

Senate Bill No. 245

(By Senators Trump, Blair and Walters)

[Introduced January 16, 2015; referred to the Committee on Labor; and then to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to repeal §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §5D-1-5 of said code; to amend and reenact §7-11B-14 of said code; to amend and reenact §7-20-22 of said code; to amend and reenact §11-13Q-9 of said code; to amend and reenact §18-5-9a of said code; to amend and reenact §25-7-4 of said code; and to amend and reenact §31-15A-15 of said code, all relating to repealing the requirement of paying prevailing hourly rate of wages for construction of public improvements.

Be it enacted by the Legislature of West Virginia:

That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended, be repealed; that §5D-1-5 of said code be amended and reenacted; that §7-11B-14 of said code be amended and reenacted; that §7-20-22 of said code be amended and reenacted; that §11-13Q-9 of said code be

1 amended and reenacted; that §18-5-9a of said code be amended and reenacted; that §25-7-4 of said
2 code be amended and reenacted; and that §31-15A-15 of said code be amended and reenacted, all
3 to read as follows:

4 **CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.**

5 **ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.**

6 **§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain**
7 **powers.**

8 The West Virginia Public Energy Authority has and may exercise all powers necessary or
9 appropriate to execute its corporate purpose. The authority may:

10 (1) Adopt, amend and repeal bylaws necessary and proper for the regulation of its affairs and
11 the conduct of its business and rules to implement and make effective its powers and duties, such
12 rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

13 (2) Adopt and use an official seal and alter the same at pleasure.

14 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly
15 designated or provided.

16 (4) Sue and be sued in its own name and plead and be impleaded in its own name, and
17 particularly to enforce the obligations and covenants made under this article. Any actions against
18 the authority shall be brought in the circuit court of Kanawha County.

19 (5) Foster, encourage and promote the mineral development industry. The authority is
20 encouraged to maximize the use of the West Virginia mineral development industry, but is not
21 prohibited from utilizing nonstate mineral resources.

22 (6) Represent the state with respect to national initiatives concerning the mineral

1 development industry and international marketing activities affecting the mineral development
2 industry.

3 (7) Engage in strategic planning to enable the state to cope with changes affecting or which
4 may affect the mineral development industry.

5 (8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any
6 electric power project or natural gas transmission project. In the event that an electric power project
7 to be constructed pursuant to this article is designed to utilize coal wastes for the generation of
8 electricity or the production of other energy, such project shall also be capable of using coal as its
9 primary energy input: *Provided*, That it shall be demonstrated to the authority's satisfaction that
10 quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the
11 term of the bonds or notes issued by the authority to finance the project and are accessible to the
12 project.

13 (9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or
14 otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its
15 electric power projects or natural gas transmission projects for such rentals or amounts and upon
16 such terms and conditions as the Public Energy Authority Board may deem advisable.

17 (10) Finance one or more electric power projects or natural gas transmission projects by
18 making secured loans to persons other than governmental agencies to provide funds for the
19 acquisition, by purchase, construction or otherwise, of any such project or projects.

20 (11) Issue bonds for the purpose of financing the cost of acquisition and construction of one
21 or more electric power projects or natural gas transmission projects or any additions, extensions or
22 improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or

1 otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the
2 proceeds thereof to persons other than governmental agencies for the acquisition and construction
3 of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the
4 manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve,
5 thirteen and seventeen, article two-c, chapter thirteen of this code: *Provided*, That the principal and
6 interest on such bonds shall be payable out of the revenues derived from the lease, lease with an
7 option by the lessee to purchase, sale or other disposition of or from loan payments in connection
8 with the electric power project or natural gas transmission project for which the bonds are issued,
9 or any other revenue derived from such electric power project or natural gas transmission project.

10 (12) In the event that the electric power project or natural gas transmission project is to be
11 owned by a governmental agency, apply to the economic development authority for the issuance of
12 bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code:
13 *Provided*, That the economic development authority shall not issue any such bonds except by an act
14 of general law. ~~*Provided, however*, That the authority shall require that in the construction of any~~
15 ~~such project, prevailing wages shall be paid as part of a project specific agreement which also takes~~
16 ~~into account terms and conditions contained in the West Virginia - Ohio valley market retention and~~
17 ~~recovery agreement or a comparable agreement.~~

18 (13) Acquire by gift or purchase, hold and dispose of real and personal property in the
19 exercise of its powers and the performance of its duties as set forth in this article.

