



# Contractors Association of West Virginia **LEGISLATIVE BULLETIN**



## **In This Issue**

LB 2016 -02

January 25, 2016

### **SUPREME COURT RULING RESTORES SENATE REPUBLICAN MAJORITY**

On Friday, the West Virginia Supreme Court issued its much-anticipated decision on the question of the state Senate vacancy created by the resignation of Daniel Hall. He was elected as a Democrat in 2012, but then switched to Republican in 2014. The ruling solidifies the Republican majority at 18-16. Gov. Earl Ray Tomblin and the Democratic Party argued that the replacement should be a Democrat since voters elected Hall as a Democrat in 2012. Republicans argued that state code says the governor shall make an appointment from a list of three legally qualified persons submitted by the party executive committee of the party with which the person holding the office immediately preceding the vacancy was affiliated. The court by three to one vote found that Hall's replacement should be a Republican.

Gov. Tomblin followed the court's directive quickly and appointed Sue Cline to the 9<sup>th</sup> District in the West Virginia Senate. Mrs. Cline has worked at Century 21 First Choice Realty in Beckley and has been an active member in her local community. She has served as vice president of the Pineville Area Chamber of Commerce and the Wyoming County Planning Commission. The governor's appointment is effective immediately.

### **HOUSE COMMITTEE ADVANCES PREVAILING WAGE REPEAL**

The House Government Organization Committee Wednesday voted along party lines in favor of H.B. 4005, the bill to repeal the state's prevailing wage law. The vote was 15-9. The bill is on First Reading in the House today and will be on Third Reading, passage stage, on Wednesday. It is expected there are enough votes in the House to pass the bill although there are a number of legislators who would rather see the bill amended instead of full repeal.

As background, one of the most debated bills last session was [S.B. 361](#), a bill that will change the way the state's prevailing wage is calculated and applied. Many Republicans ran on the platform to repeal in its entirety the prevailing wage statute. Their rationale was that the current rate was not prevailing and it's was too high. Many contractors joined with labor to oppose the bill and a number of hearings and meetings were held to reach a compromise. The final version of S.B. 361 kept the prevailing wage but reformed the method by which rates are calculated. Rates are no longer calculated by the WV Division of Labor. It is to be handled by Workforce West Virginia with the help of West Virginia University and Marshall University. No longer can collective bargaining agreements be used in the calculation method. S.B. 361 also placed a threshold by stating prevailing wage rates will not be required on projects of \$500,000 or less.

The bill was effective April 13, 2015. WVU and Marshall were to develop the

methodology for calculating prevailing wage rates by June 1, then determine the prevailing wage for the remainder of 2015 by July 1. The bill required WorkForce West Virginia to present its methodology to the Legislature by June 1. Controversy immediately erupted when legislators believed WorkForce did not follow the wishes of legislators and sponsors of the bill questioned whether special interest groups unduly influenced the outcome of the survey (a charge that the groups deny). They also questioned why the survey resulted in many of the wage rates being similar -- and in some cases, higher --- than the existing prevailing wage rates.

Since the methodology was not approved by June, there was a period of time when prevailing wage requirements were suspended. There were a few major school projects bid without prevailing wage rates specified. The prevailing wage requirements went back into effect September 1, 2015 and remain in place today.

Legislators have stated they were willing to work with the compromise bill passed in 2015 but feel the process did not reflect their agreement. Proponents of prevailing wage have been willing to look at a different methodology but have not been able to advance that position.

### **CHANGE ORDER RULE PASSED ON TO JUDICIARY COMMITTEE**

The House Government Organization Committee Wednesday passed unanimously H.B. 4046, the rules bill to restore the change order process for government construction projects. The bill now goes to the House Judiciary Committee for review and approval. The bill codifies the Emergency Rule approved July 31, 2015 to clarify that change orders related to government construction contracts do not require prior approval. For years, contracting agencies were required to file construction change orders with the Purchasing Division in a timely fashion, but prior approval was not required. This action effectively restored the approval process for construction change orders to the previous process.

