The 84th West Virginia Legislature completed its 2019 Regular Session on Saturday night at midnight. Over 1800 different Bills were introduced during the 60-day Session, with 294 of those bills successfully passed by both the House and Senate, including a balanced budget for fiscal year 2019-2020.

Several positive Bills were approved by the WV Legislature this year, including significant updates to the WVDEP air and water quality standards with the rules necessary to implement harmonic mean flow and overlapping mixing zones (SB 163); wireless small cell deployment (SB 3); expansion of community and technical college programs with the "last dollar in" tuition program (SB 1); expanded utility access to DOH rights-of-way (SB 270); necessary banking revisions to allow for the implementation of the state's medical cannabis law (HB 2538); a reduction in the severance tax rate for steam coal (HB 3142); a 3-year phased elimination of the personal income tax on Social Security benefits (HB 2001); restrictions on third-party litigation financing (SB 360); and revisions to the Medical Professional Liability Act (SB 119 and SB 487).

With the engagement of many WV Chamber members, we were also successful in defeating a number of negative Bills during the 2019 Session, including the Campus Self-Defense Act (HB 2519); the Katherine Johnson Fair Pay Act (SB 412); and the WV Intellectual Property & Trade Secrets Act (HB 2014).

There were, unfortunately, several good Bills which the WV Chamber supported that were not passed by the Legislature this year, including the creation of an Intermediate Appellate Court (SB 266); codification of an Appeal as a Matter of Right (HB 2164); the Omnibus Education Reform package (SB 451); and legislation to reduce or repeal the Tangible Personal Property Tax on business equipment and inventories (HJR 17, HJR 23 & SJR 11).

Following the conclusion of the 2019 Regular Session, Governor Jim Justice immediately announced a Special Session to address issues relating to "education betterment" and teacher salaries. Legislators will return to Charleston at an unspecified date in the future for this Special Session.

This CAWV Legislative Bulletin recaps bills of importance to the contracting industry and CAWV members.

**WORKFORCE DEVELOPMENT AT FOREFRONT**

The CAWV Board of Directors has made workforce development a top priority of the association this year. The CAWV Workforce Development Task Force has met once to outline its goals and objectives, one of which is to create a future qualified workforce for West Virginia's construction industry.
A major topic for the Legislature this session involved workforce development. Senate President Mitch Carmichael, R-Jackson, was championing his “last dollar in” bill to help students access community and technical college education. S.B. 1 is the bill is to relieve students of the cost of tuition at colleges where they could earn associate degrees and job training, but it also calls for the creation of advanced career education (ACE) programs through partnerships between public secondary schools and community and technical colleges. One purpose of the bill is to establish “clear and efficient pathways that begin in high school and lead to obtaining advanced certifications and associate degrees.” The idea is to increase the number of students who ultimately obtain post-secondary credentials or degrees.

H. B. 2004 is intended to provide better communication to students and parents on career and technical education programs that begin in high school and lead to industry-recognized credentials, certificates of applied science and associate degrees in high-demand, high-wage occupations in West Virginia. In addition, the bill would attempt to strengthen the integration between career-and-technical education programs in public schools and programs at community and technical colleges that lead to high-demand, high-wage jobs. It also would require identification of which competencies that students already have gained would count toward getting occupational licenses.

S.B. 152 will allow for criminal record expungement, rather than just reducing felonies to a misdemeanor. It has a further goal: Allowing people with criminal records to return to the workforce. The CAWV worked with representatives of the governor’s office, Adjutant General James Hoyer and legislators to tailor the bill to provide career training, drug testing and other measures that would enhance someone’s ability to be hired in the construction industry. The CAWV noted that being drug-free with some level of construction training is good but that showing up every day on the jobsite, many times in remote parts of the state, is essential to being employable. It was noted that many times people convicted of crimes have lost their drivers’ license and have huge fines that they are unable to pay. A separate bill, S.B. 90, was passed introduced to provide some type of forgiveness in order to get licenses reinstated.

The House, at 11:43 p.m. Saturday, approved by a vote of 77-22-1 S.B. 453, which provides about $13 million in supplemental appropriations to “Jim’s Dream,” Gov. Justice’s drug treatment program aimed at getting people into the job market by offering training program. The CAWV Workforce Development Task Force has been working with the West Virginia National Guard in their construction training programs at Camp Dawson and in Boone County.

