

SB 759

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE  
Regular Session, 2006

ENROLLED

SENATE BILL NO. 759

(By Senator Bowman)

PASSED March 11, 2006

In Effect from Passage

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

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## Senate Bill No. 759

(BY SENATOR BOWMAN)

[Passed March 11, 2006; in effect from passage.]

AN ACT to repeal §17-4-17c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and 17-2D-5; and to amend and reenact §17-4-17b and §17-4-17d, all relating to construction of highways and bridges; creating the Highway Design-Build Pilot Program; listing requirements for approval of design-build projects; requiring monthly progress reports on design-build projects; requiring annual reports; revising authority to propose certain rules and requirements; establishing requirements for issuing invitations for bid; requiring a report to the legislature; creating procedure for removal, relocation or adjustment of utility lines or facilities to accommodate a highway project; requiring notice of need to remove, relocate or adjust a utility line or facility; requiring removal, relocation or adjustment plans; creating liability for not following plan; and requiring public utility to pay for relocation, removal or adjustment.

*Be it enacted by the Legislature of West Virginia:*

That §17-4-17c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding

thereto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and §17-2D-5; and that §17-4-17b and §17-4-17d be amended and reenacted, all to read as follows:

**ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.**

**§17-2D-1. Short title.**

- 1 This article shall be known and may be cited as the West
- 2 Virginia Highway Design-Build Pilot Program.

**§17-2D-2. Establishment of a Highway Design-Build Pilot Program.**

- 1 (a) Notwithstanding any provision of this code to the
- 2 contrary, the Commissioner of the West Virginia Division
- 3 of Highways may establish a pilot program to expedite the
- 4 construction of no more than three special projects by
- 5 combining the design and construction elements of a
- 6 highway or bridge project into a single contract.

- 7 (b) A design-build project may not be let to contract
- 8 before the first day of January, two thousand seven, and
- 9 no more than three projects may be let to contract in the
- 10 eighteen months thereafter.

- 11 (c) A design-build project may not be let to contract
- 12 until the commissioner of the division of highways has
- 13 established polices and procedures concerning design-
- 14 build projects.

- 15 (d) After completion of the third project, no projects
- 16 shall be commenced unless the West Virginia Legislature
- 17 either approves additional projects to further study the
- 18 effectiveness of the design-build process or makes the
- 19 program permanent.

**§17-2D-3. Invitation for bids.**

- 1 (a) The division shall prepare an invitation for bids for
- 2 pre-qualified design-builders, which must provide at a
- 3 minimum:

4 (1) The procedures to be followed for submitting bids  
5 and the procedures for making awards;

6 (2) The proposed general terms and conditions for the  
7 design-build contract;

8 (3) The description of the drawings, specifications or  
9 other information to be submitted with the bid, with  
10 guidance as to the form and level of completeness of the  
11 drawings, specifications or submittals that will be accept-  
12 able;

13 (4) A proposed time schedule commencement and  
14 completion of the design-build contract;

15 (5) Budget limits for the design-build contract, if any;

16 (6) Requirements or restrictions for the subletting of  
17 specific portions of the design-build contract, if any; and

18 (7) Requirements for performance bonds, payment  
19 bonds, insurance, professional liability insurance and  
20 workers' compensation coverage.

21 (b) The division shall make available to the qualified  
22 design-builders, approved subcontractors, suppliers and  
23 sureties, as applicable, additional information including,  
24 but not limited to, surveys, soils reports, drawings or  
25 information regarding existing structures, environmental  
26 studies, photographs or references to public records, or  
27 other pertinent information.

28 (c) The division shall set forth its needs with sufficient  
29 clarity to assure that there is a comprehensive understand-  
30 ing of the project's scope and requirement.

**§17-2D-4. Acceptance of design-build bid.**

1 (a) The design-builder shall submit the bid to the  
2 division as required in the invitation for bids.

3 (b) The design-builder shall furnish a bid bond not to  
4 exceed five percent of the maximum cost of the de-  
5 sign-build contract.

6 (c) The selection committee may choose to reject all bids.  
7 If the selection committee chooses to accept a bid, the  
8 committee shall award the project to the qualified de-  
9 sign-builder based on low bid or a value-based selection  
10 process combining technical qualifications and competi-  
11 tive bidding elements. The selection committee shall  
12 ascertain that the submissions comply with the require-  
13 ments of this article and the polices and procedures of the  
14 commissioner.

**§17-2D-5. Report to the Legislature.**

1 On or before the first day of December, two thousand  
2 eight, the commissioner shall prepare and submit to the  
3 Joint Standing Committee on Government Organization a  
4 report evaluating the experience of the division of high-  
5 ways with each project, including whether the division  
6 realized any cost or time savings, the number and cost of  
7 change orders, the quality of work performed, the number  
8 of bids received and other issues the commissioner consid-  
9 ers appropriate.

