



Contractors Association of West Virginia **LEGISLATIVE BULLETIN**



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BUDGET WOES CONSUMING LEGISLATIVE ACTIVITIES

Downgrading of West Virginia's bond rating, a bill to furlough state workers, a battle of words between the Governor and legislators over the budget, highway funding and bond proposal, the Governor's SOS (Save Our State) plan for infrastructure and economic development projects, and contract language changes in state building projects are just part of the issues that took center stage this week at the West Virginia Legislature. The CAWV was able to present its case for the need for highway funding on Wednesday with Hoppy Kercheval on WV MetroNews "Talkline." West Virginia's for Better Transportation ran a full page ad in the Charleston *Gazette-Mail* on the February 16 release of the TRIP report that shows bad roads are costing the average West Virginian more than \$1,000 a year in additional operating fees. A bill on the governor's proposal to issue billions in bonds for highway if voters approve a constitutional amendment was introduced this week

As legislators and the Governor work to address a \$450 million budget gap for the 2018 Fiscal Year, multiple tax proposals are being considered by the West Virginia Senate and West Virginia House of Delegates. Today, the Senate Select Committee on Tax Reform is discussing SB 335, which would repeal the personal income tax and take the state towards an 8% General Consumption Tax.

Two of Governor Justice's tax proposals have recently been introduced: S.B. 415, which would tier the state's severance taxes, and SJR 6, which is the constitutional amendment to finance \$1.6 billion in road bonds. The Governor's budget also calls for the elimination of the professional services exemption from the state's sales tax and a 0.2% gross receipts tax on businesses in the state. While legislation on these taxes has not yet been introduced, both proposals are expected to total \$300 million in new business taxes.

STATE'S BOND RATING DOWNGRADED

Gov. Justice and Revenue Secretary Dave Hardy addressed members of the media Feb. 21 to discuss a recent report from Moody's that downgraded the state's general obligation debt rating. Moody's Investors Service downgraded West Virginia's general obligation debt to Aa2 from Aa1, which affects about \$393.6 million in debt outstanding, the agency said, and it also downgraded related lease ratings.

The downgrade "reflects the recent multi-year trend of growing structural

imbalance between annual expenditures and available resources,” Moody’s states in its news release. “While the state has used a mixture of revenue enhancements, expenditure reductions and reserves to close budget gaps, revenues continue to lag budgeted estimates and the structural imbalance is likely to continue at least through 2018.”

After the Governor’s press conference, Senate President Mitch Carmichael, R-Jackson, released a statement on the downgrade. “Years of fiscal mismanagement have led us to this point,” Carmichael said in the statement. “The bond downgrade underscores the urgency and the need for fundamental reform and a new direction in West Virginia. The old policies of simply raising taxes and spending more will only lead to further structural deficiencies and continued downgrades. This news makes it abundantly clear the time for new policies cannot wait, and we will not turn this ship around with continued taxation and unchecked spending.”

House Speaker, Tim Armstead, R-Kanawha, also released a statement. “This bond downgrade reinforces the need for fundamental changes to how we operate our state government,” Armstead said. “The failed tax-and-spend policies of the past will not solve this problem. We need bold leadership to right-size our state government and restructure our tax code in a way that promotes growth. The proposal to increase spending by another \$318 million and pay for it with the largest tax increase in the history of our state will not solve our budgetary challenge. In the coming weeks, we will work to construct a budget that will restore confidence in our future economic outlook.”

NUMEROUS CONSTRUCTION CONTRACTS BILLS INTRODUCED

There are number of bills dealing with contract language in government construction contracts. Some are clarification. Some include specific policy changes to language in the contract documents. Members are asked to review these bills and provide any comments, positive or negative, to Mike Clowser at mclowser@cawv.org

S.B. 411- The purpose of this bill is to repeal Code, §21-5-7 requiring a prime contractor to be responsible for wages and benefits. The current language, below, would be repealed. The bill is referred to Judiciary Committee.

§21-5-7. Prime contractor's responsibility for wages and benefits.

