



Contractors Association of West Virginia LEGISLATIVE BULLETIN



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*Governor Proposes
Alternate Budget*

As the 60-day legislative session reaches the half-way point Wednesday, a number of issues are beginning to take shape. The governor last Monday released an alternative plan to balance the 2018 budget - one legislative leaders seem more open to considering. In the Senate, a bill to clarify the state's right to work law (S.B 330) got a passing vote and in the House, delegates passed H.B. 2506 amending the state's water quality standards.

*Highway Finance
Bills Amended*

H.B. 2506 adopts the "harmonic mean" criteria for calculating the rate of stream flow in determining permit limits for discharges. Harmonic mean represents average stream flow rather than the current measurement based on the lowest seven-day waterway flow over a ten-year period. Business has long argued that West Virginia's regulations exceed federal standards and the standards of its neighboring states, rendering the state less appealing for sustained and new investment.

*Contractors
Licensing Board
Changes*

The Senate's Select Committee on Tax Reform is beginning its work revising a bill to overhaul West Virginia's tax code and repeal the personal income tax, a revenue source that generates nearly \$2 billion each year.

GOVERNOR SUBMITS ALTERNATE BUDGET PROPOSAL

West Virginians would drive on state toll roads for free but pay more for vehicle registration fees under state budget alternatives presented in a news briefing Monday, February 27, by Gov. Jim Justice. The proposals include updates to West Virginia's "Save Our State Budget," which Gov. Justice presented earlier this month and feature a mix of increases to fees and taxes as well as budget cuts of \$50 million or more. The state is facing an estimated deficit of at least \$500 million.

His updated proposals Monday included increasing the toll on the West Virginia Turnpike from \$2 to \$4 for out-of-state motorists, and increasing the gasoline excise tax by 4.5 cents a gallon, instead of the 10-cent increase he proposed earlier. He said his roads plan would create 48,000 "immediate jobs" and double the state's maintenance fund from \$150 million to \$300 million for repairing roads, potholes and bridges.

The governor also presented a budget plan that would add a tax of 1 cent per ounce on sugary drinks, which he said could create about \$85 million in revenue, and add 50-cents per pack to the state's cigarette tax to generate an estimated \$47.8 million.

“Without any question, the most important thing we can do in the state of West Virginia today ... is come up with a budget and a pathway for growth,” Justice said, noting he’s received criticism of his proposals but has not received any viable alternatives from legislators. “We’ve got to get to rock-solid solutions and put people in the state of West Virginia on pathways to get out of this mess.”

His budget proposals also include revisions to state contributions for teacher pensions, as well as changes to sales taxes and business taxes. Regarding tolls, Justice said increased toll funding would be used for “bonding for all roads,” and there would be no changes to the existing turnpike funding.

“I want every West Virginian to drive on our turnpike or toll road for free,” Justice said, adding that anyone could choose to purchase an electronic E-ZPass account for \$8, whether they live in the state or not. “You can buy an E-ZPass if you want. ... If you’re never on a turnpike, don’t buy it,” he said.

Part of his proposed budget update also includes increasing Department of Motor Vehicles renewal fees from \$30 to \$50, while reducing the need for a state vehicle inspection from annually to once every three years. He said the average cost of a vehicle inspection is less than \$15, so eliminating two inspections would save about \$29. In the long run, he said the difference would be a net increase of just over \$10 per year.

Senate President Mitch Carmichael, R-Jackson, and House Speaker Tim Armstead, R-Kanawha, issued a joint statement in response to Justice’s updated budget proposals, saying they are glad he is open to different options.

They said they agree that “we need to think big to solve our budget crisis,” and said legislators are working on “major tax reform proposals that will spur economic growth. We are working night and day to solve this budget crisis, and are putting forward our own alternatives,” they said. “We are committed to doing everything we can to have a budget passed by this Legislature before we end our regular session on April 8.”

The Governor's revised budget would lead to a \$63 million surplus for the General Revenue Fund by taking the following measures:

- A possible **\$50 million** in spending cuts. His budget does not identify the cuts but he has indicated he will approve them if they can be found and they do not hurt state government's ability to function.
- Lower the proposed **Commercial Activities Tax (CAT)** from the original .2 percent down to .075 percent. This would still be a tax on a business's gross receipts, similar to the B & O Tax that was removed for most businesses in 1985, but at a lower rate than initially proposed. **(Estimated \$80.4 million new revenue)**
- **Consumer Sales Tax** increase from 6% to **6.25%**. This is lower than his initial proposal of 6.5%. **(Estimated \$46.5 million new revenue)**