**S.B. 153 PROVIDES GREATER FLEXIBILITY IN INFRASTRUCTURE GRANT PROGRAM**

S.B. 153 allows the West Virginia Infrastructure and Jobs Development Council to transfer money from its loan program to be used for grants. Under the present IJDC funding mechanism, water, sewer and economic development funds are divided among West Virginia’s three congressional districts. The funding is then divided into loan funds which must be repaid by the recipient of the funds and grant funds which do not need to be repaid. Grants cannot exceed 20 percent of the total funds available for the funding of projects. Over the past few years, the IJDC has had excess loan funds, especially in West Virginia’s Third District, because the recipients
haven’t had enough of a rate base to be able to repay a loan. S.B. 153 increases the grant formula to 25 percent and add the following: That if on January 1 of any year, the amount available for grants in any congressional district is below $150,000, the council may convert up to 30 percent of the funds available for loans in that congressional district to be used for grants within the congressional district, if and when needed to make an award.

**LIMESTONE SEVERANCE TAX ELIMINATION AWAITING GOVERNOR’S SIGNATURE**

H.B. 2829 eliminates the severance tax on limestone and sandstone. The West Virginia Crushed Aggregates Council has worked for years to get a uniform structure for severance tax liability. The bill eliminates the severance tax entirely and puts West Virginia stone producers on equal footing with Pennsylvania, Maryland and Virginia that have no severance tax on limestone. The House passed the bill 78-16 and the Senate passed it by a vote of 26-6. H.B. 2829 was also inserted in H.B. 3142, a bill to reduce the severance tax on steam coal from 5 percent to 2 percent. The limestone exemption language had to be inserted in the coal bill since they both deal with the same section of state code (11-13A). Procedurally, since H.B. 3142 passed last, it would have nullified H.B. 2829. The governor can sign H.B. 2829 and not H.B. 3142, or sign H.B. 3142 and not need to sign the limestone bill.

**SCHOOL BUILDING AUTHORITY MODIFIES RULES**

The state School Building Authority presented its proposed rule changes that will reduce some of the agency’s regulation of the school construction and renovation projects it funds. S.B. 672, approved by the legislature, adopts changes that affect six policies, including no longer requiring counties to submit the list of architecture and engineering companies that have bid on their SBA-funded projects to the SBA for “review and evaluation” before the county picks a winner. Ben Ashley, director of architectural services for SBA, said most counties ask for this help regardless, and the SBA will continue to review construction bidders.

The proposal removes sections saying the SBA assigns the project management strategy for all projects” and “identifies” the “requirements for project design and construction administration,” instead saying the county “shall work with the design professional to develop a project management strategy.”

Also removed is a line saying that “if a construction manager is required, the [county] will be required to follow SBA policy regarding the procurement of professional construction management services.” SBA staff must still review the contract. The proposal raises from $100,000 to $750,000 the amount a construction project must cost before a county has to hire a clerk of the works. The ability for the SBA to grant a waiver from this hiring remains.

Ashley said clerks of the works, unlike construction managers, merely observe and report on projects and don’t have the power to stop non-compliant work and don’t have responsibility to coordinate contractors. The proposal also removes the requirement for the SBA to approve clerk of the works candidates. Other changes increase the dollars counties could receive for renovations, among other things.
BILLS PROMOTE HIGHWAY MAINTENANCE PROGRAM

A number of bills were introduced this year which addressed highway maintenance. Some dealt specifically with construction methods, such as how paving projects are to be designed, developing an app that identified locations of potholes, a requiring paving contractors to maintain their project for seven years. H.B. 2011 would have required the state’s Division of Highways districts to come up with detailed maintenance plans for the roads in their districts by Dec. 1. If the districts were unable to complete 90 percent of those plans in a given year on their own, the bill required them to hire private contractors to perform this work. None of the bills passed provided any new revenue for the West Virginia Division of Highways’ construction or maintenance fund.

The Senate passed S.B. 522, a bill to create the Special Road Repair Fund for the maintenance and repair of the state’s roads and highways. The original bill, “Randy’s Dream” for Senator Randy Smith, R-Tucker, provided for two percent of the severance of natural gas and oil and coal and other mining to be transferred to the new fund. The bill also required a one-time transfer of $200 million from the Rainy Day Fund. The bill also creates a new article that establishes a procedure for contracting road maintenance work for potholes, mowing, ditch removal and snow removal with most of the work to be contracted out to private companies.

