The second session of the 84th West Virginia Legislature completed its 2020 Regular Session on Saturday, March 7, at midnight. Over 2,300 bills were introduced during the 60-day session, with 354 of those bills successfully passed by both the House and Senate, including a balanced budget of $4.8 billion for fiscal year 2020-2021.

The CAWV did not have many issues this year given this being an election year. However, there were a number of bills introduced that adversely impacted CAWV members or the construction industry. These bills were either defeated in committee or amended in order to modify their ramifications on construction.

There were a few bills that the state’s business community closely watched including bills to promote economic growth, get more young people in the workforce, and expand broadband access for more West Virginians. Legislators spent many hours refining and eventually passing overwhelmingly a key economic development proposal introduced this session.

CAWV MEMBERS THANKED FOR THEIR INVOLVEMENT

CAWV Legislative Chairman Nate Orders thanks all members who contacted their legislators during this year’s session on bills impacting the contracting industry and CAWV members. This Legislative Bulletin details some of the bills addressed this session. Anyone needing additional information can contact Mike Clowser at (304) 342-1166 or mclowser@cawv.org.

WEST VIRGINIA IMPACT FUND CREATED

H.B. 4001 creates the West Virginia Impact Fund, a fund designed to help attract outside capital to West Virginia that can be used to open new large-scale business projects and create jobs. “I truly believe this bill will use free-market, capitalist principles to revolutionize how we advance economic development in our state,” said House Speaker Roger Hanshaw, R-Clay, lead sponsor of the bill, in an interview. “We’ve all talked for years about the need to diversify our state’s economy to promote long-term growth, and I believe this bill will help accomplish that.”
In addition to the fund, the bill creates the Mountaineer Impact Office, which would identify potential business projects that could benefit from the fund’s investment of non-taxpayer dollars. The Impact Fund could then invest in these projects, creating new jobs for West Virginians while also producing an investment return for fund investors.

“Unlike efforts of the past, this bill is not about picking economic winners and losers or using taxpayer dollars and special tax incentives to lure potential new business,” Speaker Hanshaw said. “Instead, this bill leverages the power of the capital that’s already out there waiting for investment – and there are literally trillions of dollars around the world looking for potential investment – and creates a vehicle for our state to capture it and put it to work creating jobs in West Virginia.”

INVENTORY TAX AMENDMENT FAILS IN SENATE

Senate Joint Resolution 9 would have eliminated or lowered taxes on motor vehicles and any other tangible personal property taxes. The manufacturing community for years has said the state’s tax on inventory and machinery has been a deterrent in attracting manufacturing facilities to West Virginia. SJR 9 called for a constitutional amendment to go on the ballot in the November general election. Counties objected to the proposal since the inventory taxes are dedicated to counties and local boards of education. The Senate passed a bill to partially make up the $300 million by increasing the state sales tax by a half-penny and boosting taxes on tobacco products.

The resolution was defeated when backers did not get the necessary two-thirds votes needed for a constitutional amendment. Every Democratic Senator and a few Republicans voted against the measure. Senate Finance Committee Chairman Craig Blair, R-Berkeley, said he would bring the measure up again next year.

SB 303, STUDENTS’ RIGHT TO KNOW ACT, COMPLETED LEGISLATION

S.B. 303 requires the West Virginia Board of Education, the Higher Education Policy Commission and the Council for Community and Technical College Education to provide career-path information to students in public K-12 education. Information that will be provided to students includes the most in-demand occupations in West Virginia and their entry wages and education requirements, the average cost of two- and four-year institutions across the state, available financial assistance programs, the average monthly student loan payments based on potential choices, internship opportunities, and other important pieces of information. S.B. 303 received unanimous support in both the Senate and the House.

LEGISLATURE PASSES BROADBAND EXPANSION
On Saturday the Senate passed out H.B. 4051 which would update broadband enhancement and expansion policies in the state. The bill streamlines permitting processes and allow the state to contract with private carriers to use state-owned properties and buildings to locate and deploy broadband wireless infrastructure. This is the latest in a series of bills passed since 2017 to inspire broadband expansion in the state.