Whenever any person, firm or corporation shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under such contract for the payment of wages and fringe benefits, exclusive of liquidated damages as provided in subsection (e), section four of this article, to the extent that the employer of such employee fails to pay such wages and fringe benefits: **Provided**, That such employees have exhausted all feasible remedies contained in this article against such employer, but if the prime contractor has failed to notify the commissioner as required by section sixteen of this article, then the employee shall not be required to exhaust any remedies against the employer: **Provided, however**, That such employer shall become civilly liable to such prime contractor for any

sum of money paid by him under this section.

S.B. 412- The purpose of this bill is to provide that reporting certified payroll information for persons employed under the West Virginia Jobs Act is not required, but that other information as to persons employed may be submitted. This is a result of last year's bill eliminating prevailing wage rates on government construction contracts. The bill is referred to Government Organization.

S.B. 413 - The purpose of this bill is to limit the number of alternate proposals in bidding for government construction projects; and set forth procedures for consideration of alternate bids. The new language reads as follows: (e) Any proposal shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity shall reserve the right to accept alternates in any order which does not affect determination of the low bidder.

The CAWV has not talked with the sponsor of the bill, Sen. Craig Blair, R-Berkeley, to learn the purpose of limiting agencies to only three alternates in a project.

S.B. 383 - With the passage of the bill last year eliminating prevailing wage rates for government construction projects, this bill is aimed at counties whose commissioners have stated they may require prevailing wage rates on projects in their counties. The bill is referred to Government Organization then Judiciary.

H.B. 2659 - The purpose of this bill is to restore the requirements for prevailing wages for certain government contracts to state law. This law was repealed during the 2016 Legislative Session, and this bill restores prior law. The bill goes to Industry and Labor then Judiciary. It has no chance of getting out of committee.

S.B. 190 - The purpose of this bill is to eliminate the 5% bidders' preference for in-state vendors on state contracts. Currently, there is a 5% preference for material and equipment. An amendment to the bill in Government Organization provides a reciprocal preference against states that have a vendor preference against West Virginia firms bidding in their state. A number of CAWV equipment firms have voiced their opposition to eliminating the preference.

S.B. 224 - The bill eliminates the requirement for contractors and companies in the severance of minerals to post a bond equaling four weeks of payroll if they haven't been in business for five years. The bill passed out of Workforce Committee and is now in Judiciary Committee.

S.B. 375 REWRITES SEVERANCE TAX STRUCTURE ON AGGREGATES

S.B. 375, introduced by Sen. Greg Boso, R-Nicholas, and Sen. Randy Smith, R-Tucker, changes the severance tax on limestone, sandstone and other mined aggregate products and crushed stone from a percentage of the sales price to a

flat 9 cents per ton of product sold by the producer of natural resource material. For the purpose of this this section of the code, "mined aggregate products" includes limestone sand, sand, gravel, shale, dolomite and granite that has been physically severed from the earth by a natural resource producer. The effective date is for tax years beginning after December 31, 2016.

The WV Crushed Aggregates Council has been studying changing to a flat tax verses the current system. WVCAC and the Tax Department are still looking to see if the tax rate will be 9 cents or 10 cents a ton. Both parties want to keep the bill revenue neutral. WVCAC should finalize this in the next few days. The bill is referred to the Natural Resources Committee then Finance.

GOVERNOR INTRODUCES HIGHWAY BILLS; LEGISLATORS LIKE VOTERS DECIDING ON GAS TAX AND DMV FEE INCREASES

In his state of the state address, Gov. Jim Justice said he was making highway construction and repair an early centerpiece of his administration. A number of bills to advance that goal were introduced last week. Absent are bills that would create funding for annual funding or future debt service. To date, legislators have not expressed much support for the governor's proposals. Leadership has indicated they would be agreeable to putting the bond referendum on the ballot and include the gas tax and DMV fee increase to let the voters decide to raise their fees. The CAWV opposes requiring voters to have to approve funding measures for a number of reasons. Most important, the WVDOH needs additional funding for system preservation. Waiting for a constitutional referendum to get funding further delays highway and bridge maintenance. Second, given today's economy, it would be difficult for people to vote themselves fee increases, even though it's costing each West Virginian over \$1,000 a year in additional costs due to driving on bad roads. There will some group that will oppose a road bond even if there is no funding mechanism associated with it. Including gas tax or DMV fees with the referendum further erodes its chance for ratification.

