



Contractors Association of West Virginia **LEGISLATIVE BULLETIN**



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LB 2017-09

April 12, 2017

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LEGISLATURE FAILS TO PASS BILLS FOR HIGHWAYS

The 2017 legislative session ended Saturday without passing [S.B. 477](#), a bill that would have generated over \$130 million annually in new funding to repair and construct highways and bridges and provide debt service on a \$1.6 billion road bond amendment (See article below). The Senate passed the bill on a bipartisan vote of 27-6 (see below for votes) but the bill never made it out of the House Finance Committee. The House leadership did not embrace any tax measures, including any of the Governor's proposals to make up the \$500 million shortfall in the Fiscal Year 2018 budget.

Governor Justice held a news conference around 10:00 p.m. Saturday night announcing that he and the Senate had reached a tentative agreement on the budget and an agreement on the Governor's highway funding measures, including S.B. 477 and S.B. 482 which continued and raised tolls on the WV Turnpike to provide \$600 million to \$700 million in bonds for construction in and around the turnpike. It was apparent shortly after the Governor's comments that the House of Delegates did not buy into any agreement between the Senate and the governor's office. With just minutes left in the session, the Senate passed the budget, followed by concurrence in the House, which contains numerous cuts in services and no tax increases.

It is expected the Governor will veto the budget bill and bring back legislators into a special session in the coming weeks. However, speaking Tuesday on "Talkline" on WV MetroNews, Chief of Staff Nick Casey said the Governor is contemplating accepting the budget since he's being persuaded to do so by House Speaker Tim Armstead. Yesterday, Senate President Mitch Carmichael also encouraged the Governor to sign the budget. The budget is currently \$31 million out of balance since bills passed and vetoed impact the final budget. Gov. Justice has until Friday to veto H.B. 2018. He also could sign the bill, or take no action and allow it to become law. If it isn't vetoed, West Virginia's state budget bill passed early Sunday wouldn't go into effect until July 8 — leaving the state without financial direction for the first week of the upcoming fiscal year. The Governor has called a press conference for 2:00 p.m. Thursday to announce his decision.

The budget bill does not contain the \$105 million (later reduced to \$35 million) for the Governor's "Save Our State" (SOS) plan to invest in infrastructure installation for site development as a way to encourage companies to locate in West Virginia.

INFRASTRUCTURE, HIGHWAY INVESTMENT PLAN PROMINENT IN GOVERNOR'S ECONOMIC RECOVERY DIES IN HOUSE FINANCE

On Wednesday, February 8, Governor Justice delivered his first State of the State Address. Faced with a \$500 million budget gap, the governor outlined a plan that called for \$27 million in spending cuts and approximately \$450 million in tax and fee increases. Highway funding was at the forefront of his speech. He made highway construction and repair an early centerpiece of his administration.

Calling bad roads the "800 pound gorilla in the room," the governor outlined a \$2.4 billion to \$4 billion road program that will put 45,000 West Virginians to work by completing the state's transportation system within three to five years. This would have been done by a series of new revenue and bonding, including raising the retail gas tax 10 cents a gallon and increasing DMV fees from \$30 to \$50 annually. (He later changed the gas tax increase to 4.5 cents a gallon.) The governor's proposal would have restored the wholesale gas tax to recoup the 3.5 cents per gallon lost over the last three years due to the declining price of gasoline and raise tolls on the West Virginia Turnpike from \$2 to \$3. "If you do this, you'll see those jobs," Governor Justice stated. The governor's budget also included \$105 million for "Save Our State" for infrastructure and economic development projects.

S. B. 477, the funding bill, and S.B. 482, the Turnpike bill, both passed easily through the Senate. On Tuesday, April 4, the bills were abruptly pulled from the House Finance Committee agenda, despite the fact there appeared to be enough votes in the committee to pass the bills. Despite attempts late Saturday to amend the bills into bills that were moving through the House and Senate, the bills did not advance this session. Since the highway funding bill died, so, too, did S.B. 483, the bill to charge successful bidders on a highway project a 5 percent construction severance tax to pay for the Governor's proposed drug rehabilitation program.

CAWV CALLS FOR SPECIAL SESSION ON HIGHWAY FUNDING

Chief of Staff Nick Casey, on "Talkline" Tuesday said the Governor is concerned that nothing was passed to fix West Virginia's highways and to create jobs. The CAWV is calling on Governor Justice to call a special session of the legislature to address the state's highway funding problems.

CAWV PRESIDENT THANKS MEMBERS FOR THEIR LEGISLATIVE INVOLVEMENT

Below are a few of the bills that were addressed by the CAWV during this year's legislative session, both positively and negatively. CAWV President C.R. Neighborgall stated, "Many members spent much time contacting and working with their legislators on issues that directly affected our industry. Members were active in the prevailing wage bill, highway and other infrastructure funding bills and overall business issues, all of which were important to our association and the construction industry," he said. "I thank everyone who helped during this session."