HOUSE DEFEATS CREATION OF INTERMEDIATE COURT

The West Virginia House of Delegates defeated on a vote of 44-56 S.B. 275 which would have established an intermediate court of appeals. Proponents say it’s needed to give businesses an avenue to appeal rulings without having to take their case to the state Supreme Court. Opponents said all cases are reviewed by the high court and this bill would be an unnecessary expense. This is the third year the bill hasn’t advanced.

H.B. 2646 WAGE AND HOUR SAFE HARBOR BILL PASSES

H.B. 2646 passed and will provide a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees. Under current law, if employers don’t pay a separated employee final wages or benefits, they open themselves up to lawsuits resulting in payment of wages, double damages and payment of legal fees. This bill gives employers seven days to correct any inaccuracies due to oversight or common mistakes.

LICENSED BILLS AFFECT CONTRACTORS, TRADES

A number of bills dealing with licenses and workers certifications were introduced and debated. Lawmakers stated that the hours required for trades such as plumbers and pipe fitters are a deterrent to get young people to enter the construction industry. Others promoted the requirements provided competency and safety for workers and consumers. Some bills passed and others died on the final day.

H.B. 4352 reduced hours required for fire sprinkler workers from 10,000 to 5,000. The original bill reduced the number to 1,000. H.B. 4185 exempted licensure for electricians installing low voltage wiring. It did not pass. Nor did H.B. 4155 changing classifications for plumbers. H.B. 4803, relating to certification of electrical inspectors, did pass.

BILL MODIFIES GOVERNMENT CONSTRUCTION CONTRACTS IN DECLARED EMERGENCY

Gov. Jim Justice has signed H.B. 4130. The bill is designed to encourage more construction companies to bid on housing contracts as people recover after natural disasters. Lawmakers have been considering policy tweaks since last spring, and it took a while to settle on an approach. The bill is meant to affect bidding on the
hundreds of housing contracts to help the people affected by the devastating 2016 flood. One amendment limited the bill to housing contracts, not other government construction contracts such as highways, water and sewer facilities and schools.

The second amendment added a provision that reads, “in the event a payment or performance bond is not required, the entity responsible for the contract shall provide to the state agency responsible for overseeing the work a document certifying that all of the claims of subcontractors, laborers, materialmen, and all persons furnishing material have been paid, satisfied, and discharged before final payment is released.”

“The intent is to streamline the purchasing process after a declared disaster,” said Delegate Dean Jeffries, R-Kanawha, chairman of the Joint Legislative Committee on Flooding. “As we saw in the past, we had some problems with the way our purchasing and bidding process worked. We had to bid large amounts of projects out in a lump sum, which was an inefficient process.” He said the new process will encourage bidding out in smaller sections, if not individually.

**SBA RULES BILL PASSED**

Changes to the School Building Authority of West Virginia’s construction policies has passed. S.B. 652 is a rules bill codifying the changes SBA has made to policies and procedures related to construction contracts, including post-project evaluation of architects and contractors and the possible suspension of a bidder’s right to bid future SBA-funded school construction projects. The CAWV Joint Architects Committee worked with SBA officials over the past year in developing the changes to the authority’s policies and procedures.

**BILL AMENDS STATE FIRE CODE**

The House passed H.B. 4275 which authorizes the Fire Commission to promulgate a legislative rule relating to the State Building Code. The Fire Commission is proposing an amendment to update the State Fire Code to reflect National Fire Protection Association (NFPA) standards.

**S.B. 517 CREATES FUNDING FOR PARKS**

S.B. 517 passed and creates the State Parks and Recreation Endowment Fund, to be funded from the proceeds of the leasing of gas, oil, and minerals from beneath the Ohio River and its tributaries. The purpose is to invest in state parks, state forests, state rail trails, and recreational facilities.

**BILL CLARIFIES WVDOH PROPERTY ACQUISITIONS**

S.B. 734 clarifying duties and powers of the WVDOH in acquiring property for state road construction, passed the House and will be sent
to the governor for his signature. In the past, WVDOH has had to pay large sums to acquire right-of-way for Appalachian Corridor and other major projects even though the actual roadway only takes a portion of a landowner’s property. This bill should save the state highway fund money when building new highways.

