

# 2008 LEGISLATIVE SESSION SLOW

# THE ACT REPORT

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THE AFFILIATED  
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The ACT Foundation is a division of The West Virginia State Building and Construction Trades Council. Steve Burton, President; Roy Smith, Secretary-Treasurer; Steve White, Director.

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**As the legislative session passed the halfway mark on February 8, most agreed it was a slow start.**

For the Trades not much official action was taken regarding bills to require health care on public works projects or to require contractors have drug testing programs in place.

But behind the scenes things have been active.

“We talked to a lot of legislators about the health care bill and made a few changes to get more people comfortable with the idea,” said Steve White, ACT Director.

The bill would require contractors to show that 80 percent of workers have some sort of health care while on public projects.

“We raised the dollar value so the requirement would only impact projects over \$1 million,” said White.

But getting the changes made, and strong opposition from the Contractors Association of WV

(CAWV) has delayed action on the bill.

The CAWV claims the bill is unconstitutional and asks who would pay for the health care on the private construction jobs.

“The constitutional argument was the same one they used against hiring local workers when

we had the WV Jobs Act,” said White.

Another bill “The Drug and Alcohol Free Workplace Act” has been written and awaits committee action.

Lead sponsor Del. Dan Poling (D-Wood) is also a representative of the Painters District

Council 53.

“The bill takes what we have been already doing on industrial job sites with drug testing and makes it a requirement on public works projects,” said Poling.

Sen. Jeff Kessler (D-Marshall) is leading the effort in

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**TALKING WITH SPEAKER of the House Rick Thompson (D-Wayne) (center) is Del. Dan Poling (D-Wood) (right) and Del. Orphy Klemp (D-Ohio). Poling and Klempa both are members of construction unions, Poling from the Painters and Klempa the Carpenters.**

## ACT FILES TO INTERVENE IN WAGE & BID CASE AT SUPREME COURT

**Act has filed to intervene in a case at the Supreme Court about bidding and prevailing wage.**

In 2003 the Tucker County Solid Waste Authority (TCSWA) undertook a project to build a new landfill. Instead of putting the project out for bid the Authority hired a number of employees on a temporary basis to perform the work.

At some point the WV Division of Labor received a complaint about the pay those workers received and investigated.

They found the Authority had violated state prevailing wage laws that require area wages be paid for all construction projects.

An estimate of back wages for ten employees came to \$99,880.

The Authority claimed they were not required to follow the prevailing wage law because it does not apply to their employees.

The law does provide for some exemptions, one of which applies to the regular, and some temporary employees of a public agency.

Any agency can use their ex-

isting employees to perform construction work. However, they can not hire workers just to build a project and then lay them off to avoid paying prevailing wages.

Most of the workers in question were hired around May of 2003 and terminated between November of 2003 and January 2004.

The Authority insisted that even though the employees were temporary the law exempted them from paying prevailing wages. The DOL disagreed and the case went before an administrative law judge who made

some preliminary rulings in favor of the DOL position.

So on November 16, 2007 the Authority asked the WV Supreme Court of Appeals to prevent the DOL from taking any further action and to hear the case.

The court agreed to hear the case and has set a hearing date of February 26, 2008.

When ACT learned about the case their attorney Vince Trivelli did some additional research.

Trivelli found that while the DOL correctly applied the prevailing wage laws they missed

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# WV PREVAILING WAGE RATES CHALLENGED

## A complaint filed with the WV Division of Labor has resulted in wage cuts for construction workers in four counties.

Tom Acker, a Jesuit priest and executive director of an organization called Forward Southern West Virginia, filed the complaint with the DOL in a letter dated January 14.

Acker objected to the determination of prevailing wage rates for Ohio, Raleigh, Mingo and Fayette Counties.

Under state law when the prevailing wage rates are challenged new rates can not go into effect which means wage requirements for the four counties will be set back to 2007 levels.

Because Acker only named

four counties, new wage rates for the remaining counties are in effect.

According to Acker the setting of prevailing wage rates "appears to be an exercise shrouded in mystery."

Each year the WV DOL does an extensive mailing requesting wage rates from thousands of licensed contractors. In addition, labor organizations as allowed by law, are able to supply negotiated wage rates found in collective bargaining agreements.

