

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 648

BY SENATORS JEFFRIES, BEACH, MILLER, OJEDA,

PLYMALE, PREZIOSO AND STOLLINGS

[Introduced March 17, 2017; Referred
to the Committee on the Workforce; and then to the
Committee on Government Organization]

1 A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §21-1C-2, §21-1C-4 and §21-1C-6 of said code, all relating to West
 3 Virginia jobs on public construction projects; requiring bidders on construction projects to
 4 explicitly confirm they are in compliance with the West Virginians Jobs Act; amending
 5 terms; requiring employers working on certain public improvements to furnish employee
 6 residence information to confirm compliance; setting requirements for conduct if employer
 7 falls out of compliance; authorizing penalties at double the general amount in certain
 8 circumstances; clarifying what bodies may levy penalties; and making the penalty per
 9 person per violation.

Be it enacted by the Legislature of West Virginia:

1 That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §21-1C-2, §21-1C-4 and §21-1C-6 of said code be amended and reenacted,
 3 all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

**§5-22-1. Bidding required; government construction contracts to go to lowest qualified
 responsible bidder; procedures to be followed in awarding government
 construction projects; penalties for violation of procedures and requirements
 debarment; exceptions.**

1 (a) This section and the requirements in this section may be referred to as the West
 2 Virginia Fairness In Competitive Bidding Act.

3 (b) As used in this section:

4 (1) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and
5 that meets, as a minimum, all the following requirements in connection with the bidder's response
6 to the bid solicitation. The bidder must certify that it:

7 (A) Is ready, able and willing to timely furnish the labor and materials required to complete
8 the contract;

9 (B) Is in compliance with all applicable laws of the State of West Virginia, including an
10 explicit certification that the bidder will comply with the West Virginians Jobs Act, article one-c,
11 chapter twenty-one of this code; and

12 (C) Has supplied a valid bid bond or other surety authorized or approved by the contracting
13 public entity.

14 (2) "The state and its subdivisions" means the State of West Virginia, every political
15 subdivision thereof, every administrative entity that includes such a subdivision, all municipalities
16 and all county boards of education.

17 (3) "State spending unit" means a department, agency or institution of the state
18 government for which an appropriation is requested, or to which an appropriation is made by the
19 Legislature.

20 (c) The state and its subdivisions shall, except as provided in this section, solicit
21 competitive bids for every construction project exceeding \$25,000 in total cost. A vendor who has
22 been debarred pursuant to the provisions of sections thirty-three-b through thirty-three-f, inclusive,
23 article three, chapter five-a of this code may not bid on or be awarded a contract under this
24 section. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety
25 as approved by the State of West Virginia or its subdivisions.

26 (d) Following the solicitation of bids, the construction contract shall be awarded to the
27 lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond.
28 The state and its subdivisions may reject all bids and solicit new bids on the project.

29 (e) The apparent low bidder on a contract valued at more than \$250,000 for the
30 construction, alteration, decoration, painting or improvement of a new or existing building or
31 structure with a state spending unit shall submit a list of all subcontractors who will perform more
32 than \$25,000 of work on the project including labor and materials. This section does not apply to
33 other construction projects such as highway, mine reclamation, water or sewer projects. The list
34 shall include the names of the bidders and the license numbers as required by article eleven,
35 chapter twenty-one of this code. This information shall be provided to the state spending unit
36 within one business day of the opening of bids for review prior to the awarding of a construction
37 contract. If no subcontractors who will perform more than \$25,000 of work are to be used to
38 complete the project it will be noted on the subcontractor list. Failure to submit the subcontractor
39 list within one business day after the deadline for submitting bids shall result in disqualification of
40 the bid.

41 (f) Written approval must be obtained from the state spending unit before any
42 subcontractor substitution is permitted. Substitutions are not permitted unless:

43 (1) The subcontractor listed in the original bid has filed for bankruptcy;

44 (2) The state spending unit refuses to approve a subcontractor in the original bid because
45 the subcontractor is under a debarment pursuant to section thirty-three-d, article three, chapter
46 five-a of this code or a suspension under section thirty-two, article three, chapter five-a of this
47 code; or

48 (3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is
49 unable or refuses to perform the subcontract.

50 (g) The contracting public entity may not award the contract to a bidder which fails to meet
51 the minimum requirements set out in this section. As to a prospective low bidder which the
52 contracting public entity determines not to have met one or more of the requirements of this
53 section or other requirements as determined by the public entity in the written bid solicitation, prior
54 to the time a contract award is made, the contracting public entity shall document in writing and

55 in reasonable detail the basis for the determination and shall place the writing in the bid file. After
56 the award of a bid under this section, the bid file of the contracting public agency and all bids
57 submitted in response to the bid solicitation shall be open and available for public inspection.

58 (h) A public official or other person who individually or together with others knowingly
59 makes an award of a contract under this section in violation of the procedures and requirements
60 of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-
61 a of the Code of West Virginia.