PUBLIC-PRIVATE PARTNERSHIP AND WVDOH DESIGN-BUILD BILLS PASS

S.B. 2721 will move the June 2017 sunset date on the “Public-Private Transportation Facilities Act” to 2023 to coincide with the WVDOH’s six-year State Transportation Improvement Plan (STIP). The statute has been the vehicle that has allowed construction to proceed on Route 35, Coalfields Expressway, Corridor H, Wellsburg Bridge and the Hobet project in Boone County. The WVDOH used P3 to spread out payments – availability payments – to contractors. The WVDOH is paying about \$190 million annually for the next few years on these projects.

S.B. 2722 changes the limits on the use of Design-Build on WVDOH projects. The current limits are \$50 million annually or \$150 million over three years. This bill changes the limits to \$200 million per project and \$400 million annually. Although, if all the money is not used in one year, the division can roll over \$100 million into the next year. Emergency projects are exempt from the dollar caps. The WVDOH said they need the ability to use design-build to projects get moved quickly, especially if the Trump administration comes forth with an infrastructure investment program and voters ratify the Governor’s \$1.6 billion road bond amendment.

GARVEE BONDS, ROAD BOND AMENDMENT PASS

H.B. 2878 passed which increases the state’s ability to use Grant Anticipation Notes (GARVEE) bonds from \$200 million to \$500 million. WVDOH officials noted that it’s been so long since the limit was changed that, if you apply a price index to the \$200 million, it would be around \$475 million in today’s dollars. The Governor’s proposal to issue \$1.6 billion in road bonds (S.J.R. 6, the “Roads to Prosperity Amendment,” passed on the final day of the session. The CAWV objected to a House amendment to the resolution that put a gas tax and DMV fee increase in the road bond amendment. The CAWV noted that voters would be less likely to vote themselves a tax increase if it’s on the ballot amendment, and that delaying passage of S.B. 477 only delays the ability to obtain additional State Road Funds for highway and bridge maintenance. The House ended up taking out the language and the bond amendment will be placed on the ballot later this year.

SENATE VOTES 27-6 FOR HIGHWAY FUNDING

Below is the 27-6-1 Senate vote on S.B. 477.

YEAS

Beach, D – Monongalia	Blair, R-Berkeley
Boso, R – Nicholas	Carmichael, R – Jackson
Clements, R- Wetzel	Cline, R- Wyoming
Ferns, R- Ohio	Gaunch, R- Kanawha
Hall, R – Putnam	Jeffries, D- Kanawha
Mann, R- Monroe	Maroney, R- Marshall

Maynard, R- Wayne
Mullins, R-Raleigh
Palumbo, D- Kanawha
Prezioso, D-Marion
Stollings, D-Boone
Sypolt, R -Tucker
Trump, R- Morgan
Weld, R- Brooke

Miller, D – Greenbrier
Ojeda, R - Logan
Plymale, D- Wayne
Smith, R - Tucker
Swope, R- Mercer
Takubo, R- Kanawha
Unger, R- Berkeley

NAYS

Azinger, R- Wood
Facemire, D- Braxton
Rucker, R -Jefferson

Boley, R- Pleasants
Romano, D - Harrison
Woelfel, D- Cabell

Absent: Karnes, R-Upshur

H.B. 2897 INCORPORATES NUMBER OF PURCHASING CHANGES

H.B. 2897 was introduced to help public service districts perform work on an emergency basis and increase from \$10,000 to \$50,000 before competitive bids are required. The bill is in response to the damage caused to public water and sewer facilities during the June 2016 floods. The bill ended up being the vehicle to address other construction requirements administered through the WV Purchasing Division. H.B. 2897, in its final form, increases bidding to \$25,000 and allows for emergency projects. In addition the bill: 1/ Limits alternates on public bids to seven and requires alternates to be selected in their order. If alternates are taken out of order, the selection cannot change the determination of the lowest qualified responsible bidder; 2/ The low bidder has one business day to submit his subcontractor list; 3/ Contractors can submit their affidavit stating they have a drug-free workplace policy within one business day of the bid opening instead of having it included in the bid documents; and 4/ The low bidder can submit his West Virginia contractors' license number within one day of the bid opening instead of having it included in the bid document.

H.B. 2709 CREATES SOUTH CHARLESTON ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICT

H.B. 2709 is a bill to authorize the City of South Charleston to levy a special district excise tax for the benefit of the South Charleston Park Place Economic Opportunity Development District. This bill allows South Charleston to levy a special excise tax for the development district which comprises approximately 3,100 contiguous acres of land. The project would be a \$150 million investment and would be paid for by the taxes of new businesses brought into the City of South Charleston.

Public projects that would receive funding include the Jefferson Road expansion project, an access road to the Trace Fork Shopping Center and a new school at

the West Virginia Regional Technology Park. Another site being discussed for development includes the FMC fly ash pond that has nearly 80 acres of land. South Charleston's Mayor Frank Mullens said the Jefferson Road project is their top priority.