**S.B. 839 SEEKS TO INCREASE POST-SECONDARY GOALS FOR STUDENTS**

The stated purpose of S.B. 839 is to create a state advisory council to study and report to the Legislature on post-secondary credentials and achievements of the state’s post-secondary attainment goal. The real purpose of the bill is to get a better understanding of why only 35 percent of West Virginia’s population has post-secondary credentials and to develop a plan to assist the state in achieving a 60 percent rate for West Virginians between the ages of 25 and 64. The bill requires the Higher Education Policy Commission and the Council for Community and Technical College Education to develop recommendations along with representatives of the university systems, private industry and others. The CAWV’s Workforce Development Task Force has been working with West Virginia’s educational agencies and Department of Commerce on how to get more young people in technical training that would be interested in pursuing a career in construction. The bill is awaiting the governor’s signature.

State interim Higher Education chancellor and Community and Technical College Chancellor Sarah Tucker told lawmakers last week S.B. 839 was needed to help guide the state toward a trained workforce. “We need to do something to create some momentum around getting folks the credentials and training that they need in order to fulfill our state’s economic needs,” she told the Senate’s Workforce Committee.

**BILL CREATES COUNTRY ROADS WEBSITE**

H.B. 4017 establishes a “country roads accountability and transparency” program by directing the State Auditor to develop and maintain a searchable website of funding actions and expenditures relating to state and public roads. The Senate changed the House version to minimize the number of maintenance projects WVDOH would have to report on a daily basis to avoid having to account for every load of stone, asphalt, salt, etc. the WVDOH uses in its maintenance program.

**BILLS ADDRESS WATER AND WASTEWATER PROJECTS**

S.B. 551, The Water and Wastewater Investment Facilitation Act, provides for public utilities to be able to look at options to sell or lease their facilities in order to provide funds for additional water and sewer services. S.B. 589 requires the Water Development Authority to fund projects that are deemed “critical needs” through grant funds currently
available through the West Virginia Infrastructure and Jobs Development Council. **S.B. 552** raises from $2,000 to $25,000 the limit before the WV Water Development Authority has to put a contract out for bid.

**BILLS THAT DID NOT PASS THIS SESSION**

**LAWMAKERS WANTED CREDIT / DEBIT CARDS USED ON TURNPIKE TOLLS**

**H.B. 4083** requires the state Parkways Authority to have credit and debit card options available at the Turnpike’s toll plazas by July 1, 2022. The bill died when legislators did not take up a conference report in the final minutes of the session.

**S.B. 548 DOESN’T ADVANCE THIS SESSION**

There was a bill, **S.B. 548**, which would allow any firm or individual that was licensed in one state to automatically be licensed in West Virginia without taking tests or meeting state certification requirements. The CAWV opposed allowing out of state contractors, architects and engineers from coming to West Virginia and automatically be licensed unless there was reciprocity for West Virginia companies wishing to operate in other states. The bill was tabled in Senate Government Organization Committee.

**WV CONTRACTORS LICENSE BOARD ORGANIZATION UNCHANGED**

**S.B. 489** would have moved the WV Contractors Licensing Board out from under the WV Division of Labor and placed it in Chapter 30, a section of state code that contains most every other board or licensing agency, from architects, doctors, lawyer to hairdressers and tattoo parlors. A House bill, **H.B. 4181**, had been introduced the last few years to accomplish this but it has never gone to the floor for a vote. S.B. 489 is different than the House bill in that it does not create a separate agency to administer the activities of the Contractors Licensing Board. It appears the board could have continued to operate as it has utilizing WVDOL staff rather than having to hire a staff and ramp up with vehicles and other costs associated with operating an agency. The bill was defeated on the Senate floor on a 17-17 tie.

**BILLS ELIMINATING ALTERNATIVE FUEL VEHICLE FEES DEFEATED**

**H.B. 4060** and **S.B. 248**, as well as other bills, attempted to modify or eliminate the registration fees for alternative fuel vehicles. A fee was added in 2017 when the highway funding bills were being debated. The premise is that alternative fuel vehicles benefit from driving on good roads, but they weren't paying their fair share.
These bills remove or modify the requirements passed in 2017. Currently, the annual registration fee for a vehicle fueled with hydrogen or natural gas is $200. The annual registration fee for a vehicle operating exclusively on electricity is $200. The annual registration fee for a vehicle operating on a combination of electricity and petrochemical fuels is $100. The fee generates $1.1 million to $1.3 million annually to the State Road Fund. Revenue could increase as alternate fuel vehicle use increases.