The Senate’s version called for $110 million a year for two years that will be funded out the general fund. Senate Finance Committee approved an amendment that will give each county $1.5 million to help with its maintenance needs. The House stripped the funding out of the bill. The final version just says the WVDOH can allocate up to $80 million for its maintenance program. Future funding options will have to found to provide any new money to the division.

H.B. 3044 requires the Commissioner of Highways to develop a formula for allocating road funds among districts, for the benefit of the counties; to make legislative findings; to require the commissioner to solicit and consider public comments; to require the commissioner to consider certain factors when developing the formula; and to require the commissioner to submit the formula to the Legislature for approval as a legislative rule.

BILL MODIFIES PROJECT LIMITS ON WVDOH DESIGN-BUILD PROJECTS

The WV Division of Highways introduced S.B. 538 to modify the state’s highway design-build program. The bill that passed the legislature splits design build into two sections: The regular state and federal-aid highway program; and projects funded by the bonds from the Roads to Prosperity bond amendment, GARVEE bond program and WV Turnpike bond program.

For the regular formula funding program, individual project size remained at the current $200 million level, but the yearly obligation limit for design-build projects was reduced to $200 million per year with a $100 million rollover in any one year from the current design-build formula which is $400 million with a $100 million rollover.
A new section was added to give the WVDOH more flexibility in getting bond projects through design and construction. The individual project limit on bond projects is $300 million. The division can obligate $600 million with a $100 million rollover in any one year. This change was requested by the division to expedite bond projects. The bill will become effective from the date the governor signs the bill rather than from 90 days so the DOH can keep bond projects moving.

**H.B. 2049 PASSES ON FINAL DAY**

H.B. 2049 relates to a prime contractor’s responsibility for wages and benefits. Wage payment act claims have a five-year statute of limitations. Under the wage payment act, an employee of a subcontractor may seek repayment of wages and benefits from the prime contractor. This bill seeks to address belated claims where the prime contractor, with no prior notice, is subject to suit long after a construction project ceases, due to the failure of a subcontractor to pay its employees. Legislators Saturday approved a committee substitute that provides that if an employee writes a letter to his employer about wage or benefit payments, the employer has seven days to respond and the issue can be resolved without legal fees having to be paid by the employer. If the employer fails to respond, the employee can still file a lawsuit and get their legal bills paid.

The bill also states an employee must notify the prime contractor within 100 days of being notified by a statement or other means that wages or benefits were not paid. Once the prime contractor is notified, the employee has 1 year to take action (civil suit) and must produce proof (pay stubs/bank statements) to show missing wages and benefits.

H.B. 2005, the Broadband Expansion Act of 2019, will allow broadband and wireless internet carriers to use existing rights-of-way and utility poles to place new network technologies. It also requires electric utility companies to study whether they can use their distribution networks to provide broadband services. It will also change how new broadband and wireless infrastructure is valued for property tax purposes. These changes are designed to encourage development by dramatically reducing the cost of building or expanding broadband networks in the state.

“Broadband internet access has the potential to connect our state to the rest of the world like nothing else before,” Speaker Roger Hanshaw, R-Clay, said. “This bill will not only help local businesses and entrepreneurs access new markets, but allow our children to connect to new online educational opportunities and provide seniors access to telemedicine and the most advanced health services.”

**BILLS THAT DID NOT MAKE IT THROUGH LEGISLATIVE PROCESS**

Over 1800 different bills were introduced during the 60-day Session, with 294 of those Bills successfully passed by both the House and Senate, including a balanced budget for fiscal year 2019-2020. Below are some of the bills tracked by the CAWV that did not pass this session.

Bills that did not go further than the committee process include H.B. 2203, making the WV Contractors Licensing Board a stand-alone board, H.B. 2353, requiring the WVDOH to buy
material and equipment locally if the price is lower than what’s listed in the statewide contract, H.B. 2534, the Buy America Act, and S.B. 456 which would have exempted railroads and airlines from paying the wholesale gas tax that would have cost the State Highway Fund $2 million annually.