62 (i) No officer or employee of this state or of a public agency, public authority, public
63 corporation or other public entity and no person acting or purporting to act on behalf of an officer
64 or employee or public entity shall require that a performance bond, payment bond or surety bond
65 required or permitted by this section be obtained from a particular surety company, agent, broker
66 or producer.

67 (j) All bids shall be open in accordance with the provisions of section two of this article,
68 except design-build projects which are governed by article twenty-two-a of this chapter and are
69 exempt from these provisions.

70 (k) Nothing in this section applies to:

71 (1) Work performed on construction or repair projects by regular full-time employees of
72 the state or its subdivisions;

73 (2) Prevent students enrolled in vocational educational schools from being utilized in
74 construction or repair projects when the use is a part of the student's training program;

75 (3) Emergency repairs to building components and systems. For the purpose of this
76 subdivision, the term emergency repairs means repairs that if not made immediately will seriously
77 impair the use of building components and systems or cause danger to persons using the building
78 components and systems; and

79 (4) A situation where the state or subdivision thereof reaches an agreement with
80 volunteers, or a volunteer group, in which the governmental body will provide construction or

81 repair materials, architectural, engineering, technical or other professional services and the
82 volunteers will provide the necessary labor without charge to, or liability upon, the governmental
83 body.

CHAPTER 21. LABOR.

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

1 As used in this article:

2 The term "certified payroll" means a payroll submission using the United States
3 Department of Labor Form WH-347 or other document approved by the West Virginia Division of
4 Labor that includes names, addresses and social security numbers of all workers, as well as other
5 information deemed relevant by the Division of Labor.

6 (1) The term "construction project" means any construction, reconstruction, improvement,
7 enlargement, painting, decorating or repair of any public improvement let to contract in an amount
8 equal to or greater than \$500,000. The term "construction project" does not include temporary or
9 emergency repairs;

10 (2)(A) The term "employee" means any person hired or permitted to perform hourly work
11 for wages by a person, firm or corporation in the construction industry;

12 (B) The term "employee" does not include:

13 (i) Bona fide employees of a public authority or individuals engaged in making temporary
14 or emergency repairs;

15 (ii) Bona fide independent contractors; or

16 (iii) Salaried supervisory personnel necessary to assure efficient execution of the
17 employee's work;

18 (3) The term "employer" means any person, firm or corporation employing one or more
19 employees on any public improvement and includes all contractors and subcontractors;

20 (4) The term "local labor market" means every county in West Virginia and any county
 21 outside of West Virginia, ~~if any portion of that county is within fifty miles of the~~ which shares a
 22 ~~border of~~ with West Virginia;

23 (5) The term "public authority" means any officer, board, commission or agency of the
 24 State of West Virginia and its subdivisions, including counties and municipalities. Further, the
 25 economic grant committee, economic development authority, infrastructure and jobs development
 26 council and School Building Authority shall be required to comply with the provisions of this article
 27 for loans, grants or bonds provided for public improvement construction projects;

28 (6) The term "public improvement" includes the construction of all buildings, roads,
 29 highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports
 30 and all other structures that may be let to contract by a public authority, excluding improvements
 31 funded, in whole or in part, by federal funds.

**§21-1C-4. Local labor market utilization on public improvement construction projects;
 waiver certificates.**

1 (a) Employers shall hire at least seventy-five percent of employees for public improvement
 2 construction projects from the local labor market, to be rounded off, with at least two employees
 3 from outside the local labor market permissible for each employer per project.

4 (b) Employers shall routinely furnish the awarding agency certified payroll information, not
 5 less than once per month, showing the residence of each employee. If the number of employees
 6 from the local labor market falls below seventy-five percent, then the employer shall provide an
 7 explanation of how and when it intends to come into compliance forthwith. If the employer does
 8 not come into compliance within two weeks of providing the explanation required by this
 9 subsection, then penalties as provided in section six of this article shall be levied. If compliance
 10 at any time during the project falls below fifty percent, then penalties as provided in section six of
 11 this article shall be levied at double the penalty contained in section six.

12 ~~(b)~~ (c) Any employer unable to employ the minimum number of employees from the local

13 labor market shall inform the nearest office of the Bureau of Employment Programs' division of
14 employment services of the number of qualified employees needed and provide a job description
15 of the positions to be filled.

16 ~~(e)~~ (d) If, within three business days following the placing of a job order, the division is
17 unable to refer any qualified job applicants to the employer or refers less qualified job applicants
18 than the number requested, then the division shall issue a waiver to the employer stating the
19 unavailability of applicant and shall permit the employer to fill any positions covered by the waiver
20 from outside the local labor market. The waiver shall be either oral or in writing and shall be issued
21 within the prescribed three days. A waiver certificate shall be sent to both the employer for its
22 permanent project records and to the public authority.

§21-1C-6. Penalties for violation of article.

1 Any employer who violates any provision of this article is subject to a civil penalty of \$100
2 per day ~~of~~ per person per violation, which may be levied by the public authority that awarded the
3 project or the Division of Labor: *Provided, That this penalty may be doubled as required by section*
4 four of this article.

NOTE: The purpose of this bill is to help protect West Virginia jobs on public construction projects.

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