"Our agreements show hundreds of companies paying thousands of workers a negotiated wage and benefit package, said Roy Smith, Secretary-Treasurer of the WV State Building Trades.

This is not the first time Acker has attacked prevailing wage

laws. Last year Acker led a challenge to a DOL determination that prevailing wage rates be paid on a downtown Beckley project.

Part of the funding came from the federal Housing and Urban Development agency without Davis-Bacon requirements.

Davis-Bacon is the federal prevailing wage law.

However the project used significant city and county funds which meant state prevailing wage law applied.

The city's challenge was dismissed in Kanawha County Circuit Court once, but was refiled and awaits a hearing.

In addition it appears that Acker may have violated federal rules on providing proper public notice for bids.

Last October ACT's Wayne Rebich noticed a newspaper ad

for a downtown Beckley construction project. Rebich recognized the location of the project as one Acker had been working on with Federal and local tax funds.

However the notice said nothing about prevailing wage or other federal and state requirements such as affirmative action and bonding.

At a pre-bid meeting Acker stated prevailing wage would be required but it was too late for

any bidders who cared.

ACT lawyers wrote to HUD complaining about the improper notice and HUD responded by directing the city to address the issue.

In the mean time Acker and the city of Beckley went ahead with the bid and got only one bidder.

"Acker's attack on workers is endless and from what we can tell he is entirely funded by our tax dollars," said Rebich.

## CEMENT MASONS 887 SEEKING APPRENTICES



**LOCAL 887**

We Accept Applications Monday-Friday

Time: 8:30 a.m.-11:30 a.m. and 1:00 p.m.-3:30 p.m.

Friday, February 22---Friday, February 29, 2008

Location: 3130 7<sup>th</sup> Avenue, Charleston, WV  
304-744-8389

Minimum Qualifications to be considered for the Apprenticeship program:

1. You must be of Legal Working Age
2. You must have a High School Diploma or GED
3. You must take the TABE test at your local Work 4 WV Center
4. You must reside within the Jurisdiction of Local 887
5. You must have a valid Driver's License and Transportation

Jurisdictional Counties in West Virginia:

Boone	Braxton	Cabell	Calhoun	Clay	Fayette
Gilmer	Greenbrier	Jackson	Kanawha	Lincoln	Logan
Mason	McDowell	Mercer	Mingo	Monroe	Nicholas
Pleasants	Putnam	Raleigh	Ritchie	Roane	Summers
Tyler	Wayne	Wirt	Wood	Wyoming	

Jurisdictional Counties in Virginia:

Alleghany	Augusta	Bath	Bedford	Botetourt	Charlotte
Craig	Floyd	Franklin	Henry	Highland	Mecklenburg
Montgomery	Patrick	Pittsylvania	Prince Edward	Pulaski	Roanoke
Rockbridge					

All Applications are received without regard to Race, Color, Religion, National Origin or Sex

## ELECTRICIANS LOCAL 596 APPRENTICESHIP

**The Clarksburg Joint Electrical Apprenticeship Committee takes applications year round, but only on the first Tuesday of each month.**

Those interested should go to the IBEW 596 Union Hall at 1001 North 12th Street in Clarksburg, WV between the hours of 9:00 am and 4:00 pm.

The five year program teaches all aspect of the electrical trade including general wiring for receptacles, switches, and breaker boxes, working with conduit, motor controls and fire alarms, and a complete understanding of all aspects of the trade.

Apprentices learn on the job under the supervision of journeymen and attend classes on Monday and Wednesday evenings.

Applicants must be at least 18 years old and have a high school degree or GED and show they have passed a full year of high school algebra, unless they have worked more than 4000 hours

specifically in the electrical construction trade.

Original transcripts or GED records will be required or acceptable documentation of electrical work experience.

Credit for military experience may be available if a DD-214 form is filed.

A drivers license is mandatory as well as a \$25 application fee.

In addition applicants must reside in Barbour, Doddridge, Harrison, Lewis, Marion, Monongalia, Pendleton, Pocahontas, Preston, Randolph, Taylor, Tucker or Upshur County.

Applicants who meet the basic requirements will be scheduled for an interview by the committee.

The recruitment, selection, employment, and training of apprentices shall be without discrimination because of race, color, religion, national origin, sex, or age.

