

West Virginia Legislature

2016-2017 Session

The Good, The Bad and The Ugly

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Neal Barkus

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OVERVIEW

During the 2016-2017 legislative sessions, the West Virginia Legislature behaved like a “mini” version of the U.S. Congress. Both chambers of both bodies are controlled by the Republican Party. And as with the U.S. Congress, the GOP legislators in West Virginia argued among themselves, ultimately blunting any initiatives.

As on the national scene, the philosophical divide was the question of what government should be. The Democrats wanted to raise revenues to address the state’s many problems. The Republicans came to the Legislature believing they had a mandate to raise no taxes and keep government from becoming larger and more expensive. Where Republicans promoted new ideas and initiatives, they typically sought to fund them by giving credits against taxes already in place.

BUDGET

The only constitutionally required task for the Legislature is to adopt a balanced budget.

Projected revenues for FY 2018 were anticipated to be only \$4.05B. The largest source of revenue is the General Revenue Fund, made up of taxes, fees, licenses and lottery revenues. General Revenues have declined over the last decade for a number of reasons.

- Business Franchise and Corporate Income Taxes were cut. These dropped from 10% of the General Revenue Fund in 2008 to less than 4% in 2016.
- Coal and natural gas production have declined. Large increases in severance taxes between 2004 and 2014 masked the harm done by corporate tax decreases. The decline in severance taxes after 2014 exposed this harm.

- Business tax cuts did not spur job growth. We have 25,000 fewer private sector jobs now than in 2012. This has caused a decline in personal income tax collections.

So the legislative session began with a gap of \$497M between projected revenues and FY 2017 spending. The task was to come up with more revenue or cut spending.

The Governor proposed two plans, both of which would have raised revenues and increased spending in various ways. In the first budget the Governor proposed to spend approximately \$4.89B, raising \$450M in new revenues with \$26.6M in targeted budget cuts. Revenue would be raised through a new commercial activity tax of .2% and increased sales taxes from 6% to 6.5%

In his February 2017 revised plan, the Governor proposed to raise \$402M in new revenues through a smaller increase in the sales tax to 6.25% and a smaller commercial activity tax. He also proposed raising the taxes on cigarettes and sugary drinks. He also proposed a high-income surcharge of \$1,000 for annual incomes above \$300,000, \$750 for incomes above \$250,000 and \$500 for incomes above \$200,000.

A feature of both the Governor's plans was the Save Our State Fund. This would allocate approximately \$105M for economic development and infrastructure improvements.

Neither the House nor the Senate were interested in the Governor's plans. As the regular session wore on and then the special session became necessary, the Governor realized that his ideas for raising revenues and spending would not prevail. Thereafter, he aligned himself with Senate Republicans to the consternation of Senate Democrats and the entire House of Delegates.

The Senate's initial proposal balanced the budget through spending cuts, mainly to education and Medicaid. The school aid formula was changed to increase the local share of K-12 education and allow local school districts to raise property tax. Four-year colleges would have been cut \$31M and community and technical colleges \$10M. The Governor's Save Our State Fund was ignored.

Early in the session, Senate President Mitch Carmichael appointed Sen. Robert Karnes to head a tax reform subcommittee. Karnes is perhaps the most conservative member of the Legislature, although others could give him a run for his money. Karnes believes that cutting income taxes on wealthy “job creators” in the state will spur economic activity and more revenue. This supply-side, trickle down growth model has never worked, anywhere. Nevertheless, income tax cuts were the pivot on which things turned in this Legislature.

At first the House was willing to raise new revenue by raising the sales tax rate and expanding the base of items covered by that tax to include telecommunications and personal services. It would have eliminated RESAs and testing for 9th and 10th graders. It canceled a raise for teachers and service personnel. The House bill also would have zeroed out funding for all colleges and appropriated \$19.7M to a Higher Education Policy Commission for allocation to the colleges. The Governor’s Save Our State Fund was ignored.

With time running out in the regular session, the Legislature passed a budget bill that looked nothing like their earlier proposals and nothing like the Governor’s plans. It involved no new revenue and relied on steep budget cuts and a substantial dip into the Rainy Day Fund. The school aid formula was left as is, but teacher pay raises were cancelled. Medicaid was cut \$187.9M. That cut was partially offset by \$90M from the Rainy Day Fund.

In April the Governor vetoed this budget, requiring a special session. Many observers think the Legislature wanted the Governor to veto this budget because the House and Senate could not agree on a sensible plan.

In the special session, which lasted 17 days at \$35,000 per day, neither the House nor the Senate had an appetite for additional spending, such as that found in the Governor’s plans. The mood was that the state should “live within its means.”

The House put forward several proposals that involved higher sales tax and a broadened base, but was not interested in cutting income taxes. In later iterations of the House budget, the increased sales tax rate was eliminated. The Senate was not interested in sales tax increases or base broadening by

themselves, or increases in any other taxes, unless it could have income tax cuts. It was willing to settle for on a 5% cut for FY 2018 and similar cuts in later years if certain triggers were met. The Governor supported the Senate approach and engaged in shuttle diplomacy, sometimes separating the Delegates from the Senators and meeting with them separately.

