



News from Inside the Capitol

Volume 15

March 13, 2007

Session Summary

The 2007 session will probably be best known for the one that passed table games after years of it being on the table. The best news about this passing for us is the additional traffic that it will bring into the state and the additional dollars that will be generated. It may be sad, but make no doubt about it, this was an economic development issue for West Virginia. H. B. 2718 will allow for local county option elections on table games at licensed racetracks in West Virginia. The bill will let the four racetrack counties — Hancock, Jefferson, Kanawha and Ohio — vote on permitting table games. The measure will impose a 35 percent tax rate on these centers. It appears that Ohio and Hancock may vote as early as June. The West Virginia Family Foundation has said that it will sue to block the votes.

Conferees are working on the FY 2007 Budget of \$3.7 billion in the extended session. They are making an effort to complete work on the budget by week end.

In total 2035 bills were introduced this session. Of those, 273 bills completed legislative action. Following is a summary of issues and bills that passed that were most pertinent to OMEGA members during the 60-day session:

Reduction in Business Franchise Tax

S. B. 749 originated in the Senate Finance Committee late in the session. The bill in its original form called for **combined tax reporting**. It was introduced with three other bills that addressed the reduction of corporate net, business franchise and a tax credit for intellectual property. All of these bills passed in the Senate. Once they arrived in the House it first appeared that they would not be addressed. But in a last push to do something for West Virginia business the Governor's Office worked with Finance Chairman H. K. White to amend the reduction of the Business Franchise Tax rate from .55 percent to .02 percent over a five-year period in the combined reporting bill and pass it to the floor. The reduction process would begin in January 2009, and, when completed, will cut business taxes about \$75 million a year. Companies that are partnerships, LLC's (Limited Liability Companies), sub S and C corp companies will benefit most from this legislation). Most OMEGA member companies will probably benefit from this reduction.

OMEGA worked closely with the Governor on this issue and applaud him as well as Senator McCabe and Chairman H. K. White for their strength on this issue. OMEGA will be sending letters of thanks to all of these individuals and urge you to do so as well. We have long said that the government does a lot to lure business to West Virginia but does not do anything for the businesses that are located here which serve the citizens day in and day out. This bill does that and we urge you write to that YOUR legislators. This truly sends a signal that we are "Open for Business".

Legal Reform

H. B. 2956 which will establish **modest restrictions on out-of-state lawsuits being filed in West Virginia (venue)** passed. The bill was developed in response to a recent WV Supreme Court ruling that struck down the venue law that had been enacted in 2003. Late in the session the Governor's office got involved in this issue and was not pleased with the bill that had been negotiated. Both Judiciary Chairmen Kessler and Webster stood by the legislation. The Governor has said that he will veto it. At this time we do not know when he will call a special session to pass a bill that he feels will be stronger.

A bill, Com. Sub. For S.B. 194, which will provide for a \$50 million cap on **appeals bonds** passed and is effective on July 1, 2007.

A publication of



Highway Funding

Several pieces of legislation which effect Highway funding passed. First was H.B. 2955, which **renews the nickel-per-gallon portion of the state's gasoline tax**. The bill will renew this tax until 2013. Extending the nickel tax will maintain \$55 million annually for the state's Road Fund. We are pleased that the house amendment to this bill which would have set up a process similar to the "budget digest" was not included in the bill that passed on the last day of the session.

H.B. 2877 discontinued the **funding from the State Road Fund of the Public Service Commission weight enforcement division and the State Police patrol of roads** and authorized their funding from the General Revenue Fund. It also took the funding of the **Courtesy Patrol Program** from the State Road Fund to the Tourism Promotion Fund. The change of these diversions added approximately \$14.5 million back into the State Road Fund. A bill to create a **Special Railroad and Intermodal Enhancement Fund**, S.B. 569, as introduced would have taken \$4.3 million from the State Road Fund but late in the session it got funded from the General Revenue Fund. S.B. 690 passed that would **return to the Division of Highways the sales tax collected on materials purchased by highway contractors for use in highway construction** and maintenance projects. Passage of this legislation will add approximately \$13 million back into the State Road Fund. A bill that will delete approximately \$5 million passed. That was H.B. 2775, which will **exempt new residents from payment of the privilege tax** upon a showing that the applicant was not a resident of this state at the time the vehicle was purchased.

In total the net gain for the State Road Fund was approximately \$87.5 million dollars. Prior to and during the session both the Highway Department as well as West Virginians for Better Transportation (WVBT) kept broadcasting that a total of \$250 million dollars was needed for Highway Funding. Governor Manchin met with the OMEGA Board of Directors on February 7th and asked us not to oppose the renewal of the 5-cent a gallon tax but also promised not to sign any bill that would come to him that would increase the gas tax. On the same day, Department Secretary Paul Mattox, Jr., addressed our group regarding the cost-saving measures that the Department had put into place and the ones that they had planned.