- **Repeal Exemptions on Professional Services** (except Advertising - which would remain exempt). The Governor's initial proposal also called for the elimination of the exemption for advertising. The West Virginia Chamber would note that only New Mexico, South Dakota and Hawaii levy a sales tax on professional services. **(Estimated \$78.9 Million in new revenue)**
- **Sugary Drink Tax** - 1 cent per fluid ounce on drinks containing sugar. **(\$85 million new revenue)**
- **Cigarette tax** increase of 50 cents per pack **(\$47.8 million new revenue)**
- **Extra personal income tax fees for wealthy West Virginians - flat fee per year: (\$8 million in new revenue)**
 - Household income over \$200k = extra \$500 per year
 - Household income over \$250k = extra \$750 per year
 - Household income over \$300k = extra \$1,000 per year
- **Smoothing of gains & losses in Teachers Retirement Plan Unfunded Repayment** (4-year smoothing) **(saves \$40.75 million from budget expenses in FY 2018)**
- **SOS Fund** -- break up the original one-time expenditure of \$105 million = split over 3 years = \$35 million per year **(saves \$70 million from budget expenses in FY 2018)**
- **Beer Tax, Liquor Tax, Workers' Compensation Redirect, Eliminate General Revenue Transfer to Road Fund - (\$86.5 million in new revenue and savings)**

Removal of some initial proposed expenditures (Saves \$122 million)

BILL MODIFIES CONTRACTORS LICENSING REQUIREMENTS

H.B. 2554 makes major modifications to West Virginia's contractors licensing requirements. The bill has been amended since its introduction to the House Government Organization Committee. The bill was on the agenda Friday but was not voted on after a number of questions were unable to be answered in the time allotted. A meeting of Contractors Licensing Board members, WV Division of Labor, legislators and industry representatives will be held this morning to see if the issues can be resolved.

The purpose of this bill is to transfer the West Virginia Contractor Act from administration and regulation by the Division of Labor to regulation under the

provisions of professions and occupations in chapter thirty of State Code. Chapter 30 is where most every licensing board – from beauticians to architects – is housed. Board members have noted that they are not “under” the WVDOL but, rather, the WVDOL and its personnel provide services for the board to carry out its mission. The board questioned if they will have to set up a separate operation, hire their own personnel to test, inspect and enforce contractor licensing requirements, and establish a complaint and violation procedures. If so, board members asked, at what cost compared to using WVDOH for administrative services.

The bill, as amended, establishes a new category, Journeyman General Building Contractor. It provides for an emerging contractor to perform work up to \$7,500 from having to take a contractors licensing test although a person in this category would still have to have all state and local licenses and be registered with Tax Department and workers’ compensation. The board would grant this license based on the applicants showing two years of experience and providing two letters of recommendation from licensed contractors. There was a proposal to raise the limit on the project for licensing from \$2,500 to \$10,000 that did not advance. The board is authorized to grant reciprocity and to provide training to students who desire to obtain a West Virginia contractor license.

If an agreement on the bill is reached, it could be on the committee’s agenda today.

H.B. 2744 AUTHORIZE LOCAL ENERGY EFFICIENCY PARTNERSHIPS

The purpose of this bill is to authorize local units of government to adopt local energy efficiency partnership programs and to create districts to promote the use of energy efficiency improvements by owners of certain real property; to provide for the financing of such programs through voluntary property assessments, commercial lending, and other means; to authorize a local unit of government to issue bonds, notes, and other evidences of indebtedness and to pay the cost of energy efficiency improvements from the proceeds thereof; to provide for the repayment of bonds, notes, and other evidences of indebtedness; to authorize certain fees; to prescribe the powers and duties of certain governmental officers and entities; and to provide remedies.

The bill referred to the Committee on Political Subdivision then Finance.

GOVERNOR’S HIGHWAY FUNDING BILLS INTRODUCED

Gov. Jim Justice’s bills to fund his \$2.4 billion highway construction program were introduced this week, along with legislation to continue tolls on the West Virginia Turnpike. These include: a bill to increase the state gas tax 4.5 cents per gallon, restore the 3.5 cents per gallon wholesale tax that was lost with the declining price of gas, and increasing various DMV fees; continuing tolls on the West Virginia Turnpike instead of having them expire in 2019; and imposing a 5 percent license tax on successful bidders of road construction contracts. A breakdown of the bill follow:

S.B.477 -- The purpose of this bill is to increase the State Road Fund by

increasing Division of Motor Vehicle administrative fees and motor fuel excise taxes, including titling, registration, driver licensing, identification card issuance and abstract fees. Every five years, the DMV fees will increase based on the U.S. Department of Labor Consumer Price Index. This bill increases the flat rate component of the motor fuel excise tax from 20.5 cents to 30.5 cents per invoice gallon of motor fuel and upon each gallon equivalent of alternative fuel. This bill also increases the minimum average wholesale sales price of motor fuel from \$2.34 to \$3.04. All changes are effective July 1, 2017.

