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Legislative Report

The Voice Of Business In West Virginia

A final report on the proceedings of the 2009 West Virginia Legislature
Tuesday, April 14, 2009

60-Day Legislative Session Ends With Action On Several Key Matters

Provided are summaries of key bills that were enacted during the 60-day regular session of the West Virginia Legislature. Lawmakers have recessed until late May when they will return to Charleston to finalize work on the new state budget.

Unemployment Compensation Funding (Com. Sub. for S.B. 246)

This bill, which is effective from passage, will provide about \$120+ million in added funds to the state's unemployment compensation program, which has seen an enormous increase in claims over the past several months.

West Virginia has experienced a 56 percent increase in the number of unemployed people since December 2008. Also, March 2009 had the lowest level of employment in West Virginia in at least 10 years.

The bill authorizes a one-time transfer of \$40 million in state funds and generates \$70 million to \$75 million a year by increasing the taxable wage base to \$12,000 of gross wages on employees. This temporary wage base increase will go in effect when the state's UC fund drops to \$180 million, and remain there until the fund balance goes back to \$220 million on any February 15th. Once the balance returns to \$220 million, the unemployment compensation taxable wage base will be set at \$9,000. **The bill does not include any additional temporary assessments, which were originally contemplated to be imposed on employers and employees.**

The bill also contains several reforms that were advocated by the West Virginia Chamber and other business groups, including:

- establishing mandatory disqualification from unemployment comp benefits if a worker is terminated for failing a workplace drug or alcohol test;
- disallowing payment of unemployment compensation benefits to an individual who elects to take a voluntary retirement incentive package; and
- establishing disqualification for "gross" misconduct.

One provision, relating to strike benefits, will remain the same as current law.

Workers' Comp Mileage/Regulations (Com. Sub. for S.B. 537)

The bill will modify language in the workers' compensation statutes to clean-up references and adjust practices more in line with insurance industry practices on prime subcontractor and subcontractor liability and subrogation. The bill also will establish mileage and travel reimbursement provisions based on the W.Va. Department of Administration's travel rules:

- Allows only the use of the most direct route
- Sets up prior approval for any overnight stays, and overnight stays will be at government rate
- Makes travel mileage for distance from home to work not reimbursable
- Sets the reimbursement rate to be 44.5 cents per mile

Property Tax Assessment/Appeal (Com. Sub. for Senate Bill 484)

The bill, which was developed by the Chamber's Tax Committee, will make improvements to the state's property tax assessment and appeals process. The changes improvements will provide:

- 1) for greater due process in terms of notice to taxpayers,
- 2) more realistic timeframes for filing property tax returns and gives state circuit courts time to develop the record on appeal from a county board of equalization and review; and
- 3) added capabilities for businesses to present property tax valuation information and greater ability to appeal contested property tax cases.

Omnibus Tax Bill/Combined Reporting (Committee Substitute for Senate Bill 540)

This bill will make additional changes related to the implementation of the state's new combined reporting system and also includes a number of tax-related statutory and procedural changes developed by the state Tax Department.

Tax Bills - Business

[Click to read a complete list of all tax-related business bills that were enacted.](#)

Industrial Accident Emergency Notification Bill (Com. Sub. for S.B. 279)

This bill, which was proposed by Governor Manchin, will provide state and local emergency responders with notice of significant industrial accidents and require the reporting of such accidents to state and local officials. Here are the bill's provisions:

- requires certain industrial facilities to notify either the Mine and Industrial Accident Emergency Operations Center or their local 911 Center of an emergency event within 15 minutes
- establishes a fine of up to \$100,000 for not reporting,
- requires the industrial facility to establish a communications system designed to provide timely information to appropriate state and local officials,
- requires facilities to provide access to certain state and local officials to the location where the emergency event is being managed or coordinated and to the location of the incident once it has been deemed by the facility as being safe,
- requires state and local officials to notify the public within 30 minutes of obtaining information regarding hazardous materials that affects the public health, safety or welfare,
- establishes that a facility can be subject to additional civil penalties depending on how it handles the continuing communications and access requirements of the bill,
- designates that any moneys collected pursuant to the bill will be deposited in the Hazardous Waste Emergency Response Fund managed by the WVDEP, and
- authorizes the Division of Homeland Security and Emergency Management to promulgate rules, including emergency rules.

Chesapeake Bay Watershed (S.B. 715)

The bill provides for the development of a holistic program that not only aims to improve the water quality of the Chesapeake Bay and its watershed but also preserves the economic stability of the affected areas.

Rather than have the W.Va. DEP immediately require communities to meet standards that they cannot possibly achieve, the bill provides for the time to allow communities to come into compliance.

Omnibus Environmental Regulatory Bill (S.B. 153)

[Click to read an overview of the regulations contained in this bill.](#)

Alternative Energy Portfolio Bill (Com. Sub. for S.B. 297)

This bill requires utilities to meet a 25 percent alternative/renewable target by 2025. The final version of the bill is very broad and includes pump storage hydro, clean coal technologies (IGCC) and natural gas as qualifying projects. There is not a mandated renewable requirement, and the bill allows for certain projects to qualify for double and triple credit.

Selenium Testing (S.B. 461)

This bill will extend the deadline for testing for selenium by two years, to 2012. This extension was an important need for the coal industry.