Underground Storage Tank Insurance Fund

After several years and two interim committee assignments a bill addressing the defunct Underground Storage Tank Insurance Fund passed. S.B. 490 sets up provisions for DEP to get these sites cleaned up and paid for by 2012. The fiscal note on this legislation was approximately \$7 million dollars. Currently there are 58 sites and 38 claimants associated with this fund, many of which are OMEGA members.

Bad Checks

Two bills were folded into one and passed regarding bad checks. H.B. 2741 passed with both provisions. The provisions will: (1) Allow citizens to file complaints for obtaining property by worthless check; (2) to prevent complainants from being assessed court costs for worthless check charges dismissed as a result of a plea agreement; and (3) to require the defendant to pay court costs when convicted of a worthless check charge and to pay the initial notice fee (\$25) for each charge dismissed as a result of a plea agreement. The bill further clarifies that under for pre-existing debts if a payment of a worthless check is made within the ten day notice period it is a complete defense and that complaints for a misdemeanor violation may be filed directly with a magistrate without a law enforcement complaint.

Extended Hours of Liquor Sales

Since several OMEGA members sell liquor we worked very hard to add a provision in S.B. 712 relating to wine regulations to extend the hours which liquor can be sold. Effective July 1, 2007, hours will be extended from 10 p.m. until midnight. (This was a compromise for not adding Sunday sales.) Also, for you wine lovers, a provision of the bill will allow you to cork and take wine out of a restaurant home with you if you have purchased a \$15 dollar meal.

Turnpike Authority

S.B. 738, which would require the **WV Parkways, Economic Development and Tourism Authority to present any proposed toll revision to the Joint Committee on Government and Finance and then to the full legislature** to vote upon passed after a conference committee addressed differences passed between the Senate and the House. The House had taken out the provision that the legislature had to vote upon the increases stating that that provision may jeopardize the bonding authority of the Parkway. If under further investigation that the Governor finds that the bonding authority is comprised he may veto this legislation. Our thoughts are that having the raises coming back to the legislature puts another safety measure on raising the tolls. We know that the legislature would not vote to raise them unless they felt like it was absolutely necessary. The PRAG report was released during the session that recommended an increase in tolls. The link to this study can be found at: <http://www.wv.gov/OffSite.aspx?u=http://www.wvgov.org/>. In the executive summary, the PRAG report states that a one-time toll revenue increase of approximately 68% to 96% in FY 2008 would allow the Authority to fully address the current estimated backlog of capital needs. If the Authority limits the toll revenue increase in FY2008 to 30% or 50%, additional toll revenue increases would be required in FY2013, along with additional bonding requirements.

Trucking

A bill, S.B. 398 - **Authorizing the Division of Motor Vehicles to suspend or refuse to register certain interstate commerce motor carriers** passed. The purpose of this bill was to authorize DMV to suspend or refuse to register vehicles of motor carriers whose authority to operate in interstate commerce which had been denied or suspended by the Federal Motor Carrier Safety Administration.

Under S.B. 641 the term, "**PSC motor carrier inspectors and enforcement officers**" is defined for criminal provisions purposes.

H.B. 2575 passed that relates to **commercial driver's licenses** (CDL). The purpose of this bill was to update provisions pertaining to the issuance and disqualification of commercial drivers' licenses to conform with Federal law.

H.B. 2938 includes **motor carrier inspectors and enforcement officers in the definition of law-enforcement officer**. This bill will require motor carrier inspectors and enforcement offices to go through the police academy but will not give them any additional authority of motor carriers. Passage of this bill will give them additional benefits if they are killed while working.

Miscellaneous Bills

S.B. 70 - will establish penalties for employers who knowingly hire **unauthorized workers**.

S.B. 177 - will create a new state **Division of Energy** under the WV Department of Commerce. This measure will put all state energy policy and planning under this new division.

S.B. 185 - Creates a **Tobacco Settlement Finance Authority**. This legislation will allow the state to sell bonds for its future tobacco settlement allocations, provided that the bonds must achieve \$800 million or more. Most of the bonds funds will be used to pare down the long-term debt in the Teachers' Retirement Funds.

S.B. 595 - revised various sections of the **workers' compensation** statues in light of the recent transition to a private insurance system.

S.B. 747 - creates a **Municipal Home Rule Pilot Program**. This program will allow five Class I, Class II and Class III municipalities and/or metro governments to apply to be a pilot city. The bill would establish a seven-member panel to judge which cities make the cut and are allowed to have home rule for five years. (The panel includes a representative from the WV Business and Industry Council, WV BIC). There will be a rigid application in which cites must list their plans for the next five years, which will include what changes they would make and why, and how the changes would affect residents. Further their must be public notices and hearings. They will be authorized to pass any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia. (They could not enact a gas tax as it is stated in the WV constitution that all gas taxes must go to the State Road Fund.) The Legislative Auditor's Office would evaluate each city approved after five years and report back to the Legislature.

