



Legislative bulletin

Contractors Association of West Virginia

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LB 2010-6
February 22, 2010

Today, February 22, is the 41st day of the legislative session and the last day to introduce bills in the House and Senate. Today's Legislative Bulletin contains all the bills affecting contracting that were introduced this morning. There will probably be another round of bills introduced later today and any bills affecting CAWV members will be sent in an addendum to today's bulletin. The 47th day, February 28, is also an important date since all bills are due out of committees in their house of origin to ensure three separate days for readings. Since this is a Sunday, legislators will be working full time this week to conclude work on bills by Friday, February 26.

Below is an update on some of the key legislation the CAWV has been tracking this past week.

GREEN BUILDINGS ACT BILL MODIFIED

[H.B. 4008](#) requires that public buildings over 5,000 square-feet (the Senate version, [S.B. 474](#), has a 50,000 square-foot provision) adopt green building standards for construction and renovation projects. The House Government Organization Committee Thursday passed out a greatly modified version of the bill. (See the February 15, 2010 CAWV Legislative Bulletin for a complete synopsis of the original version). Changes made in the House committee include: Only state buildings are covered by the act, not any other public buildings for cities, counties or school boards; the U.S. Green Building Council LEED program is not the only standard to be used - Green Globes and substantially equivalent standards can be utilized; and, the most important change, the bill encourages state agencies to design and build to green building standards but does not mandate it. Environmental groups opposed these amendments in the committee meeting. The bill now goes to the House Finance Committee. It is not clear at press time if the Senate will stop debate on S.B. 474 in order to wait to see if the House passes its version.

The CAWV thanks all members who responded to the CAWV Legislative Alert seeking their opinion on the proposed legislation.

SCHOOL LEASE PURCHASE BILLS INTRODUCED

A number of bills were introduced recently that give county boards of education the ability to enter public/private partnerships to finance, build and lease school facilities. [S.B. 613](#), introduced by Sen. Joe Minard, D-Harrison; [S.B. 630](#), introduced by Senators Minard, David Sypolt, R-Preston, Bob Williams, D-Taylor, and Doug Facemire, D-Braxton; and [S.B. 637](#), introduced by Sen. Sypolt, all appear to accomplish the same goal. The bills create the Facility Design-Build-Finance-Lease-Purchase Act which expands the current West Virginia Design Build Board's authority to include approval of lease-purchase agreements. The bills are referred to the Committee on Education with a second reference to Finance.

The bill's premise has been debated over the past year. The stated purpose is to give county boards of education additional funding options, especially if county voters are unwilling to pass bond issues. The CAWV's position has been that public entities that enter into lease-purchase agreements should be required to adopt rules that provide complete transparency to the process.

Guidelines should be made public so public owners, developers, contractors and taxpayers have a complete understanding of what is expected when considering a lease-purchase proposal. Rules and regulations should be reasonable and structured to encourage the maximum amount of competition so taxpayers get the best deal for their investment.

The association also noted there should be criteria for choosing among competing proposals. Boards of Education should have analysis procedures that include a cost-benefit analysis so they know what their total costs will be. Boards of Education should also be able to determine the nonfinancial benefits of the proposed lease-purchase agreement.

STATE'S VENDOR PREFERENCE TO BE ALTERED

The formula for determining preference for resident vendors would be changed if [H.B. 4350](#) is passed. Currently, there is a five percent resident vendor preference on state commodities or printing. It is separated into two sections: West Virginia residents and corporations get a 2.5 percent preference and companies that employ West Virginia residents can get a 2.5 percent preference. The WV Department of Administration has often expressed that the current system is cumbersome and leads to bid protests. Also, very seldom does the preference ever result in an award going to a resident vendor. This bill would increase the bidders preference to six percent and be only available to West Virginia residents and resident companies. The CAWV has always opposed vendor preference laws for construction projects since surrounding states have reciprocal laws. The current preference is only on commodities and printing. The bill is referred to the House Government Organization Committee with a second reference to Finance.

HIGHWAY BILLS HELP, HURT HIGHWAY FUND

[S.B. 352](#), the Community Empowerment Transportation Act (CETA) has passed the Senate Finance Committee and is moving to the full Senate for ratification. The bill, sponsored by Sen. John Unger, D-Berkeley, chairman of the Senate Transportation and Infrastructure Committee, provides funding options for highway and transportation projects. It is on first reading today in the Senate.