For more information call Shelia Young at 866-622-0170, ext. 12.

# APPRENTICE TAX CREDIT

**B**eginning the first of the year, contractors using construction apprentices start earning a tax credit.

The one dollar per hour credit comes from a bill passed last year and sponsored by Del. Orphy Klempa, (D-Ohio).

Klempa is also a service representative of the Mid-Atlantic Regional Council of Carpenters.

Contractors can only take the credit if the apprentice they employ is registered in a program approved by the Federal Bureau of Apprenticeship and Training (BAT).

The credit can go as high as \$1000 per apprentice each year. So a company with five appren-

tices who each work 1000 hours in the year will be able to reduce their state taxes for 2008 by \$5,000.

In a recent meeting between Klempa and WV Tax Commissioner Chris Morris details of the reporting employers must do to claim the credit were worked out. "We want to make filing simple," said Morris.

He explained that a line will be added to the tax forms for the total credit, and a schedule will be created to attach details.

The schedule will list the apprentices name, identification, BAT registration number, and total hours worked for the year.

The tax credit must be applied against the business franchise tax, corporate net income tax,

and personal tax, in that order.

The credit can not be carried over from year to year and the credit can never be more than the total taxes paid.

"The most important point is just calling someone an apprentice doesn't cut it," said Klempa. "They have to be indentured in a BAT program."

According to BAT records, there are approximately 1800 registered apprentices in West Virginia giving the credit a potential value to contractors of \$1.8 million per year.

"It's simple," said Klempa. "We want to encourage more employers to hire more apprentices which will mean more opportunities for young people to learn a trade."

# New Millwright Apprentice Class

**M**illwright Local #1755 Joint Apprenticeship and Training Committee will be recruiting a new class of Apprentices.

The five year program includes paid on-the-job training as well as classroom instruction. In the training are courses in mathematics, welding, a working knowledge of hand tools, power tools, bench & machine tools, training in engineering principles, optical instruments, safety and blueprint reading.

Applications will be available as follows.

**Charleston** at  
205A Tennessee Ave.

Monday, March 3

9 AM - 4:30 PM

Monday, March 10

1 PM - 7:00 PM

**Bridgeport** at 609 Broadway

Wednesday, March 5

9 AM - 4:30 PM

Wednesday, March 12

1 PM - 7:00 PM

**Parkersburg** at

4600 Camden Ave.

Friday, March 7

9 AM - 4:30 PM

Friday, March 14

1 PM - 7:00 PM

Applications may be picked up on the above dates, times and

locations ONLY and in person. Applicants must be at least eighteen years of age, satisfy the Joint Committee that they have sufficient education to take the related instruction, be physically able to perform the work of the trade and have proof of residency within the jurisdiction of Local 1755, which includes the following counties in WV: Wetzel, Tyler, Pleasants, Wood, Wirt, Ritchie, Calhoun, Jackson, Roane, Monongalia, Preston, Taylor, Barbour, Harrison, Tucker, Lewis, Upshur, Gilmer, Webster, Marion, Doddridge, Mason, Putnam, Logan, Mingo, McDowell, Wyoming, Mercer, Summers, Monroe, Greenbrier, Raleigh, Fayette, Nicholas, Boone, Kanawha, Clay, Braxton, Pocahontas and Randolph; and in Ohio: Washington and Athens.

All applicants will be required to pass a qualifying math and mechanical aptitude test to be scheduled for an interview.

Applicants will be required to pass a physical examination, and a substance abuse test.

All applicants will be considered without regard to race, color, religion, national and ethnic origin or sex. For more information call Training Director Bill Boso at 422-7637.

## Senator Jay Rockefeller Announces Re-Election Bid



**SEN. JAY ROCKEFELLER (D-WV) (left) announced his re-election bid for U.S. Senate on Saturday, January 19 at four different locations in the state. Among those at the Charleston event were (from right) Roy Smith, State Building Trades and Ronnie Burdette and Tom Plymale of Operating Engineers Local 132.**

**You May Be Eligible for the Earned Income Tax Credit (EITC)!**

- Did you make less than \$40,000 last year?
- Do you know you could receive up to \$4,716 from the IRS?
- Are you between the ages of 25 and 65?
- Do you know you can claim EITC for three years back?
- Do you know **FREE** tax help is available?