The governor's bills include:

S.B. 414/H.B. 2717 - The purpose of this bill is to create the Division of Multimodal Transportation under the Secretary of Transportation and to combine the employees, equipment, assets, liabilities and duties previously executed by the Public Port Authority, the state Aeronautics Commission and the West Virginia State Rail Authority. The governor's office believes consolidation of these agencies currently within the Department of Transportation will create efficiencies and save money.

S.B. 416/H.B. 2721 - The purpose of this bill is to eliminate the cap on the size of projects constructed by the Division of Highways and to remove the sunset date on the Public-Private Transportation Facilities Act. Currently, projects under \$20 million can't use the P3 method of construction. The current bill sunsets in June and this bill makes P3s permanent. The governor says he needs this bill to get all the highway projects he hopes to build designed and completed. The CAWV is opposed to continuing the P3 act until there are changes to current statute. The WVDOH is paying about \$150 million a year for the next four to five years on the five P3 projects that have been awarded. The CAWV wants to be sure

there is new highway funding before any consideration is given to a P3 bill. It is referred to Transportation and Infrastructure then Finance.

S.B. 417/H.B. 2722 - The purpose of this bill is to remove the financial limitations on how many design build projects may be undertaken by the Division of Highways. Currently, no more than \$50 million a year up to an aggregate of \$150 million may be expended for design build projects. The governor's and CAWV's position are the same as listed in S.B. 416, the P3 bill. S.B. 417 also goes to Transportation and Infrastructure and Finance.

S.B. 421 - The purpose of this bill is to increase from \$200 million to \$500 million the amount the Division of Highways is allowed to use to apply for Federal Grant Anticipation Notes to be reimbursed from the funds made available to West Virginia from the federal government's Highway Fund for West Virginia. Funds obtained from this federal grant will only be used for the completion of interstate or other highway facilities designated as part of the federal-aid highway system or for toll bridges.

SJR 6 - The Roads to Prosperity Amendment of 2017 provides a constitutional amendment before voters that would authorize \$1.6 billion in bonds. If ratified, \$800 million would be sold July 2018, \$400 million in July 2019, \$200 million in July 2020, and \$200 million in July 2021. Any bonds not issued by the time designated can be carried forward and issued in any subsequent year. The governor wants to pay off the bonds by increasing the gas tax 10 cents a gallon.

GOVERNOR BEGINS SAVE OUR STATE TOUR IN RALEIGH COUNTY

Gov. Jim Justice touted raising taxes Sunday, February 19, at the launch of his statewide Save Our State (SOS) Tour at the Coalfields Expressway roads project in Raleigh County. More than 200 people attended the event. The governor said the increases would create jobs and improve infrastructure. He told people in attendance that the state has already cut too much, and tax increases are the best solution. A main focus of his speech was a massive highways construction program that would be financed through a \$20 increase in the annual license plate renewal fee, a 10-cents-per-gallon increase in the state gasoline tax and a \$1 increase in turnpike tolls. Justice said the plan would create 48,000 jobs.

The average driver in Charleston spends \$1,357 a year in additional expenses due to poor roads, according to the latest report on West Virginia roads by TRIP, a national transportation research group. Thomas Smith, state secretary of transportation, speaking at the Coalfields site said the increased fees would be far less than car repair costs. "If we continue to underinvest in this next year, if we don't find a way to invest in highways, we'll be telling you that the cost has gone up yet again," Smith said.

Justice emphasized the tax increases would not be permanent and were only serving as a stop-gap measure. "I know it's going to hurt a little bit in the beginning, but it's going to be so good that you won't believe it," Justice said.