CETA would allow county commissions to impose user fees to construct and maintain roads, so long as voters approve it. It also gives counties the ability to issue revenue and general obligation bonds for transportation projects. Sen. Unger has pushed the proposal for a number of years as a means to provide additional funding for highway projects. The bill is the result of a nearly year-long debate on how to provide additional revenue for highway and bridge construction projects. "We are seeing a decline in traditional highway user fees, particularly gas taxes," Chairman Unger has often commented. "We must start looking at broadening the state's ability to generate funds from non-conventional sources. This bill gives the tools, but doesn't mandate, to local communities to help fund projects in their areas."

Another bill, [S.B. 347](#), establishes the West Virginia Transportation Finance Commission to provide loans and other financial assistance to government units for transportation infrastructure. The commission is patterned after the WV Infrastructure Council in that it can provide loans to governmental entities at low interest rates. The entities would pay back their loan, making additional money available for projects. This bill has been referred to Senate Government Organization with a second reference to Finance.

[H.B. 4270](#) would transfer money from the State Road Fund to the Public Service Commission's weight enforcement division. Currently, vehicles transporting coal over certain public highways, designated as Coal Resource Transportation Roads, pay a special permit fee in addition to any state registration fee, user fee or other decal fee. The permit fees are deposited in the State Road Fund. H.B. 4270 would allocate this money to the PSC to conduct weight enforcement. Gov. Joe Manchin and the Legislature eliminated the diversion of state highway funds to the PSC for weight enforcement a few years ago. If this bill passes, about \$800,000 would be diverted from the road program. The bill has been referred the House Judiciary Committee with a second reference to Finance.

EMPLOYEE VERIFICATION BILLS PASS ONE COMMITTEE

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 met to discuss the bill. Compromise language was developed that allows the DOL to take action if employers refuse to provide documentation within the 72 hours currently stipulated in state code.

[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. There is no compromise language on this bill. Both bills last week passed out of the Committee on Energy, Industry and Labor, Economic Development and Small Business. They now go to the Judiciary Committee.

LIEN BILL REQUIRES RELEASE TO BE RECORDED

[S.B. 575](#), introduced by Sen. Jeff Kessler, D-Marshall, requires lienholders to record a release in the county clerk's office within 60 days after a lien has been satisfied. It also requires that liens be removed from record upon satisfaction. The bill goes to the Committee on Banking and Insurance then the Judiciary Committee.

FEDERAL ACTION EXPECTED ON JOBS BILL

The U.S. Senate is expected to vote this evening on its version of job-creation legislation, the Hiring Incentives to Restore Employment (HIRE) Act. The measure is expected to include an extension of the federal surface transportation programs through the end of the calendar year and a number of provisions to strengthen the Highway Trust Fund (HTF) so it can meet its obligations through the end of this year. The bill also includes a tax incentive for capital purchases, a change to the current fuel tax exemptions enjoyed by local governments, and a change to current law that will allow the HTF to retain interest earned on its balances.

All Democrats are expected to support the legislation, but due to health reasons, Senator Frank Lautenberg (D-NJ) will be unable to attend the vote. Two Republican votes are now required to reach the 6-vote threshold necessary to overcome an anticipated effort by some Republicans to block the bill. The current short-term extension of the programs expires February 28. The HIRE Act's highway/transit piece would be an important step to help stabilize state transportation programs.

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 4547](#) Del. McGeehan and Shook-Coal-to Liquid Act of 2010-To Energy, Industry and Labor, Economic Development and Small Business then Finance

