



Contractors Association of West Virginia  
**LEGISLATIVE BULLETIN**

**In This Issue**

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*Buy American*

*OSHA 10-HOUR*

*Highway Funding*

The West Virginia Legislature was not immune to the water crisis that shut off water to a nine-county region for nearly a week, including the State Capitol complex. By Tuesday, however, all committee meetings and the floor session had resumed. Since then, discussion has begun on what caused a leak in an above-ground chemical tank to go undetected for a period of time that resulted in West Virginia American Water to shut down its treatment plant, leaving 300,000 West Virginians with no water for drinking, cooking or showering. Numerous lawsuits have been filed and the company responsible for the spill has declared bankruptcy. WV Department of Environmental Protection will begin to review laws, policies and procedures regarding above ground storage tanks. It was reported this company's tanks, located over one mile from WV American Water's water intake, last inspection was nearly 20 years ago. Lawmakers have begun drafting legislation. Sen. John Unger, D-Berkeley, and other senators introduced [S.B. 373](#) on Friday, a bill to amend the Water Resources Protection and Management Act. It is expected the administration will come out with its own bill. WVDEP and legislators will hopefully look at what is presently in state statute that addresses this issue before making recommendations on any amendments. Many construction-related firms have above-ground tanks that, the CAWV understands, are regulated and inspected.

**BUY AMERICAN ON HOUSE COMMITTEE AGENDA**

[H.B. 4168](#) and [S.B. 335](#) are the newest versions of the Buy American Provision (BAP). The legislation was developed by the new Labor and Workers' Safety Committee. The bill has been reduced to about one page requiring materials, supplies, equipment and other items purchased by the state and its agencies to be made in the United States. These bills contain none of the procedures or rules that the Buy American task force said must be developed before BAPs are adopted and implemented.

The key components of 4168 and 335 are:

- State construction bids shall "specify and require that goods and equipment comprising a substantial portion of the total bid amount shall be American made and no bid shall be approved that does not comply with this section."
- "Substantial portion of the total bid amount" means an item of goods or equipment of which the cost is equivalent to or greater than \$25,000 or five percent, whichever is less, of the total price of the bid.

- “American made” means that the item is manufactured in the United States or assembled in the United States from component parts or materials, regardless of origin.
- The Director of Purchasing may, in writing, authorize the use of foreign goods and equipment if the specified goods or equipment are necessary for the protection or safety and no comparable American made products are available; the goods are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements; or if the American made goods exceed the cost of comparable foreign made goods by more than ten percent of the cost of that item.

The concern industry has expressed on the previous BAP bills is that contractors will not know at the time of bid whether products and equipment meet the Buy American provisions. This bill does not identify who will determine, in advance, what products can be used in a state construction project. It does state that the Director of Purchasing will provide, in writing, any exceptions. Given the workload of the State Purchasing Division, it would be highly unlikely that the division could review, research and provide a written exemption without delaying the design or bidding process. Another concern is what additional cost will be added to highway, bridge, water, sewer, school, airport and other infrastructure projects.

It is anticipated H.B. 4168 will be on the agenda at Wednesday’s House Industry and Labor Committee. It will then go to Finance Committee.

### **OSHA 10-HOUR BILL INTRODUCED FOR FOURTH TIME**

[S.B. 376](#) requires every worker on a public construction contract to complete the OSHA 10-Hour Safety training program. This is the fourth straight year the bill had been introduced. It has been defeated in House Government Organization or the Senate Judiciary Committee. The Labor and Workers’ Safety Committee, formed last year to look at just such legislation, developed the language for the bill. The language addresses some of the issues raised by the CAWV. If the bill passes this session, contractors for one year can have their employees on the job 90 days before they have to complete the OSHA 10-Hour. This is to give contractors time to phase in the legislation. The bill also provides that, going forward, employees must complete the OSHA 10-Hour within ten days of employment on the site. In previous bills, workers had to complete the 10-Hour Course prior to beginning work on the site. Many CAWV members have their employees complete the 10-Hour Safety Course. Other members choose to do more construction specific safety training in lieu of the OSHA 10-Hour. The S.B. 376 is referred to the Senate Labor Committee then Judiciary.

