



**WV BUY AMERICAN ACT BILL CONSUMES FINAL DAYS OF LEGISLATIVE SESSION**

The second session of the 81<sup>th</sup> Legislature of West Virginia concluded at midnight on Saturday, March 10. A number of bills followed by the Contractors Association of West Virginia were deliberated in the final hours of the 60-day session while others completed action earlier in the week. A number of bills that were still in play up to the last minute did not pass when House and Senate conferees could not reach agreement or when time finally ran out. There were 104 House bills passed and 94 Senate bills. A bill that generated a lot of concern among CAWV contractor, subcontractor and supplier members was [H.B. 4168](#), the West Virginia Buy American Act. The bill passed the House of Delegates by a 90-7 vote and was referred to the Senate Government Organization Committee. The bill would have required each construction contract made by a public agency to contain a provision that the iron, steel, manufactured goods, coal and timber used or supplied as construction materials shall be manufactured or produced in the United States. The bill was patterned after the Buy American Provision that was included with American Recovery and Reinvestment Act (ARRA) projects. This was the third year the bill was debated.

The bill was still in play until Thursday evening when the Government Organization Committee did not meet. Had the committee met, the bill would have probably been on the agenda and passed out, although in a different form than the House. A number of Senators questioned how a Buy American provision would work, especially since West Virginia's largest trading partner, Canada, came out in opposition to the bill. Many CAWV members contacted their Senators to voice their concern over the bill. Representatives of the Steelworkers Union have pledged to bring back the Buy American bill next session.

**WATER CRISIS CONSUMES MUCH OF SESSION**

The tank leak that caused a nine-county region to go without water for over a week spawned numerous bills to regulate above ground storage tanks and probably set the tone for the remainder of this year's legislative session. Lawmakers spent more time on this issue than anything else. Gov. Earl Ray Tomblin held a press conference the first week of the session to introduce his bill which gave the WV Department of Environmental Protection the authority to regulate the construction and

maintenance of above ground tanks. In addition, the bill requires water utilities to have contingency plans for emergencies. Sen. John Unger, D-Berkeley, introduced his bill which covered the regulation of a number of tanks. The Senate Natural Resources Committee combined many of the elements in both bills into one. The Senate Judiciary Committee further amended the bill and sent it to the Senate floor with a recommendation for passage. The House sent the bill to three committees, causing Senators to question their motive. House leaders responded by noting that the more committee reviewing, the better. The bill finally passed the House Wednesday following many changes and modifications. The House and Senate reached a final agreement on the bill Saturday and it now goes to the Governor for his signature. A report on what changes, if any, the construction industry can expect relating to their storage tanks will be sent to members soon.

Another topic that consumed, and will continue as lawmakers meet this week, is the Fiscal Year 2015 budget. The governor projected a nearly \$150 million shortfall in next year's budget and proposed a number of measures including cost cutting, diverting funds from programs into the general fund and tapping the state's nearly \$1 billion Rainy Day Fund.

[S.B. 334](#), the governor's bill to divert \$13 million a year for two years from the State Road Fund to the state general fund, was not supported by legislators who think the highway fund needs more funds, not less. The Senate Transportation Committee defeated the bill and it was not resurrected. However, [H.B. 4333](#), the lottery proceeds bill that deferred revenue to horse and dog racing firms, counties and cities that have casinos, and the WV Infrastructure Fund was still moving. The bill diverted \$20 million of the annual \$40 million in lottery proceeds going to the WV Infrastructure Fund to the general fund. The original bill took \$20 million a year for three years from the WV Infrastructure Fund, for a total of \$60 million. Cities and counties balked at losing funds and they were removed from the bill. The CAWV and others objected to \$60 million coming from the Infrastructure Fund and the bill was amended to a one-year transfer totaling \$20 million. Lawmakers with horse and dog tracks continued to raise objections and the bill passed the Senate in the final minutes of the session. There was not enough time for the House to act on the bill and it failed. The governor and lawmakers now have a bigger hole in next fiscal year's budget and they will have to dip further into the Rainy Day Fund or reconsider the bill in a special session which could be held during this week's budget session.

In meetings with the CAWV, Secretary of Revenue Bob Kiss stated he would rather not take any money from the infrastructure fund and would only use it if absolutely necessary. It came to light that taking infrastructure funds is needed not just to balance the 2014-15 state budget but to maintain a AAA credit rating for state bonds backed by Lottery revenues. This issue affects not only the WV Infrastructure Fund, but the pending issuance of \$52.5 million of Lottery bonds for improvements at

Cacapon and Beech Fork state parks and the \$246 million worth of Chesapeake Bay watershed projects (see the Feb. 17 [CAWV Legislative Bulletin](#) for full details).