20 (14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such
21 manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided
22 in chapter fifty-four of this code, such real property or parts thereof or rights therein, rights-of-way,

1 property, rights, easements and interests it deems necessary for carrying out the provisions of this
2 article and compensation shall be paid for public or private lands so taken; and the authority may sell
3 any of the real property or parts thereof or rights therein, rights-of-way, property, rights, easements
4 and interests acquired hereunder in such manner and upon such terms and conditions as the authority
5 deems proper: *Provided*, That if the authority determines that land or an interest therein acquired
6 by the authority through the exercise of the power of eminent domain for the purpose of this article
7 is no longer necessary or useful for such purposes, and if the authority desires to sell such land or
8 interest therein, the authority shall first offer to sell such land or interest to the owner or owners from
9 whom it was acquired, at a price equal to its fair market value: *Provided, however*, That if the prior
10 owner or owners shall decline to reacquire the land or interest therein, the authority shall be
11 authorized to dispose of such property by direct sale, auction, or competitive bidding. In no case
12 shall such land or an interest therein acquired under this subdivision be sold for less than its fair
13 market value. This article does not authorize the authority to take or disturb property or facilities
14 belonging to any public utility or to a common carrier, which property or facilities are required for
15 the proper and convenient operation of such public utility or common carrier, except for the
16 acquisition of easements or rights-of-way which will not unreasonably interfere with the operation
17 of the property or facilities of such public utility or common carrier, and in the event of the taking
18 or disturbance of property or facilities of public utility or common carrier, provision shall be made
19 for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost
20 of the authority.

21 The term "real property" as used in this article is defined to include lands, structures,
22 franchises and interests in land, including lands under water and riparian rights, and any and all other

1 things and rights usually included within the said term, and includes also any and all interests in such
2 property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other
3 incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for
4 years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for
5 damages for such real estate.

6 For the purposes of this section, "fair market value" shall be determined by an appraisal made
7 by an independent person or firm chosen by the authority. The appraisal shall be performed using
8 the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions"
9 published under the auspices of the Interagency Land Acquisition Conference, United States
10 Government Printing Office, 1972.

11 (15) Make and enter into all contracts and agreements and execute all instruments necessary
12 or incidental to the performance of its duties and the execution of its powers: *Provided*, That if any
13 electric power project or natural gas transmission project is to be constructed by a person other than
14 a governmental agency, and with whom the authority has contracted to lease, sell or finance such
15 project upon its completion, then the authority shall not be required to comply with the provisions
16 of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the
17 construction of such a project.

18 (16) Employ managers, superintendents and other employees, and retain or contract with
19 consulting engineers, financial consultants, accountants, architects, attorneys, and such other
20 consultants and independent contractors as are necessary in its judgment to carry out the provisions
21 of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely
22 from the proceeds of bonds issued by the economic development authority, from the proceeds of

1 bonds issued by or loan payments, lease payments or other payments received by the authority, from
2 revenues and from funds appropriated for such purpose by the Legislature.

3 (17) Receive and accept from any federal agency, or any other source, grants for or in aid of
4 the construction of any project or for research and development with respect to electric power
5 projects, natural gas transmission projects or other energy projects, and receive and accept aid or
6 contribution from any source of money, property, labor or other things of value to be held, used and
7 applied only for the purpose for which such grants and contributions are made.

8 (18) Purchase property coverage and liability insurance for any electric power project or
9 natural gas transmission project or other energy project and for the principal office and suboffices
10 of the authority, insurance protecting the authority and its officers and employees against liability,
11 if any, for damage to property or injury to or death of persons arising from its operations and any
12 other insurance which may be provided for under a resolution authorizing the issuance of bonds or
13 in any trust agreement securing the same.

14 (19) Charge, alter and collect transportation fees and other charges for the use or services of
15 any natural gas transmission project as provided in this article.

16 (20) Charge and collect fees or other charges from any energy project undertaken as a result
17 of this article.

