Improved Jobs Act, Penalties for Unauthorized Workers

Trades Pass Two New Laws

A CT and the State Building Trades were able to pass two key pieces of legislation and help a number of other important measures (see story page 2) become law during the 2010 legislative session.

An update to the West Virginia Jobs Act, first passed in 2001, received final approval on Thursday, March 11 when it passed the State Senate unanimously.

The new bill, H.B. 4359, will go into effect June 9 of this year and will improve the Jobs Act two ways.

Under current law only projects valued at more than $1 million are covered, the new law will now include all jobs worth more than $500,000.

The Jobs Act requires contractors to hire 75 percent local workers on state and local tax funded projects. The new bill defines a local worker as anyone who lives in West Virginia or lives in a county that is within 50 miles of our borders.

The current law includes counties as far away as 75 miles from our border.

F rye Roofing Inc. has agreed to pay $113,407 in back wages outlined in a February 10 settlement agreement with the West Virginia Division of Labor.

The company, based in Bluefield, WV, reached the settlement after more than a year of investigation by the WV Division of Labor.

About $35,000 will be paid right away from funds held by various County agencies and the remainder must be paid no later than December 21, 2011.

The company must make quarterly payments of approximately $10,000 starting March 31 of this year.

As part of the settlement Frye does not admit to any liability for the claims. In addition Frye has no liability to any employee or former employee for any taxes or tax forms related to the payments.

Roofers Local 185 and the Affiliated Construction Trades have filed numerous protests and complaints regarding the company.

“We suspected Frye was not paying the correct wages, and this settlement confirms our suspicions” said Dale Rose, Business Agent for Roofers Local 185.

“We appreciate the work Wayne Rebich and ACT have done, as well as the Division of Labor.”

Rebich collected payroll documents that showed what appeared to be an unusual number of Frye employees paid at a Laborers rate rather than a Roofers rate for roofing work. In addition, payroll records ACT was able to collect showed possible overtime violations and raised questions about Frye’s compliance with payroll taxes such as State and Federal income tax, social security and unemployment.

The majority of Frye employees listed on the payroll live in North Carolina.

Rebich had also uncovered documents showing Frye had at least two roofing projects that were completed hundreds of days past the agreed upon completion date.

ACT has written to the
A number of bills of interest to the Trades passed the 2010 legislative session.

A bill promoted by Governor Joe Manchin to increase bond levels to $500 million for the State School Building Authority, S.B. 229 passed. This will mean the SBA can refinance some existing bonds and get more money for school construction projects.

A similar bill, S.B. 612, aimed at more University construction funding sponsored by Sen. Bob Plymale (D-Wayne) provides $5 million more per year to the Higher Education Improvement Fund.

The money comes from lottery proceeds and when pledged to a bond could bring another $70 to $75 million in Higher Education projects.

Another Governor’s bill S.B. 427 to expand the Parkways Authority passed. The purpose for the change was to provide for a new way to use valid drivers license or immigration work permit, then the employer has 72 hours to produce those records.

According to the DOL 215 employers never produced records last year, and 81% of non-compliant employers were from out-of-state.

H.B. 3301 creates a penalty of $100 per worker per day for an employer who does not produce the records requested.

“Basically out-of-state employers were ignoring the DOL’s request for documents and they had no way to enforce the law,” said White. Del. Ricky Moye (D-Raleigh) led the effort on the bill.

Both bill now go to Governor Joe Manchin for his signature and should go into effect on 90 days from passage.

S.B. 612, AIMED AT MORE UNIVERSITY CONSTRUCTION FUNDING SPONSORED BY SEN. BOB PLYMALE (D-WAYNE) PROVIDES $5 MILLION MORE PER YEAR TO THE HIGHER EDUCATION IMPROVEMENT FUND.

Tolls for road funding.

Route 35 is the most likely candidate for tolls that will be used to fund the $500 million in construction needed to complete the project.

A bill to streamline private company participation in toll road financing failed, H.B. 4441.

H.B. 4130, a pilot-project to allow Supreme Court candidates the option of financing their campaign with public funds rather than private contributions passed.

The measure was aimed at the increased use of big special interest funding of candidates.

A bill to track Marcellus Shale water usage passed. Increasingly people want to know what benefits and costs the Marcellus Shale gas fields bring to West Virginia.

Governor Manchin’s proposal for a Constitutional Amendment H.J.R. 101 failed to pass on the final day.

The Amendment, if passed by voters, would have allowed Counties to eliminate personal property taxes on businesses.

The Trades did not push legislation aimed at requiring workers on public projects have health care this year because of the national health care legislation pending before congress.

Bills the Trades opposed that failed included numerous bills attacking prevailing wage laws.

Prevailing wage laws aim to protect local workers and companies from unfair low wage competition on public projects.

Similarly a bill to allow private companies to design, build, finance and maintain public schools was introduced but was never placed on a committee agenda.

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West Virginia AFL-CIO COPE Endorsements Finalized for the May 11, 2010 Primary Election

The West Virginia AFL-CIO’s Committee on Political Education (COPE) met February 27th in Charleston finalizing candidate endorsements for the 2010 Primary Election.

The WV AFL-CIO State COPE committee is comprised of representatives from every affiliated International Union in West Virginia, representatives from Trade and Industrial Councils, Central Labor Councils and West Virginia AFL-CIO Executive Board Members.

An endorsement by the West Virginia AFL-CIO State COPE follows recommendations from Central Labor Councils located in 13 cities around the state.

