

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 376

(By Senators Yost, Fitzsimmons, Kessler (Mr. President) and
Wells)

[Originating in the Committee on the Judiciary;
reported February 14, 2014.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-3-22, relating to safety and welfare of employees at certain public improvement sites by public authorities; defining terms; requiring onsite employees at certain public improvement sites to complete an Occupational Safety and Health Administration-approved ten-hour construction safety program; requiring the retention of training records; providing for incremental implementation period for mandate; providing the Commissioner of Labor to issue

cease-and-desist notices in certain situations; providing civil penalties for violations; creating a misdemeanor offense and providing criminal fines for exhibiting false documents; exempting certain construction activities and persons from application of this section; and requiring a report from the Commissioner of Labor on effectiveness of the safety training.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §21-3-22, to read as follows:

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-22. OSHA construction safety program.

1 (a) For the purposes of this section, the terms “public
2 improvement” and “public authority” shall have the same
3 definitions as those terms are given in section two, article one-d
4 of this chapter.

5 (b) No person or other business entity providing services as
6 a contractor or subcontractor under a contract, entered on or
7 after July 1, 2014, for the construction, reconstruction, alteration,

8 remodeling or repairs of any public improvement by or on
9 behalf of a public authority, where the total contract cost of
10 all work to be performed by all contractors and
11 subcontractors is \$50,000 or more, shall use, employ or
12 assign any person to work at the work site who has not
13 successfully completed a ten-hour construction safety
14 program designed by the United States Occupational Safety
15 and Health Administration (OSHA) no later than twenty-one
16 calendar days after starting employment at a public
17 improvement site: *Provided*, That this training requirement
18 does not apply to any employee who does not work at the
19 public improvement site any additional day after the twenty-
20 first calendar day following the employee's first day of
21 employment at the public improvement site: *Provided*,
22 *however*, That for the first year of the effective date of this
23 section enacted during the Regular Session of the Legislature,
24 2014, completion of the ten-hour construction safety program
25 shall occur no later than ninety days after starting
26 employment at the public improvement site.

27 (c) Every contractor and subcontractor providing services
28 shall make and maintain records of the persons he or she
29 employs pursuant to the contract and, for each employee, the
30 date of the employee's completion of the safety training
31 program and the identity of the provider of the training.
32 These records shall be preserved pursuant to the provisions
33 of section five, article five-c of this chapter and shall be
34 maintained at the employer's business office.

35 (d) If the Commissioner of Labor or his or her designee
36 finds a person who has not completed the OSHA safety
37 training at a public improvement site in violation of this
38 section, the commissioner may issue a notice for that person
39 to cease and desist in performing work at the site until the
40 person has completed the training program.

41 (e) The Commissioner of Labor may assess a civil
42 penalty of not less than \$100 nor more than \$1,000 to any
43 person or business entity who violates subsection (b) or (c)
44 of this section for each violation.

45 (f) Any person who, with knowledge that a document or
46 other record falsely represents that a person has completed
47 the training program identified in this section, provides or
48 exhibits the document or record to the Commissioner of
49 Labor or to his or her designee or to an employer shall be
50 guilty of a misdemeanor and, upon conviction thereof, shall
51 be fined not less than \$250 nor more than \$2,500.

52 (g) The following individuals are exempt from the
53 training requirements of this section:

54 (1) Law-enforcement officers involved with traffic
55 control or job-site security;

56 (2) Federal, state and municipal government employees
57 and inspectors; and

58 (3) Suppliers whose sole responsibility is to deliver
59 materials to the work site and other delivery personnel.

60 (h) The Commissioner of Labor shall report to the Joint
61 Committee on Government and Finance by January 1, 2017,
62 on accident and injury rates at affected construction sites
63 the two years prior and following implementation of this

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64 section, as enacted during the Regular Session of the

65 Legislature, 2014.