18 (21) When the electric power project is owned and operated by the authority, charge
19 reasonable fees in connection with the making and providing of electric power and the sale thereof
20 to corporations, states, municipalities or other entities in the furtherance of the purposes of this
21 article.

22 (22) Purchase and sell electricity or other energy produced by an electric power project in and

1 out of the State of West Virginia.

2 (23) Enter into wheeling contracts for the transmission of electric power over the authority's
3 or another party's lines.

4 (24) Make and enter into contracts for the construction of a project facility and joint
5 ownership with another utility and the provisions of this article shall not constrain the authority from
6 participating as a joint partner therein.

7 (25) Make and enter into joint ownership agreements.

8 (26) Establish or increase reserves from moneys received or to be received by the authority
9 to secure or to pay the principal of and interest on the bonds issued by the economic development
10 authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued
11 by the authority.

12 (27) Broker the purchase of natural gas for resale to end-users: *Provided*, That whenever
13 there are local distribution company pipelines already in place the authority shall arrange to transport
14 the gas through such pipelines at the rates approved by the Public Service Commission of West
15 Virginia.

16 (28) Engage in market research, feasibility studies, commercial research, and other studies
17 and research pertaining to electric power projects and natural gas transmission projects or any other
18 functions of the authority pursuant to this article.

19 (29) Enter upon any lands, waters and premises in the state for the purpose of making surveys
20 and examinations as it may deem necessary or convenient for the purpose of this article, and such
21 entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under
22 any condemnation proceedings which may be then pending and the authority shall make

1 reimbursement for any actual damages resulting to such lands, waters and premises as a result of
2 such activities.

3 (30) Participate in any reorganization proceeding pending pursuant to the United States Code
4 (being the act of congress establishing a uniform system of bankruptcy throughout the United States,
5 as amended) or any receivership proceeding in a state or federal court for the reorganization or
6 liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any
7 such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any
8 question pending therein, which requires the approval of the creditors participating in any
9 reorganization proceeding or receivership, exchange any evidence of such indebtedness for any
10 property, security or evidence of indebtedness offered as a part of the reorganization of such
11 responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may
12 compromise or reduce the amount of any indebtedness owing to it as a part of any such
13 reorganization.

14 (31) Make or enter into management contracts with a second party or parties to operate any
15 electric power project or any gas transmission project and associated facilities, or other related
16 energy project, either during construction or permanent operation.

17 (32) Do all acts necessary and proper to carry out the powers expressly granted to the
18 authority in this article.

19 (33) Nothing herein shall be construed to permit the transportation of gas produced outside
20 of this state through a natural gas transmission project.

21 (34) The authority shall, after consultation with other agencies of state government having
22 environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-a

1 of this code, to establish standards and principles to be applied to all projects in assessing the effects
 2 of projects on the environment: *Provided*, That when a proposed project requires an environmental
 3 impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the
 4 environmental impact statement shall be filed with the authority and be made available prior to any
 5 final decision or final approval of any project and prior to the conducting of any public hearings
 6 regarding the project, and in any such case, no assessment pursuant to the legislative rule need be
 7 made.

8 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

9 **ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.**

10 **§7-11B-14. Projects financed by tax increment financing considered to be public**
 11 **improvements subject to ~~prevailing wage~~, local labor preference and**
 12 **competitive bid requirements.**

13 (a) Any project acquired, constructed, or financed, in whole or in part, by a county
 14 commission or municipality under this article shall be considered to be a "public improvement"
 15 within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

16 (b) The county commission or municipality shall, except as provided in subsection (c) of this
 17 section, solicit or require solicitation of competitive bids ~~and require the payment of prevailing wage~~
 18 ~~rates as provided in article five-a, chapter twenty-one of this code~~ and compliance with article one-c
 19 of said chapter for every project or infrastructure project funded pursuant to this article exceeding
 20 \$25,000 in total cost.

21 (c) Following the solicitation of the bids, the construction contract shall be awarded to the
 22 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:

1 *Provided*, That the county commission, municipality or other person soliciting the bids may reject
2 all bids and solicit new bids on the project.