### **BILL DIVERTS HIGHWAY FUNDING TO BUDGET DEFICIT**

A bill introduced by Governor Tomblin, [S. B. 334](#) and [H. B. 4155](#) would reduce funding for the State Road Fund for two years. Presently, the

state Tax Department transfers to the State Road Fund consumer sales tax collected on WV Division of Highways' projects. The transfers range between \$11 million and \$15 million. S.B. 334 would put a moratorium on the transfer for fiscal years 2015 and 2016. Reimbursements would resume in fiscal year 2017. The CAWV has not spoken with the Governor's office but it assumed the money is being withheld to help offset the current budget deficit (See January 10 CAWV Newsletter). The governor proposed the same moratorium on dollars going into the Special Railroad and Intermodal Enhancement Fund during the fiscal years 2015 and 2016. [S.B. 329](#) suspends deposits going into the fund, whose purpose is for construction, reconstruction, maintenance and repair of railways.

### **PURCHASING BILLS INTRODUCED; S.B. 358 REQUIRES CHANGE ORDERS TO BE SUBMITTED FOR LEGISLATIVE REVIEW**

A number of bills dealing with state purchasing procedures have been introduced, some as a result of the routers, cell tower and broadband contracts that auditors have claimed did not follow standard procurement procedures. About ten bills, including one from Gov. Tomblin, have been assigned to committees for review and debate. The CAWV has always been involved in procurement proceeds to guarantee that fair and open competitive bid procedures are defined for government construction projects. The purchasing bills to date are included with this week's bill list. [S.B. 358](#), introduced by Sen. Chris Walters, R-Kanawha, and others, attempts to address a change order issue that arose on a broadband contract. This bill would require the Director of Purchasing to approve or deny "any change order or combination of change orders that would increase the total price of any state contract over \$1 million by: (i) Five percent or more of the total value of the original contract; or (ii) by \$100,000 or more," and "requiring that the director approve or deny in writing any requested change order within five business days of Purchasing Division's receipt of the request for state contracts over \$1 million." S.B. 358 also requires Purchasing to submit annual reports to the Legislature of the value of, justification for, and vendor and agency associated with all change orders approved by the Purchasing Director for state contracts over \$1 million. One of the issues the CAWV/State Purchasing Task Force members has been studying is how to get change orders approved more quickly. Even though this bill requires a 5-day approval of change orders, it would be difficult for agencies to turn around a change order this quick. The CAWV will be communicating with legislators that the vast majority of change orders are developed by the agencies, not contractors, and that it's the contractor who is at risk for performing a change order only on a verbal approval since waiting for a written change order would delay the project. Most of the bills have been committed to the House and Senate Government Organization committees.

### **ACTION OF FALSE CLAIMS ACT BILL SLOWS**

[H.B. 4001](#), bill creating a False Claims Act introduced on the first day of the session and passed by the House Judiciary committee on the second day, appears to be getting further review. The business community expressed much concern over the bill. (See January 13 CAWV Legislative Bulletin for full details) since it goes far beyond the

federal False Claims Act and other states' legislation. The business community requested the House look more closely at H.B. 4001 before proceeding with action on the bill. The CAWV appreciates House Speaker Tim Miley and his leadership team for evaluating the bill further.

**GOVERNOR INTRODUCES MANDATORY ONE-CALL BILL**

All operators of underground facilities in West Virginia would be required to participate in the one-call system under a bill introduced by Gov. Tomblin. [H.B. 4152](#) and [S.B. 324](#) strikes language that has been in state code for years that exempts any privately-owned public water utility regulated by the Public Service Commission, any state agency and municipal and county systems from participating in the mandatory one-call system, known in West Virginia as Miss Utility of West Virginia. In the past, water companies have noted that it is difficult to detect all of their lines, especially when they have taken over municipal or other systems that don't have proper mapping. Government-owned operations have not wanted to bear the cost of participating in a one-call system. The bill is the result of many years of activity by supporters of the one-call system. H.B. 4152 is referred to the Committee on Energy then Judiciary.

**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>Committees</i>
<a href="#">HB 4152</a>	Requiring all operators of the underground facilities in this state to participate in the one-call system	Speaker Miley, Del. Armstead	01/14/14 - Energy then Judiciary
<a href="#">HB 4153</a>	Providing that the State Fire Marshal shall serve at the will and pleasure of the fire commission	Speaker Miley, Del. Armstead	01/14/14 – Govt. Organization
<a href="#">HB 4154</a>	Fixing a technical error relating to the motor fuel excise tax	Speaker Miley, Del. Armstead	01/14/14 - Finance
<a href="#">HB 4155</a>	Suspending payments of the refundable exemption to the West Virginia consumers sales and service tax to the State Road Fund for fiscal years 2015 and 2016	Speaker Miley, Del. Armstead	01/14/14 - To Roads and Transportation then Finance
<a href="#">HB 4156</a>	Creating the Safe and Efficient Parkways Act (SEPA)	Speaker Miley, Del. Armstead	01/14/14 - To Roads and Transportation then Judiciary
<a href="#">HB 4157</a>	Extending the cessation of deposits into the Special Railroad and Intermodal Enhancement Fund	Speaker Miley, Del. Armstead	01/14/14 - Finance

