

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **Senate Bill 95**

**FISCAL  
NOTE**

BY SENATOR WALTERS

[Introduced January 13, 2016;

Referred to the Committee on Government

Organization.]

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

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

1 That §5A-6-4c of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 6. OFFICE OF TECHNOLOGY.**

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

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

6 (b) The proposal will further include:

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

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

9 (3) System requirements, if known;

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

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

12 (6) A proposed resource or funding plan.

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

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

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

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

26 (g) The Chief Technology Officer, through the steering committee, shall provide a project  
27 performance report for each approved major information technology project with a contract price  
28 in excess of \$500,000. A project performance report shall be provided not less than quarterly to  
29 the Legislative Auditor, and shall include, but not limited to, the following information:

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

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

33 (3) Change orders affecting project performance period;

34 (4) Revised project completion date;

35 (5) Project's initial contracted price;

- 36 (6) Amount of approved project change orders and revised project cost;
- 37 (7) Pending or unapproved change orders potentially affecting time of performance or
- 38 project cost; and
- 39 (8) Issues potentially affecting project performance or cost.
- 40 (h) Change orders shall be prepared and approved for all changes affecting project
- 41 duration or cost associated with major information technology projects, and shall be supported
- 42 by:
- 43 (1) Quantities and costs of products, labor and equipment;
- 44 (2) Taxes, insurance and bonds;
- 45 (3) Overhead costs and projected profit;
- 46 (4) Justification for any change in contract time; and
- 47 (5) Credit for deletions from contract, similarly documented.
- 48 (i) A post audit review shall be conducted by the steering committee on all major
- 49 information technology projects that cost in excess of \$1 million and include, at a minimum, the
- 50 following:
- 51 (1) A review of the routine audits that were performed during the completion of the project;
- 52 (2) Whether the project is satisfactorily completed in accordance with contract terms,
- 53 drawings and specifications;
- 54 (3) Whether all required approvals have been obtained;
- 55 (4) An evaluation of all change orders to ensure that they are not for work already required
- 56 by the contract and contain supporting documentation as required by this section; and
- 57 (5) Whether the agency is entitled to damages on the contract for any reason.
- 58 (j) The post-audit review shall promptly be performed and completed after the major
- 59 information technology project is completed. A report of the post-audit review shall be made in

60 writing or electronically and set forth the reasons for the auditor's findings, a copy shall be  
61 provided to the legislative auditor who may conduct its own post audit review of the project.

62 (k) When a major information technology project cost is in excess of \$1 million, the agency  
63 issuing the contract, in conjunction with the steering committee, shall require, as a term of the  
64 contract, set benchmarks and acceptance criteria for periodic payment for services rendered. In  
65 addition, if applicable, there should be a sufficient amount of retainage or a performance bond to  
66 assure the benchmarks and deliverables provided for in the contract are fulfilled by the vendor:  
67 Provided, That if the project is ongoing maintenance and support, the agency issuing the contract  
68 may utilize other methodologies to assure compliance with the contract in lieu of retainage and  
69 performance bonds.

70 (l) If any amount is not paid to a vendor under a retainage agreement or an amount is  
71 collected under a performance bond, that amount shall be returned to the agency(s) paying for  
72 the project, unless the funding for the project comes from general revenue then such amount shall  
73 be deposited into the General Revenue Fund of the State Treasury.

NOTE: The purpose of this bill is to require the Chief Technology Officer to ensure routine audits are made of all major information technology projects approved. The bill requires change orders be supported by certain documentation. The bill requires a post-audit review be conducted on certain major information technology projects. The bill requires certain contract terms for major information technology projects with a cost in excess of \$1 million. The bill requires amounts not paid under a retainage agreement or collected under a performance bond be returned to the agency or agencies paying for the project or deposited in the state's general revenue account..

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