

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 55**

BY SENATORS SYPOLT, SWOPE, AND MARONEY

[Introduced February 10, 2021; referred  
to the Committee on Government Organization]

1 A BILL to amend and reenact §7-11B-14 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §8-12-5 of said code, all relating to allowing municipalities to contract,  
 3 without bidding, projects up to \$50,000 in total; increasing the monetary threshold from  
 4 \$25,000 to \$50,000; and correcting improper citations.

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

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

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

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

1 (a) Any project acquired, constructed, or financed, in whole or in part, by a county  
 2 commission or municipality under this article shall be considered to be a “public improvement”  
 3 within the meaning of the provisions of §21-1C-1 *et seq.* of this code.

4 (b) The county commission or municipality shall, except as provided in subsection (c) of  
 5 this section, solicit or require solicitation of competitive bids and require compliance with §21-1C-  
 6 1 *et seq.* of this code for every project or infrastructure project funded pursuant to this article  
 7 exceeding ~~\$25,000~~ \$50,000 in total cost: *Provided*, That the provisions of §17-2D-1 *et seq.* of this  
 8 code may apply where applicable to projects subject to an intergovernmental agreement with the  
 9 Commissioner of Highways.

10 (c) Following the solicitation of the bids, the construction contract shall be awarded to the  
 11 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:  
 12 *Provided*, That the county commission, municipality or other person soliciting the bids may reject  
 13 all bids and solicit new bids on the project.

14 (d) No officer or employee of this state or of any public agency, public authority, public  
 15 corporation, or other public entity, and no person acting or purporting to act on behalf of such

16 officer or employee or public entity shall require that any performance bond, payment bond, or  
17 bid bond required or permitted by this section be obtained from any particular surety company,  
18 agent, broker or producer.

19 (e) This section does not:

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

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

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

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

36 (f) The provisions of subsections (a) and (b) of this section apply to any specific project,  
37 whether privately or publicly owned or constructed on private or public lands, that are financed or  
38 to be financed, in whole or in part, with tax increment or proceeds of tax increment financing  
39 obligations: *Provided*, That, the provisions of subsections (a) and (b) of this section do not apply  
40 to any project or part of a project that is privately owned and financed without any tax increment  
41 or proceeds of tax increment financing obligations.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

#### §8-12-5. General powers of every municipality and the governing body thereof.

1           In addition to the powers and authority granted by: (i) The Constitution of this state; (ii)  
2 other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not  
3 inconsistent or in conflict with any of the foregoing except special legislative charters, every  
4 municipality and the governing body thereof shall have plenary power and authority therein by  
5 ordinance or resolution, as the case may require, and by appropriate action based thereon:

6           (1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in  
7 good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks,  
8 drains and gutters, for the use of the public, and to improve and light the same, and have them  
9 kept free from obstructions on or over them which have not been authorized pursuant to the  
10 succeeding provisions of this subdivision; and, subject to such terms and conditions as the  
11 governing body shall prescribe, to permit, without in any way limiting the power and authority  
12 granted by the provisions of §8-16-1 *et seq.* of this code, any person to construct and maintain a  
13 passageway, building or other structure overhanging or crossing the airspace above a public  
14 street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person  
15 to construct and maintain a passageway, building or other structure overhanging or crossing any  
16 airspace is granted, a public hearing thereon shall be held by the governing body after publication  
17 of a notice of the date, time, place and purpose of the public hearing has been published as a  
18 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and  
19 the publication area for the publication shall be the municipality: *Provided*, That any permit so  
20 granted shall automatically cease and terminate in the event of abandonment and nonuse thereof

21 for the purposes intended for a period of 90 days, and all rights therein or thereto shall revert to  
22 the municipality for its use and benefit;

23 (2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways,  
24 sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions  
25 under which any such opening may be made;

26 (3) To prevent by proper penalties the throwing, depositing or permitting to remain on any  
27 street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron,  
28 nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of  
29 individuals or animals or the tires of vehicles;

