



Contractors Association of West Virginia **LEGISLATIVE BULLETIN**



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Highway Funding Bill Not Enough, CAWV Says

Governor Throws Support for S.B. 610

Sales Tax Proposals to Add Millions to Construction Projects

The House and Senate worked Saturday and the Senate worked Sunday to advance legislation prior to Wednesday's deadline to have bills passed in their house of origin lest they die this legislative session. The House met late Friday and Saturday since a number of bills consumed hours with debate. The session is entering its final two weeks. Some of the bills affecting CAWV members and their status follow.

HIGHWAY FUNDING IN 'POLITICAL HEADWIND'

Highway funding proponents have worked 47 days to get a bill to passage stage in the West Virginia Senate. Friday, those efforts were thwarted when the Senate Finance Committee decided to sideline [S.B. 610](#) and pass out of committee [S.B. 555](#), a much watered down funding bill. The bill attempts to restore the 2.5-cents-per-gallon loss in the wholesale tax due to reductions in the wholesale price of gasoline. Senate Finance Chairman Mike Hall, R-Putnam, who supports a comprehensive highway funding package, said Sunday on WOWK's "Decision Makers" that highway funding is "hitting a political headwind" and time is running out for action during this 60-day session. He says his proposal in S.B. 555 increases the retail gasoline tax 3-cents-per-gallon when the price of gas goes under \$2.00 a gallon. One cent of the retail gas tax raises about \$11 million whereas one cent of the wholesale gas tax raises about \$14 million to \$15 million. This is because there are no exemptions in the wholesale tax, such as off-road vehicles, heating oil, etc. The wholesale gas tax dropped 1.1 cents per gallon on January 1, 2015 and 1.4 cents again on January 1, 2016, about a \$38 million loss in State Road Fund revenues over a two year period. The 3-cent proposal, at about \$33 million, doesn't restore the lost revenue. A positive in S.B. 555 is that it raises the current floor for the calculation of the wholesale gas tax from \$2.34 cents per gallon to \$2.54 cents per gallon. This is to keep the wholesale tax at the current level. Without this measure, the wholesale tax would probably drop another 1 cents per gallon on January 1, 2017.

CAWV CONTINUES TO PUSH FOR S.B. 610

Governor Earl Ray Tomblin threw his support behind highway funding Thursday by issuing a statement saying he will support an increase in DMV fees and possible other tax measures to fund highway maintenance and construction projects. Following the Governor's statement, Senate Finance Chairman Mike Hall announced his committee would meet to begin crafting legislation. The governor's comments, included below, were confirmed Thursday morning by Director of

Communications, Chris Stadelman on MetroNews Talkline" with Hoppy Kercheval. The governor likes Senator Ed Gaunch's S.B. 610 pay as you go bill verses the \$2 billion bond referendum passed this week by the Senate Judiciary Committee.

S.B. 610 was on track to be voted on the full Senate Finance Committee but in a meeting Thursday with the bill's sponsors and Senate leadership, a lobbying group opposed increases in an increase in Division of Motor Vehicles registration fees and changes in the privilege tax on vehicles. After discussion with Senate leadership, the DMV fees and Privilege tax provisions of the bill were removed. GO-MART came out in opposition to the diesel fuel tax increase even though the West Virginia Trucking Association has gone on record in support of a 5-cent gas tax increase.

The CAWV, in comments to the Senate Finance Committee and to Charleston Gazette-Mail Capitol reporter Phil Kabler, stated the funding proposed in S.B. 555 was "too little, too late" and the association will probably not be supporting this bill. The 3-cents-per gallon does not even restore what was lost with the 2.5-cents-per-gallon wholesale gas tax drop. Even more concerning is that the Legislature and, possibly the general public, will consider the state's road problem solved and it could be years before highway funding is back on a legislative agenda. In Kabler's February 28 "Statehouse Beat: Discussion on road funding still needed" article, CAWV Executive Mike Clowser is quoted saying S.B. 555 doesn't even "get us back to what we lost. It doesn't create one new job, or provide additional new money to build roads."