3 (d) No officer or employee of this state or of any public agency, public authority, public
4 corporation, or other public entity, and no person acting or purporting to act on behalf of such officer
5 or employee or public entity shall require that any performance bond, payment bond, or bid bond
6 required or permitted by this section be obtained from any particular surety company, agent, broker
7 or producer.

8 (e) This section does not:

9 (1) Apply to work performed on construction projects not exceeding a total cost of \$50,000
10 by regular full-time employees of the county commission or the municipality: *Provided*, That no
11 more than \$50,000 shall be expended on an individual project in a single location in a twelve-month
12 period;

13 (2) Prevent students enrolled in vocational educational schools from being used in
14 construction or repair projects when such use is a part of the students' training program;

15 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
16 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use
17 of the building components and systems or cause danger to those persons using the building
18 components and systems; or

19 (4) Apply to any situation where the county commission or municipality comes to an
20 agreement with volunteers, or a volunteer group, by which the governmental body will provide
21 construction or repair materials, architectural, engineering, technical or any other professional
22 services and the volunteers will provide the necessary labor without charge to, or liability upon, the

1 governmental body: *Provided*, That the total cost of the construction or repair projects does not
2 exceed \$50,000.

3 (f) The provisions of subsection (b) of this section apply to privately owned projects or
4 infrastructure projects constructed on lands not owned by the county commission, a municipality or
5 a government agency or instrumentality when the owner or the owner's agent or person financing the
6 owner's project receives money from the tax increment financing fund for the owner's project.

7 **ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.**

8 **§7-20-22. Special infrastructure projects financed by service fee considered to be public**
9 **improvements subject to ~~prevailing wage~~, local labor preference and**
10 **competitive bid requirements.**

11 (a) Any special infrastructure project acquired, constructed or financed, in whole or in part,
12 by service fees imposed by a county commission under section twelve of this article shall be
13 considered to be a "public improvement" within the meaning of the provisions of articles one-c and
14 five-a, chapter twenty-one of this code.

15 (b) The county commission shall, except as provided in subsection (c) of this section, solicit
16 or require solicitation of competitive bids ~~and require the payment of prevailing wage rates as~~
17 ~~provided in article five-a, chapter twenty-one of this code~~ and compliance with article one-c of said
18 chapter for any special infrastructure project funded pursuant to section twelve of this article
19 exceeding \$25,000 in total cost.

20 (c) Following the solicitation of the bids, the construction contract shall be awarded to the
21 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:
22 *Provided*, That the county commission or other person soliciting the bids may reject all bids and

1 solicit new bids on the project.

2 (d) No officer or employee of this state or of any public agency, public authority, public
3 corporation or other public entity and no person acting or purporting to act on behalf of such officer
4 or employee or public entity shall require that any performance bond, payment bond or bid bond
5 required or permitted by this section be obtained from any particular surety company, agent, broker
6 or producer.

7 (e) This section does not:

8 (1) Apply to work performed on construction projects not exceeding a total cost of \$50,000
9 by regular full-time employees of the county commission: *Provided*, That no more than \$50,000
10 shall be expended on an individual project in a single location in a twelve-month period;

11 (2) Prevent students enrolled in vocational educational schools from being used in
12 construction or repair projects when such use is a part of the students' training program;

13 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
14 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use
15 of the building components and systems or cause danger to those persons using the building
16 components and systems; or

17 (4) Apply to any situation where the county commission comes to an agreement with
18 volunteers, or a volunteer group, by which the county commission will provide construction or repair
19 materials, architectural, engineering, technical or any other professional services and the volunteers
20 will provide the necessary labor without charge to, or liability upon, the county commission:
21 *Provided*, That the total cost of the construction or repair projects does not exceed \$50,000.

22

CHAPTER 11. TAXATION.

1 **ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

2 **§11-13Q-9. New jobs percentage.**

3 (a) *In general.* -- The new jobs percentage is based on the number of new jobs created in this
 4 state directly attributable to the qualified investment of the taxpayer.

5 (b) *When a job is attributable.* -- An employee's position is directly attributable to the
 6 qualified investment if:

7 (1) The employee's service is performed or his or her base of operations is at the new or
 8 expanded business facility;

9 (2) The position did not exist prior to the construction, renovation, expansion or acquisition
 10 of the business facility and the making of the qualified investment; and

11 (3) But for the qualified investment, the position would not have existed.