A stalemate developed and tempers were hot. The Senate conferees refused to put their names on a conference committee bill to resolve differences between the House and Senate. In another meeting, Sen. Karnes blamed the whole budget shortfall on the Democrats, who promptly walked out of the meeting. Later, the Senate sent the House a budget bill including its income tax cuts and the House sent it back having replaced the entire Senate bill with the entire House bill that had been previously rejected by the Senate. Back and forth it went.

To avoid a worse bill, on June 13 the Governor came up with a revised revenue estimate of \$4.225B, resulting from increased severance tax collections and hypothetical economic growth from the roadbuilding program. This became the basis for the budget bill passed by both chambers that the Governor allowed to become law without signing.

The final General Revenue budget proposes to spend that \$4.225B in projected revenue without new or enhanced revenues, but with substantial cuts. A listing of the cuts can be found in a chart provided by the West Virginia Center on Budget and Policy (wvpolicy.org/comparing-the-fy-2017-and-2018-budgets/). The total budget for FY 2018, including General Revenue, Lottery and Excess Lottery funds is \$4.653B, slightly higher than FY 2017.

The largest single item in the budget is Medicaid spending at \$889M. It is pretty clear that the state is maxed out in what it can spend on healthcare for the needy and the potential blow from a pullback in Medicaid funds proposed in the Trumpcare bill would be devastating.

ROADBUILDING LEGISLATION

The Governor put forward a three-pronged plan to raise money for highway construction.

West Virginia Constitution Art. VI, Sec 6-52 requires that all revenue from gasoline taxes, vehicle registration and license taxes be used solely for (1) construction, repair and maintenance of public highways, and (2) payment of interest and principal on road bonds.

There will be a referendum on October 7 to decide whether the state will issue \$2.8B in general obligation bonds to be paid off by revenues from higher gasoline taxes and vehicle fees. Other bonds will also be issued.

The gas tax in West Virginia will rise from 32.2 cents to 35.7 cents. The sales and use tax on motor vehicles was raised from 5 to 6 percent. These additional taxes are projected to raise \$141M in FY 2018. The additional revenues will be used to pay down the new bonds.

Gov. Justice announced there were 500 road projects in the state ready to begin. He believes this work will raise economic activity in the state and also tax revenues totaling \$110M.

OTHER LEGISLATION

This legislative session was busier than average but somewhat less busy than 2016. 1802 bills were introduced, while 262 were passed by both houses in the regular session. Most bills died in committee.

SIGNIFICANT BILLS THAT BECAME LAW:

SB 25 -- Farm to Food Bank Tax Credit

Co-sponsored by Patricia Rucker

Allows a "farming taxpayer" a credit for donation of edible agricultural products to food banks.

Credit is 10% of value up to \$2,500 per year.

SB 76 – Second Chance for Employment Act

Sets up a procedure for convicted felons to reduce conviction records to misdemeanor. Not expungement.

Designed to improve employment opportunities for released convicts.

Excludes felonies involving serious physical harm, sexual offenses, and offenses involving a deadly weapon.

Available ten years after release, if no additional crimes committed.

Commission of non-violent, nonsexual offense or reduction of offense under the Act may not be introduced into evidence in a suit against an employer, except under limited circumstances.

SB 240 – Nonconsensual Distribution of Sexual Images (Sexting)

Co-sponsored by Patricia Rucker

Creates misdemeanor for publishing or circulating images of the “intimate parts” of another, or sexual activity of another, who does not consent.

Rises to felony on second offense.

SB 386 – Medical Cannabis

Beginning no sooner than July 2019, qualifying patients whose doctors have issued them a written certification for medical cannabis will be allowed to register with the health department to use medical cannabis and to buy it from regulated dispensaries.

Patients may qualify for medical cannabis if they have a terminal illness or if they suffer from cancer, HIV/AIDS, ALS, Parkinson’s disease, multiple sclerosis, spinal cord damage, epilepsy, neuropathies, and several other diseases.

The only types of medical cannabis allowed initially are pills, oils, gels, creams, ointments, tinctures, liquid, and non-whole plant forms for administration through vaporization. Dispensaries cannot sell edibles, but medical cannabis products could be mixed into food or drinks by patients themselves.

Home cultivation is not allowed.

HB 2001 Ethics In Government

Riley Moore Co-Sponsor

Requires any business awarded a public contract to file a disclosure statement revealing the beneficial owners of the business.

HB 2195 Drug Awareness Programs in Schools

Requires the Board of Education to develop programs within the existing health and physical education structure to give students life skills to resist drugs, alcohol and tobacco.

HB 2781 Voter ID

Beginning in 2019, whenever a WV resident applies for a driver's license or renewal, information will be collected, including full name, address, DOB, telephone number, email address, political party, driver's license number and last four digits of SSN. This information then sent to Secretary of State, who forwards it to the appropriate county clerk. Inconsistent prior voter registrations will be cancelled.

HB 2857 Safer Workplaces Act

Co-sponsored by Riley Moore.

