



Contractors Association of West Virginia LEGISLATIVE BULLETIN



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LB 2016-06

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Legislators are entering the final three weeks of this year's legislative session and the state's budget woes still dominate discussion. Last week, House Finance Chairman Eric Nelson, R-Kanawha, asked state agencies to provide information on what impact a 6.5 percent reduction in funding would have on their operations. This is in addition to the governor's 4 percent reduction already in place. Agency heads predicted layoffs of personnel and possible cessation of programs and closings of facilities. The Senate Finance Committee increased the governor's proposal to increase the state's tobacco tax 45 cents to raise revenue to fund the Public Employees Insurance Agency's shortfall by another dollar. It is not sure how the full Senate will respond to the committee's recommendation but House members have repeatedly questioned the need for a tax increases to fund PEIA or other any government program. The Senate Finance Committee is expected to take up highway funding issues this week including S.B. 610 (see details below).

Time is becoming an issue for bills in this year's session. Today is the final day to introduce bills in the Senate. Tomorrow is the last day for House bills. On February 28, all bills are due out of committees in their house of origin to ensure three full days for reading. March 2 is the last day to consider bills on Third Reading in their house of origin.

SEN. GAUNCH INTRODUCES S.B. 610 TO GENERATE MILLIONS FOR HIGHWAY PROGRAM

Sen. Ed Gaunch, R-Kanawha, introduced [S.B. 610](#) which will generate over \$250 million for highway maintenance and construction. The bill has 20 bipartisan cosponsors and is single referenced to the Senate Finance Committee. Sen. Gaunch says it is time to fix West Virginia's roads and bridges. "It's also a jobs bill," Sen. Gaunch said on *Talkline* with Hoppy Kercheval. "Thousands of jobs would be created by investing in highways," he said, noting this would be much more than a plant or company locating in the state.

The bill has a number of funding components totaling about \$285 million in new revenues annually. The biggest portion would be \$100 million if the state's consumer sales tax would increase from 6 percent to 6.5 percent with the .05 percent dedicated to the State Road Fund. The bill also transfers from the state's general fund to the SRF the sales tax currently generated on the sale of car parts, tires, and repairs. This would generate about \$56 million. The bill increases DMV fees, many of which haven't been raised since the 1970s. This would generate about \$66 million and only cost motorists about 8 cents a day more. "This bill would cost West Virginians pennies a day and save them hundreds on car repairs," Sen. Gaunch told Kercheval.

The bill modifies the sales tax on vehicles by reducing from 5 percent to 4 percent and applying the tax on the sale of the new vehicle. S.B. 610 also places an annual fee on alternative fuel vehicles since they travel the highways but do not help with maintenance costs. A major component of the bill raises the diesel fuel tax 5 cents per gallon. The West Virginia Trucking Association supports this measure because they see poor roads as a safety issue. The five cents would generate about \$25 million annually.

MEMBERS MUST CONTACT SENATORS TO SUPPORT S.B. 610

The Senate Finance Committee is expected to take up the bill this week. Members need to call their Senators immediately to ask them to vote yes for [S.B. 610](#). The CAWV has developed a short email explaining the issue and the need to invest in West Virginia's highways. To email your senators on this issue, visit the CAWV Legislative Action Center by clicking [here](#). MEMBERS SHOULD CALL THEIR SENATOR'S OFFICE AS WELL. To get phone numbers of senators, click [here](#). This is best opportunity to get highway funding this year. Every member must contact their legislator asking their support of the bill.

Talking points on S.B. 610 include:

- West Virginia needs jobs. This bill creates over 3,800 jobs, many outside the construction industry.
- State Road Fund revenues are stagnant and WVDOH is putting future expansion projects on hold.
- This bill only costs motorists pennies per day. The average motorist is spending \$333 annually due to poor roads.
- Other states have stepped forward to fund their road program. Inaction will hurt WV's ability to attract new businesses to WV.
- Good roads equal jobs, economic development and improved safety.

WVBT CONTINUES BETTER ROADS CAMPAIGN

West Virginians for Better Transportation is continuing with its "Fix Our Roads" campaign to show that West Virginia needs to invest in its roads and bridges for job creation and safety reasons. This week's ad will show that [S.B. 610](#) will only cost West Virginia drivers pennies a day while driving on bad roads cost 90 cents a day. There will also be an ad showing West Virginia has moved from 14th in the nation to 8th in the nation in two years based on the number of deficient bridges as a percentage of total bridges. Members can visit www.fixourroadswv.com to view the WVBT 30-sec TV commercial and newspaper ads on the homepage.