The governor also proposed [S.B. 329](#), which proposed the same moratorium on dollars going to the Special Railroad and Intermodal Enhancement Fund during the fiscal years 2015 and 2016. S.B. 329 suspended the transfer, whose purpose is for construction, reconstruction, maintenance and repairs of railways. Senate Transportation members noted that the Prichard Intermodal Facility in Wayne County became a reality because it was able to move quickly on securing a Federal Highway Administration TIGER grant since the state funds were available to match the federal dollars. They noted that other intermodal projects could become a reality in Martinsburg and in the Northern Panhandle. This bill did not progress.

### **SESSION BEGAN BY SPOTLIGHTING HIGHWAY FUNDING NEEDS**

As in the past two years, this year's legislative session began on a transportation theme as over 200 CAWV members and West Virginians for Better Transportation coalition partners flooded the State Capitol and both the House of Delegate and Senate chambers on Thursday, January 9. The group all wore reflective vests making the message of "Roads = Jobs" visible to lawmakers. The group filled both the House of Delegates and Senate balconies for their 11:00 a.m. floor sessions. The CAWV knew that highway funding issues were not going to be part of this session but the need for highway funding needed to be before legislators. Senate President Jeff Kessler, Senate Transportation and Infrastructure Committee Chair Bob Beach, and Delegate Margaret Staggers, chair of the House Roads and Transportation Committee, spoke to WVBT attendees and promised their support for future highway funding. Any funding proposals would probably be handled in a special legislative session on highways.

### **CAWV PRESIDENT THANKS MEMBERS FOR THEIR PARTICIPATION**

"Many members spent much time contacting and working with their legislators on issues that directly affected our industry," said CAWV President Phil Weser, March-Westin Company, Morgantown. "Members were active in the Buy American bill, funding bills and other bills that were important to our association," he said. "I thank everyone who helped during this session. We would not be as nearly successful as we were without our members' commitment and involvement," he said.

### **BILLS OF INTEREST TO CAWV**

***The following are bills the CAWV tracked closely during the 60-day session.*** For more information on a particular piece of legislation, contact Mike Clowser at (304) 342-1166 or email [mclowser@kawv.org](mailto:mclowser@kawv.org).

### **OSHA 10-HOUR SAFETY PROGRAM BILL PASSES; EFFECTIVE**

## JULY 1

[S.B. 376](#), requiring all employees working on public works project to complete the OSHA 10-Hour safety program, passed after about five years of debate. The bill addresses many of the concerns the CAWV has raised in opposition to the bill. The bill goes into effect July 1, 2014 but language in the bill gives ample time for contractors to get their employees through the course. The CAWV will provide opportunities for training for any member needing to have their employees go through the course. The bill, which is considerably different from previously introduced versions, contains the following provisions:

- All construction workers on a publicly-financed project over \$50,000 must complete the OSHA 10-Hour safety course (Course). The course is a one-time requirement, not annual.
- The bill goes into effect July 1, 2014.
- For the first year (July 1, 2014 to July 1, 2015) construction workers have to be employed at the public improvement site before they need the course. This will give current employees time to take the course.
- After the first year, employees must complete the course no later than 21 calendar days after starting employment at a public improvement site. The time for a new employee starts when he/she begins on a project, not when he/she is hired. This gives the contractor time to evaluate the employee to determine if he/she is going to be made permanent and, therefore, needs to complete the course.
- S.B. 376 makes the course a requirement of the employee, not the contractor. Employees can pay for the course and take the course on their own time. Contractors can provide and pay for the course for their employees, and contractors can pay their employees' time for taking the course, but this is not required. The employee must show the contractor he/she has taken the course and provide the contractor with documentation.
- The WV Division of Labor may issue a cease and desist in performing work at the site to any employee who has not completed the course.
- The WV Division of Labor may assess a civil penalty of not less than \$100 nor more than \$1,000 to a business that does not get the necessary documentation from the employee. Anyone who falsely represents the training program has been completed is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$250 nor more than \$2,500. All provisions dealing with

jail time was stricken from the bill.

### **SENATOR KESSLER'S FUTURE FUND PASSED IN AMENDED FORM**

[S.B. 461](#), a bill that would put a portion of oil and natural gas severance tax revenue in a special account for future use, was introduced by Senate President Jeff Kessler and passed in the waning minutes of the session. The bill, as introduced, creates the Future Fund which would have been funded by depositing 25 percent of oil and natural gas severance tax revenues more than \$175 million into the account. The interest received on the account can be spent on economic development projects, infrastructure and educational enhancement. In order to build up the principal there is a delay rider that provides that nothing shall be expended for a period of six years. After six years, the Future Fund account could have been significant. President Kessler has introduced the bill before and patterned it off of a North Dakota law which has generated billions from their oil and natural gas revenues. The House amended the bill by changing the funding mechanism and expanding the items to be funded. The House version sets aside 3 percent of all severance tax revenues. There is no threshold the severance tax must meet before revenues are set aside, which could affect the state budget. If budget figures are not met, little to none would be set aside for the Future Fund. Sen. Brooks McCabe, D-Kanawha, who has promoted a number of economic development proposals in his 16 years in the state Senate, remarked on the changes. "In my opinion, there is no way in the world unless the economy absolutely takes off with us, we will pass the first trigger that would allow the money in 2017 to come out." The President said he wished the Senate version had prevailed.

