

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 737

BY SENATORS AZINGER AND SYPOLT

[Introduced February 7, 2020; referred
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
 2 sections, designated §21-11-21 and §21-11-22, all relating to requiring contractors
 3 performing work for government contracts on computers use software to verify the hours
 4 the contractor worked on the computer; providing that the automatic billing software
 5 applies for any contract over \$100,000; defining “executive agency” as any state agency;
 6 providing required aspects of automatic billing verification software; providing that
 7 contracts over \$1 million, when meeting certain conditions, are required to verify hours
 8 worked on a computer; requiring the Department of Administration provide reports relating
 9 to contracts over budget; providing that the Department of Administration will request
 10 information relating to contracts performed; providing for the contents of the required
 11 report; providing that the required report will be published on the Department of
 12 Administration’s website and given to the Joint Committee on Government and Finance;
 13 providing dates for receiving required information to complete the report; providing for
 14 limitations relating to continued payments for certain contracts; providing that hours
 15 worked on a computer under certain circumstances must be verified before receiving
 16 payment; providing that a contractor generating data cannot charge an executive agency
 17 for access to or retrieval of the data; and providing for exemptions from the requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-21. Require the use of software to verify hours worked on government contracts.

1 (a) The Legislature recognizes that an increasing amount of government contracts require
 2 the use of computers, a virtual office, or online activity. The Legislature further recognized the
 3 difficulty in verifying hours worked on computers for government contracts. Therefore, the
 4 Legislature intends to establish a secure and transparent process to verify hours worked on
 5 computers for government contracts to prevent abuse and overbilling.

6 (b) This section shall apply to a contract by or on behalf of any department, agency, or

7 political subdivision of the state, for professional or technical services in excess of \$100,000.

8 (c) A contract subject to this section shall require a contractor to use software to verify that
9 hours billed for work under the contract that are performed on a computer are legitimate. The
10 contract must specify that the agency will not pay for hours worked on a computer unless those
11 hours are verifiable by the software or by data collected by the software. The software must do
12 the following:

13 (1) Permit the agency or an Auditor of the state to have real-time or retroactive access to
14 data collected or provided by the software within 14 days of the generation of the data;

15 (2) Automatically count the number of keystrokes and mouse events but shall not record
16 the actual keystrokes or mouse events;

17 (3) Automatically take a screenshot every three minutes;

18 (4) Provide to the agency or an Auditor of the state automated real-time cost statuses of
19 each task;

20 (5) Provide to the agency professional biographical information;

21 (6) Must protect all data regarding individuals that is private or confidential, consistent with
22 West Virginia and federal law; and

23 (7) Permit the agency to provide immediate feedback to the contractor on work in progress.

24 (d) The data collected by the software shall be considered financial records belonging to
25 the contractor. The contractor must store, or contract with another to store, the data collected by
26 the software for a period of seven years and provide the access to the data to the contracting
27 agency or State Auditors upon request.

28 (e) The contractor must not charge the agency or an Auditor of the state for access to or
29 use of the work verification software, or for access to or retrievals of data collected by the software.

30 (f) Software used under this section must be procured by the contractor from an
31 independent entity.

§21-11-22. Reporting on contractor progress.

1 (a) As used in this section, the term “executive agency” shall mean any administrative
2 governmental entity created either by the Constitution or statute in this state under the executive
3 branch or created to be independent, including any department, agency, board, bureau, council,
4 commission, or committee supported in whole or in part by state funds; any subdivision of an
5 executive agency; and any legally designated agent of such entity.

6 (b) The Department of Administration shall submit annually to the Joint Committee on
7 Government and Finance and post on its website, a report on any information technology project
8 that is funded by an executive agency using only funds appropriated by the Legislature:

9 (1) That is more than one year behind schedule; or,

10 (2) For which the amount spent on the project is at least \$1 million more than the original
11 cost estimate for the project.

12 (c) To prepare the report, the Department of Administration shall send a request for
13 information to executive agencies no later than July 1, of each year and shall require a response
14 no later than September 30. The Department of Administration shall submit their report to the
15 Joint Committee on Government and Finance and post on their website on or before December
16 1, 2021, and every year thereafter.

17 (d) The report submitted and posted pursuant to this section shall, for each project
18 included in the report, provide:

19 (1) A brief description of the project, including:

20 (A) The purpose of the project;

21 (B) The location in which the project in carried out;

22 (C) The year the project began;

23 (D) The state’s share of the total cost of the project; and

24 (E) Each primary contractor and grant recipient of the project;

25 (2) An explanation of any changes to the original scope of the project, including the
26 addition or narrowing of the initial requirements of the project;

- 27 (3) The original expected completion date;
- 28 (4) The current expected completion date;
- 29 (5) The original cost estimate for the project, as adjusted to reflect increases in the
30 Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics;
- 31 (6) The current cost estimate for the project, as adjusted to reflect increases in the
32 Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics;
- 33 (7) An explanation for a delay in completion or increase in the original cost estimate; and
- 34 (8) The amount of, and rationale for, any award, incentive fee, or similar expense, including
35 terms and conditions to receive or be denied for such awards or incentives, if any award or
36 incentive was given or denied for the project.
- 37 (e) For any project identified in the report required by this section that is more than one
38 year behind schedule or for which the amount spent is at least \$1 million more than the original
39 cost estimate for the project, beginning January 1, of the year following the submission of the
40 report, the executive agency shall not pay for hours worked on a computer and billed by the hour
41 to the state unless those hours are verifiable pursuant to §21-11-21 of this code. Any automatic
42 billing verification software must meet the requirements in §21-11-21(c) of this code.
- 43 (f) The contractor shall provide access to the executive agency or an Auditor of the
44 executive agency on request for a period of time governed by law, rule, or as otherwise stated in
45 the contract. The contractor shall not charge the executive agency or an Auditor of the executive
46 agency for access to or retrievals of the data generated by the automatic billing verification
47 software.
- 48 (g) This section shall not apply to:
- 49 (1) State employees;
- 50 (2) State agencies or departments contracting with other state agencies or departments;
- 51 (3) Law-enforcement agencies or contracts with any agency which is the custodian of
52 criminal justice information, as defined in the Federal Bureau of Investigation Criminal Justice

53 Information Services Security Policy; and

54 (4) Any individual who works for a contractor that performs work on a state-owned device.

55 (h) Any executive agency making contracts subject to the provisions of this section shall

56 give preference to any contractor that uses computer software to automatically verify the hours

57 worked on a computer and billed under the contract, except as provided in subsection (h) of this

58 section.

NOTE: The purpose of this bill is to require contractors using computers to complete government contracts have software that verifies the amount of hours worked on the computer or computers for the contract.

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