

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 404**

4 (By Senator Walters)

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6 [Originating in the Committee on Government Organization;

7 reported February 26, 2015.]

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10 **FISCAL
NOTE**

11 A BILL to amend and reenact §5A-6-4c of the Code of West Virginia, 1931, as amended, relating
12 to audits of certain government contracts; requiring Chief Technology Officer to ensure
13 routine audits are made of all major information technology projects approved; requiring
14 change orders be supported by certain documentation; requiring a post-audit review be
15 conducted on certain major information technology projects; requiring certain contract terms
16 for major information technology projects with a cost in excess of \$1 million; and requiring
17 amounts not paid under a retainage agreement or collected under a performance bond be
18 returned to the agency or agencies paying for the project or deposited in the state’s general
19 revenue account.

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

21 That §5A-6-4c of the Code of West Virginia, 1931, as amended, be amended and reenacted

22 to read as follows:

23 **ARTICLE 6. OFFICE OF TECHNOLOGY.**

1 **§5A-6-4c. Major information technology projects proposals and the establishment of steering**
2 **committees.; contract audits; change orders.**

3 (a) Prior to proceeding with a major information technology project, an agency shall submit
4 a project proposal, outlining the business need for the project, the proposed technology solution, if
5 known, and an explanation of how the project will support the agency's business objective and the
6 state's strategic plan for information technology. The project manager may require the submission
7 of additional information as needed to adequately review any proposal.

8 (b) The proposal will further include:

9 (1) A detailed business case plan, including a cost-benefit analysis;

10 (2) A business process analysis, if applicable;

11 (3) System requirements, if known;

12 (4) A proposed development plan and project management structure;

13 (5) Business goals and measurement criteria, as appropriate; and

14 (6) A proposed resource or funding plan.

15 (c) The project manager assigned to review the project development proposal shall
16 recommend its approval or rejection to the Chief Technology Officer. If the Chief Technology
17 Officer approves the proposal, then he or she shall notify the agency of its approval.

18 (d) Whenever an agency has received approval from the Chief Technology Officer to proceed
19 with the development and acquisition of a major information technology project, the Chief
20 Technology Officer shall establish a steering committee.

21 (e) The steering committee shall provide ongoing oversight for the major information
22 technology project and have the authority to approve or reject any changes to the project's scope,
23 schedule or budget.

1 (f) The Chief Technology Officer shall ensure that the major information technology project
2 has in place adequate project management and oversight structures for addressing the project's
3 scope, schedule or budget and shall address issues that cannot be resolved by the steering committee.

4 (g) The Chief Technology Officer, through the steering committee, shall provide a project
5 performance report for each approved major information technology project with a contract price in
6 excess of \$500,000.00. A project performance report shall be provided not less than quarterly to the
7 Legislative Auditor, and shall include, but not limited to, the following information:

8 (1) General project information, including a detailed project description;

9 (2) Period of project performance, including start date and original projected completion date;

10 (3) Change orders affecting project performance period;

11 (4) Revised project completion date;

12 (5) Project's initial contracted price;

13 (6) Amount of approved project change orders and revised project cost;

14 (7) Pending or unapproved change orders potentially affecting time of performance or project
15 cost; and

16 (8) Issues potentially affecting project performance or cost.

17 (h) Change orders shall be prepared and approved for all changes affecting project duration
18 or cost associated with major information technology projects, and shall be supported by:

19 (1) Quantities and costs of products, labor and equipment;

20 (2) Taxes, insurance and bonds;

21 (3) Overhead costs and projected profit;

22 (4) Justification for any change in contract time; and

23 (5) Credit for deletions from contract, similarly documented.

1 (I) A post audit review shall be conducted by the steering committee on all major information
2 technology projects that cost in excess of \$1 million and include, at a minimum, the following:

3 (1) A review of the routine audits that were performed during the completion of the project;

4 (2) Whether the project is satisfactorily completed in accordance with contract terms,
5 drawings and specifications;

6 (3) Whether all required approvals have been obtained;

7 (4) An evaluation of all change orders to ensure that they are not for work already required
8 by the contract and contain supporting documentation as required by this section; and

9 (5) Whether the agency is entitled to damages on the contract for any reason.

10 (k) The post-audit review shall promptly be performed and completed after the major
11 information technology project is completed. A report of the post-audit review shall be made in
12 writing or electronically and set forth the reasons for the auditor's findings, a copy shall be provided
13 to the legislative auditor who may conduct its own post audit review of the project.

14 (l) When a major information technology project cost is in excess of \$1 million, the Agency
15 issuing the contract, in conjunction with the steering committee, shall require, as a term of the
16 contract, set benchmarks and acceptance criteria for periodic payment for services rendered. In
17 addition, if applicable, there should be a sufficient amount of retainage or a performance bond to
18 assure the benchmarks and deliverables provided for in the contract are fulfilled by the vendor:
19 Provided, That if the project is ongoing maintenance and support, the agency issuing the contract
20 may utilize other methodologies to assure compliance with the contract in lieu of retainage and
21 performance bonds,

22 (m) If any amount is not paid to a vendor under a retainage agreement or an amount is
23 collected under a performance bond, that amount shall be returned to the agency(s) paying for the

- 1 project, unless the funding for the project comes from general revenue then such amount shall be
- 2 deposited into the General Revenue Fund of the State Treasury.