

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 611

BY SENATOR CLEMENTS

[Passed March 12, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §17-4-20 of the Code of West Virginia, 1931, as amended, relating
2 to contract bidder's surety or collateral bond; modifying cap on contract bidder's surety or
3 collateral bond; authorizing Commissioner of Highways to determine bond amounts based
4 on objective criteria; setting forth that any final decision would be considered a contested
5 case subject to appeal; and updating outdated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-20. Bidder's bond required; return or forfeiture of bond.

1 (a) In any case where a contract for work and materials shall be let as a result of
2 competitive bidding, the successful bidder shall, within 20 days after notice of award, execute a
3 formal contract to be approved as to its form, terms, and conditions by the commissioner, and
4 shall also execute and deliver to the commissioner a good and sufficient surety or collateral bond,
5 payable to the State of West Virginia, to be approved by the commissioner, in such amount as
6 the commissioner may require, but not to exceed 110 percent of the contract price, conditioned
7 that the contractor shall well and truly perform the contract. The commissioner may determine
8 individual contractor surety or collateral bond amounts based upon objective criteria set by the
9 commissioner, and any final decision that adversely affects a contractor shall be a contested case
10 subject to appeal under chapter 29A of this code.

11 (b) The contractor shall pay in full to the persons entitled thereto for all material, gas, oil,
12 repairs, supplies, tires, equipment, rental charges for equipment and charges for the use of
13 equipment, and labor used by the contractor in the performance of such contract, or which
14 reasonably appeared, at the time of delivery or performance, would be substantially consumed in
15 and about the performance of the contract. A legal action may be maintained upon the bond for
16 breach thereof by any person for whose benefit the bond was executed or by his or her assignee.

17 (c) The bidder who has the contract awarded to him or her and who fails within 20 days
18 after notice of the award to execute the required contract and bond shall forfeit such check or

19 bond, which shall be taken and considered as liquidated damages and not as a penalty for failure
20 of such bidder to execute the contract and bond.

21 (d) Upon the execution of the contract and bond by the successful bidder, his or her check
22 or bond shall be released to him or her. The checks or bonds of the unsuccessful bidders shall
23 be released to them promptly after the bids are opened and the contract awarded to the successful
24 bidder.

25 (e) A duplicate copy of such contract and bond shall be furnished by the Commissioner of
26 the Division of Highways, in electronic or paper form as may be required, to the county clerk of
27 the county in which such contract is to be performed. It is the duty of the county clerk to bind and
28 preserve the same in his or her office and index the same in the name of the commissioner and
29 of the contractor.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2022.

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Governor