The governor has already amended his gas tax proposal down from 10 cents a gallon to 4.5 cents. **This would generate about \$45 million for the WVDOH. Raising the floor on wholesale tax would generate about \$50 million and raising DMV fees would raise about \$33 million, for \$125 million in new revenue annually.**

The bill has been referred to the Committee on Transportation and Infrastructure then Finance.

S.B. 483 -- The purpose of this bill is to impose a license tax on successful bidders for road construction contract and to provide that the proceeds of the license tax shall be used to fund drug treatment programs after appropriation by the Legislature. The governor proposed this bill in his state of the state address to address the state's growing drug problem.

The bill requires that within ten days after the award of a WVDOH contract, the successful bidder shall pay a license tax equal to 5 percent of the amount of the bid to the WVDOH. At the discretion of the commissioner, the license tax could be paid in five equal installments over the period specified by the commissioner. If the successful bidder fails to pay timely the amount of license tax to the WVDOH, the bill requires the contractor to forfeit the contract and the award of the contract will be given to the second bidder or all bids could be rejected and the project rebid.

The CAWV has noted that there is no expiration date on S.B. 483 so the 5 percent license tax will be on all WVDOH projects going forward. The governor stated he wants to create the drug treatment program from revenues that will be generated from accelerating road construction through user fees and bonds. However, whenever the accelerated construction program is completed, the highway program will continue to fund the treatment programs.

If the WVDOH doesn't get additional funding and awards around \$400 million, the 5 percent license fee would cost the WVDOH \$20 million. If funding moves awards to \$800 million, the cost is \$40 million. Once the WVDOH's budget comes back down, the 5 percent will remain under the language in S.B. 483.

The bill is referred to the Committee on Transportation and Infrastructure then Finance.

S.B. 482 -- The purpose of this bill is to grant authority to the Parkways Authority to issue revenue bonds and refunding bonds for the purpose of financing parkway projects within the state constructed or improved by the Department of Transportation or the authority or refunding bonds issued in

connection with any parkway project, to clarify notice and public meeting requirements and procedures for fixing or increasing tolls or fees, to study and implement, if feasible, a single fee program, and to authorize electronic toll collection as a method of collecting and enforcing any tolls that may be charged for transit over any parkway project.

Under current law, tolls on the WV Turnpike end in 2019. The governor's proposal is to raise tolls from \$2 per toll booth to \$4 and use the increase in revenues to issue additional bonding, perhaps as much as \$600 million, for new roads in southern West Virginia and well as other roads that may be tolled in the future. There are currently a few bills that have passed the House Roads and Transportation Committee to hasten the removal of tolls on the turnpike. The Beckley Chamber of Commerce this week passed a resolution supporting continuation of tolls on the turnpike in order to keep it in good condition which, they say, is crucial to economic development and jobs in southern West Virginia.

The bill has been referred to the Committee on Transportation and Infrastructure then Finance.

These bills are in addition to the highway bills already introduced, including SJR6 which is a constitutional amendment that would, if ratified by voters, authorize issuance of \$1.6 billion in highway bonds, S.B. 421, raising the state's GARVEE bond authorization from \$200 million to \$500 million, S.B. 417 which eliminates the \$50 million a year cap on the amount the WVDOH could award as Design-Build contracts, and S.B. 416 which makes the Public-Private Partnership (P3) Act permanent and eliminating the \$20 million limit.

H.B. 2734 AUTHORIZES TAX COLLECTION METHOD OF PROPERTY TAXES RELATED TO HEAVY EQUIPMENT INVENTORY

H.B. 2734 creates a method to authorize the method for the collection and remittance of property taxes related to dealers' heavy equipment inventory. Current law does not provide any special guidance in this regard, the bill states.

For the purposes of this article, "dealer of heavy equipment rental property" means the inventory of any construction, earthmoving or industrial equipment that is mobile and rented by a dealer of heavy equipment rental property including attachments for the equipment or other ancillary equipment or tools. Qualified heavy equipment property is mobile if it is not permanently affixed to real property and is capable of being moved to work sites. For the purposes of this article, a "dealer of heavy equipment rental property" means a person or entity principally engaged in the business of short-term rental of property as described under North American Industrial Classification System code 532412, as published by the Bureau of Census.

H.B. 2734 contains the following language regarding dealer collection of unit property tax on heavy equipment rental property. 11-6C-6 of West Virginia's State Code:

(a) For the purpose of the collection and remittance of property taxes on heavy equipment rental inventory, each dealer shall, with respect to each short-term

rental, assign a unit property tax to each item of heavy equipment rental property, state the amount of the unit property tax assigned to the item of heavy equipment rental property as a separate line item on the invoice or other billing statement issued by the dealer to the renter, and collect the unit property tax from the renter at the time the renter makes a short-term rental payment to the dealer. The unit property tax shall be in any amount not greater than two and one-half percent of the rental charge.