COMPUTER SOFTWARE BILL DIES IN HOUSE COMMITTEE

The CAWV and architectural and engineering community mounted strong opposition to H.B. 2756 and S.B. 737, a bill to require contractors using computers to complete government contracts on a software that verifies the amount of hours worked on the computer for the contract. Many members responded to a CAWV Legislative Alert asking them to contact their legislators to oppose these bills. CAWV’s concern on the bills include the following:

- This bill would have a negative impact on every business that chooses to work with the State of West Virginia. The software, which the CAWV believes is only available from one company, would collect, hold and use data, much of which is confidential and proprietary.

- The storage requirements alone are staggering, but the security risks are even more alarming. All keystrokes, usernames, passwords and other private information could be captured by a third party.

- Predatory oversight by an unregulated out of state entity that could collect and hold data is not only a bad business practice, it sets a standard of distrust between vendors and the state which could result in companies deciding not to engage in contracting with the state of West Virginia.

- Tracking computer usage and activity is an invasive process that doesn’t come close to capturing all the work that goes into a project. Project management involves much more than inputting data into a computer. This bill wouldn’t even meet the stated objectives of the proposed bill.

- The government contracting process has thorough accountability and oversight. There are plenty of programs in place to make sure the contractor is meeting the contractual requirements of the project.

BILL CREATED “CONSTRUCTION INDUSTRY EMPLOYEE VERIFICATION ACT”
S.B. 496 would have prohibited the employment of unauthorized employees in the construction industry. An unauthorized employee is defined as an individual who does not have the legal right or authorization under Federal law to work in the United States. If passed, the bill would have required employers to verify the employment eligibility of the employee through the E-Verify program and to keep a record of the verification for the duration of the employee’s employment or three years, or whichever is longer.

The Attorney General would have investigated a complaint. If an employee is an unauthorized employee, the Attorney General shall notify the United States Immigration and Customs Enforcement. The AG will bring action against the employer, who has a rebuttable presumption if the employer verified the employee through E-Verify. The employer could have his/her license suspended for a violation of the code.

BILL WOULD HAVE ELIMINATED READING OF WVDOH BIDS

West Virginia Division of Highways would no longer read bids aloud during lettings under a proposal by the WVDOH. H.B. 4404 would have eliminated language in state code mandating bids be opened and read aloud. The WVDOH approached the CAWV seeking comment on eliminating the long-standing practice of DOH personnel opening and reading the bidders on each project during the Tuesday lettings. The division cites the ability to post bid results on their website as being sufficient to provide a public opening. The CAWV did not support the bill at this time.

BILL ALLOWING UNLIMITED LISTING OF SPECIALTY CONTRACTOR LICENSES REJECTED

H.B. 4606 would have prevented the WV Contractors Licensing Board from limiting the number of specialty categories a contractor could apply for. Currently, the board limits a contractor to three specialty licenses on the basis that if a contractor is doing a lot of activities, they should have a general building, engineering, or homebuilders license. The Senate on the 60th day defeated the bill on a 15-19 vote.

S.B. 674 GAVE WVDOH AUTHORITY TO CIRCUMVENT STATE CONTRACTS FOR EQUIPMENT AND HARDWARE

S.B. 674 would have permitted the Commissioner of the Division of Highways to purchase hardware items and equipment from a local seller rather than the holder of a state contract if the cost of the item or equipment is less than the cost from the holder of the state contract. This bill was introduced last year but did not advance. The CAWV and WVDOH questioned what type of equipment or
material could be purchased outside the state contract and what procedures would be followed.

**S.B. 265** passed the Senate which would establish and implement a program to reclaim abandoned and dilapidated structures in the State to improve communities and to open new parcels for development. Dilapidated and abandoned structures are a blight on state communities and invite criminal activity as well as deter financial investment in state communities. The Reclamation of Abandoned and Dilapidated Properties Program will provide the State and its counties with a new tool to spur investment in our communities. The proposal and bill was developed by Senator Chandler Swope, R-Mercer. The bill did not get on a House committee agenda.