Labor Council members review incumbent’s voting records, (on issues concerning working families), followed by an interview of candidates who have successfully completed the WV AFL-CIO questionnaire.

In addition the WV State Building Trades endorsed two members who are running for local School Board races.

Steve Wedge, Assistant Business Manager of Boilermakers 667 is running for re-election to the Jackson County School Board, a position he has held for 16 years.

Jason Hershman, Business Agent for Laborers Local 379 is running for the Preston County Board of Education.

Supreme Court of Appeals
- Thomas E. McHugh
U.S. House of Representatives
- 1st Congressional District: Alan Mollohan
- 3rd Congressional District: Nick Joe Rahall
State Senate
- 1st Orphy Klempt
- 2nd Larry Edgell
- 5th John Cummings
- 6th H. Truman Chafin
- 7th Jeff Eldridge
- 8th Richie Robb
- 9th Mike Green
- 10th Ronald Miller
- 11th C. Randy White
- 12th Joe Minard
- 13th Ron Justice
- 14th Steven Shaffer
- 16th John Unger
- 17th Brooks McCabe

House of Delegates
- 1st Marilyn Boyd, Randy Swartzmiller
- 2nd Roy Givens, Alan Klein
- 3rd Shawn Fluharty, Erikkia Storch
- 4th Michael Ferro, Scott Varner
- 5th Dave Pethel
- 9th Jim Marion
- 10th Dan Poling, John Ellem
- 12th Jo Boggess Phillips
- 13th Dale Martin, Brady Paxton
- 14th Darrell Black, Cathy Larck
- 15th Carl Eastham, Jim Morgan, Matthew Woelfel
- 16th Doug Reynolds, Dale Stephens
- 17th Don Perdue, Richard Thompson
- 18th Larry Barker
- 19th Greg Butcher, Ted Ellis, Ralph Rodighiero, Josh Stowers
- 21st Harry Keith White
- 22nd Daniel J. Hall, Linda Goode Phillips
- 23rd Clif Moore
- 25th John Frazier
- 27th Mel Kessler, Virginia Mahan, Ricky Moye, Sally Susman, Bill Wooton
- 28th Thomas Campbell, Ray Canterbury
- 29th David Perry, Margaret Staggers
- 30th Bonnie Brown, Nancy Guthrie, Bobbie Hatfield, Mark Hunt, Doug Skaff Jr., Sharon Spencer, Danny Wells
- 31st Meshea Poore
- 32nd Scott Lavigne
- 33rd David Walker
- 34th Brent Boggs
- 35th Sam Argento
- 36th Joe Talbott
- 37th Paul “PJ” Louk
- 39th Bill Hamilton
- 40th Mary Poling
- 41st Frank “Chunki” Angotti Jr., Ron Fragale, Richard Iaquinta, Tim Miley
- 42nd Michael Manypenny
- 43rd Mike Caputo, Linda Longstreth, Tim Manchin
- 44th Stephen L. Cook, Barbara Fleischauer, Charlene Marshall
- 45th Larry Williams
- 46th Stan Shaver
- 49th Charles Messick
- 50th Ruth Rowan
- 52nd Mike Roberts
- 53rd Robert V. Mills
- 54th Walter Duke*
- 55th Donn E. Marshall
- 56th Terry L. Walker
- 57th Lorraine M. Rea
- 58th Tiffany Lawrence

County School Boards
- Jackson County Board of Education – Steve Wedge*
- Preston County Board of Education – Jason Hershman*

*No action was taken by COPE, however the Building Trades have endorsed.

Legislative

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Questions about how bidding would take place in a fair way remain to be detailed in the bill.

A bill to create a severance tax on Wind Power projects never got out of committee. The bill was promoted by the coal industry and would have killed wind projects.

An insurance industry bill to make it harder for workers poisoned by asbestosis to get their case heard in court died after a compromise was reached between various lawyer groups.

Details on all these bills can be found at the Legislative website www.legis.state.wv.us.
The Ohio Supreme Court ruled contractors who cheat workers on prevailing wage projects must pay back not only lost wages but penalties as well.

The March 2 ruling in Bergman v. Monarch Construction Co., reversed a lower court ruling that said courts have discretion in the assessment of penalties.

The Ohio Supreme Court disagreed with the Court of Appeals saying the penalties are mandatory and must be assessed in but exceptional cases.

Under Ohio state law employers must pay a 25 percent penalty on the unpaid wages and a 75 percent penalty to the Ohio Department of Commerce which uses the fines for enforcement.

The case started when a masonry sub-contractor Don Salyers Masonry was charged by the Department of Commerce in 2006 for not paying 36 workers the proper wages on a Miami University student housing project.

Salyers went out of business and the general contractor Monarch Construction was called on to pay the bill. The amount for unpaid wages was $368,266 and the penalty added up to an equal amount.

Monarch protested the penalties for both the workers and the Department of Commerce. A trial court had agreed.

Workers in Ohio who believe they have not been paid the proper prevailing wages can file a private lawsuit against their employer or file a complaint with the Department of Commerce.

In West Virginia workers usually go through the WV Division of Labor or the U.S. Department of Labor for prevailing wage claims.

Ohio Attorney General Richard Cordray, whose office filed a brief in support of the workers’ position, issued a statement in support of the ruling saying prevailing wage penalties help small businesses as well as construction workers by creating a level playing field for fair competition.