### **GOVERNOR'S PURCHASING REFORM BILL PASSED**

The governor introduced [S.B. 356](#), his purchasing reform bill. The bill mostly deals with commodities. It does provide for reverse auctions but construction is prohibited from utilizing reverse auctions for procurement.

### **S.B. 485 STREAMLINES WVDOH PERMITTING PROCESS**

[S.B. 485](#) exempts the WV Division of Highways from the permitting requirements of the Natural Stream Preservation Act when it is building temporary construction access for bridge repair, so long as the construction does not impeded or impairs boat passage. This does not address a 404 permit, it just precludes the state from having to get another permit from the WV Environmental Quality Board of the WV Department of Environmental Protection.

### **WVDOH CAN UTILIZE ELECTRONIC TOLLING, BUT ONLY ON NEW ROADS**

The WV Division of Highways, for the fourth time, introduced legislation to allow for electronic collection of tolls on highways. [H.B. 4156](#), Electronic Toll Collection Act, passed this session although it's hard to determine

where it will be used in the near future. Many states have the bars over the road that reads the vehicle's transponder and automatically charges the toll. The WVDOH wanted the same ability, especially if any road project is built where this would be an advantage to toll collection. Certain lawmakers questioned privacy issues where the car's license would be photographed and recorded. Others did not want electronic tolling on the WV Turnpike in case toll booth jobs would be lost. The bill was amended to specifically exempt the Turnpike and any project on the WVDOH's current six-year plan. That leaves the question as to what road would ever be built in which electronic tolling would be viable. The bill completed action on the last day of the session.

### **WEST VIRGINIA LAUNCHPAD ACT HOPES TO INCENTIVIZE DEVELOPMENT ACTIVITIES**

[H.B. 4343](#), the Project Launchpad Act, is designed to encourage economic development and job creation in 10 economically distressed areas of the state, known as launch pads. Businesses involved in innovative or emerging technologies that locate with the launch pads could qualify for a number of tax credits, including new jobs credit of \$1,250 a year for each new full-time job with benefits created within the zone. Qualifying businesses would also be exempt from paying sales taxes, personal income taxes, corporate net and business franchise taxes for up to 16 years, and any personal property and real property directly used in the state-of-the-art technology would be appraised at scrap value, or 5 percent of cost, for tax purposes. Delegate Doug Skaff, D-Kanawha, the lead sponsor of the bill, said it is patterned on similar programs that helped revitalize communities across the country, the closest being Homestead, Pa., a township south of Pittsburgh. He said unlike past tax credits given to attract businesses to the state, companies participating in Project Launchpad would have to prove they had created good-paying full-time jobs with benefits to qualify for the tax relief.

### **SCR 32 HONORS ROBERT O. ORDERS, SR. WITH BRIDGE NAMING**

In one of the positive actions in this year's legislative session, the WV Legislature passed [Senate Concurrent Resolution 32](#) naming the Annamoriah Bridge in Calhoun County the "U.S. Army Sergeant Robert Odell Orders Memorial Bridge" in honor of past CAWV President and long-time Board member, Robert O. Orders, Sr., Orders Construction Company, St. Albans. The bridge, whose naming was spearheaded by his grandson, Nate, had a special meaning for the veteran bridge builder.

### **BI-PARTISAN SUPPORT LEADS TO FALSE CLAIMS BILL DEFEAT**

The business community did score a victory with the defeat of [H.B. 4001](#), the False Claims Act bill. On Tuesday, the House of Delegates voted down the bill which allows whistleblowers to bring lawsuits against companies that are allegedly defrauding state- and federal-run programs such as Medicaid and construction contracts. Ten Democrats joined all

Republicans in creating a 55-42 defeat for the bill. In a press release following the vote, Speaker Tim Miley, D-Harrison, stated, "I am disappointed that this effort to reduce fraud on the government was rejected by a majority in the House of Delegates. Every member claims to come to Charleston with the goal of eliminating fraud and waste and to protecting taxpayer funds, yet that was not evident in the vote (Tuesday). Chris Hamilton, chairman of the WV Business and Industry Council, and Steve Roberts, president of the WV Chamber of Commerce, issued a press release stating, "On behalf of West Virginia's businesses community, we appreciate the clear and progressing thinking a majority of the House of Delegates undertook in evaluating this bill and the potential negative impact it could have had on the State. We are particularly pleased with the bi-partisan rejection of this legislation. We thank those legislators on both sides of the aisle that took the time to listen to our concerns and did the right thing by voting against it."

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