(b) Any business collecting the unit property tax authorized by this section shall account for and hold those amounts separately from all other business receipts and shall use such amounts solely and exclusively for purposes of paying the property taxes levied upon its heavy equipment rental property inventory.

(c) Any dealer collecting unit property taxes shall remit such amounts annually to the appropriate county sheriff on or before September 30, following receipt of annual tax statements. Any such remittances shall be credited against the dealer's property taxes attributable to dealer heavy equipment rental property for that year. Any unit property taxes remitted to any county in excess of the dealer's actual property tax liability attributable to its dealer heavy equipment rental property in that county shall be retained by the county having received the payments and no such excess shall be refunded to the dealer.

(d) Nothing in this section may be construed to exempt such heavy equipment rental property from property taxes.

(e) All unit property taxes collected from renters shall be excluded from any amounts subject to state or municipal sales or use taxes.

S.B. 427 CHANGES WVDEP SPECIAL ACCOUNTS SPENDING

The purpose of S.B. 427 is to convert certain nonappropriated special revenue funds administered by the Department of Environmental Protection into appropriated special revenue funds. The bill covers most all of the special revenue funds administered by the WVDEP. Those connected with construction projects include the AML program, Special Reclamation, Quarry Reclamation Fund, Dam Safety and Water Pollution Control. The bill states, "Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature."

Since many of the projects funded by these special revenue funds are allocated to projects as the projects move from design to construction stage (such as in the case of sewer projects, projects are awarded as they get design, right of way, permits and finance in place), it is not known how S.B. 427 would affect getting projects approved and put out to bid. The CAWV will meet with the bill's sponsors to discuss. The bill is the Committee on Judiciary then Finance.

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 2734	Del. Boggs and Westfall	Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory	2/28/17 - To Finance
HB 2744	Del. Hanshaw, Fleischauer, Lovejoy, Cooper, Ambler, Walters, Isner, Fluharty, R. Miller, Pushkin and Canestraro	Local Energy Efficiency Partnership Act	3/01/17 - To Political Subdivisions then Finance
HB 2764	Del. Espinosa, Statler, Harshbarger, Dean, Blair, Higginbotham, Westfall, Wilson, Moore, Cooper and Upton	Allowing the State Building Commission or the Higher Education Policy Commission to request and receive money from the Investment Management Board	3/01/17 - To Education then Finance
HB 2772	Del. Brewer, Storch, Diserio, Ferro, R. Miller, Lovejoy, Moye, Caputo, Eldridge, Maynard and Robinson	Requiring welders working in the State of West Virginia to meet certain certification requirements	3/01/17 - To Industry and Labor then Government Organization
HB 2775	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Relating to imposing, administering, and collecting a license tax on successful bidders for road construction contracts	3/2/17 - To the Judiciary then Finance
HB 2776	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Creating of special revenue funding sources for the Division of Labor	3/2/17 - To Industry and Labor then Finance
HB 2779	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	Supplementing, amending, decreasing, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation	3/2/17 - To Finance
HB 2803	Del. Miley [By Request of the Executive]	Granting authority to the Parkways Authority to issue revenue bonds and refunding bonds for the purpose of financing parkway projects (FN)	3/6/17 - To Roads and Transportation then Finance

SENATE BILLS			
Bill #	Sponsors	Proposal	Introduced/Committee

SB 427	Sen. Blair	Relating to special revenue funds administered by DEP (FN)	2/24/17 - Judiciary then Finance
SB 477	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Increasing State Road Fund by raising DMV fees and motor fuel excise taxes (FN)	2/28/17 - Transportation and Infrastructure then Finance
SB 480	Sen. Blair	Authorizing local government adopt energy efficiency partnership programs	2/28/17 - Government Organization
SB 482	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Relating generally to WV Parkways Authority (FN)	2/28/17 - Transportation and Infrastructure then Finance
SB 483	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Imposing license tax on successful bidders for road construction contracts	2/28/17 - Transportation and Infrastructure then Finance
SB 484	Sen. Carmichael (Mr. President) and Prezioso [By Request of the Executive]	Relating generally to taxation	2/28/17 - Finance
SB 485	Sen. Smith, Cline, Ferns, Mann, Maynard, Ojeda, Rucker and Sypolt	Relating to expansion of broadband service (FN)	3/01/17 - Economic Development then Finance
SB 501	Sen. Gaunch	Relating to WV Economic Development Authority	3/03/17 - Economic Development then Government Organization
SB 503	Sen. Plymale and Stollings	Establishing Library Facilities Improvement Fund	3/03/17 - Finance