SENATE FINANCE POSTPONES FUEL TAX EXEMPTION BILL

A bill intended to authorize railroad and commercial watercraft claims for refundable exemption on motor fuel excise taxes was postponed indefinitely during Thursday’s Senate Finance Committee meeting. S.B. 456, which had come before the committee twice prior to the decision, spurred caution among members. During the bill’s latest review on Feb. 19, committee chair Sen. Craig Blair, R-Berkeley, expressed concern over the legislation and requested for more testimonies to come before the committee before a decision would be given. This bill has been introduced numerous times over the years. Exempting locomotives and aircraft from tax on the wholesale price of gasoline would cost the State Road Fund $2 million to $3 million annually.

INDUSTRY AND LABOR COMMITTEE PASSES BILL RELATING TO CONTRACTORS WAGES FOR SUBCONTRACTOR EMPLOYEES

TAX BILLS CLARIFY REGISTRATION REQUIREMENTS FOR NONRESIDENT PRIMES AND SUBS

S.B. 455 and H.B. 2819 amends State Code to expressly clarify that business registration requirements apply to both nonresident contractors and nonresident subcontractors, and to amend the code so that the requirement to post bond applies to both nonresident contractors and nonresident subcontractors, and to specifically include with the bonding requirement, municipal consumers sales and service tax and use tax, special district excise tax, as applicable. Both bills are referred to their respective Finance Committees.
The House Government Organization Committee Wednesday passed 14-10 H.B. 2203, which transfers operation procedures of the West Virginia Contractors Licensing Board. The board currently utilizes the West Virginia Division of Labor (WVDOL) personnel to run their day-to-day duties. The bill requires the board to set up its own operations, administrative duties, licensing, inspection and record keeping without the involvement of the WVDOL. The bill would put the contractors licensing board under Chapter 30 in the State Code which is where all other licensing boards are listed. While there is merit to this, the question is what additional costs will there be to the Contractors Licensing Board if it must hire its own inspectors and provide benefits and vehicles. Will this additional cost require an increase in the annual licensing fee? The bill will go to House Judiciary Committee before going to full House of Delegates.

The committee also passed H.B. 2353 to give the WV Division of Highways the authority to “purchase hardware items and equipment necessary for the betterment of the state-wide road system 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.” The purpose of the bill is to allow WVDOH personnel to go to Lowe’s or the local equipment dealer when they want to purchase material or equipment and bypass the state-wide contract on that item. The bill goes to the House Judiciary Committee.

H.B. 2353 has been introduced and referred to the House Government Organization, then Judiciary Committee. The stated purpose is to give the WV Division of Highways the authority to “purchase hardware items and equipment necessary for the betterment of the state-wide road system 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.”

The CAWV assumes the purpose of the bill is to allow DOH personnel to go to Lowe’s or the local equipment dealer when they want to purchase material or equipment. A version of this bill has been introduced before. Legislators have commented the agency should be able to get a lower price if it can be purchased locally. There has been no discussion to my knowledge about what the agency would do when maintenance or repair work is required on a piece of equipment.

The House Government Organization Committee is expected to pass today H.B. 2203 which transfers operation procedures of the West Virginia Contractors Licensing Board. The board currently utilizes the West Virginia Division of Labor (WVDOL) personnel to run their day-to-day duties. The bill requires the board to set up its own operations, administrative duties. Licensing, inspection and record keeping without the involvement of the WVDOL. The bill would put the contractors licensing board under Chapter 30 in the State Code which is where all other
licensing boards are listed. While there is merit to this, the question is what additional costs will there be to the Contractors Licensing Board if it must hire its own inspectors and provide benefits and vehicles, and will this additional cost require an increase in the annual licensing fee? The bill will go to House Judiciary Committee before going to full House of Delegates.

**NUMEROUS LABOR, LICENSING BILLS INTRODUCED IN FIRST WEEK**

Numerous bills were introduced last week dealing with labor related issues. These range from making sure the WV Division of Labor cannot request payroll information on public projects since legislators eliminated the state’s prevailing wage rate (H.B. 2045 and S.B. 69) to reinstating the state’s prevailing wage rate (H.B. 2057). There are bills that modify the state’s crane certification process (S.B. 64), certification of HVAC workers (H.B. 2247 and S.B. 225) and H.B. 2049 which would eliminate the prime contractor’s responsibility for wage and benefit payments by their subcontractors and suppliers.