30 (4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks  
31 and public places belonging to the municipality, including the naming or renaming thereof, and to  
32 consult with local postal authorities, the Division of Highways and the directors of county  
33 emergency communications centers to assure uniform, nonduplicative addressing on a  
34 permanent basis;

35 (5) To regulate the width of streets, avenues and roads, and, subject to the provisions of  
36 §8-18-1 *et seq.* of this code, to order the sidewalks, footways and crosswalks to be paved,  
37 repaved, curbed, or recurbed and kept in good order, free and clean, by the owners or occupants  
38 thereof or of the real property next adjacent thereto;

39 (6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels  
40 and ferries and approaches thereto;

41 (7) To provide for the construction and maintenance of water drains, the drainage of  
42 swamps or marshlands and drainage systems;

43 (8) To provide for the construction, maintenance and covering over of watercourses;

44 (9) To control and administer the waterfront and waterways of the municipality and to  
45 acquire, establish, construct, operate and maintain and regulate flood control works, wharves and  
46 public landings, warehouses and all adjuncts and facilities for navigation and commerce and the

47 utilization of the waterfront and waterways and adjacent property;

48 (10) To prohibit the accumulation and require the disposal of garbage, refuse, debris,  
49 wastes, ashes, trash and other similar accumulations whether on private or public property:

50 *Provided, That*, in the event the municipality annexes an area which has been receiving solid  
51 waste collection services from a certificated solid waste motor carrier, the municipality and the  
52 solid waste motor carrier may negotiate an agreement for continuation of the private solid waste  
53 motor carrier services for a period of time, not to exceed three years, during which time the  
54 certificated solid waste motor carrier may continue to provide exclusive solid waste collection  
55 services in the annexed territory;

56 (11) To construct, establish, acquire, equip, maintain and operate incinerator plants and  
57 equipment and all other facilities for the efficient removal and destruction of garbage, refuse,  
58 wastes, ashes, trash and other similar matters;

59 (12) To regulate or prohibit the purchase or sale of articles intended for human use or  
60 consumption which are unfit for use or consumption, or which may be contaminated or otherwise  
61 unsanitary;

62 (13) To prevent injury or annoyance to the public or individuals from anything dangerous,  
63 offensive or unwholesome;

64 (14) To regulate the keeping of gunpowder and other combustibles;

65 (15) To make regulations guarding against danger or damage by fire;

66 (16) To arrest, convict and punish any individual for carrying about his or her person any  
67 revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or  
68 any other dangerous or other deadly weapon of like kind or character: *Provided, That* with respect  
69 to any firearm a municipality may only arrest, convict and punish someone if they are in violation  
70 of an ordinance authorized by ~~subsection five-a of this article~~ §8-12-5a of this code, a state law  
71 proscribing certain conduct with a firearm or applicable federal law;

72 (17) To arrest, convict and punish any person for importing, printing, publishing, selling or

73 distributing any pornographic publications;

74 (18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting  
75 to another person any house or other building for the purpose of being used or kept as a house  
76 of ill fame, or for knowingly permitting any house owned by him or her or under his or her control  
77 to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame,  
78 or frequenting same;

79 (19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd,  
80 obscene and indecent;

81 (20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

82 (21) To arrest, convict and punish any individual for driving or operating a motor vehicle  
83 while intoxicated or under the influence of liquor, drugs or narcotics;

84 (22) To arrest, convict and punish any person for gambling or keeping any gaming tables,  
85 commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under  
86 any denomination, whether the gaming table be played with cards, dice or otherwise, or any  
87 person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank,  
88 or keeping or maintaining any gaming house or place, or betting or gambling for money or  
89 anything of value;

90 (23) To provide for the elimination of hazards to public health and safety and to abate or  
91 cause to be abated anything which in the opinion of a majority of the governing body is a public  
92 nuisance;