The King Coal Highway and Coalfields Expressway in Southern West Virginia

would be a primary focus of the construction program. The project has been delayed due to the decline of the coal mining industry. Justice, a Raleigh County native, said the project would put unemployed coal miners back to work. Multiple towns throughout the area are not connected to the highway system. “The people are so good, and a lot of times they are forgotten. They’re not going to be forgotten with me,” Justice said.

When completed, the Coalfields Expressway will be about 65 miles long. Only 8 miles are open to drivers today. The governor is adding more cities to his SOS tour. Members will be advised of locations and time.

CAWV PROMOTES HIGHWAY INVESTMENT ON “TAKLINE”

The CAWV had the opportunity Wednesday to appear on WV MetroNews’ “Talkline” with Hoppy Kercheval to talk about the need for highway funding. In the 10-minute interview, CAWV Executive Director Mike Clowser talked about the recent TRIP study showing that the average West Virginian spends over \$1,000 annually due to bad roads, the ARTBA bridge report that has West Virginia moving from 8th to 5th worst in the nation in the percentage of deficient bridges and the thousands of jobs that would be created from investing in highways.

To listen to the interview, go to <http://media.wvmetronews.com/media/02221712351-TalklineforWednesdayFebruary222017.mp3>. The interview starts around the 1:15:50 mark.

WEST VIRGINIA LEGISLATURE BILL INFORMATION

House and Senate bills can be accessed from the CAWV’s Legislative home page at www.cawv.org/legislative. 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			
Bill #	Sponsors	Proposal	Introduced/Committee
HB 2582	Del. Householder, Walters, R. Romine, Frich, Westfall, Statler, Cowles, Kessinger, Blair, Sypolt and N. Foster	Relating to disqualification for unemployment benefits (FN)	2/21/17 - To the Judiciary

HB 2590	Del. Miley and Mr. Speaker (Mr. Armstead) [By Request of the Executive]	Updating the meaning of federal taxable income and certain other terms used in the West Virginia Corporation Net Income Tax Act	2/21/17 - To Finance
HB 2591	Del. Atkinson, Hill, Ward, Kelly, Moore, Harshbarger, Ambler, Cooper, Hollen, Westfall and Kessinger	Small Business Tax Credit (FN)	2/21/17 - To Small Business, Entrepreneurship and Economic Development then Finance
HB 2594	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act	2/21/17 - To Finance
HB 2596	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Incorporating changes to the Streamlined Sales and Use Tax Agreement	2/21/17 - To Finance
HB 2606	Del. Walters	Maintaining status quo in the event bond indebtedness relative to Parkways Authority is eliminated (FN)	2/21/17 - To Roads and Transportation then Finance
HB 2608	Del. Statler	Requiring the Commissioner of Highways to contract with private providers or contractors for certain emergency maintenance operations (FN)	2/21/17 - To Roads and Transportation then Finance
HB 2609	Del. Kessinger, Paynter and Fast	Requiring county boards of education to conduct regular structural inspections of school facilities and structures (FN)	2/21/17 - To Education then Finance
HB 2610	Del. Kessinger and Paynter	Allowing private entities to lease buildings to local school boards in cases of emergency or condemnation	2/21/17 - To Education
HB 2615	Del. Pushkin, Rowe, Caputo and Robinson	Providing a tax credit for obtaining certain certifications by the United States Green Building Council Leadership in Energy and Environmental Design green building rating system (FN)	2/21/17 - To Government Organization then the Judiciary
HB 2636	Del. Marcum, O'Neal, Phillips, Gearheart, E. Evans, Ellington, Shott, Hicks, Hamrick, Paynter and Cooper	Relating to construction of a modern highway from Pikeville, Kentucky to Beckley, West Virginia	2/21/17 - To Education then Finance
HB 2659	Del. Brewer, Diserio, Pethel, Ferro, Iaquina, R. Miller, Boggs, Rodighiero, Caputo, Miley and Moye	Reestablishing prevailing wages for certain state government contracts (FN)	2/22/17 - To Industry and Labor then the Judiciary
HB 2709	Del. E. Nelson, Lane, Byrd, Walters, N. Foster, Rowe, Robinson, White, Pushkin, Caputo and Mr. Speaker (Mr. Armstead)	Authorizing the City of South Charleston to levy a special district excise tax (FN)	2/24/17 - To Political Subdivisions then Finance

