

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 115**

4 (By Senators Yost, Miller and Klempa)

5 _____
6 [Originating in the Committee on Labor;
7 reported February 9, 2012.]
8
9 _____
10

11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §5B-2I-1, §5B-2I-2,
13 §5B-2I-3 and §5B-2I-4, all relating to creating the Keep Jobs
14 in West Virginia Act; requiring all work performed for the
15 state by contractors be performed in the United States; making
16 legislative findings; permitting the state to seek damages and
17 void contracts for work done outside the country; and
18 providing exceptions.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §5B-2I-1, §5B-2I-2,
22 §5B-2I-3 and §5B-2I-4, all to read as follows:

23 **ARTICLE 2I. KEEP JOBS IN WEST VIRGINIA ACT.**

24 **§5B-2I-1. Title.**

25 This article may be known as the "Keep Jobs in West Virginia

1 Act."

2 **§5B-2I-2. Legislative findings.**

3 The Legislature finds that:

4 (a) State departments and agencies procure services, in part
5 through contracts with private vendors.

6 (b) Increasingly, private vendors purchase or carry out these
7 services, or subcontract or otherwise procure these services, from
8 a location outside the United States. This international
9 outsourcing substantially increases unemployment and workforce
10 dislocation and deprives West Virginia residents of job
11 opportunities, including industries and jobs that West Virginia has
12 expended resources to attract.

13 (c) International outsourcing erodes state and local revenues
14 by drawing jobs and income away from state residents and
15 businesses. International outsourcing additionally may provide
16 fewer privacy protections for state residents whose personal
17 information may, in the course of service delivery, be transmitted
18 to locations outside the United States.

19 **§5B-2I-3. State contracts.**

20 Except as provided in section four of this article, the
21 following requirements apply to all state contracts:

22 (a) State department and agencies may not award a contract to
23 a contractor or subcontractor who performs the work at a site
24 outside the United States;

25 (b) Each vendor submitting a bid or contract to provide
26 services for the state must certify the services covered by the bid

1 or contract will be performed in the United States;

2 (c) If, during the life of the contract, the contractor or
3 subcontractor shifts work overseas, then the department or agency
4 shall require the contractor or subcontractor to pay damages in an
5 amount equal to the amount paid by the department or agency for the
6 percentage of outsourced work. The department or agency also shall
7 terminate the contract for noncompliance; and

8 (d) The department or agency is entitled to bring a civil
9 action in state or federal court to compel enforcement or damages
10 under this article. The court shall award reasonable attorney's
11 fees and costs to the department or agency.

12 **§5B-2I-4. Exceptions.**

13 (a) Section three of this article does not apply to a contract
14 if refusing to award that contract would violate the specific terms
15 to which state consented under:

16 (1) The Agreement on Government Procurement of the World Trade
17 Organization; or

18 (2) A bilateral or regional free trade agreement.

19 (b) If the state agency determines that it is necessary to
20 waive any provision of section 3 of this Article, the agency shall,
21 before the finding takes effect:

22 (1) Publish in the State Register a certified written
23 justification as to why the waiver is needed;

24 (2) Consider all comments received during a thirty-day comment
25 period in evaluating the waiver requests; and

26 (3) Provide notice of the finding and an opportunity for

1 public comment on such finding for a reasonable period of time not
2 to exceed fifteen days.

3 (c) In the event a state agency grants such a waiver, the
4 agency shall work with the other relevant state agencies in
5 creating a plan to ensure a domestic supply will be available in
6 the future.

NOTE: The purpose of this bill is to create the "Keep Jobs in West Virginia Act." The bill requires all work performed for the state by contractors be performed in the United States. The bill makes legislative findings. The bill also permits the state to seek damages and void contracts for work done outside the country and provides exceptions.

This article is new; therefore, strike-throughs and underscoring have been omitted.