93 (24) To license, or for good cause to refuse to license in a particular case, or in its  
94 discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for  
95 hire of pool and billiard tables notwithstanding the general law as to state licenses for any such  
96 business and the provisions of §8-13-4 of this code; and when the municipality, in the exercise of  
97 its discretion, refuses to grant a license to operate a pool or billiard room, mandamus may not lie  
98 to compel the municipality to grant the license unless it shall clearly appear that the refusal of the

99 municipality to grant a license is discriminatory or arbitrary; and in the event that the municipality  
100 determines to license any business, the municipality has plenary power and authority and it shall  
101 be the duty of its governing body to make and enforce reasonable ordinances regulating the  
102 licensing and operation of the businesses;

103 (25) To protect places of divine worship and to preserve peace and order in and about the  
104 premises where held;

105 (26) To regulate or prohibit the keeping of animals or fowls and to provide for the  
106 impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

107 (27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly  
108 beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of  
109 necessary sustenance any domestic animal;

110 (28) To provide for the regular building of houses or other structures, for the making of  
111 division fences by the owners of adjacent premises and for the drainage of lots by proper drains  
112 and ditches;

113 (29) To provide for the protection and conservation of shade or ornamental trees, whether  
114 on public or private property, and for the removal of trees or limbs of trees in a dangerous  
115 condition;

116 (30) To prohibit with or without zoning the location of occupied house trailers or mobile  
117 homes in certain residential areas;

118 (31) To regulate the location and placing of signs, billboards, posters and similar  
119 advertising;

120 (32) To erect, establish, construct, acquire, improve, maintain and operate a gas system,  
121 a waterworks system, an electric system or sewer system and sewage treatment and disposal  
122 system, or any combination of the foregoing (subject to all of the pertinent provisions of §8-19-1  
123 *et seq.* and §8-20-1 *et seq.* of this code; and particularly to the limitations or qualifications on the  
124 right of eminent domain set forth in ~~articles nineteen and twenty~~ therein), within or without the



125 corporate limits of the municipality, except that the municipality may not erect any system partly  
126 without the corporate limits of the municipality to serve persons already obtaining service from an  
127 existing system of the character proposed and where the system is by the municipality erected,  
128 or has heretofore been so erected, partly within and partly without the corporate limits of the  
129 municipality, the municipality has the right to lay and collect charges for service rendered to those  
130 served within and those served without the corporate limits of the municipality and to prevent  
131 injury to the system or the pollution of the water thereof and its maintenance in a healthful  
132 condition for public use within the corporate limits of the municipality;

133 (33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any  
134 and all other property and appurtenances necessary, appropriate, useful, convenient or incidental  
135 to any system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all  
136 of the pertinent provisions of §8-19-1 *et seq.* and §8-20-1 *et seq.* of this code;

137 (34) To establish, construct, acquire, maintain and operate and regulate markets and  
138 prescribe the time of holding the same;

139 (35) To regulate and provide for the weighing of articles sold or for sale;

140 (36) To establish, construct, acquire, maintain and operate public buildings, municipal  
141 buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor  
142 vehicle parking lots or any other public works;

143 (37) To establish, construct, acquire, provide, equip, maintain and operate recreational  
144 parks, playgrounds and other recreational facilities for public use and in this connection also to  
145 proceed in accordance with §10-2-1 *et seq.* of this code;

146 (38) To establish, construct, acquire, maintain and operate a public library or museum or  
147 both for public use;

148 (39) To provide for the appointment and financial support of a library board in accordance  
149 with the provisions of §10-1-1 *et seq.* of this code;

150 (40) To establish and maintain a public health unit in accordance with the provisions of

151 §16-2-2 of this code, which unit shall exercise its powers and perform its duties subject to the  
152 supervision and control of the West Virginia Board of Health and State Bureau for Public Health;

153 (41) To establish, construct, acquire, maintain and operate hospitals, sanitariums and  
154 dispensaries;