12 (c) *Applicable percentage.* -- For the purpose of subsection (a) of this section, the applicable
 13 new jobs percentage is determined under the following table:

14	If number of	The applicable
15	new jobs is at least:	percentage is:
16	20	20%
17	280	25%
18	520	30%

19 (d) *Certification of new jobs.* -- With the annual return for the applicable taxes filed for the
 20 taxable year in which the qualified investment is first placed in service or use in this state, the
 21 taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it
 22 in this state within the period prescribed in subsection (f) of this section that are, or will be, directly

1 attributable to the qualified investment of the taxpayer. For purposes of this section, “applicable
2 taxes” means the taxes imposed by articles thirteen, twenty-one, twenty-three and twenty-four of this
3 chapter against which this credit is applied.

4 (e) *Equivalency of permanent employees.* -- The hours of part-time employees shall be
5 aggregated to determine the number of equivalent full-time employees for the purpose of this section.

6 (f) *Redetermination of new jobs percentage.* -- With the annual return for the applicable taxes
7 imposed, filed for the third taxable year in which the qualified investment is in service or use, the
8 taxpayer shall certify the actual number of new jobs created by it in this state that are directly
9 attributable to the qualified investment of the taxpayer.

10 (1) If the actual number of jobs created would result in a higher new jobs percentage, the
11 credit allowed under this article shall be redetermined and amended returns filed for the first and
12 second taxable years that the qualified investment was in service or use in this state.

13 (2) If the actual number of jobs created would result in a lower new jobs percentage, the
14 credit previously allowed under this article shall be redetermined and amended returns filed for the
15 first and second taxable years. In applying the amount of redetermined credit allowable for the two
16 preceding taxable years, the redetermined credit shall first be applied to the extent it was originally
17 applied in the prior two years to personal income taxes, then to corporation net income taxes, then
18 to business franchise taxes and, lastly, to business and occupation taxes. Any additional taxes due
19 under this chapter shall be remitted with the amended returns filed with the commissioner, along
20 with interest, as provided in section seventeen, article ten of this chapter, and a ten-percent penalty
21 determined on the amount of taxes due with the amended return, which may be waived by the
22 commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due

1 to reasonable cause and not due to willful neglect.

2 (g) *Additional new jobs percentage.* -- When the qualified investment is \$20 million or more
3 ~~and the new or expanded business facility is constructed using construction laborers and mechanics~~
4 ~~who are paid an average wage equal to or greater than the prevailing wage for their respective classes~~
5 ~~of work determined under chapter twenty-one of this code,~~ then, if the number of full-time
6 construction laborers and mechanics working at the job site of the new or expanded business facility
7 is seventy-five or more, or if the number of hours of all construction laborers and mechanics working
8 at the job site is equal to or greater than the number of hours seventy-five full-time construction
9 laborers and mechanics would have worked at the job site during a twelve consecutive month period,
10 a taxpayer that is allowed a new jobs percentage determined under subsection (a) of this section shall
11 be allowed a new jobs percentage that is five percentage points higher than the new jobs percentage
12 allowed under subsection (a) of this section. In no event may construction laborers and mechanics
13 be used to attain or retain a subsection (a) new jobs percentage. The number of full-time
14 construction laborers and mechanics working at the job site shall be determined by dividing the total
15 number of hours worked by all construction laborers and mechanics on a new or expanded business
16 facility during a twelve consecutive month period by two thousand eighty hours per year. A taxpayer
17 may not claim the additional new jobs percentage allowed by this section unless the taxpayer
18 includes with the certification filed under subsection (d) of this section a certification signed by the
19 general contractor or the construction manager certifying that construction laborers employed at the
20 job site during a consecutive twelve month period aggregated the equivalent of at least seventy-five
21 full-time employees and the taxpayer has received from the general contractor or construction
22 manager records substantiating the certification, which records shall be retained by the taxpayer for

1 thirteen years after the day the expansion to an existing business facility, or the new business facility,
2 is first placed in service or use by the taxpayer. For purposes of subsection (g) of this section:

3 (1) The term “construction laborers and mechanics” means those workers, utilized by a
4 contractor or subcontractor at any tier, whose duties are manual or physical in nature, including those
5 workers who use tools or are performing the work of a trade, as distinguished from mental or
6 managerial and working foremen who devote more than twenty percent of their time during a
7 workweek performing the duties of a laborer or mechanic; and

8 (2) The term “job site” is limited to the physical place or places where the construction called
9 for in the contract will remain when the work on it is completed and nearby property, as described
10 in subdivision (3) of this subsection, used by the contractor or subcontractor during construction that,
11 because of proximity, can reasonably be included in the “site”.

12 (3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile
13 factories, batch plants, borrow pits, job headquarters and tool yards are part of the “job site” provided
14 they are dedicated exclusively, or nearly so, to performance of the contract or project and are located
15 in proximity to the actual construction location so that it would be reasonable to include them.

16 (4) The term “job site” does not include permanent home offices, branch offices, branch plant
17 establishments, fabrication yards or tool yards of a contractor or subcontractor whose locations and
18 continuance in operation are determined without regard to the contract or subcontract for
19 construction of a new or expanded business facility.

20 **CHAPTER 18. EDUCATION.**

21 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

22 **§18-5-9a. Energy-savings contracts.**

1 (a) For the purposes of this section:

2 (1) “Energy-conservation measures” means goods or services, or both, to reduce energy
3 consumption operating costs of school facilities. These include, but are not limited to, installation
4 of two or more of the following:

5 (A) Insulation of a building structure and systems within a building;

6 (B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors,
7 heat-absorbing or heat-reflective glazed and coated window or door systems or other window or door
8 modifications that reduce energy consumption;

9 (C) Automatic energy control systems;

10 (D) Heating, ventilating or air conditioning systems, including modifications or replacements;

11 (E) Replacement or modification of lighting fixtures to increase energy efficiency;

12 (F) Energy recovery systems;

13 (G) Co-generation systems that produce steam or another form of energy for use by the
14 county board of education in a building or complex of buildings owned by the board of Education;

15 or

16 (H) Energy-conservation maintenance measures that provide long-term operating cost
17 reductions of the building’s present cost of operation.

18 (2) “Energy-savings contract” means a contract for the evaluation and recommendation of
19 energy operations conservation measures and for implementation of one or more such measures. The
20 contract shall provide that payments, except obligations upon termination of the contract before its
21 expiration, are to be made over time. A county board of education may supplement these payments
22 with federal, state or local funds to reduce the annual cost or to lower the initial amount to be

1 financed.

2 (3) "Qualified provider" means a person, firm or corporation experienced in the design,
3 implementation and installation of energy-conservation measures.

4 (b) County boards of education are hereby authorized to enter into performance-based
5 contracts with qualified providers of energy-conservation measures for the purpose of reducing
6 energy operating costs of school buildings.

7 (c) A board of education may enter into an energy-savings contract with a qualified provider
8 to significantly reduce energy operating costs. Before entering into such a contract or before the
9 installation of equipment, modifications or remodeling to be furnished under such a contract, the
10 qualified provider shall first issue a proposal summarizing the scope of work to be performed. Such
11 a proposal shall contain estimates of all costs of installation, modifications or remodeling including
12 the costs of design, engineering, installation, maintenance, repairs or debt service as well as estimates
13 of the amounts by which energy operating costs will be reduced. If the board finds, after receiving
14 the proposal, that the proposal includes more than one energy-conservation measure designed to save
15 energy operating costs, the board may enter into a contract with the provider pursuant to this section.

16 (d) An energy-savings contract shall include the following:

17 (1) A guarantee of a specific minimum amount of money that the board will save in energy
18 operating costs each year during the term of the contract; and

19 (2) A statement of all costs of energy-conservation measures including the costs of design,
20 engineering, installation, maintenance, repairs and operations.