- [HB 4550](#) Del. Louisos and Reynolds-Requiring commissioners of the Public Service Commission to be elected-To Judiciary then Finance
- [HB 4558](#) Del. Shott, Fragale and Porter-Making certain clarifications of the definition of the term employment as contained in this article-To Energy, Industry and Labor, Economic Development and Small Business then Judiciary
- [HB 4573](#) Del. Michael, Staggers, Craig, Cann, Perry, Morgan and Crosier-Exempting licensed surveyors from liability for defamation or slander of title when performing their professional duties-To Judiciary
- [HB 4574](#) Del. Manchin, Caputo, Martin, Staggers and Eldridge-Authorizing regional water authorities, regional wastewater authorities and regional water and wastewater authorities to provide for joint maintenance of its participating public agencies (FN)-To Government Organization then Finance
- [HB 4576](#) Del. Sumner, Shott and Frazier-Terminating tolls on the West Virginia Turnpike before 2020-To Roads and Transportation then Finance
- [HB 4582](#) Del. Campbell, Guthrie, Hatfield, Phillips, Poling, M., Kominar, White, Craig, Marshall, Spencer and Mahan-Creating reciprocity for West Virginia small, women and minority owned businesses who receive such preferences in other states-To Finance
- [HB 4588](#) Del. Fleischauer, Miley, Marshall, Beach, Shook, Susman, Varner, Fragale, Frazier, Hamilton and Moore-Creating the 2010 West Virginia Job Promotion, Evaluation and Reporting Act-To Energy, Industry and Labor, Economic Development and Small Business then Judiciary
- [HB 4605](#) Del. McGeehan-Establishing that the environmental regulation of business activities performed within the state is not subject to federal regulation-To Energy, Industry and Labor, Economic Development and Small Business then Judiciary
- [HB 4611](#) Del. Armstead-Abolishing joint liability and establishing the principle of comparative fault-To Judiciary
- [HB 4616](#) Del. Pethtel-Creating the temporary natural gas resources transportation road system-To Roads and Transportation then Finance
- [HB 4618](#) Del. Caputo, Butcher, Poling, M., Stowers, Eldridge, Poling, D., Klempa, Marshall, Guthrie, Manypenny and Boggs-Requiring greater information to be submitted by the Public Service Commission annually regarding the quality of service provided by utilities and persons subject to its jurisdiction-To Energy, Industry and Labor, Economic Development and Small Business then Judiciary
- [HB 4637](#) Del. Fleischauer, Shook, Marshall, Beach, Moye, Perry, Doyle, Hartman, Cowles and Susman -Allowing county school boards to enter into energy-saving contract-To Education then Judiciary
- [HB 4638](#) Del. Fleischauer, Talbott, Fragale, Wells and Lawrence-Relating to air pollution control-To Energy, Industry and Labor, Economic Development and Small Business then Judiciary
- [HB 4650](#) Del. Miller, C., Sobonya, Sumner, Shott, Rowan, Duke, Phillips, Crosier, Shaver, Perry and Stowers-Allowing the School Building Authority to designate money for the building of playgrounds-To Education then Finance

SENATE BILLS

- [SB 585](#) Sen. Kessler-Relating to release requirements for liens-To Banking and Insurance then Judiciary
- [SB 594](#) Sen. Browning and McCabe-Relating to powers, duties and responsibilities of Water Development Authority- To Economic Development then Government Organization
- [SB 595](#) Sen. McCabe-Extending vesting period for subdivision and land development plans-To Judiciary
- [SB 612](#) Sen. Plymale, Unger, Bowman, D. Facemire, Minard, Snyder, Kessler, Wells and Yost-Authorizing Governor certify certain capital improvement projects' lists (FN)-To Education then Finance
- [SB 613](#) Sen. Minard-Creating Facility Design-Build-Finance-Lease-Purchase Act-To Education then Finance
- [SB 630](#) Sen. Minard, Sypolt, Williams and D. Facemire-Creating WV Facility Lease-Purchase Act-To Education then Finance
- [SB 637](#) Sen. Sypolt-Allowing county board of education enter into certain lease-purchase agreement-Education then Finance
- [SB 643](#) Sen. Kessler-Creating temporary natural gas resources transportation road system-To Transportation and Infrastructure then Judiciary
- [SB 644](#) Sen. Minard and Williams-Establishing workers' compensation risk pools-To Banking and Insurance then Finance
- [SB 666](#) Sen. Minard-Transferring state agency workers' compensation programs' duties to Insurance Commission (FN)-To Government Organization then Finance
- [SB 670](#) Sen. Foster-Requiring political subdivisions give preference to certain resident vendors-To Education then Finance
- [SB 675](#) Sen. Kessler-Requiring local labor for certain public construction projects-To Government Organization then Finance
- [SB 676](#) Sen. Laird-Exempting licensed surveyors from liability for defamation or slander of title-To Judiciary