**ARTICLE 4. STATE ROAD SYSTEM.**

**§17-4-17b. Relocation of public utility lines on highway construction projects.**

1 (a) Whenever the division reasonably determines that  
2 any public utility line or facility located upon, across or  
3 under any portion of a state highway needs to be removed,  
4 relocated or adjusted in order to accommodate a highway  
5 project, the division shall give to the utility sixty (60) days'  
6 written notice directing it to begin the physical removal,  
7 relocation or adjustment of such utility obstruction or  
8 interference. If such notice is in conjunction with a  
9 highway improvement project, it will be provided at the  
10 date of advertisement or award. Prior to the notice  
11 directing the physical removal, relocation or adjustment of  
12 a utility line or facility, the utility shall adhere to the  
13 division's utility relocation procedures for public road

14 improvements which shall include, but not be limited to,  
15 the following:

16 (1) The division will submit to the utility a letter and a  
17 set of plans for the proposed highway improvement  
18 project;

19 (2) The utility must, within twenty (20) days, submit to  
20 the division a written confirmation acknowledging receipt  
21 of the plans and a declaration of whether or not its facili-  
22 ties are within the proposed project limits and the extent  
23 to which the facilities are in conflict with the project;

24 (3) If the utility is adjusting, locating or relocating  
25 facilities or lines from or into the division's right-of-way,  
26 the utility must submit to the division plans showing  
27 existing and proposed locations of utility facilities. These  
28 utility plans must be submitted to the division within  
29 thirty (30) days of receipt of the highways plans or such  
30 longer time as may be provided in the letter accompanying  
31 the highway plans.

32 (4) The utility's submission shall include with the plans  
33 a working time analysis demonstrating that the utility  
34 adjustment, location or relocation will be accomplished in  
35 a manner and time frame established by the division's  
36 written procedures and instructions. Such working time  
37 plan shall specify the order and calendar days for removal,  
38 relocation or adjustment of the utility from or within the  
39 project site and any staging property acquisition, compen-  
40 sable work or other special requirements needed to  
41 complete the removal, relocation or adjustment. The  
42 division may approve the work plan, including any  
43 requests for compensation, submitted by a utility for a  
44 highway improvement project if it is submitted within the  
45 established schedule and does not adversely affect the  
46 letting date. The division will review the work plan to  
47 ensure compliance with the proposed improvement plans  
48 and schedule.

49 (b) If the utility does not thereafter begin removal within  
50 the time specified in the work plan, the division may give  
51 the utility a final notice directing that such removal shall  
52 commence not later than ten (10) days from the receipt of  
53 such final notice. If the utility does not, within the ten (10)  
54 days from receipt of the final notice, begin to remove or  
55 relocate the facility or, having so begun removal or  
56 relocation, thereafter fails to complete the removal or  
57 relocation within the time specified by the work plan, the  
58 division may remove or relocate the same with its own  
59 employees or by employing or contracting for the neces-  
60 sary engineering, labor, tools, equipment, supervision,  
61 materials and other necessary services to accomplish the  
62 removal or relocation, and the expenses of such removal  
63 may be paid and collected as provided at law. If addi-  
64 tional utility removal, relocation, or adjustment work is  
65 found necessary after the letting date of the highway  
66 improvement project, the utility shall provide a revised  
67 work plan within thirty (30) calendar days after becoming  
68 aware of such additional work or upon receipt of the  
69 division's written notification advising of such additional  
70 work. The utility's revised work plan shall be reviewed by  
71 the division to ensure compliance with the highway project  
72 or improvement.

73 (c) In addition to the foregoing, the owner of the utility  
74 shall be responsible for and liable to the division or its  
75 contractors for damages resulting from its failure to  
76 comply with the submitted and approved work plan. If the  
77 utility owner fails to provide a work plan or fails to  
78 complete the removal, relocation, or adjustment of its  
79 facilities in accordance with the work plan approved by  
80 the division, the owner shall be liable to the contractor for  
81 all delay costs and liquidated damages incurred by the  
82 contractor which are caused by or which grow out of the  
83 failure of the utility owner to provide a work plan or a  
84 revised work plan or to complete its work in accordance  
85 with the approved work plan. The division may withhold

86 approval of permits for failure of the utility owner to  
87 comply with the requirements of this section.

**§17-4-17d. Relocation of public utility lines and public service  
districts utility lines on state highway construc-  
tion projects.**

1 Whenever the Commissioner of Highways determines  
2 that any public utility line owned by a county or municipal  
3 governmental body located upon, across or under any  
4 portion of a state highway needs to be relocated in order  
5 to accommodate a highway project for which proportion-  
6 ate reimbursement of the cost is not available from any  
7 federal program, the commissioner shall notify the public  
8 utility owning or operating the facility which shall relo-  
9 cate the same in accordance with this section, and the cost  
10 of the relocation shall be paid out of the state road fund.



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

*Randy White*  
.....  
Chairman Senate Committee

*R. Beer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*David Adams*  
.....  
Clerk of the Senate

*Bugs M. Boy*  
.....  
Clerk of the House of Delegates

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

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

The within *is approved* this the *31<sup>st</sup>*  
Day of *March*, 2006.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 31 2006

Time 10:35 am