



# Contractors Association of West Virginia LEGISLATIVE BULLETIN



## IN THIS ISSUE

LB 2021-09

April 14, 2021

*Final Wrap Up: 2021  
Legislative Session*

The first session of the 85<sup>th</sup> West Virginia Legislature completed its 2021 Regular Session on Saturday, April 10, at midnight. Over 2,039 bills, much less than last year, were introduced during the 60-day session, with 282 of those bills successfully passed by both the House and Senate, including a balanced budget for fiscal year 2021-2022.

*Construction Venue Bill  
Passes - Effective July 1*

The CAWV did not have many issues this year given the fact that COVID-19 greatly modified the legislative session. The State Capitol was closed to the public as were many of the committee meetings. Most public hearings had speakers attending remotely. 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 were never put on the agenda for debate. There is a list of these bills at the end of this bulletin.

*Bills Affecting Licensing  
and Occupations*

*Bills Not Passed*

*Legislation Passed This  
Session*

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. Much discussion was held on Gov. Jim Justice's proposal to eliminate the state's personal income tax.

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WV Legislature Online



[H.B. 3300](#) encompassed Gov. Justice's proposal to eliminate the state's income tax as a way to encourage people to move to West Virginia. The plan passed by the Senate last week with the support of the Governor would have reduced the Personal Income Tax in exchange for an 8% Consumer Sales Tax, taxing professional services, a tiered-severance tax rate for natural resources, tobacco tax increases, and a sales tax increase on prepared foods and soft drinks. The West Virginia House of Delegates rejected the plan on Friday afternoon on a 0-100 vote. The Governor has announced he plans to go on the road to continue advocating for his plan, much like his program to support the 2017 Roads to Prosperity bond amendment.

## **CAWV MEMBERS THANKED FOR THEIR INVOLVEMENT**

CAWV Legislative Committee Chairman James Ridgeway 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.

## **S.B. 673, CONSTRUCTION VENUE BILL EFFECTIVE JULY 1, 2021**

[S.B. 673](#), the CAWV's bill to require civil action regarding West Virginia construction contracts be resolved in West Virginia, passed 33-0 in the Senate and 99-0 in the House.

The bill was developed by the CAWV Legislative Committee to mandate that West Virginia is the location where construction claims must be resolved if a party to a West Virginia construction contract breaches that contract. Under current law, there may be a dispute of only several thousands of dollars, yet West Virginia construction firms are faced with bringing a lawsuit thousands of miles away, which is expensive, time consuming and disruptive. Virginia, Ohio, and Pennsylvania have legislation that voids any language in a boilerplate contract that forces in state firms to resolve any disputes in the state where the project owner resides, thereby requiring the contractor or subcontractor to hire out of state counsel.

The bill is effective for construction projects entered into after July 1, 2021. The CAWV Education Committee is planning a webinar for contractors, subcontractors, and the legal community on the aspects of [S.B. 673](#).

### **CONTRACTOR AND PROFESSIONAL LICENSING REQUIREMENTS GREATLY MODIFIED**

Legislators made sweeping changes in [H.B. 2006](#), relating to the West Virginia Contractors Licensing Board, and [H.B.2008](#), a bill dealing with certification for electricians, fire sprinkler fitters, plumbers and HVAC technicians. These bills narrowly passed the Senate after a large majority of House members voted in favor. The bills were part of priority bills by the House of Delegates on occupational boards and professions. A similar bill, [H.B. 2007](#), which dealt with all professionals, including architects, engineers, barbers, accountants and a host of other professions licensed under Chapter 30 of the State Code, passed the House and the Senate Government Organization Committee. It did not pass the full Senate.

[H.B. 2006](#) removes the WV Contractor Licensing Board from the Division of Labor and creates it as a separate board under Chapter 30 in the State Code, which is how other professional licensing boards are governed. In addition, it removed the requirement to hold a contractor's license for commercial projects under \$25,000 and residential projects under \$5,000. The bill also eliminates the contractor license for Painting and Landscaping contractors at any dollar amount. Under Chapter 30, contractors would have to meet annual continuing education requirements in order to maintain their license. (The West Virginia Contractor Licensing Board is meeting April 22, 2021 to review and begin making operational changes as required in the bill.)

