miller, Minard, Nohe, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills and Kessler (Acting President)--26.

The nays were: None.

Absent: Chafin, Green, Jenkins, Klempa, Palumbo, Wells, Yost and Tomblin (Mr. President)--8.

So, a majority of all the members elected to the Senate having voted in the affirmative, the Acting President declared the bill (Eng. S. B. No. 2001) passed with its title.

Senator Unger moved that the bill take effect from passage.

On this question, the yeas were: Barnes, Beach, Boley, Browning, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Hall, Helmick, Laird, McCabe, Miller, Minard, Nohe, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills and Kessler (Acting President)--26.

The nays were: None.

Absent: Chafin, Green, Jenkins, Klempa, Palumbo, Wells, Yost and Tomblin (Mr. President)--8.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the Acting President declared the bill (Eng. S. B. No. 2001) takes effect from passage.

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

Senator Prezioso, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Senate Bill No. 2002, Supplementing, amending and increasing item from State Road Fund to Department of Transportation, Division of Highways.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 2002 (originating in the Committee on Finance)--A Bill supplementing, amending and increasing an item of the existing appropriation from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2012, organization 0803, for the fiscal year ending June 30, 2012.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Roman W. Prezioso, Jr.,

Chair.

At the request of Senator Unger, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 2002) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Unger, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Barnes, Beach, Boley, Browning, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Hall, Helmick, Laird, McCabe, Miller, Minard, Nohe,

Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills and Kessler (Acting President)--26.

The nays were: None.

Absent: Chafin, Green, Jenkins, Klempa, Palumbo, Wells, Yost and Tomblin (Mr. President)--8.

The bill was read a second time and ordered to engrossment and third reading.

Engrossed Committee Substitute for Senate Bill No. 2002 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Barnes, Beach, Boley, Browning, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Hall, Helmick, Laird, McCabe, Miller, Minard, Nohe, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills and Kessler (Acting President)--26.

The nays were: None.

Absent: Chafin, Green, Jenkins, Klempa, Palumbo, Wells, Yost and Tomblin (Mr. President)--8.

So, a majority of all the members elected to the Senate having voted in the affirmative, the Acting President declared the bill (Eng. Com. Sub. for S. B. No. 2002) passed with its title.

Senator Unger moved that the bill take effect from passage.

On this question, the yeas were: Barnes, Beach, Boley, Browning, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Hall,

Helmick, Laird, McCabe, Miller, Minard, Nohe, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills and Kessler (Acting President)--26.

The nays were: None.

Absent: Chafin, Green, Jenkins, Klempa, Palumbo, Wells, Yost and Tomblin (Mr. President)--8.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the Acting President declared the bill (Eng. Com. Sub. for S. B. No. 2002) takes effect from passage.

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

The Senate proceeded to the eleventh order of the business and the introduction of guests.

On motion of Senator Unger, the Senate adjourned until Sunday, August 21, 2011, at 6 p.m.
