

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4506

FISCAL  
NOTE

BY DELEGATES ATKINSON, TOMBLIN, SYPOLT, WESTFALL,

HOTT, HARTMAN, ANDERSON, CADLE, DEAN AND D.

KELLY

(By Request of the Division of Natural Resources)

[Introduced January 23, 2020; Referred to the  
Committee on Agriculture and Natural Resources  
then Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §20-1-15, relating to procurement of architect-engineer services by the West  
3 Virginia Division of Natural Resources, and exempting the agency from certain existing  
4 procurement requirements.

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

## **ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**

### **§20-1-15. Procurement of Architect-Engineer Services by the Division.**

1 (a) The Legislature declares the Division of Natural Resources to be exempt from §5G-1-  
2 1 et seq. of this code and it to be the policy of the division to procure architectural or engineering  
3 services or both on the basis of demonstrated competence and qualification for the type of  
4 professional services required.

5 (b) Definitions. As used in this section:

6 “Agency” means the Division of Natural Resources.

7 “Architectural and engineering services” includes those professional services of an  
8 architectural or engineering nature as well as incidental services that members of those  
9 professions and those in their employ may logically or justifiably perform.

10 “Chief procurement officer” means the chief procurement officer of the Division of Natural  
11 Resources or anyone the chief procurement officer has designated to procure the services of  
12 architects and engineers.

13 “Firm” or “professional firm” means any individual, firm, partnership, corporation,  
14 association, or other legal entity permitted by law to practice the professions of architecture and  
15 engineering.

16 (c) In the procurement of architectural and engineering services for projects estimated to  
17 cost \$750,000 or more, the chief procurement officer shall encourage firms engaged in the lawful  
18 practice of the profession to submit an expression of interest, which shall include a statement of  
19 qualifications and performance data, and may include anticipated concepts and proposed

20 methods of approach to the project. All jobs shall be announced by public notice published as a  
21 Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. A  
22 committee of three to five representatives of the agency shall evaluate the statements of  
23 qualifications and performance data and other material submitted by interested firms and select  
24 three firms which, in their opinion, are best qualified to perform the desired service: *Provided,*  
25 That if such circumstances exist, such that seeking competition could result in a compromise to  
26 public safety, significantly increase costs, or an extended interruption of essential services, the  
27 agency may, with the prior approval of the chief procurement officer, select a firm on the basis of  
28 previous satisfactory performance and knowledge of the agency's facilities and needs. Interviews  
29 with each firm selected shall be conducted and the committee shall conduct discussions regarding  
30 anticipated concepts and proposed methods of approach to the assignment. The committee shall  
31 then rank, in order of preference, no less than three professional firms deemed to be the most  
32 highly qualified to provide the services required, and shall commence scope of service and price  
33 negotiations with the highest qualified professional firm for architectural or engineering services  
34 or both. Should the agency be unable to negotiate a satisfactory contract with the professional  
35 firm considered to be the most qualified, at a fee determined to be fair and reasonable, price  
36 negotiations with the firm of second choice shall commence. Failing accord with the second most  
37 qualified professional firm, the committee shall undertake price negotiations with the third most  
38 qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with  
39 any of the selected professional firms, it shall select additional professional firms in order of their  
40 competence and qualifications and it shall continue negotiations in accordance with this section  
41 until an agreement is reached: *Provided, however,* That for any water or wastewater construction  
42 project the engineering design and construction inspection costs may not exceed the amount  
43 calculated pursuant to the compensation curves for consulting engineering services based upon  
44 project construction costs published by the American Society of Civil Engineers manual of  
45 practice, unless granted a variance by the Infrastructure and Jobs Development Council

46 established pursuant to §31-15A-1 et seq. of this code.

47 (d) In the procurement of architectural and engineering services for projects estimated to  
48 cost less than \$750,000, competition shall be sought by the agency. The agency shall conduct  
49 discussions with three or more professional firms solicited on the basis of known or submitted  
50 qualifications for the assignment prior to the awarding of any contract: *Provided*, That if a judgment  
51 is made that special circumstances exist and that seeking competition is not practical, the agency  
52 may, with the prior approval of the chief procurement officer, select a firm on the basis of previous  
53 satisfactory performance and knowledge of the agency's facilities and needs. After selection, the  
54 agency and firm shall develop the scope of services required and negotiate a contract.

NOTE: The purpose of this bill is to provide for procurement of architect-engineer services by the West Virginia Division of Natural Resources and providing an exemption from §5G-1-1 et seq.

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