[H.B. 2008](#) affects electricians, HVAC technicians, plumbers, and sprinkler fitters by changing standards and lowering the amount of experience required to obtain a license across the board. For electricians, a person can now get a master's license after only two years of experience, and a journeyman license with only one year. An

apprentice license will no longer be offered because a person assisting an electrician needs no license at all.

Requirements for a plumber's license were also lowered. To get a master's license a person only needs to hold a journeyman license for a year. No experience is needed for a person to get a journeyman license. HVAC technicians only need to show 2,000 hours of experience to be fully licensed for commercial work and no experience for residential.

The bill reduces the number of hours of experience to qualify for a sprinkler fitter license from 5,000 to 2,000.

### **WV CRANE OPERATOR CERTIFICATION ACT REPEALED**

[H.B. 2008](#) also repeals the West Virginia Crane Operator Certification Act. Current law, State Code Chapter 21, Article 3D which has been in effect almost 20 years, provides two crane operator licenses: A Class A certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which requires both a written examination and a practical demonstration, and which must be accredited by the American National Standards Institute's Personnel Certification Accreditation Program; and a Class B certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which requires the successful completion of a training course.

Current law also requires Class A certification renewal requirements of individuals who operate cranes in the State of West Virginia to pass a written examination and a supply a physician's certificate at least every five years.

Under [H.B. 2008](#), all individuals who operate cranes in the State of West Virginia will now be governed by the provisions of the Occupational Safety and Health Administration of the United States Department of Labor, 29 C.F.R §1926.1400, Subpart CC.

Sponsors of [H.B. 2006](#), [H.B. 2007](#) and [H.B. 2008](#) stated the purpose for the changes is to make it easier for people to move into West Virginia and get licensed to practice in their chosen profession. The business community and regulated industries did not support these bills because they allow automatic or unchecked licensing to someone with no familiarity or knowledge of West Virginia laws, regulations, and professional standards to operate in West Virginia.

### ***CHANGES OUTLINED IN HOUSE BILLS 2006 AND 2008 ARE DETAILED BELOW (SEE EFFECTIVE DATES):***

#### **H.B. 2006 – Effective June 15, 2021**

1. The Contractor Licensing Board will start operating under WV Code §30-42;

2. The **cost of the undertaking**, before a license is required, will change from \$2,500 to \$5,000 for residential work and \$25,000 for commercial work (**Undertaking means entire project - material & labor**);
3. Landscaping **will not** require a contractor license; and
4. Painting **will not** require a contractor license.

## **H.B. 2008 – Effective June 16, 2021**

### ***Crane Operator Certification Act (§21-3D)***

1. The WV Crane Operator Certification Requirement is being repealed and **will no longer** be accepted to meet the OSHA standard;
2. On or after June 16, 2021, the Division of Labor **will no longer** accept or process applications and payments;
3. All WV Crane Operator Certifications issued in 2021 will expire January 1, 2022; and
4. Employers must ensure ALL crane operators are trained, certified/licensed, and evaluated according to OSHA Regulation 29 C.F.R. §1926.1427 Subpart CC.

For more information, visit [www.osha.gov/cranes-derricks-construction](http://www.osha.gov/cranes-derricks-construction).

### ***Supervision of Plumbing Work Act (§21-14)***

1. Master Plumber **will no longer** require 12,000 hours of experience;
2. Journeyman Plumber **will no longer** require 8,000 hours of experience; and
3. Plumber-In-Training fee **will be reduced** from \$50.00 to \$25.00.

### ***Regulation of Heating, Ventilating, and Cooling Work Act (§21-16)***

1. HVAC Technician experience **will be reduced** from 8,000 hours to 2,000 hours;
2. A Veteran may apply for licensure, without examination, once they meet certain requirements; and
3. HVAC Technician-In-Training fee **will be reduced** from \$50.00 to \$25.00.