Coalbed Methane Notice (S.B. 613)

This bill will allow notice of coalbed methane production to be provided to absentee mineral rights owners by virtue of an ad in the local newspaper. Coalbed methane operators estimate this bill will save between \$40,000 to \$80,000 per well. The land owner and primary mineral owners will continue to be notified by certified mail.

Illegal Entry of Utility Property (S.B. 761)

This bill creates a felony for the illegal trespassing on utility owned property as a way to help crack down on the theft of copper and other materials.

Tax Credit for certain Solar Systems (H.B. 2535)

This bill creates a tax credit for customers that purchase solar systems for the purpose of electric generation, heating or cooling. The bill also directs the PSC to develop net metering rules for solar customers.

Carbon Sequestration Regulations (H.B. 2860)

This bill provides the guidance for CO2 sequestration projects in the state. However, the bill does not address two key issues: liability and pore space ownership. Additional rule-making will be required.

Medical Home/Health Czar (S.B. 414)

The bill will fund pilot projects of patient-centered medical homes and create a health planning and policy coordinator's position within the governor's office.

Medical Credentialing (H.B. 2885)

The bill calls for the state Insurance Commissioner to review the current process being used for credentialing of medical providers and to work with stakeholders on recommendations to the Legislature as to what a revised CVO process should look like.

Early Childhood Education (S.B. 498)

This bill aims to improve early childhood education by encompassing the Quality Rating and Improvement System (QRIS), which provides for up to five pilot projects using the system but without funding until 2010. The bills restored most of the collaborative requirements and required the Secretary of DHHR and state Superintendent of Schools both to approve the plans without an ending date.

Promise Scholarship (S.B. 373)

The bill will provide the Promise Scholarship program with an additional \$2 million from lottery funds, thereby raising the base funding to \$29 million. The legislation also caps funds available to students at \$4,750.

Bills That Died

Campaign Electioneering (H.B. 3337)

The bill would have made additional changes to the state's electioneering communications requirements.

Caloric Posting (S.B. 419)

The bill would have imposed caloric posting requirements on food establishments in the state that have 15 or more locations in the U.S.

Health Information Technology Tax (H.B. 2747)

The bill would have imposed a new tax on the processing of health insurance claims. Funds will be used to help with health information technology initiatives in the state.

Road Funding (S.B. 680)

The bill would have continued the current freeze on the state fuel tax at 32.2 cents per gallon through the 2010 calendar year. State Division of Highways officials estimate that the defeat of the bill may result in the loss to the state Road Fund of \$70 million a year.

180-Day School Calendar (S.B. 249)

This bill would have changed the annual school calendar to require 180 days of classroom instruction. The bill died in the final hours of the session. At issue was the use of non-instructional days when weather caused too many days lost to instruction.

Employment/HR Bills

The West Virginia Chamber of Commerce worked to oppose and ultimately stop consideration -- or defeated -- a number of onerous human resources/employment bills:

- **Lunch/Break Period Bill (H.B. 2686)** -- the original version would have mandated a lunch break of 20 consecutive minutes and other provisions related to break periods.
- **Public Employee Collective Bargaining (S.B. 622)** -- would have permitted public employees to associate with others in organizing and choosing representatives for the purpose of collective bargaining. The bill also would have required the state (excluding higher education) to recognize, negotiate and bargain with the employee organizations and to enter into written agreements through the establishment of standards and procedures.
- **Personnel Files (H.B. 3032)** -- would have given all employees "the right to review and copy their respective personnel files."
- **Flexible Leave Act (H.B. 2272)** -- would have established the Flexible Leave Act, which would have allowed for the use of earned leave with pay for an illness in an employee's immediate family.
- **Workplace Fatality Reporting (H.B. 2411)** -- would have required employers to report workplace fatalities to the state Division of Labor.
- **E-Verification (H.B. 2871)** -- would have required all employers in West Virginia to verify legal employment status of workers by requiring employers to register with and utilize the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996.
- **Workers' Comp PTD Benefits (H.B. 2854)** -- would have extended permanent total disability benefits to workers' compensation benefits claimants for life.
- **Mandated Health Benefits (H.B. 2478)** -- would have required that workers on public improvement projects valued at \$1 million or more be covered by health care insurance.

Resolutions

- The Chamber opposed the pro-Employee Free Choice Act resolution ([S.R. 28](#)) that was introduced in the state Senate. The resolution was never taken up by the Senate Judiciary Committee.
- These two resolutions were adopted by the state Senate but failed to receive action by the House:
 - [SCR 47](#) – would have called for a study of the economic impact of state and federal prevailing wage laws in West Virginia
 - [SCR 67](#) – would have called for a study of the need for further disclosure by claimants in civil actions involving exposure to asbestos of all current and anticipated claims against bankruptcy trusts and all supporting documentation filed with the bankruptcy trusts

West Virginia Legislature Bill Information

The following links will allow you to search for bills and determine the status of legislation for the 2009 session of the West Virginia Legislature. These link pages and the legislative information are maintained by the West Virginia Legislative Reference & Information Center.

Bill Status - http://www.legis.state.wv.us/Bill_Status/bill_status.cfm

Bill Tracking - http://www.legis.state.wv.us/billstatus_personalized/persbills_login.cfm

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