*Be sure to ask your tax preparer if you are eligible for EITC!*

**FREE Tax Preparation Available!**

Volunteer Income Tax Assistance (VITA) sites are located throughout West Virginia during tax season. Returns can be filed electronically and deposited into your bank account within 7 to 10 days at no charge.



For the location of a free tax preparation site near you, visit [www.wveitc.com](http://www.wveitc.com) or Dial 2-1-1, your toll-free connection to community services in West Virginia.

# BOILERMAKERS & ALLEGHENY ENERGY PARTNER ON NEW TRAINING EFFORT

## A cooperative effort to increase training for union Boilermakers has led to a new training facility at Allegheny Energy's Harrison Power Station.

A dedication event was held on January 17 to bring attention to the effort.

The new training center was opened in January and has facilities to teach welding skills as well as OSHA 10 classes and

other instruction presented through the Boilermakers MOST Program.

Standard plate welding, mig and G tig welding procedures will be taught.

"The need for skilled Boilermakers is urgent," said George Pinkerman, Business Manager for Local 667.

"We are working with our contractor and owner partners to meet their needs and continue Local 667's ability to supply the skilled workforce they need."

Training is available to appren-

tices and journeyman.

Allegheny's Harrison Power plant manager Kevin Geraghty was among a number of top company representatives on hand.

He noted the long standing cooperative relationship the company has had with the Boilermakers and other union crafts to make sure important projects are done properly and on time.

"We value the partnership with our contractors and the Boilermakers," said Geraghty.

Also in attendance was Boil-

ermakers International Vice President Sean Murphy. Murphy commended Allegheny for investing in the training facility and pledged to work with them to reach out to the local community through their recruitment program.

He emphasized that with im-

proved skills comes fair wages and benefits.

Allegheny Energy prepared the center and the Boilermaker Apprenticeship Program furnished the equipment. Help also came from members of Sheet Metal Workers Local 33 and UA Local 152.



**TALKING TO A group touring the new Boilermaker training center at Allegheny Energy's Harrison Power Station is Local 667 Apprentice Coordinator David White. Behind White stands a number of 667 members who were training at the center.**

## ACT FILES

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another violation of state bidding law.

"The DOL is tasked to enforce wage laws, not bidding laws therefore this important point has not been considered in this matter up until this point," said Trivelli.

"But this important point makes it clear without a doubt

that the Authority violated both bidding and wage laws."

State bidding law states any projects costing more than \$25,000 must be advertised for public bid. A similar exemption allowing the use of regular employees applies, but temporary employees are not included.

"While the record in this matter is limited, the TCSWA has admitted these were temporary employees therefore it appears

this project should have been bid and prevailing wages paid," said Trivelli.

ACT filed a motion to intervene on February 1.

In addition the Kanawha Valley Builders Association has also filed a brief in support of ACT's position.

"Public bidding is an important protection for taxpayers, workers and contractors," said Trivelli.

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## LEGISLATIVE

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the Senate. Kessler Chairs the Judiciary Committee.

The Public-Private Transportation Act, a new version of a bill ACT proposed a number of years ago has been reworked and is moving through House Committees. The bill will allow private financing of toll roads and other public transportation projects.

It now includes strict prevailing wage and bidding requirements which include ensuring bidding is handled by a public agency, not a private company. In addition the law can not be used for coal mining projects like the King Coal Highway.

Rules for the Plumber and Sprinklerfitter license still must be approved. These include details on how long a license will last, the cost and how the test will be determined.

Starting January 1, 2009 anyone doing plumbing or sprinkler fitting must have a license.

The proposed rules would allow individuals to get their license starting July 1 of this year to avoid a rush at the end of the year.

Del. Orphy Klempa (D-Ohio) is working on drafting two public contract bills.

One would require a bidder to submit subcontractor lists within two hours of a bid, just like current policy for the School Building Authority.

The other requires subcontractors to be paid timely.

The WV AFL-CIO's Worker Freedom Bill to stop mandatory company meetings about religion, politics or unions has been re-drafted and faces major opposition.

The big issue for the session appears to be about taxes. Corporate cuts for income tax, franchise tax and inventory tax are being pushed.