### ***Supervision of Fire Protection Work (§29-3D)***

1. “Fire protection layout technician” is now defined as an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III, or has achieved from the National Fire Protection Association a certification in Certified Water Based Systems Professional (CWBSF), or has passed an exam approved by the state Fire Marshal from the National Inspection Testing Certification (NITC) organization, or higher certification as recognized by the state Fire Marshal, and who has the knowledge, experience, and skills necessary to lay

out fire protection systems based on engineering design documents.

2. “Journeyman sprinkler fitter” means a person qualified by at least 2,000 (down from 5,000) hours of work experience installing, adjusting, repairing, and dismantling fire protection systems and who is competent to instruct and supervise fire protection work, provided that current license renewal exemptions to examinations apply.
3. Deletes need for license from the state Fire Marshall for person performing damper work.

### **TAX CREDIT LEGISLATION FOSTERS BUILDING DEVELOPMENT**

[H.B. 3301](#) allows county commissions or municipalities to extend the duration of a tax increment financing district subject to consent of any municipality in the district. TIFs are limited to 30 years. The bill would allow any TIF created before December 31, 2020 to extend its TIF by five years to December 31, 2050, whichever comes first. [S.B. 344](#) eliminates both the sunset date for the qualified rehabilitated buildings investment credit and the maximum amounts allowable of the tax credit. Current law ended the tax credit December 2022 but recent successful rehabilitation projects such as the Atlas Building in downtown Charleston and the Hotel Morgan in Morgantown proved the benefit of the credits in restoring abandoned or underused structures.

A somewhat related development bill is [S.B. 368](#) which authorizes the WV Department of Environmental Protection to develop the Reclamation of Abandoned and Dilapidated Properties Program to demolish abandoned dilapidated buildings to improve communities and to open new parcels for development. The bill passed on the last day of the session.

[H.B. 2760](#) passed the last day of the session. The purpose of this bill, titled Economic Opportunity Tax Credit in State Code 11-13Q-9, is to amend the economic opportunity tax credit and the high technology manufacturing tax credit to provide more targeted and effective tax incentives for economic development. One of the ways for these companies to receive a tax credit is when they have a qualified investment of \$20 million and hire 75 or more full-time construction workers.

### **PROPERTY TAX CONSTITUTIONAL AMENDMENT GOES TO VOTERS; USE TAX ON EQUIPMENT RENTAL AND LEASING EXEMPTION**

[H.J.R. 3](#) is the Property Tax Modernization Amendment to grant the Legislature the authority to set personal property tax rates. It proposes a constitutional amendment that, if approved by the voters in November 2022, would allow the Legislature in the future to phase out the tax on business inventory, equipment, and machinery, and eliminate the property tax on vehicles. [S.B. 34](#) was passed by legislators to create an exemption in the state sales and use tax for the rental or leasing of equipment among commonly owned companies. The bill adds an

exemption under Chapter 11, Article 15, Section 9 – Consumers Sales and Service Tax -- for the rental of equipment among corporations with a minimum of 50 percent common ownership.

### **BROADBAND FUNDING BILL PASSES**

[H.B. 2002](#) was also a high priority bill for delegates. H.B. 2002 is intended to expand access for broadband providers. It creates the Office of Broadband under the Department of Economic Development. It allows counties and municipalities to set up their own networks and form partnerships to do that.

### **NEW VETERANS NURSING HOME TO BE BUILT IN BECKLEY**

Funds for the Beckley veteran's nursing home were in the final budget bill and in a supplemental appropriation approved on the last day of the session. This fully funds the state's portion required to begin building the nursing home. In 2012, the Legislature authorized building the facility located on the campus of Jackie Withrow Hospital in Beckley. This would be the second facility of its kind in West Virginia, with the other in Clarksburg. So far, the federal government awarded \$15 million toward the project. The state is allocating \$30 million, making the total cost of the project \$45 million. Beckley was chosen as the site for the new location because of its proximity to the Beckley VA Hospital.

### **WV JUMPSTART SAVINGS ACT TO GET NEW PEOPLE INTO CONSTRUCTION AND OTHER TRADES**

[H.B. 2001](#) creates the West Virginia Jumpstart Savings Act, a plan to allow individuals who wish to pursue a vocation or trade to make tax-free contributions to a savings and investment account. The bill passed and has been signed by the governor. The plan has been the centerpiece on the agenda of state Treasurer Riley Moore, who was sworn into office in January.