West Virginia Supreme Court of Appeals had limited by decision the circumstances when drug testing by a private employer could be done.

This law clarifies to right to drug test. Now an employer may make drug testing of prospective or current employees a condition of employment, but will only be insulated from claims by a terminated employee if the statute's accuracy and fairness safeguards are followed.

An employer can test to deter illegal drug use, investigate possible employee impairment, investigate accidents, and the maintenance of safety and quality.

Requires the employer to have a written plan publicized to employees in advance.

HB 3093 Broadband Access

Designed to create competition for Frontier and other broadband providers.

Allows for creation of local cooperatives to receive and distribute broadband signal.

Cooperatives can receive loan guarantees up to \$10M from WV Economic Development Authority for buildout.

Requires utility companies to allow access to utility poles for cooperatives.

Expands the role of the state Broadband Council into a true planning organization.

Revenue neutral.

No "truth in advertising" imposed on broadband providers.

BILLS THAT DIED IN COMMITTEE

SB 6 – Tim Tebow Act

Co-sponsored by Patricia Rucker

Allowing home schooled or parochial school children to participate in extracurricular activities at public schools, including athletic teams.

SB 19 – West Virginia Freedom of Conscience Protection Act

Creating a cause of action for anyone whose freedom to exercise his religion is burdened by state or municipal action in any way.

Requiring that strict scrutiny be the standard applied to any state or municipal action that burdens the exercise of religion.

SB 31 – Prohibiting Abortion Coverage in Qualified Healthcare Plans

Co-sponsored by Patricia Rucker.

Prohibiting abortion coverage in qualified plans operating in West Virginia Healthcare Exchange.

SB 60 -- Creating Eligibility Requirements and Fraud Protection in Public Assistance

Co-sponsored by Patricia Rucker.

Adding work requirement of 20 hours per week and income limitations on eligibility for SNAP (food stamp) benefits.

Income limitations are based on the assets of everyone in the recipient's household.

SB 69 – Sexual Assault Victim's Bill of Rights

Establishing, among other things, the right of a sexual assault victim to have a representative at all examinations and proceedings and the right to have a forensic medical examination.

SB 77 – Employment Discrimination

Prohibiting discrimination on the basis of sexual orientation in employment.

SB 175 – Direct Primary Care

Co-sponsored by John Unger

Allowing persons authorized to provide medical care to do so through direct primary care agreements outside any insurance or Medicare.

SB 189 – Legal Custody of Children

Co-sponsored by Patricia Rucker

Establishing that shared legal and physical custody of children by both parents in divorce cases is in the best interest of the children.

SB 200 – Quality Education Opportunities

Creating public charter schools within the existing public school system.

SB 250 – Tax Credit for Physicians Locating To West Virginia

Creating a personal income tax credit for a licensed physician who has graduated from a U.S. medical school who locates to West Virginia to practice medicine.

SB 277 – Intermediate Court of Appeals

Co-sponsored by Patricia Rucker.

Creating a Court of Appeals between the Circuit Courts and the Supreme Court of Appeals to which an appeal of right is ensured. Judges to be elected on a non-partisan basis.

SB 312 -- Social Workers in Public Schools

Creating a four-year pilot program locating licensed social workers in public schools to work with abused and neglected children.

SB 627 – Raising Speed Limit

Raising speed limits on interstate and four-lane highways to 80 miles per hour.

SB 650 – Voter Registration

Requiring a photograph on voter registration cards and listing of voter precinct on driver's licenses.

HB 2375 – Small Business Empowerment Tax Credit

Introduced by Riley Moore.

Allowing a tax credit against property tax for any newly-established small business under \$15M in revenues that locates to West Virginia or obtains a West Virginia business license in the preceding five years.

HB 2566 – Fresh Food Act

Requiring all state institutions to purchase at least 20% fresh food from local sources.

HB 2710 – Child Abuse Includes Unborn Child or Fetus

Adding unborn “child or fetus” over 24 weeks of gestation to crime of child abuse if fetus dies. Parent or guardian penalized.

HB 2945 – Exemptions from Immunization

Co-sponsored by Michael Folk

Creating exemption for child from mandatory immunization upon certification from parent that the immunization is contrary to religious beliefs, or has a conscientious or personal objection to the immunization.

HB 2969 – Minimum Wage Adjustment

Adjusting upward the state minimum wage each year by the amount of any increase in the consumer price index calculated by the U.S. Department of Labor.

HB 3035 – Marijuana

Allowing the cultivation and personal use of marijuana by persons 21 years of age or older.

HB 3052 – State Funding for Abortion

Co-sponsored by Jill Upson

Prohibiting the use of state money to fund abortions or healthcare coverage that includes abortions.

HB 3068 – Stay in State Tax Credit

Creating a personal income tax credit for amounts paid against student loans for graduates of a West Virginia college or university who stay in state.

HB 3077 – Discrimination on the Basis of Sex or Marital Status by Financial Institutions

Declaring it a discriminatory practice to discriminate on the basis of sex or marital status in the issuance or operation of any insurance policy or retirement plan, or in the setting of rates or fees.