



Legislative bulletin

Contractors Association of West Virginia

2114 Kanawha Boulevard East • Charleston, West Virginia 25311 • (304) 342-1166

LB 2010-4
February 8, 2010

YOUNG CONTRACTORS TO SEE LEGISLATIVE PROCESS FIRST-HAND

Members of the CAWV Young Contractors will be at the State Capitol Wednesday, February 10, to see first-hand how the state legislative process affects the construction industry. Over 15 Young Contractors have already signed up to participate in a “Day at the Legislature” where they will meet with legislators, sit in on the Senate Floor Session, get a briefing from Sen. John Unger, chair of the Senate Transportation and Infrastructure Committee and vice chair of the Senate Economic Development, have lunch in the refurbished Capitol cafeteria and get a tour of the new \$15 million State Museum.

“Keeping the membership informed about what is going on at the Capitol during the Legislative Session is one of the association’s premier services,” said Young Contractors Chairman Nate Orders. “This event will take us one step further by allowing the young members of the association to meet with delegates and senators and review the key issues.”

Members of the CAWV Young Contractors have received a notice for the event. **All CAWV members are invited to attend.** There is no charge to attend, but registration is required. Nearly 15 members have already signed up. For more information, or to register, contact Lindsay Stephens at (304) 342-1166 or lstephens@cawv.org.

BUDGET HEARINGS TOPIC OF FINANCE COMMITTEES

State agency officials have been presenting their Fiscal Year 2010 proposed budgets to both the House and Senate Finance Committees. The agencies are presenting their budgets with Governor Manchin’s edict to reduce spending by 3.4 percent to prepare for an expected \$120 million reduction in state revenues. Although severance taxes have been higher than expected through the first six months of the current fiscal year, the administration believes revenues will not meet estimates by the June 30 year-end.

WVDOT PRESENTS BUDGET; DMV PROPOSES USER FEE INCREASE

WV Department of Transportation Secretary Paul Mattox spoke February 2 to the House Finance Committee to present the WVDOT’s budget, along with the agencies that fall under the Transportation Department. The presentation included the divisions of Highways, Motor Vehicles, State Rail Authority, Public Transit, Public Port Authority, Aeronautics and Parkways. Division of Motor Vehicles Commissioner Joe Miller outlined nearly \$61 million a year in fee increases to generate revenues for the State Road Fund. Most are driver fees that haven’t changed for nearly 30 years. The commissioner noted that some of the fees have remained the same since 1971 while others were last raised in the early 1980s.

The proposal mirrors the results of a study performed by WVU’s Bureau of Business and Economic Research conducted a few years ago and updated this year. Dr. Tom Witt, director of BBER, noted in his study that vehicle fees, such as the sales tax, registration fees and drivers licenses, have not kept up with

inflation and should be revised. The CAWV presented recommendations a few years ago when the Legislature was looking for additional highway funds that lead to the elimination of diversions to the state highway fund and generated millions for the road program, but fee increases were not included in the funding plan at that time.

Below are some of the fees Commissioner Miller presented to Finance Committee members. At this point, it does not appear the administration will submit legislation to raise fees, nor has any legislator indicated they are willing, especially in an election year, to introduce legislation. In most cases, according to the commissioner, the fees don't cover the cost of the DMV providing the service.

Raising the vehicle privilege tax – the sales tax on a vehicle – from 5 percent to 6 percent, to raise an additional \$34 million a year. The tax on vehicles sales has not changed since 1971.

Increasing the vehicle registration fee from the \$28.50 to \$38.50 a year to raise \$13 million a year. The fee hasn't changed since 1976.

Increasing costs for a driver's license from \$12.50 every five years to \$25. That fee was last increased in 1981. This would generate \$3.2 million.

There are a number of other fees that are included in the DMV's proposal, including a duplicate title fee which would generate \$600,000, and a duplicate plate or decal fee which would generate \$75,000. The entire list generates about \$61 million.

BILLS REDUCE FUNDING FOR STATE ROAD FUND

Despite the expressed need for funding for highways, there are always bills introduced that attempt to change the state's wholesale gas tax system. There are exemptions for the retail gas tax and refunds available when gas tax is paid on fuel used in off-road vehicles, including boats. There are not exemptions, however, for the wholesale gas tax. [H.B. 4358](#) is just one of a number of bills that will be introduced this session to exempt certain entities from paying the wholesale gas tax. This bill would exempt propane gas that is used for home heating purposes. Other bills have attempted to exempt entities such as churches, non-profit organizations and barge operations from paying the wholesale tax. To date, these bills have not received much attention due to the fact that it would be hard to administer the exemptions and the road fund is in need of all available dollars.

H.B. 4338 REQUIRES FIRE MARSHAL APPROVAL FOR BLASTING

State Fire Marshal approval of all blasting projects before those projects can proceed is the basis for [H.B. 4338](#), introduced by Monongalia County Delegates Barbara Evans Fleischauer, Charlene Marshall, Alex Shook and Robert Beach. The bill would require all contractors, subcontractors and their respective agents and employees to provide the State Fire Marshal and local property owners with 30 days notice prior to any proposed explosive blasting. The bill will provide, at all times, the right to seek injunctive relief. It also gives the State Fire Commission the right to propose rules for legislative approval to "safeguard life and property through the adoption of a state blasting code." The bill is referred to the Committee on Energy, Industry and Labor, Economic Development and Small Business, then the Judiciary Committee.