"This savings plan will benefit countless future workers in our state by empowering them and removing a final barrier to entry into the workforce," said the new treasurer. Moore's office said the plan allows for family members and the individual's employer to make contributions to the account. The plan beneficiary can later withdraw money from the account – which will also be tax-free – to help cover business startup costs, equipment, tools, certifications, and licenses needed in the vocation or trade.

### **SBA TO FUND OTHER SCHOOL CONSTRUCTION PROJECTS**

[H.B. 2906](#) will allow the School Building Authority of West Virginia (SBA) to increasing construction funding, at its discretion, to spend up to 10 percent of their annual construction and major improvements budget for projects at vocational programs throughout the state. The current limit is 3 percent. SBA currently grants construction and major renovation

funding not just to county school systems, but to K-12 vocational schools that serve multiple counties and specialized schools that serve the whole state. These include, among others, the Fred W. Eberle Technical Center in Buckhannon and the Schools for the Deaf and the Blind in Romney. The bill provides no additional funding for SBA projects.

### **GOVERNOR SIGNS COVID LIABILITY BILL**

[S.B. 277](#), creating the COVID-19 Jobs Protection Act, is effective now that the governor signed the bill into law. The legislation provides a liability shield for employers in West Virginia for claims that may arise due to the COVID-19 pandemic.

### **WORKER CLASSIFICATION ACT CLARIFIES INDEPENDENT CONTRACTOR STATUS**

[S.B. 272](#), relating to the WV Employment Law Worker Classification Act, is designed to provide clarity for when an individual is considered an employee or an independent contractor. The bill is intended to help support the emerging “gig economy” in West Virginia.

### **INTERMEDIATE COURT OF APPEALS CREATED**

Governor Justice has signed [S.B. 275](#) which includes the West Virginia Appellate Reorganization Act of 2021. The Act creates the framework for an Intermediate Court of Appeals that will be operable by July 1, 2022. West Virginia will join 40 states that have intermediate appellate courts. The Intermediate Court of Appeals will consist of three judges, initially appointed by the Governor to serve staggered terms. As the terms expire, there will be nonpartisan elections for 10-year terms.

The Intermediate Court of Appeals will have jurisdiction over final orders in the following: (1) circuit court civil cases; (2) family court cases; (3) circuit court guardianship or conservatorship matters; (4) agency or administrative law judge matters; (5) Health Care Authority matters; (6) Office of Judges matters; and (7) Workers’ Compensation Board of Review matters. The Intermediate Court of Appeals will issue written decisions in each appeal. Such written decisions will be binding precedent on all lower courts and agencies unless they are overruled or modified by the West Virginia Supreme Court of Appeals.

### **STATE PURCHASING BILLS INTRODUCED**

The Senate has passed a series of bills dealing with state purchasing procedures. [S.B. 487](#) updated WV Division of Purchasing procurement and spending thresholds. The bill did not pass. [S.B. 587](#) has a stated purpose to make contract consummation with the State of West Virginia more efficient, by clarifying that government officials are not permitted to enter into certain contract terms, and that even a signature on a contract containing those terms is ineffective. This bill passed. [S.B. 474](#) would have given the WV Division of Highways the authority to perform its own

purchasing functions. The WVDOH contracts its construction projects but all materials, equipment and building construction are administered by the state Purchasing Division. The WVDOH used to handle its purchasing and S.B. 474 restored to the division that power. This bill did not pass.

## **BILLS OF INTEREST THAT DIDN'T PASS THIS SESSION**

### ***BILLS INTRODUCED TO ELIMINATE FEES ON ALTERNATE FUEL VEHICLES AND TURNPIKE TOLLS***

A number of bills were introduced to remove the fees on electric and natural gas vehicles. Fees were included for alternate fuel vehicles in the 2017 highway funding bill for the first time ever as a way to have these vehicles pay for driving on West Virginia's highways. The WV State Road Fund collects about \$1.5 million in annual revenues, but this is expected to increase as more alternate fuel vehicles are put in service. Bills were also introduced to require legislative approval before the Parkways Authority can sell bonds and to eliminate tolls on the WV Turnpike once the bonds have been repaid.