SENATE TRANSPORTATION COMMITTEE TUESDAY'S AGENDA INCLUDES BILL MAKING PERMANENT WVDOH P3 PILOT PROGRAM

The Senate Transportation and Infrastructure Committee Tuesday will discuss [S.B. 557](#) which would make the WVDOH's pilot Public Private Partnership (P3) legislation permanent. The pilot bill expires June 2017. The CAWV opposes the bill this year. The reason is that the purpose of the P3 legislation was to determine whether this funding mechanism would benefit highway construction in West

Virginia. There are currently three projects that have been awarded as P3 projects - Coalfields Expressway, Route 35 and Corridor H - and the latter two have not even begun construction. The goal is to evaluate the positives of this method of procurement during the construction phase this year and come back to the legislature next year with recommendations to better the process and to extend the expiration date. It is premature to address the bill this year and for this reason, the CAWV is opposing S.B. 557.

CAWV Highway Division members Friday received a CAWV Legislative Alert asking them to contact members of the Senate T&I Committee asking them to vote no on S.B. 557.

WVDEP GIVEN AUTHORITY TO ADMINISTER CONSTRUCTION CONTRACTS

[S.B. 474](#) will give the WV Department of Environmental Protection the ability to administer its own construction and reclamation projects. The bill passed the Senate Government Organization Committee Friday and is on First Reading on the Senate Calendar today. WVDEP would be able to advertise and administer engineering and construction contracts that presently are administered by the state Purchasing Division. WVDEP has attempted to perform its own purchasing functions, but like many other state agencies, they fall under Purchasing guidelines. The agency believes this would save time in getting projects designed and constructed. There is a companion House bill, [H.B. 4573](#) but with only three weeks left in the legislative session, the House bill will be tabled and the House will work with the Senate bill when it passes the full Senate.

BILL PROVIDES SAFE HARBOR FOR TAXATION OF LIMESTONE AND SANDSTONE

The West Virginia Crushed Aggregates Council has been working to create a Safe Harbor valuation formula for calculation of the West Virginia severance tax upon limestone and sandstone. WVCAC has proposed a rate of 10 percent of the selling price as the basis for calculation. WVCAC members believe 10 percent of the selling price of crushed stone is a reasonable approximation of a quarry's average mining costs. A safe harbor calculation method would provide certainty within the quarry industry as to what their tax liability will be. It would provide an easier methodology and more exact measurement for Tax Department auditors.

[S.B. 673](#), introduced by Sen. Greg Boso, R-Nicholas, and [S.B. 675](#), introduced by Sen. Herb Snyder, D-Jefferson, were introduced today. (Only one bill will be put forward). They are single referenced to the Senate Finance Committee. House Majority Leader Daryl Cowles, R-Morgan, has introduced [H.B. 4626](#). It, too, has a single reference to House Finance Committee. WVCAC will be working for passage of one or both of the bills over the next week. Members are urged to contact members of the House and Senate Finance Committees. The CAWV has sent a letter to legislators giving them background on the issue.

BILL ELIMINATES PORT AUTHORITY

[S.B. 579](#) passed the full Senate Saturday. It eliminates the West Virginia Public Port Authority, a division of the West Virginia Department of Transportation. The stated mission of the West Virginia Public Port Authority is to develop the potential of intermodalism by combining highway, rail, and water transportation infrastructure to maximize overall economic advantages to business, industry, and the citizens of

West Virginia. It oversaw the creation of the Prichard intermodal facility in Wayne County. The bill now goes to the House.

BILL REQUIRES PARTIES OF STATE CONTACTS TO DISCLOSE PERSONNEL INFORMATION TO WV ETHICS COMMISSION

[H.B. 4605](#), originating last week in the House Judiciary Committee, would require all businesses with a state contract in excess of \$100,000 to file a form with the West Virginia Ethics Commission disclosing all interested parties in the company. The form would have to be submitted to the West Virginia Ethics Commission prior to the contract award. "Interested Party" is determined as "a person who has a controlling interest in a business entity with whom a state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary adviser, or attorney for the business entity." The bill is on Third Reading today in the House.

The stated purpose of the bill is to provide transparency in government contracts. Questions on implementation include how timely will the information be gathered and whether it will hold up award, and does "interested party" include family members and staff who do the estimating and bid preparation? Company information is already on file in the Secretary of State's office that anyone, including the Ethics Commission, can review. If this is another piece of paper that must be included with submission of the bid, what happens if the information is not included? Will bidders be declared nonresponsive? Or, will this open the door for future protests from bidders against bidders who don't include the information at bid time? It is unclear what committee or committees in the Senate the bill will be referred.

BILL CREATES INTERMEDIATE CONTRACTOR LICENSE WITHOUT EXAMINATION REQUIREMENT

[H.B. 4652](#), introduced today and expected to the House Government Organization Committee agenda this afternoon would create a new "intermediate contractor" definition under the West Virginia Contractors Licensing Act and exempt this new category from having to take an examination to be licensed. The maximum cost of the work an intermediate contractor could undertake is \$10,000.

An intermediate contractor means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the maximum cost of the undertaking is \$10,000.