**ADDITIONAL BOND FOR CITY TAX PAYMENT BILL DIES IN COMMITTEE**

**H.B. 4811** died this session when the bill was not taken up by the House Government Organization Committee. The bill would have required vendors bidding on state contracts in excess of $1 million to furnish surety bonds for the purpose of paying municipal taxes where the contract work will be performed. The bill is a result of a legislative study that reported municipalities were missing out on business and occupation taxes and other fees when contractors, particularly out-of-state firms, working within city limits finish the project without paying local taxes. The CAWV noted at the time that many agencies require contractors to furnish a release from municipalities showing payment before final payment can be released.

The way H.B. 4811 was written, all bidders would have to submit this additional bond with their bid instead of only the low bidder having to provide a bond prior to award of the contract. The state Purchasing Director would determine the amount of the bond that would be required.

A companion bill, **H.B. 4869**, required a public entity bidding a public contract to notify all municipalities and counties that the project will be performed within their borders. On first read, this would eliminate the need for H.B. 4811. Currently, the WV Division of Highways and other owners require contractors to provide proof that all permits, licenses and taxes have been paid before release of final payment. If all contracts had this provision, all bidders, including out-of-state firms bidding a project for the first time, would know to take care of their municipal B&O tax obligations. This bill was never placed on the agenda of the House Political Subdivisions Committee.

**BILLS OF INTEREST THAT DID NOT PASS**
• SB 11: Relating to certification requirements of crane operators
• SB 148: Creating Road Maintenance Program (FN)
• SB 159: Allowing municipalities to contract projects up to $50,000 without bidding
• SB 239: Requiring general contractors to have and maintain general liability insurance
• SB 248: Repealing additional registration fees for alternative fuel vehicles (FN)
• SB 315: Creating Special Road Repair Program (FN)
• SB 516: Allowing DNR procure architect-engineer services (FN)
• SB 587: Mandating escorts for vehicles that exceed maximum width requirements
• SB 619: Relating to motor fuel excise tax
• SB 736: Relating to public service districts' laying of certain utility lines on state rights-of-way
• SB 815: Removing residency requirement for Commissioner of DOH
• HB 2028: Limiting supervision of laying of lines on state rights of way (FN)
• HB 2056: Repealing the West Virginia Workplace Freedom Act and restoring prior law
• HB 2076: 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)
• HB 2112: Relating to failure to maintain state and public roads
• HB 2120: Providing local government the authority to place video cameras at road intersections
• HB 2138: Prohibiting blasting within six-hundred twenty-five feet of an occupied dwelling
• HB 2156: Creating a tax credit for improving facades in historic districts (FN)
• HB 2159: Requiring paving contracts for state highways to have special requirements to prevent potholes
• HB 2387: Requiring the Commissioner of Highways to verify legal employment status of contractors and vendor’s employees for certain road and bridge contracts
• HB 2573: Relating to payment for the construction of any expanded or upgraded public service district facilities in certain circumstances
• HB 2944: Relating to paving contracts (FN)
• HB 3040: Repealing the law which makes prime contractors liable for the failure of subcontractors to make proper payments for workers’ compensation (FN)
• HB 3092: Creating a pilot program to encourage utility infrastructure development to certain lands (FN)
• HB 4060: Removing the registration fee for a vehicle operating on a combination of electricity and petrochemical fuels (FN)
• HB 4086: Removing certain requirements related to wages for construction of public improvements
- **HB 4120**: Requiring the Commissioner of Highways to develop a formula for allocating road funds among districts
- **HB 4163**: Repealing section of code authorizing additional registration fees for alternative fuel vehicles (FN)
- **HB 4463**: Relating to prequalification of vendors for state contracts
- **HB 4736**: Relating to qualifications for a commercial driver's license permit
- **HB 4738**: Creating a tax credit for improving facades in historic districts (FN)
- **HB 4741**: Reducing the motor fuel excise tax (FN)
- **HB 4757**: Establishing tax credits for lead abatement in child occupied residences (FN)
- **HB 4791**: Altering the definition of a specialty contractor under the West Virginia Contractor Licensing Act
- **HB 4798**: Creating an exemption under the West Virginia Contractor Licensing Act for work performed by certain subcontracted specialty contractors
- **HB 4847**: Requiring the commissioner to establish a website for state residents to submit road maintenance requests
- **HB 4869**: Requiring a public entity accepting a bid on a public contract to notify all municipalities and counties
- **HB 4947**: Repealing additional registration fees for alternative fuel vehicles (FN)

For a complete list of bills that passed during the 2020 session of the West Virginia Legislature, [click here.](#)