HB 2716	Del. Ward, Howell, McGeehan, Hamrick, Miley, Wilson, Hollen, Paynter, Frich, Butler and Arvon	Imposing an indefinite moratorium on new business and occupancy or privilege taxes	2/27/17 - To Political Subdivisions then Finance
HB 2717	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Creating the Division of Multimodal Transportation	2/27/17 - To Government Organization then Finance
HB 2720	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Allowing the School Building Authority to transfer funds allocated into the School Construction Fund (FN)	2/27/17 - To Education then Finance
HB 2721	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Removing the cost limitation on projects completed by the Division of Highways	2/27/17 - To Roads and Transportation then Finance
HB 2722	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Eliminating the financial limitations on utilizing the design-build program for highway construction	2/27/17 - To Roads and Transportation then Finance

SENATE BILLS

Bill #	Sponsors	Proposal	Introduced/Committee
SB 364	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Incorporating changes to Streamlined Sales and Use Tax Agreement	2/21/17 - Finance
SB 365	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Maintaining solvency of Unemployment Compensation Fund (FN)	2/21/17 - Finance
SB 375	Sen. Boso	Relating to rate and measure of severance taxes on certain natural resources (FN)	2/21/17 - Natural Resources then Finance
SB 381	Sen. Boso	Relating to Parkways Authority maintaining status quo (FN)	2/21/17 - Transportation and Infrastructure then Finance
SB 383	Sen. Boso	Prohibiting local government entities from setting prevailing wages	2/21/17 - Government Organization then Judiciary
SB 399	Sen. Ferns, Blair and Trump	Prohibiting political subdivisions from enacting local ordinances regulating benefits employers provide to employees	2/22/17 - Workforce then Judiciary
SB 400	Sen. Blair	Regarding appointments to WV Infrastructure and Jobs Development Council	2/22/17 - Government Organization

SB 409	Sen. Karnes	Modifying exemptions for consumers sales and service tax (FN)	2/23/17 - Tax Reform then Finance
SB 411	Sen. Blair	Relating to prime contractor's responsibility for wages and benefits	2/23/17 - Judiciary
SB 412	Sen. Blair	Relating to WV Jobs Act reporting requirements	2/23/17 - Government Organization
SB 413	Sen. Blair	Relating to bids on government construction contracts	2/23/17 - Government Organization
SB 414	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Creating Division of Multimodal Transportation	2/23/17 - Transportation and Infrastructure then Government Organization
SB 415	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Relating to severance tax on natural gas (FN)	2/23/17 - Energy, Industry and Mining then Finance
SB 416	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Relating to Public-Private Transportation Facilities Act	2/23/17 - Transportation and Infrastructure then Finance
SB 417	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Removing financial limitations on number of design-build projects undertaken by DOH	2/23/17 - Transportation and Infrastructure then Finance
SB 419	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Creating special revenue fund sources for Division of Labor to meet statutory obligations	2/23/17 - Finance
SB 421	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Increasing amount of authorized federal Grant Anticipation Notes for which DOH may apply (FN)	2/23/17 - Transportation and Infrastructure then Finance
SB 427	Sen. Blair	Relating to special revenue funds administered by DEP (FN)	2/24/17 - Judiciary then Finance
SJR6	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Roads to Prosperity Amendment of 2017	2/23/17 - Transportation and Infrastructure then Judiciary
SB 452	Sen. Miller, Facemire, Jeffries, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel	Creating WV Earned Income Tax Credit (FN)	2/27/17 - Tax Reform then Finance