In his "Decision Makers" comments, Chairman Hall commented that time is running out on this year's session. If legislators do not take action in the next two weeks, he said highway funding must be addressed sooner than later. He said there could be a special session called in May and dedicated to highway funding solutions. The Governor would have to call legislators into special session since it would require a two-thirds vote of the legislature to call themselves into special session.

GOVERNOR'S STATEMENT ON S.B. 610

Governor Tomblin stated: "I understand West Virginians across the state are concerned about the condition of our roads, and legislation currently being considered in the Senate would help to address these concerns. I am open to discussing an increase in DMV fees and potentially the state's gasoline tax to collect the new revenues necessary to fund these improvement projects. On the other hand, I am concerned that dedicating sales tax revenue generated by auto-related purchases would leave a shortfall in the General Revenue Fund, and an increase in the state's sales tax would be difficult at this time.

"I also think we should pay for road construction projects as they are completed, rather than issuing bonds, so we can create jobs in West Virginia for hardworking West Virginians and keep our taxpayer dollars in-state, while dedicating nearly \$150 million a year to road maintenance and improvement projects."

This is a major breakthrough in getting a highway funding bill passed this year. However even if the Senate does pass a funding bill, it will still be an uphill battle in the House where many delegates have taken a "no new tax" pledge.

MEDIA HIGHLIGHTS ROAD FUNDING NEEDS

There was plenty of media attention this week on highway funding. Links to radio and newspaper articles are below. To listen to Governor Tomblin's Director of Communication Chris Stadelman on Thursday's "Talkline," click [here](#) and fast forward to the 1:32:00 mark. To listen to Mike Clowser on Hoppy Kercheval which aired Wednesday, click [here](#) and fast forward to the 22:00 mark. The three West Virginians for Better Transportation ads which appeared in the *Charleston Gazette-Mail* and *State Journal* are also attached.

[#FTDR moving to front burner at the Capitol](#) Metro News 2/26/2016

[Contractors call for action on highways bill](#) Metro News 2/24/2016

[Senate committee passes fuel tax bill to raise \\$30 million for highway work](#) Metro News 2/26/2016

[Statehouse Beat: Discussion on road funding still needed](#) WV Gazette Mail 2/27/2016

[WV faces struggle to supplement federal construction funding](#)

WV Gazette Mail 2/27/2016

LOCAL POWERS ACT AND \$2 BILLION ROAD BOND AMENDMENT STILL IN PLAY

The House has passed [H.B. 4009](#), the County Local Powers Act lead by Del. Joe Statler, R-Monongalia, would allow counties to develop their own highway projects and fund them through the issuance of local bonds. The bill requires a super majority of voters (60 percent) to approve bonds and a taxing authority for repayment of the bonds. Counties must coordinate their projects with the WV Division of Highways. The Senate has a companion bill, [S.B. 12](#) promoted by Sen. Kent Leonhardt, R- Monongalia, which is on Second Reading today in the Senate. Senate Joint Resolution [\(SJR\) 6](#) would place a constitutional amendment on November's general election ballot to seek voters' approval of a \$2 billion highway bond amendment which would be repaid by an increase in property taxes. The legislation is in Senate Finance.

HOUSE FINANCE SURPRISES WITH CONSUMER SALES TAX REWRITE; EXEMPTIONS REMOVED

The House Finance Committee Saturday presented a committee substitute to a bill dealing with the state's consumer sales tax. [H.B. 2407](#), introduced originally to increase the state's consumer sales tax from 6 percent to 7 percent to ease the state's funding problems. The committee used a Saturday morning meeting to come up with what could be the largest revenue producing bill this legislative session.

The measure, which passed on a voice vote, would lift the current sales tax exemption on professional services, things like lawyers, engineers, architects, construction contracts, advertising sales, and then decrease the current 6 percent consumer sales tax to 5.5 percent immediately and more as the state's revenue picture gets better. As revenues grow the sales tax would go down below the initial drop, keeping in mind the required balance in the state's Rainy Day Fund, which

would trigger the sales tax decrease.