WAGE BOND REQUIREMENT NOW ONE YEAR

S. B. 224 changes the requirement for new employers submitting a wage bond to the West Virginia Division of Labor to cover employees' wages for one month from 5 years to 1 year. There are exemptions to this requirement. They are: If the employer, person, firm or corporation meets one of the following, then such employer, person, firm or corporation shall be exempt from the requirements of this subsection: (1) Has been in business in another State for at least five years and has at least \$1 million in assets; or (2) Is a subsidiary of a parent company in business for at least five years.

WVDNR CAN BID SPECIFIED WORK DIRECT UNDER BILL

H.B. 2949 provides that repair and related construction contracts necessary to protect public health or safety or to provide uninterrupted enjoyment and public use of state parks, state forests, wildlife management areas and state natural areas under the jurisdiction of the Division of Natural Resources are exempt from having to go through the State Purchasing Division. DNR will have to develop bidding requirements for these types of project if the Senate concurs with the House bill. Nothing in this section shall authorize the construction or replacement of capital improvements without going through the Purchasing Division.

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.

H.B. 2857 CREATES WEST VIRGINIA SAFER WORKPLACES ACT

The purpose of this bill is to create the West Virginia Safer Workplaces Act. The bill permits employers to test employees and prospective employees for drugs and alcohol. The bill determines a collection of samples, scheduling of tests and testing procedures. The bill sets forth testing policy requirements and disciplinary procedures. H.B. 2857 also: provides for sensitive employees; protection from liability; establishes causes of action; provides for confidentiality; provides for termination of employment; provides for forfeiture of certain benefits; and requires employers to have drug and alcohol testing policies and procedures when implementing drug and alcohol testing.

BILLS THAT DID NOT PASS IN THIS LEGISLATIVE SESSION

SEVERANCE TAX ON AGGREGATES DIES ON THIRD READING

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 10 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. The bill died on Third Reading in Senate when some aggregates producers objected to the bill.

S.B. 190 – Eliminated the 5% bidders' preference for West Virginia material and equipment suppliers. Passed Senate but defeated in House Government Organization Committee

S.B. 238 – Increasing the tax credits allowed for rehabilitation of certified historic structures from 10 percent to 25 percent.

S.B. 412 – Relating to the WV Jobs Act by eliminating any wage payment requirements when submitting information required under the Jobs Act.

S.B. 414 – Creates Division of Multimodal Transportation Division by combining the current divisions of Public Transit, Rail Authority, Port Authority and Aeronautics Division into one division under the WV Department of Transportation.

S.B. 427 - The purpose of this bill 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."

S.B. 635 - The purpose of this bill is to increase the maximum weight amount for trucks equipped with six axles and two additional brakes to ninety-seven thousand pounds.

S.B. 638 – The purpose of this bill is to provide an exemption from taking the business and law portion of the examination for a license under the West Virginia Contractor Licensing Act when an applicant presents evidence of retaining a certified public accountant or public accountant to file business and tax filings required by the state and federal government.

S.B. 641 – The purpose of this bill is to require welders working in the State of West Virginia to meet certain certification requirements and to conform to national welding standards.

S.B. 642 – The purpose of this bill is to provide a structured minimum wage for Veterans and others working on public improvement projects in the State of West Virginia.

S.B. 643 – The purpose of this bill is to ensure West Virginia residents and United States citizens are given preference in public improvement construction jobs.

S.B. 644 – The purpose of this bill is to reestablish prevailing wages for certain state government construction contracts.

S.B. 645 – The purpose of the bill relates to the employer's right to require employee training.

S.B. 648 – The purpose of this bill is to help protect West Virginia jobs on public construction projects.

S.B. 689 – Relating to expediting payment of small claims by WVDOH.

SJR 4 – County Economic Development Amendment that will go on the November 2018 general election ballot to authorize the Legislature to, by general law, allocate a portion of ad valorem property taxes paid by owners of certain new manufacturing facilities and large capital additions to existing manufacturing facilities located in counties in which county commissions elect to fund infrastructure capital improvements using property taxes, including schools, water and sewer system and local roads.

H.B. 2554 – Places the West Virginia Contractors Licensing Act under state code with other professional licensing boards instead of being aligned with the WV Division of Labor. Also created a "Journeyman General Building Contractor" category for emerging contractors who could perform up to \$7,500 before having to take the contractors licensing test.

H.B. 2923 -- The purpose of this bill requires that Department of Highways contracts in excess of \$500,000 be entered into with contractors who verify that its employees and those employees of any subcontractors only utilize workers lawfully working in the United States.

H.B. 3054 – The purpose of this bill is to give a five percent bid preference on certain state contracts to businesses owned at least 51% by honorably discharged resident veterans.

For a complete list of bills that passed during the 2017 session of the West



Virginia Legislature, visit

http://www.legis.state.wv.us/bill_status/Bills_all_pass.cfm?year=2017&sessiontype=RS&btype=bill