The emergency rule became necessary on July 1, 2015 when amendments to Series 1 went into effect, which govern, among other things, change orders for contracts approved by the Purchasing Division. The amendments provided that all change orders must be approved by the Purchasing Division and Attorney General (as to form) prior to commencement of work. If work was performed by a contractor prior to final approval, the contractor could not get paid for costs associated with the change order.

### **SENATE PASSES RIGHT TO WORK LEGISLATION**

The Senate Thursday passed S.B. 1 which makes West Virginia a Right to Work state. The bill passed 17-16 with every Republican voting for and every Democrat voting against. The future of the bill became clearer Friday when the Supreme Court ruling restored the Republican's majority in the Senate (see article above). If the House voted for the bill and the governor vetoed the bill, which many speculated he would do, the Senate would need 18 votes to override a veto. The appointment of a Democrat to fill Daniel Hall's vacancy would have made the Senate 17-17. The bill now goes to the House of Delegates.

### **WVBT BEGINS HIGHWAY FUNDING CAMPAIGN**

On Monday, January 18, West Virginians for Better Transportation unveiled its campaign to promote highway funding. "Fix Our Roads Now" ads are running in

Charleston newspapers and the MetroNews radio system, and billboards are up on Interstates 64, 77 and 79 leading into and out of Charleston. Viewers in the Charleston television market, starting today, will see a 30-second TV ad extolling the need to fix West Virginia's road for jobs and safety reasons. Media from around the state did a great job covering "Transportation Day at the Capitol" on January 18 and showing the need for additional highway funding. Speaker Tim Armstead, Senate Majority Leader Mitch Carmichael, and Senate and House Transportation Committee chairmen Chris Walters and Marty Gearheart spoke to about 200 WVBT supporters attending the day's event.

Members can learn more about the campaign on the website [www.fixourroadswv.org](http://www.fixourroadswv.org). Click [here](#) to view the billboard and click [here](#) to view the newspaper ad.

### **NUMEROUS HIGHWAY RELATED BILL INTRODUCED**

There are a number of bills introduced to date that impact highways or the WV Division of Highways. They include: H.B. 4200 which eliminates the state's Courtesy Patrol which is now funded by the WVDOH; H.B. 4232 by Del. Patsy Trecoast, D-Harrison, which increases the state's consumer sales tax from 6 cents to 7 cents through 2021 and dedicates the increase (about \$200 million annually) to the State Road Fund; H.B. 4239 and S.B. 327 which require a four-lane highway from Pikeville, Ky to Beckley, WV; H.B. 4222 which switches control of the WV Turnpike from the WV Parkways Authority to the WVDOH; and H.B. 4172 which requires any monetary savings realized as a result of the changes to the state's retirement benefit entitlements and calculations enacted in 2015 by 2015 S.B. 529 be deposited in the State Road Bond Fund.

### **BILL WOULD REQUIRE HIGHWAY PAINTING CERTIFICATION**

S.B. 66 would require that all workers who paint state bridges have successfully completed the SSPC Coating Application Specialist (CAS) Program. The bill, introduced by Sen. Jack Yost, D-Hancock, has been referred to the Committee on Transportation and Infrastructure then Government Organization.

### **WV INFRASTRUCTURE FUNDING REDUCED \$10 MILLION**

S.B. 4217 is the governor's bill to reduce the excess lottery proceeds into the West Virginia Infrastructure Fund from \$40 million to \$30 million for fiscal year 2017. The \$10 million difference will be put into the state's General Fund to help defray the proposed \$353 million deficit in the state's budget. Two years ago, the governor transferred \$20 million from the Infrastructure Fund and \$10 million last year. The CAWV met with the governor's budget people in 2015 to encourage keeping the fund intact this year despite the problems associated with the general fund budget. H.B. 4217 also increases the percentage of Infrastructure Fund funding used to make grants from 20 percent to 50 percent for fiscal year 2017. The bill goes to House Finance.