Broadening the tax base while cutting the tax rate could be a way to build the state's economy, Finance Committee Vice Chair Eric Householder (R-Berkeley) said. "We can maybe spur some economic activity that we didn't even consider from having a lower tax rate," Householder said.

Services currently exempt from the state sales tax that would be taxed under the bill include computer hardware and software, digital goods, advertising services, lawyers, certified public accountants, professional accounts, architects, professional engineers, contractors and veterinarians. The sales tax exemption would stay in place for food, medical services and elderly care. Possible new revenues ranging from \$50 million to \$344 million were mentioned during the meeting. The state is facing a \$350 million revenue hole this fiscal year with another tough budget year expected next fiscal year. The committee agreed to call the bill the West Virginia Tax Decrease Act of 2016.

H.B. 2407 would add millions of dollars in additional construction costs, plus whatever taxes would be raised on architectural and engineering services. If the WVDOH awarded \$500 million in construction and maintenance contracts, adding a 5% consumer sales tax would increase costs by \$25 million. This would go higher if all subcontractors added 5% to their bids. Engineers, surveyors and every other provider would add 5% to their bill. The same with all other public projects – schools, water and sewer projects, airports, reclamation, dams, etc. All commercial contracts for retail, hospitals, offices, etc. would be increased by a 5% sales tax.

The bill is on Second Reading on the House of Delegates Special Calendar. The Senate Finance Committee had a similar bill on its agenda this afternoon but has since been removed. The CAWV will work with the Senate to address the construction industry's concern should the full House pass H.B. 2407 Tuesday.

VENDOR PREFERENCE BILL DOES NOT ADVANCE

[S.B. 527](#), introduced by Sen. Craig Blair, R-Berkeley, would have eliminated the current 5 percent preference for resident West Virginia vendors bidding on public procurement contracts. The current preference only applies to products and services. The committee opted not to take up the bill so the current vendor preference on products and services remains in place.

UPDATE ON BILLS OF INTEREST TO THE CAWV

There are number of bills still under consideration that impact the construction industry. Some that have been in past CAWV Legislative Bulletins include:

[H.B. 2028](#) would create statute regarding construction change orders on public works contracts. The bill passed the House Government Organization Committee and is currently in the House Judiciary Committee. The CAWV is supporting [H.B. 4046](#) which is the rules bill that restores construction change orders to the previous process.

[S.B. 474](#) allows the WV Department of Environmental Protection to perform its own purchasing for construction and reclamation projects. The bill has passed the Senate and is referred to the Senate Government Organization Committee.

[S.B. 557](#) makes permanent the WVDOH's ability to utilize Public Private Partnerships (P3) as a construction method. The current P3 pilot project expires June 30, 2017. The bill will not pass this year.

[S.B. 673](#) would create a safe harbor for the calculation of severance tax liability for the production of limestone and sandstone. West Virginia Crushed Aggregates Council members and the Tax Department have reached a tentative agreement and discussions are ongoing at press time.

[H.B. 4605](#) requires businesses with a state contract in excess of \$100,000 to file with the WV Ethics Commission disclosing all interested parties in the company. The bill has passed the House and has been referred to the Senate Judiciary Committee.

[H.B. 4652](#) creates a new section within the Contractors Licensing Board. An "Intermediate Contractor" classification could do up to \$15,000 worth of construction without having to take a contractors licensing exam. The bill has passed the House and been referred to the Senate Government Organization Committee.

[H.B. 4476](#) would remove the Contractors Licensing Board out from under the WV Division of Labor and make it a stand-alone board. The bill is dead for this session.

[S.C.R 33](#) would require the WV Infrastructure Council to report on the issue of consolidation regarding public water and sewer utilities. It has passed the Senate and is currently in House Rules Committee. The resolution does not make this mandatory but would require more effort when review consolidation of existing public service districts.

[H.B. 4147](#) allows the West Virginia School for the Deaf and Blind to participate in School Building Authority funding. Passed the House and referred to the Senate Finance Committee.

[H.B. 4218](#) expanding the definition of underground facilities in the one call system. Passed the House and referred to the Senate Judiciary Committee.