S.B. 748 - was introduced to set up a system for the deployment and operation of broadband strategic planning and development in West Virginia. As it passed, a section was added in the bill that creates a **Joint Legislative Oversight Commission on Transportation and Infrastructure**, that will not only look at broadband but all transportation and infrastructure for the state. We will have to watch and work with this Commission closely if they operate under these extended powers.

H.B. 2714 - revises the requirements for **parking areas designated for use by persons with mobility impairments**. The bill does make one change for those that provide spaces. In addition to the current ADA accessibility guidelines the words "no parking," which are at least twelve inches in height must be painted.

H.B. 2745 - **increases the fine from \$150 to \$250 for those selling or furnishing liquor** (not non-intoxicating beer) to persons under 21 years of age.

H.B. 3073 - relates to **prohibiting financial institutions from establishing or maintaining a branch in West Virginia** on, or within, one and one-half miles, of the premises or property of an affiliate, under certain circumstances. This was addressed on the senate floor as the anti Walt-Mart banking bill.

Bills that Failed to Pass

As is customary, much of our effort is focused on keeping legislation from passing that would cause our industries harm. Following are the key issues that we were opposed to and focused our greatest efforts toward defeating:

Bottle Bill - As you know those in favor of the bottle bill have really put a big push on, especially in the press this session. The coalition working on this has been very effective.

Minimum Wage increase - At one point in time it looked as if the minimum wage in West Virginia might apply to all employees. We can thank Senator Helmick for his help on keeping this issue off the agenda of his Senate Finance Committee.

Tobacco Tax Increase - We were very lucky this year to not have had a big push to increase the tobacco tax. Several states are facing this issue currently. The Governor made it clear that he wanted the tobacco securitization addressed and that he did not want to jeopardize that issue with a tobacco tax increase. In the future with the state's budget not looking as positive we are sure that this will be one of the first places that new revenue dollars will be sought.

Price Gouging - There was a huge push by Senator White to pass legislation to give the Office of the Attorney General the power to investigate and charge home heating oil, gasoline or other motor fuel price gouging, at any time. Thus far we have worked very hard at defeating this legislation. There are several bills still alive dealing with the A. G.'s office. We will continue to stay on top of this issue.

Windfall Profit Tax Act - H.B. 3198, was introduced that would have greatly harmed our industry. It was introduced toward the cut-off when bills could be introduced and did not get much discussion, however; we expect it to be re-introduced next session.

Increase restrictions prohibiting minors access to tobacco products was introduced by Philip Morris in H. B. 3075 and S. B. 602. The bill, as introduced, had penalties up to \$1000 on retailers. The House bill passed but was not addressed in the Senate. They were portion of this bill that OMEGA liked but we were told by the anti-smoking groups that if the bill made it to committee that they would push hard to add licensing and increased fees to tobacco retailers. When reviewing the Sinar statistics which show that we are now selling more to minors than we have in past year we knew that the committee would side with the anti-smoking groups.

Prohibiting fractional pricing in the retail sale of gasoline which was introduced in H.B. 3142 and S.B. 674. This legislation has been introduced throughout the United States.

In addition there were many nuisance bills introduced ranging from prohibiting employees at restaurants from handling drinking vessels by touching on or near the vessel's brim to giving employees access to personal files. All of which OMEGA addressed on behalf of their members.

Many resolutions were passed by one or both bodies to study numerous issues. In order to be studied during the interim process a resolution does not have to pass. The President and Speaker will list what they want to be studied and then committee chairmen can address any additional issues that they wish. Following is a list of issues that we feel will be studied during the interim process:

- **Interchange fees**
- **Primary seat belt laws**
- **Real ID Act**
- **Repeal of the crown/syrup tax**
- **Health care reform options**

Thanks

For those of you who attended public hearings, made phone calls or sent letters to your representatives, OMEGA WV would like to thank you on behalf of all our industries. Grassroots efforts really work!

The Future

There is no time like the present to think about next year's legislative session. Think now about legislation that you would like to have passed to aid you in running an efficient business and communicate those to the OMEGA office.

OMEGA PAC

Please consider donation to the OMEGA PAC. The OMEGA PAC is a political action committee funded by voluntary contributions from the members of OMEGA. OMEGA PAC assists those candidates for political office who are supportive of the goals and objectives of our industries.

If you would like a complete listing of the bills that passed this session or copies of any particular bills, feel free to call the OMEGA office at (304) 343-5500.