The West Virginia Department of Transportation was successful in passage of [H.B. 2720](#). The purpose of this bill is to allow the Secretary of the Department of Transportation to establish a merit-based personnel administration system for all of the department's employees. The DOT will have until October 31, 2022, to establish the new system.

### ***DISCLOSING WAGE RECORDS BILL DEFEATED ON TIE VOTE***

[S.B. 370](#), requiring any wage information submitted to a state agency be exempt from Freedom of Information Act (FOIA) requirements, died in House Judiciary on a tie vote of 12-12, after passing the Senate and another House committee. The language in S.B. 370 stated:

"No governmental entity that requires a private company that has contracted with, or is seeking to contract with, a governmental entity for a construction project to submit any document that includes records of actual wages paid to employees may disclose the document or the information contained therein to any other entity or person: Provided, That this prohibition does not prevent disclosure of the document or the information contained therein to another state or federal agency. Any such document shall be considered confidential and proprietary and may not be considered a public record for the purposes of §29B-1-1 et seq. of this code. (For the purposes of this section, "governmental entity" means the state and its 9 subdivisions or any other entity or person acting on behalf of the state and its subdivisions.)"

### ***COMPUTER SOFTWARE BILL DOES NOT ADVANCE***

The CAWV and architectural and engineering community last year mounted strong opposition to 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. CAWV's concern on the bills include the fact that the 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. H.B. 2331 was introduced this year but never was put on a committee agenda for discussion.

**The CAWV monitors bills that affect construction or CAWV members that are introduced during the legislative session. Below are bills of interest to the CAWV that did not pass this year.**

[S.B. 48](#): Prohibiting employment of unauthorized employees in construction industry

[S.B. 55](#): Allowing municipalities to contract projects up to \$50,000 without bidding

[S.B. 94](#): Repealing additional registration fees for alternative fuel vehicles

[S.B. 97](#): Modifying procedure certain public agencies use to procure architectural and engineering services contracts

[S.B. 244](#): Making it unlawful for public utility to prohibit customers from hiring contractors to construct, install, or maintain connections to public utility

[S.B. 283](#): Relating to public and private funding of road construction projects (FN)

[S.B. 286](#): Providing for special obligation notes to finance construction completing I-73 and I-74 (FN)

[S.B. 370](#): Requiring certain documents that contain wage records be considered confidential

[S.B. 405](#): Amending definition of "aboveground storage tank"

[S.B. 408](#): Relating to maintenance and repair of roads and highways (FN)

[S.B. 474](#): Exempting DOH from Purchasing Division procedures (FN)

[S.B. 487](#): Updating Division of Purchasing procurement and spending thresholds (FN)

[S.B. 489](#): Returning refundable exemption for road construction contractors to State Road Fund (FN)

[S.B. 550](#): Providing counties with authority to impose county sales and use tax of up to one percent under certain circumstances

[S.B. 620](#): Repealing WV Workplace Freedom Act

[S.B. 635](#): Requiring State Fire Commission propose rules for sprinkler protection in basements of certain buildings

[S.B. 698](#): Creating annual adjustment to motor vehicle excise tax (FN)

[S.B. 701](#): Reestablishing prevailing wage for certain state government contracts (FN)

[H.B. 2007](#): Provide for occupational licenses or other authorization to practice by recognition for qualified applicants from other states

[H.B. 2075](#): Removing the registration fee for a vehicle operating on a combination of electricity and petrochemical fuels

[H.B. 2090](#): Relating to a customer constructing a connection or other infrastructure necessary for the customer to connect to the public utility

[H.B. 2113](#): Relating to paving contracts

[H.B. 2116](#): Verifying legal employment status of contractors and vendor's employees for certain road and bridge contracts

[H.B. 2151](#): Listing contractor classifications on a contractor license

[H.B. 2168](#): Relating to the transfer of certain revenues derived from lottery activities generally, restoring distribution to the West Virginia Infrastructure Fund to 2013 rates and decreasing the funds available for grants therefrom