155 (42) To acquire, by purchase, condemnation or otherwise, land within or near the  
156 corporate limits of the municipality for providing and maintaining proper places for the burial of  
157 the dead and to maintain and operate the same and regulate interments therein upon terms and  
158 conditions as to price and otherwise as may be determined by the governing body and, in order  
159 to carry into effect the authority, the governing body may acquire any cemetery or cemeteries  
160 already established;

161 (43) To exercise general police jurisdiction over any territory without the corporate limits  
162 owned by the municipality or over which it has a right-of-way;

163 (44) To protect and promote the public morals, safety, health, welfare and good order;

164 (45) To adopt rules for the transaction of business and the government and regulation of  
165 its governing body;

166 (46) Except as otherwise provided, to require and take bonds from any officers, when  
167 considered necessary, payable to the municipality, in its corporate name, with such sureties and  
168 in a penalty as the governing body may see fit, conditioned upon the faithful discharge of their  
169 duties;

170 (47) To require and take from the employees and contractors such bonds in a penalty,  
171 with such sureties and with such conditions, as the governing body may see fit;

172 (48) To investigate and inquire into all matters of concern to the municipality or its  
173 inhabitants;

174 (49) To establish, construct, require, maintain and operate such instrumentalities, other  
175 than free public schools, for the instruction, enlightenment, improvement, entertainment,  
176 recreation and welfare of the municipality's inhabitants as the governing body may consider

177 necessary or appropriate for the public interest;

178           (50) To create, maintain and operate a system for the enumeration, identification and  
179 registration, or either, of the inhabitants of the municipality and visitors thereto, or the classes  
180 thereof as may be considered advisable;

181           (51) To require owners, residents or occupants of factory-built homes situated in a factory-  
182 built rental home community with at least ten factory-built homes, to visibly post the specific  
183 numeric portion of the address of each factory-built home on the immediate premises of the  
184 factory-built home of sufficient size to be visible from the adjoining street: *Provided*, That in the  
185 event no numeric or other specific designation of an address exists for a factory-built home subject  
186 to the authorization granted by this subdivision, the municipality has the authority to provide a  
187 numeric or other specific designation of an address for the factory-built home and require that it  
188 be posted in accordance with the authority otherwise granted by this section.

189           (52) To appropriate and expend not exceeding 25 cents per capita per annum for  
190 advertising the municipality and the entertainment of visitors;

191           (53) To conduct programs to improve community relations and public relations generally  
192 and to expend municipal revenue for such purposes;

193           (54) To reimburse applicants for employment by the municipality for travel and other  
194 reasonable and necessary expenses actually incurred by the applicants in traveling to and from  
195 the municipality to be interviewed;

196           (55) To provide revenue for the municipality and appropriate the same to its expenses;

197           (56) To create and maintain an employee benefits fund which may not exceed one tenth  
198 of one percent of the annual payroll budget for general employee benefits and which is set up for  
199 the purpose of stimulating and encouraging employees to develop and implement cost-saving  
200 ideas and programs and to expend moneys from the fund for these purposes;

201           (57) To enter into reciprocal agreements with governmental subdivisions or agencies of  
202 any state sharing a common border for the protection of people and property from fire and for

203 emergency medical services and for the reciprocal use of equipment and personnel for these  
204 purposes;

205 (58) To provide penalties for the offenses and violations of law mentioned in this section,  
206 subject to the provisions of §11-8-1 of this code, and such penalties may not exceed any penalties  
207 provided in this chapter and Chapter 61 of this code for like offenses and violations; ~~and~~

208 (59) To participate in a purchasing card program for local governments authorized and  
209 administered by the State Auditor as an alternative payment method; and

210 (60) To let contracts without competitive bidding when the value of the contract is \$50,000  
211 or less.

NOTE: The purpose of this bill is to allow municipalities to let contracts for projects without competitive bidding when the value is \$50,000 or less.

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