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2003 MAR 14 P 3 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

SENATE BILL NO. 352

(By Senator Hunter, et al.)

PASSED March 8, 2003

In Effect March 15, 2003 ~~Passage~~

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SECRETARY OF STATE

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Senate Bill No. 352

(BY SENATORS HUNTER, UNGER, BAILEY, HELMICK,
ROWE, KESSLER, PLYMALE, DEMPSEY, WHITE,
BOWMAN, EDGELL, MCCABE, LOVE, SPROUSE, MINARD,
SNYDER, CALDWELL, CHAFIN, ROSS, SHARPE, GULLS,
JENKINS, FANNING, PREZIOSO AND MINEAR)

[Passed March 8, 2003; to take effect March 15, 2003.]

AN ACT to amend and reenact sections five and seven, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia jobs act; requiring reporting to the state tax department; and changing the effective date.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five and seven, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

1 As used in this article:

2 (1) The term "construction project" means any construc-
3 tion, reconstruction, improvement, enlargement, painting,
4 decorating or repair of any public improvement let to
5 contract in an amount equal to or greater than one million
6 dollars. The term "construction project" does not include
7 temporary or emergency repairs;

8 (2) (A) The term "employee" means any person hired or
9 permitted to perform hourly work for wages by a person,
10 firm or corporation in the construction industry;

11 (B) The term "employee" does not include:

12 (i) Bona fide employees of a public authority or individu-
13 als engaged in making temporary or emergency repairs;

14 (ii) Bona fide independent contractors; or

15 (iii) Salaried supervisory personnel necessary to assure
16 efficient execution of the employee's work;

17 (3) The term "employer" means any person, firm or
18 corporation employing one or more employees on any
19 public improvement and includes all contractors and
20 subcontractors;

21 (4) The term "local labor market" means every county in
22 West Virginia and all counties bordering West Virginia
23 that fall within seventy-five miles of the border of West
24 Virginia;

25 (5) The term "public authority" means any officer,
26 board, commission or agency of the state of West Virginia
27 and its subdivisions, including counties and municipalities.
28 Further, the economic grant committee, economic develop-
29 ment authority, infrastructure and jobs development
30 council and school building authority shall be required to
31 comply with the provisions of this article for loans, grants
32 or bonds provided for public improvement construction
33 projects;

34 (6) The term “public improvement” includes the con-
35 struction of all buildings, roads, highways, bridges, streets,
36 alleys, sewers, ditches, sewage disposal plants, water-
37 works, airports and all other structures that may be let to
38 contract by a public authority, excluding improvements
39 funded, in whole or in part, by federal funds.

§21-1C-3. Legislative findings; statement of policy.

1 The Legislature finds that the rate of unemployment in
2 this state is significantly higher than that of most other
3 states and that a majority of West Virginia counties are
4 designated as labor surplus areas by the United States
5 department of labor.

6 The Legislature finds that the employment of persons
7 from outside the local labor market on public improve-
8 ment construction projects contracted for and subsidized
9 by the taxpayers of the state contributes significantly to
10 the rate of unemployment and the low per capita income
11 among qualified state residents who would otherwise be
12 hired for these jobs.

13 Therefore, the Legislature declares that residents of local
14 labor markets should be employed for the construction of
15 public improvement projects which directly utilize tax-
16 payer funding, in whole or in part.

**§21-1C-4. Local labor market utilization on public improve-
ment construction projects; waiver certificates.**

1 (a) Employers shall hire at least seventy-five percent of
2 employees for public improvement construction projects
3 from the local labor market, to be rounded off, with at
4 least two employees from outside the local labor market
5 permissible for each employer per project.

6 (b) Any employer unable to employ the minimum
7 number of employees from the local labor market shall
8 inform the nearest office of the bureau of employment
9 programs' division of employment services of the number

10 of qualified employees needed and provide a job descrip-
11 tion of the positions to be filled.

12 (c) If, within three business days following the placing of
13 a job order, the division is unable to refer any qualified job
14 applicants to the employer or refers less qualified job
15 applicants than the number requested, then the division
16 shall issue a waiver to the employer stating the unavail-
17 ability of applicant and shall permit the employer to fill
18 any positions covered by the waiver from outside the local
19 labor market. The waiver shall be either oral or in writing
20 and shall be issued within the prescribed three days. A
21 waiver certificate shall be sent to both the employer for its
22 permanent project records and to the public authority.

**§21-1C-5. Applicability and scope of article; reporting require-
ments.**

1 (a) This article applies to expenditures for construction
2 projects by any public authority for public improvements
3 as defined by this article.

4 (b) For public improvement projects let pursuant to this
5 article, the public authority shall file, or require an
6 employer as defined in section two of this article to file,
7 with the division of labor copies of the waiver certificates
8 and certified payrolls, pursuant to article five-a of this
9 chapter, or other comparable documents that include the
10 number of employees, the county and state wherein the
11 employees reside and their occupation.

12 (c) The division of labor shall compile the information
13 required by this section and submit it to the joint commit-
14 tee on government and finance by the fifteenth day of
15 October, two thousand five, for a legislative audit to be
16 prepared for the December, two thousand five, interim
17 session. Beginning with the legislative interim meetings in
18 May, two thousand three, and continuing through the
19 interim period ending in November, two thousand five, the
20 division of labor shall provide quarterly reports to the

21 joint committee on government and finance on the infor-
22 mation compiled pursuant to this article. The joint
23 committee may forward these reports to the legislative
24 auditor to review and make comments regarding the
25 usefulness of the information collected and to suggest
26 changes to the division's method of reporting to ensure the
27 information collected will prove useful in evaluating the
28 effectiveness of the provisions of this article.

29 (d) Each public authority has the duty to implement the
30 reporting requirements of this article. Every public
31 improvement contract or subcontract let by a public
32 authority shall contain provisions conforming to the
33 requirements of this article.

34 (e) The division of labor is authorized to establish
35 procedures for the efficient collection of data, collection of
36 civil penalties prescribed in section six and transmittal of
37 data to the joint committee on government and finance.

§21-1C-7. Effective date.

1 This article is effective from passage through the fif-
2 tenth day of March, two thousand six.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Lucy Moe
.....
Chairman Senate Committee

Sharon Spencer
.....
Chairman House Committee

Originated in the Senate.

To take effect March 15, 2003.

Russell E. Gibbs
.....
Clerk of the Senate

Gregory M. Bell
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is disapproved* this the *14th*
Day of *March*, 2003.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/14/03

Time 9:55 AM