<a href="#">HB 4168</a>	Requiring materials, supplies, equipment and other items purchased by the state and its agencies to be made in the United States	Dels. D. Poling, Diserio, Marshall, Walker, Poore, Young, Frich	01/14/14 – To Industry and Labor then Finance
<a href="#">HB 4183</a>	Supplementing, amending, decreasing, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways	Speaker Miley, Del. Armstead	01/15/14 - Finance
<a href="#">HB 4185</a>	Implementing purchasing reforms	Speaker Miley, Del. Armstead	01/15/14 – Gov. Organization then Judiciary
<a href="#">HB 4187</a>	Dissolving the West Virginia Parkways, Economic Development and Tourism Authority and transfer its powers to the Secretary of the Department of Transportation	Dels. Staggers, Marshall, Perry, Pino, Guthrie, Fragale, Gearheart	01/15/14 – Roads and Transportation then Finance
<a href="#">HB 4194</a>	Relating to the adoption of rules for traffic control signals	Dels. Iaquinta, Fragale, Perdue, Kinsey, Hartman, Campbell, Diserio, Poling, M., Azinger, Hamilton, Pasdon	01/16/14 - Roads and Transportation then Judiciary
<a href="#">HB 4196</a>	Requiring the Workforce Investment Council to provide information and guidance to local workforce investment boards that would enable them to better educate both women and men about higher paying jobs	Dels. Marshall, Fleischauer, Cooper	01/16/14 - Industry and Labor then Judiciary
<a href="#">HB 4215</a>	Requiring the Director of the Purchasing Division's direct purchases be consistent with the other requirements of the purchasing process and best value contracting	Dels. Guthrie, Sponaugle, D. Poling, Caputo, Manypenny, Moore, Fleischauer, Perdue	01/17/14 – Govt. Organization then Judiciary
<a href="#">HB 4219</a>	Auditing the Division of Highways	Dels. Gearherat, Shott, Ellington, Border, Sponaugle, Fleischauer, Perdue	01/17/14 – Govt. Organization
<a href="#">HB 4222</a>	Providing the Parkways Authority with the power to issue \$500 million worth of bonds	Dels. Gearheart, Householder, Moore, Shott, Ellington, Staggers, Kump, Westfall, Espinosa	01/17/14 – Roads and Transportation then Finance

<a href="#">HB 4224</a>	Making changes to the definition of electrical contractor	Dels. Gearheart, Householder, Moore, Shott, Kump, Border, Westfall, Espinosa, Ellington, R. Phillips	01/17/14 – Industry and Labor then Govt. Organization
<a href="#">HB 4227</a>	Requiring certification of correctness as to design, construction and performance of domestic and commercial liquefied petroleum gas-consuming equipment	Del. Hunt	01/17/14 – Industry and Labor then Judiciary

## Senate Bills

<i>Bill #</i>	<i>Proposal</i>	<i>Sponsors</i>	<i>Committees</i>
<a href="#">SB 348</a>	Supplementing, amending, decreasing and increasing appropriations from State Road Fund to DOH	President Kessler, Sen. M. Hall	01/14/14 - Finance
<a href="#">SB 356</a>	Relating to purchasing reforms	President Kessler, Sen. M. Hall	01/15/14 – Govt. Organization then Judiciary
<a href="#">SB 358</a>	Requiring Purchasing Director approve certain change orders	Sens. Walters, Blair, Cole, D. Hall, Nohe, Palumbo, Snyder, Sypolt, Wells	01/16/14 – Govt. Organization
<a href="#">SB 360</a>	Repealing article relating to wages for construction of public improvements	Sens. Cole, Barnes, Blair, Carmichael Walters	01/16/14 – Labor then Govt. Organization then Finance
<a href="#">SB 368</a>	Repealing article relating to unfair trade practices	Sens. Snyder and Blair	01/16/14 - Judiciary
<a href="#">SB 369</a>	Requiring state procurement by competitive bidding	Sens. Snyder, Blair, Boley, Cann, Green Cookman, Yost	01/16/14 – Govt. Organization then Judiciary
<a href="#">SB 373</a>	Incorporating State Water Resources Management Plan into Water Resources Protection and Management Act	President Kessler, Sen. Unger	01/16/14 – Natural Resources then Judiciary
<a href="#">SB 376</a>	Requiring certain construction workers complete OSHA safety program	Sens. Yost, Fitzsimmons	01/17/14 - Labor



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