SENATE CONCURRENT RESOLUTION 33 WOULD STUDY PUBLIC UTILITIES CONSOLIDATION

[S.C.R. 33](#), introduced by Senators Snyder, Boso and Stollings, requires the West Virginia Infrastructure and Jobs Development Council to study and report on the issue of consolidation regarding public water and sewer utilities. The resolution states the legislature is "concerned that over 500 municipal and public service district water and sewer utilities are providing service to customers. The capital

cost associated with the repair or replacement of existing infrastructure that serves current customers and the construction of upgrades to existing facilities or new facilities to serve new customers is far greater than available public funding sources and the ability of the utilities to raise money from existing rate-payers.

The resolution requests that the IJDC study and report on the issue of consolidation, regarding public water and sewer utilities and that the IJDC refer every proposed public water and sewer project to its consolidation committee to consider the issues related to potential consolidation or other measures that could result in efficiencies and more productive use of public moneys.

The IJDC will submit a report to the Legislature at the beginning of its 2017 regular session that identifies the potential for consolidation; the IJDC's treatment of that issue through its funding decisions; the problems that exist with the issue including barriers that may impede cooperation between municipals and public service districts in obtaining the desired result of providing quality water and sewer service to the residents of West Virginia at the lowest possible cost.

The resolution was amended Saturday to address concerns that this would be another layer of bureaucracy since IJDC already has a committee that reviews consolidation issues. The amendment removed line extensions from having to go through this process.

WEST VIRGINIA LEGISLATURE BILL INFORMATION

House and Senate bills can be accessed from the CAWV's Legislative home page at 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.

HOUSE BILLS			
<i>Bill #</i>	<i>Proposal</i>	<i>Sponsors</i>	<i>Introduced/ Committee</i>
HB 4584	Prohibiting shifting future development costs onto existing public service district customers	Del. Upson	2/17/16 - Government Organization then Finance
HB 4612	Relating generally to tax increment financing and economic opportunity development districts	Del. E. Nelson, Mr. Speaker (Mr. Armstead), Gearheart, Hamrick, Householder, Anderson, Shott, Storch, Espinosa, Howell and Boggs	2/18/16 - Roads and Transportation then Finance
HB 4613	Declaring rights-of-way held by the Division of Highways that are no longer publically travelled, or maintained, for five or more years, null and void	Del. Ireland, Anderson, Gearheart, Ambler, D. Evans, Border, Miller, Cooper, Hanshaw, Overington and Walters	2/18/16 - Roads and Transportation then the Judiciary

HB 4626	Providing a safe harbor valuation for the measure of tax upon limestone and sandstone	Del. Cowles	2/20/16 - Finance
HB 4628	Requiring county boards of education to conduct regular structural inspections of school facilities and structures	Del. Kessinger, Perry, Arvon, Hill, Stansbury, Fluharty, McCuskey, Sobonya, Summers, Border and Hamrick	2/20/16 - Education
HB 4629	Disqualifying a terminated employee from benefits for testing positive on a drug or alcohol test	Del. Foster	2/20/16 - Judiciary
HB 4652	Relating to the creation of an intermediate contractor's license-	Del. Howell, Cadle, Atkinson, R. Smith, Stansbury, Moffatt, P. White, Arvon, Foster, Hamrick and McGeehan	2/22/16 - Government Organization
HB 4660	Relating to the information required to be included in support of an application to the Public Service Commission for a certificate of convenience and necessity for a water, sewer and/or stormwater service project	Del. Espinosa	2/22/16 - Government Organization
SENATE BILLS			
<i>Bill #</i>	<i>Proposal</i>	<i>Sponsors</i>	<i>Introduced/Committee</i>
SB 565	Allowing well pad and road construction for oil and gas activities	Sen. Boso and Walters	2/10/16 – Energy, Industry and Mining
SB 579	Eliminating WV Port Authority	Sen. Plymale	2/11/16 - Finance
SCR33	Requesting WV Infrastructure and Jobs Development Council study and report on consolidation regarding public water and sewer utilities	Sen. Snyder and Boso	2/11/16
SB 592	Relating to pipeline safety	Sen. Hall	2/12/16 – Government Organization
SB 610	Relating to generating and maintaining revenue for maintenance of roads and infrastructure	Sen. Gaunch	2/16/16 - Finance
SB 633	Relating generally to Public Service Commission	Sen. Snyder	2/19/16 - Government Organization then Finance
SB 650	Creating DEP Public Improvements Fund	Sen. Romano and Facemire	2/20/16 - Government Organization
SB 663	Authorizing Commissioner of Highways permit DOH participate in	Sen. Maynard, Gaunch, Karnes and Takubo	2/22/16 - Finance

	construction or maintenance of publicly funded highway jobs		
SB 673	Providing safe harbor valuation for measure of tax on limestone and sandstone	Sen. Boso	2/22/12 - Finance