[H.B. 2180](#): Prohibiting the regulation and licensing of occupations by local government

[H.B. 2191](#): Requiring paving contracts for state highways to have special requirements to prevent potholes

[H.B. 2192](#): Creating a tax credit for improving facades in historic districts

[H.B. 2203](#): Ending tolls on the West Virginia Turnpike effective July 1, 2021 (FN)

[H.B. 2223](#): Repealing section of code authorizing additional registration fees for alternative fuel vehicles

[H.B. 2227](#): Prohibiting blasting within 625 feet of an occupied dwelling

[H.B. 2230](#): The Healthy and Safe Workplace Act

[H.B. 2293](#): Reestablishing prevailing wages for certain state government contracts (FN)

[H.B. 2294](#): Removing the requirement for contractors to file payroll information on public improvement construction projects

[H.B. 2296](#): West Virginia Contractor Licensing Act

[H.B. 2318](#): Repealing the West Virginia Jobs Act (FN)

[H.B. 2327](#): Repealing the law which makes prime contractors liable for the failure of subcontractors to make proper payments for workers' compensation (FN)

[H.B. 2331](#): Requiring contractors performing work for government contracts on computers use software to verify the hours

[H.B. 2481](#): Removing and modifying certain requirements for employers relating to wages for construction of public improvements

[H.B. 2498](#): Ensure State Road Construction Account funds are in addition to general highways funds provided to the DOT districts

[H.B. 2503](#): Requiring legislative approval of additional parkways bonds and removing tolls once bonds paid

[H.B. 2514](#): Relating to the Rural Industrial Site Development Act

[H.B. 2516](#): Altering the definition of a specialty contractor under the West Virginia Contractor Licensing Act

[H.B. 2522](#): Requiring that patching repair of hard surfaced roads, highways and streets be by use of mechanical rollers

[H.B. 2523](#): Relating to gasoline and fuel excise tax (FN)

[H.B. 2532](#): Requiring the Commissioner of Highways to develop a formula for allocating road funds among districts

[H.B. 2533](#): 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)

[H.B. 2570](#): Pothole app and map

[H.B. 2598](#): Alter the definition of an above ground storage tank

[H.B. 2600](#): Require all public contracts be publicly advertised

[H.B. 2604](#): Expand 529 savings plans to include vocational and trade schools

[H.B. 2605](#): Require that a public service district board that represents more than one community have at least one member from each community

[H.B. 2673](#): Exempting Division of Highways from Purchasing Division procedures (FN)

[H.B. 2675](#): Relating to costs and interest in eminent domain condemnation proceedings (FN)

[H.B. 2691](#): Tax exemption for border cities and counties for gas tax (FN)

[H.B. 2717](#): Assure West Virginians proper access to water and sewage service at reasonable rates (FN)

[H.B. 2749](#): Reestablishing prevailing wages for certain state government contracts (FN)

[H.B. 2757](#): Clean Drinking Water Act of 2020 (FN)

[H.B. 2761](#): Authorizing the Division of Highways to assess local impacts to roadways for activities permitted by the Department of Environmental Protection

[H.B. 2825](#): Shifting funding from the Landfill Closure Assistance Fund to local solid waste authorities (FN)

[H.B. 2848](#): Reinstate WV Prevailing Wage Law (FN)

[H.B. 2849](#): Repeal Right to Work Legislation (FN)

[H.B. 2856](#): Relating to performance metrics for the West Virginia Division of Highways

[H.B. 2858](#): Requiring the Commissioner of Highways to develop a formula for allocating road funds among districts (FN)

[H.B. 2955](#): Removing the residency requirement for the Commissioner of the Division of Highways

[H.B. 3122](#): Relating to the establishment and operation of regional water, wastewater and stormwater authorities

[H.B. 3200](#): Relating to maintenance and repair of roads and highways (FN)

## **WEST VIRGINIA LEGISLATIVE BILL INFORMATION**

For a complete list of bills passed in the 2021 Legislative Session, [click here](#). **Anyone needing further information can contact Mike Clowser at (304) 342-1166 or email [mclowser@cawv.org](mailto:mclowser@cawv.org).**