21 (e) An energy-savings contract which is performance-based and includes a guarantee of
22 savings and a comprehensive approach of energy-conservation measures for improving comfort is

1 subject to competitive bidding requirements. ~~The requirements of article five-a, chapter twenty-one~~
 2 ~~of this code as to prevailing wage rates shall apply to the construction and installation work~~
 3 ~~performed under such a contract.~~

4 (f) A board may enter into a “lease with an option to purchase” contract for the purchase and
 5 installation of energy-conservation measures if the term of the lease does not exceed fifteen years
 6 and the lease contract includes the provisions hereinafter contained in subsection (g) and meets
 7 federal tax requirements for tax-exempt municipal leasing or long-term financing.

8 (g) An energy-savings contract may extend beyond the fiscal year in which it first becomes
 9 effective except that such a contract may not exceed a fifteen-year term and shall be void unless
 10 such agreement provides the board the option to terminate the agreement during each fiscal year of
 11 the contract. The board may include in its annual budget for each fiscal year any amounts payable
 12 under long-term energy-savings contracts during that fiscal year.

13 (h) Nothing contained in this section requires or permits the replacement of jobs performed
 14 by service personnel employed by the local school board pursuant to sections eight and eight-a,
 15 article four, chapter eighteen-a of the code, as amended.

16 **CHAPTER 25. DIVISION OF CORRECTIONS.**

17 **ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.**

18 **§25-7-4. Correctional industries service contracts.**

19 (a) The commissioner may enter into contracts with private entities under which inmate or
 20 resident labor is provided through correctional industries for work involving the delivery of products
 21 or for service work. Service work means work which includes, but is not limited to, repairs,
 22 replacement of original manufactured items, packaging, sorting, recycling, labeling or similar work

1 that is not original equipment manufacturing. The use of inmate or resident labor may not result in
 2 the displacement of civilian workers employed in the local region where the work is performed. The
 3 division may negotiate the wage for inmate or resident labor under correctional industries contracts.
 4 ~~and, except as provided in sections thirteen, fourteen, fifteen and sixteen of this article, the wage may~~
 5 ~~be less than the prevailing wage for work of a similar nature in the private sector.~~

6 (b) The Division of Corrections, in cooperation with the Department of Commerce, shall
 7 develop and maintain a marketing plan encouraging private sector businesses to employ inmates
 8 through the correctional industries program.

9 CHAPTER 31. CORPORATIONS.

10 ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT 11 COUNCIL.

12 §31-15A-15. Projects not to be considered public improvements; competitive bid 13 requirements.

14 (a) No project or infrastructure project acquired, constructed, maintained or financed, in
 15 whole or in part, by the water development authority shall be considered to be a "public
 16 improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this code
 17 as a result of the financing.

18 (b) The state and its subdivisions shall, except as provided in subsection (c) of this section,
 19 solicit competitive bids ~~and require the payment of prevailing wage rates as provided in article~~
 20 ~~five-a, chapter twenty-one of this code~~ for every project or infrastructure project funded pursuant to
 21 this article exceeding \$25,000 in total cost.

22 Following the solicitation of the bids, the construction contract shall be awarded to the lowest

1 qualified responsible bidder, who shall furnish a sufficient performance and payment bond:

2 *Provided*, That the state and its subdivisions may reject all bids and solicit new bids on the project.

3 (c) This section does not:

4 (1) Apply to work performed on construction or repair projects not exceeding a total cost of
5 \$50,000 by regular full-time employees of the state or its subdivisions: *Provided*, That no more than
6 \$50,000 shall be expended on an individual project in a single location in a twelve-month period;

7 (2) Prevent students enrolled in vocational educational schools from being used in the
8 construction or repair projects when such use is a part of the students' training program;

9 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
10 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use
11 of the building components and systems or cause danger to those persons using the building
12 components and systems; or

13 (4) Apply to any situation where the state or a subdivision of the state comes to an agreement
14 with volunteers, or a volunteer group, by which the governmental body will provide construction or
15 repair materials, architectural, engineering, technical or any other professional services and the
16 volunteers will provide the necessary labor without charge to, or liability upon, the governmental
17 body: *Provided*, That the total cost of the construction or repair projects does not exceed \$50,000.

18 (d) The provisions of subsection (b) of this section do not apply to privately owned projects
19 or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.

NOTE: The purpose of this bill is to repeal requirements to pay prevailing wages for construction of public improvements.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Article 5A of Chapter 21 is repealed.