JOBS ACT REVISIONS PROPOSED

[H.B. 4359](#), sponsored by Delegates Daniel Poling, Orphy Klempa, Michael Ferro, Linda Longstreth, David Walker, Scott Varner, Jim Morgan and Mike Caputo, amends the West Virginia Jobs Act for the first time since the act passed a number of years ago. The Jobs Act is included on all government-funded construction contracts. Its purpose is to hire local labor on projects funded with taxpayer dollars. H.B.

4359 would reduce the dollar amount for an applicable construction project from \$1 million to \$250,000. It also reduces the definition of local labor market from 75 miles of the border of West Virginia to 50 miles. The Jobs Act was the subject of much debate and controversy when first proposed in the late 1980s. After much discussion, an agreement was reached which established the limits contained in current statute. The CAWV has not considered revisions to the statute since it has worked fairly well over the past decade. The bill has been referred to the Committee on Government Organization then the Judiciary Committee.

PLAS PROHIBITION BILL INTRODUCED

Delegates Daryl Cowles, Jonathan Miller and John Overington have introduced a bill to prohibit the use of Project Labor Agreements (PLAs) on state-funded construction contracts. [H.B. 4357](#)'s stated purpose is "to fulfill the state's proprietary objectives in maintaining and promoting the economical, nondiscriminatory, and efficient expenditures of public funds in connection with publicly funded or assisted construction projects." The bill is referred to the Committee on Government Organization then the Judiciary Committee.

JOINT AND SEVERAL LEGISLATION UNDER REVIEW

[S.B. 198](#), introduced by Sen. Don Caruth, R-Mercer, is a bill that attempts to properly apportion the percentage of fault to all defendants whose conduct caused an incident, injury or damages at issue in a case. The bill is in response to a court case in which a contractor was brought into a lawsuit due to a truck driver hitting a stopped vehicle on the interstate, resulting in two fatalities. The contractor was working on the interstate but the traffic was stopped about two miles from the construction zone. While the trucking company's insurance paid out \$1 million to the family's estate and there was no evidence the construction project had any impact on the traffic backup, the insurance companies of the contractors paid out over \$2.4 million. The Manchin administration and Legislature addressed tort legislation in 2005 to address the apportionment of damages among the various parties in a civil action by establishing standards for several liability. S.B. 198 attempts to close a loophole not addressed in the 2005 legislation. The CAWV met with Sen. Caruth and Senate Judiciary Committee counsel last week to see what amendments are necessary to move the bill forward.

GREEN BUILDINGS ACT PROPOSED

Sen. John Unger, D-Berkeley, has introduced [S.B. 474](#), creating the "Green Buildings Act." The bill would adopt green building standards for the construction and renovation of public buildings over 50,000 square feet. It would require that all public buildings be constructed and designed to meet standards of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system. The LEED silver standard should be the goal where "practical and financially affordable." All major facility projects of a public school district would also have to be designed to LEED standards.

The bill would not apply to major projects that entered into the grant application process prior to July 1, 2010. A major facility project does not have to follow the LEED silver standard if:

- 1/ There is no appropriate LEED silver standard for that type of building or renovation project. In such case, the agency will set lesser green building standards that are appropriate to the project.
- 2/ There is no practical way to apply the LEED silver standard to a particular building or renovation project. In such case, the agency will set lesser green building standards that are appropriate to the project.
- 3/ The building or renovation project is an electricity transmitter building, a water pumping station or a hospital.

S. B. 474 is referred to the Committee on Transportation and Infrastructure then the Finance Committee.

EMPLOYEE VERIFICATION BILLS TO BE DEBATED THIS WEEK

There are two bills dealing with verifying the legal employment of workers. [H.B. 3301](#), introduced by Delegates Ricky Moye, Patti Eagloski Schoen, Orphy Klempa, Thomas Campbell, Linda Sumner, Mike Caputo, Daniel Poling and Larry Barker, would give the West Virginia Division of Labor the authority to issue an order terminating undocumented employees. It goes further by allowing the DOL to issue a separate violation for every day each undocumented employee works following the termination order. The bill's sponsors and affected industries are meeting today to discuss the bill. [H.B. 2871](#) would require all employers in West Virginia to verify legal employment status of workers by registering with and utilizing the electronic verification (E-Verify) program. This bill is referred to the Committee on Energy, Industry and Labor, Economic Development and Small Business, then the Judiciary Committee.

WEST VIRGINIA LEGISLATURE BILL INFORMATION

House and Senate bills can be accessed from the CAWV's Legislative home page at www.cawv.org/legislative.html. Members can view status updates on bills of interest to the construction industry and see what legislation is introduced that affects the construction industry. A summary of each day's activities will be uploaded each afternoon.