Two other bills affecting infrastructure project funding are expected to be introduced soon. One would divert \$4 million to the general fund from the School Building Authority and one to cancel the transfer of consumer sales taxes paid on highway construction material to the State Road Fund. This is about a \$10 million reduction to the highway department.

### **ONE-CALL SYSTEM EXPANDED UNDER BILL**

Gov. Tomblin has introduced H.B. 4218 which is a bill to implement a formal recommendation offered by the West Virginia Commission on Oil and Natural Gas Industry Safety. Specifically, the bill expands the definition of “underground facility” in the One-Call System Act to include underground pipelines for gas, oil or any hazardous substances that are four inches in diameter or greater and are not otherwise subject to one-call reporting requirement under federal or state law. The bill is referred to the Committee on Energy then Judiciary.

**WEST VIRGINIA LEGISLATURE BILL INFORMATION**

House and Senate bills can be accessed from the CAWV’s Legislative home page at [www.cawv.org/legislative](http://www.cawv.org/legislative). Members can view status updates on bills of interest to the construction industry and see what legislation is introduced that affects the construction industry. A summary of each day’s activities will be uploaded each afternoon.

**Below is a list of bills that have been introduced this week that have an impact on the construction industry or some CAWV members. Anyone needing further information can contact Mike Clowser at (304) 342-1166 or email [mclowser@cawv.org](mailto:mclowser@cawv.org).**

**HOUSE BILLS**

<i>Bill #</i>	<i>Proposal</i>	<i>Sponsors</i>	<i>Introduced/ Committee</i>
<a href="#">HB 4046</a>	Department of Administration, rule relating to the purchasing division	Del. Sobonya, Frich and Moffatt	01/18/16 – Government Organization then Judiciary
<a href="#">HB 4147</a>	Making the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority	Del. Rowan, Mr. Speaker (Mr. Armstead), Cowles, Perry, Duke, Miley, Hamilton, Espinosa, O’Neal, Anderson and E. Nelson	01/19/16 – Education then Finance
<a href="#">HB 4156</a>	Transferring funds from the State Excess Lottery Revenue Fund, to the Department of Revenue, Lottery Commission, Distributions to Statutory Funds and Purposes	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	01/19/16 - Finance
<a href="#">HB 4157</a>	Supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways	Del. Mr. Speaker (Mr. Armstead) and Miley [By Request of the Executive]	01/19/16 - Finance
<a href="#">HB 4172</a>	Creating a special fund named “the State Road Bond Fund”	Del. Kurcaba, Statler and Waxman	1/20/16 – Roads and Transportation then Finance
<a href="#">HB 4189</a>	Expiring funds to the unappropriated balance in State Fund, General Revenue, from the Department of	Del. Mr. Speaker (Mr. Armstead) and Miley	1/20/16 - Finance