Below is a list of bills that have been introduced this week that have an impact on the construction industry or some CAWV members. Anyone needing further information can contact Mike Clowser at (304) 342-1166 or email mclowser@cawv.org.

HOUSE BILLS

- [HB 4254](#) Del. Reynolds and Rodighiero-Providing a corporate tax credit for qualified health insurance policies (FN)-To Banking and Insurance then Finance
- [HB 4266](#) Del. Moye, Barker, Poling, M., Stephens, Campbell, Schoen, Rodighiero, Poling, D and Argento-Verifying legal employment status of workers-To Energy, Industry and Labor, Economic Development and Small Business then Judiciary
- [HB 4267](#) Del. Miller, J., Blair, Cowles, Overington and Duke-Creating a mandatory grace period for the payment of water and sewer bills-To Political Subdivisions then Judiciary
- [HB 4276](#) Del. Guthrie-Energy Efficient Building Act (FN)-To Energy, Industry and Labor, Economic Development and Small Business then Finance
- [HB 4277](#) Del. Boggs, Miley, Barker and Caputo [By Request of the Division of Environmental Protection]-Authorizing the Secretary of the Department of Environmental Protection to issue National Pollutant Discharge Elimination System permits-To Judiciary
- [HB 4279](#) By Mr. Speaker (Mr. Thompson) and Del. Armstead [By Request of the Executive]-Renaming the West Virginia Parkways, Economic Development and Tourism Authority (FN)-To Finance
- [HB 4282](#) Del. Miller, J., Blair, Cowles, Lane, Walters, McGeehan, Shott, Miller, C., Andes, Armstead and Sobonya-Creating the "Health Care Choice Act"-To Banking and Insurance then Judiciary
- [HB 4309](#) Del. Michael-Authorizing the Town of Moorefield, the Hardy County Commission and Hardy County's largest corporate user of public wastewater facilities to construction and maintain a state of the art regional wastewater treatment plant-To Political Subdivisions then Judiciary-[Local Bill]

- [HB 4332](#) Del. Guthrie-Permitting certain part-time employees to be eligible for unemployment compensation benefits (FN)-To Judiciary then Finance
- [HB 4335](#) Del. White, Campbell and Kominar [By Request of the Tax and Revenue Department]-Relating to the business tax (FN)-To Finance
- [HB 4338](#) Del. Fleischauer, Marshall, Shook and Beach-Requiring blasting contractors to notify the State Fire Marshal and local property owners before blasting-To Energy, Industry and Labor, Economic Development and Small Business then Judiciary
- [HB 4341](#) Del. Martin, Klempa and Poling, D. [By Request of the Division of Highways]-Authorizing the electronic collection of tolls (FN)-To Roads and Transportation then Finance
- [HB 4350](#) Del. White [By Request of the Department of Administration]-Relating to the functions of the purchasing director-To Government Organization then Finance
- [HB 4351](#) Del. White, Campbell, Doyle and Kominar [By Request of the Tax and Revenue Department]-Relating to the administration of sales and use tax (FN)-To Finance
- [HB 4357](#) Del. Cowles, Miller, J. and Overington-Prohibiting project labor agreements on state-funded construction contracts-To Government Organization then Judiciary
- [HB 4358](#) Del. Cowles, Stowers, Eldridge, Rodighiero, Miller, J., Miller C., Blair, Michael, Evans and Hall-Exempting special fuel and propane used for home heating purposes from the motor fuel excise tax (FN)-To Finance
- [HB 4359](#) Del. Poling, D., Klempa, Ferro, Longstreth, Walker, D., Morgan and Caputo-Requiring local labor for public construction projects-To Government Organization then Judiciary
- [HB 4364](#) Del. Doyle and Duke-Relating to land use planning-To Political Subdivisions then Judiciary
- [HB 4381](#) Del. Moye, Staggers, Manchin, Campbell, Miley and Doyle-Relating to annexation generally-To Political Subdivisions then Judiciary
- [HB 4387](#) Del. Caputo, Boggs, Fragale, Hatfield, Martin, Moye and Stephens-Flexible Leave Act-To Energy, Industry and Labor, Economic Development and Small Business then Finance
- [HB 4401](#) Del. Martin [By Request of the Division of Motor Vehicles]-Updating the requirements to obtain and retain a commercial driver's license-To Roads and Transportation then Judiciary

SENATE BILLS

- [SB 460](#) Sen. Helmick and McCabe-Relating to business registration tax (FN)-To Finance
- [SB 466](#) Sen. Unger, D. Facemire and McCabe-Authorizing electronic toll collection on certain roads (FN)-To Transportation and Infrastructure then Finance
- [SB 486](#) Sen. Jenkins, Browning, Wells, McCabe, Williams, Foster, Stollings, Green, D. Facemire, Fanning, Palumbo, Laird, Caruth, Sypolt, Hall, Guills, Boley, K. Facemyer, Barnes and Deem-Creating Asbestos Claim Transparency Act-To Judiciary
- [SB 504](#) Sen. K. Facemyer-Verifying workers legal employment status-Labor then Judiciary