Revenue

<a href="#">HB 4192</a>	Relating to regional Division of Motor Vehicle offices and self-service kiosks	Del. Howell, Frich, Moffatt, Faircloth, Westfall, R. Phillips, Cadle, Walters, Zatezalo, Waxman and Kelly	1/21/16 - Roads and Transportation then Finance
<a href="#">HB 4200</a>	Eliminating courtesy patrol programs	Del. Gearheart, Householder, Ellington, Ambler, Cooper, Azinger, McGeehan, Wagner, Shott, Hamrick and Westfall	1/21/16 - Roads and Transportation then Finance
<a href="#">HB 4217</a>	Reducing the distributions to the West Virginia Infrastructure Fund	Del. Mr. Speaker (Mr. Armstead) and Miley	1/21/16 - Finance
<a href="#">HB 4218</a>	Expanding the definition of "underground facility" in the One-Call System Act	Del. Miley [By Request of the Executive]	1/21/16 - Energy then the Judiciary
<a href="#">HB 4222</a>	Providing for the transfer of ownership, operation and maintenance of certain assets of the West Virginia Parkways Authority to the Division of Highways	Del. Gearheart, Householder, Ellington, Fast and Ambler	1/21/16 - Roads and Transportation then Finance
<a href="#">HB 4223</a>	Authorizing individuals and business concerns to purchase sponsorship relative to courtesy patrol vehicles in exchange for advertisement displays	Del. Trecost, Boggs, Guthrie, Longstreth, Hamrick and Lynch	1/22/16 - Roads and Transportation then the Judiciary
<a href="#">HB 4230</a>	Adding citizen members to the board of Registration For Professional Engineers	Del. Howell, Arvon, Blair, Phillips, Hill, Hartman, Stansbury, McGeehan, R. Smith, Hamrick and Morgan	1/22/16 - Government Organization
<a href="#">HB 4232</a>	Raising the consumer sales and service tax	Del. Trecost	1/22/16 - Roads and Transportation then Finance
<a href="#">HB 4238</a>	Adding citizen members to the board of Professional Surveyors	Del. Howell, Arvon, Blair, Phillips, Hill, Hartman, Stansbury, McGeehan, R. Smith, Hamrick and Morgan	1/22/16 - Government Organization
<a href="#">HB 4239</a>	Relating to construction of a modern highway from Pikeville, Kentucky to Beckley, West Virginia	Del. Marcum, Phillips, O'Neal, Bates, Arvon, Gearheart, Shott, Cooper, P. White, Ellington and Moyer	1/22/16 - Roads and Transportation then Finance

<i>Bill #</i>	<i>Proposal</i>	<i>Sponsors</i>	<i>Introduced/Committee</i>
<a href="#">SB 315</a>	Providing for construction of statewide, fiber optic broadband	Sen. Walters, Ashley, Beach, Boley, Boso, Gaunch, Kessler, Kirkendoll,	1/19/16 - Transportation and Infrastructure then

	infrastructure network (FN)	Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Snyder, Stollings, Sypolt, Takubo, Trump and Williams	Government Organization
<a href="#">SB 324</a>	Allowing transportation network companies to operate in WV	Sen. Walters, Blair, Boso, Carmichael, Ferns, Gaunch, Hall, Mullins, Sypolt and Trump	1/19/16 - Transportation and Infrastructure then Judiciary
<a href="#">SB 325</a>	Developing matching grant to foster development of creative communities (FN)	Sen. Miller, Beach, Kessler, Kirkendoll, Laird, Palumbo, Snyder, Stollings, Unger, Walters, Williams, Woelfel and Yost	1/19/16 - Economic Development then Finance
<a href="#">SB 327</a>	Proposing construction of modern highway from Pikeville, KY to Beckley, WV	Sen. Kirkendoll, Beach, Facemire, Hall, Kessler, Laird, Plymale, Prezioso, Romano, Stollings and Woelfel	1/20/16 - Transportation and Infrastructure then Government Organization
<a href="#">SB 358</a>	Establishing Mining Mutual Insurance Company	Sen. Gaunch, Boso, Blair, Walters, Palumbo, Stollings, Kirkendoll, Carmichael, Ferns, Takubo, Prezioso, Plymale, Williams, Trump, Hall and Mullins	1/21/16 - Banking and Insurance then Finance
<a href="#">SB 359</a>	Requiring performance bonds by operators	Sen. Boso, Gaunch, Blair, Palumbo, Stollings, Kirkendoll, Carmichael, Ferns, Takubo, Prezioso, Plymale, Williams, Trump, Hall and Mullins	1/21/16 - Energy, Industry and Mining then Finance
<a href="#">SB 371</a>	Deregulating persons who perform work on heating, ventilating and cooling systems and fire dampers	Sen. Walters	1/21/16 - Government Organization then Judiciary



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