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H. B. 2144

(By Delegates Caputo, Talbott and Hatfield)

[Introduced January 12, 2011; referred to the

Committee on Energy, Industry and Labor, Economic Development and

Small Business then Government Organization.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-22-3, relating to requiring contractors awarded state public works construction projects to meet time restrictions for the completion of a public works construction project; defining "public works construction contract"; providing a monetary penalty for failure to complete a public works construction project on the agreed-upon completion date; providing exceptions in which extensions may be granted; providing limitations upon an increase in contract price, or extension of time to complete a project, in the event of change orders; and directing the Secretary of the Department of Administration to propose legislative rules designed to implement the law.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended
2 by adding thereto a new section, designated §5-22-3, to read as
3 follows:

4 **ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

5 **§5-22-3. Requirement of on-time completion of construction**
6 **contracts.**

7 (a) Every public works construction contract shall include a
8 provision which requires the contractor awarded the contract to
9 complete the construction project by an agreed-upon completion
10 date. For the purposes of this section, "public works construction
11 contract" means any contract between a private contractor and any
12 public agency of this state for the construction, reconstruction,
13 establishment, acquisition, improvement, renovation, extension,
14 enlargement, increase, equipment, maintenance and repair (including
15 replacements) of facilities, buildings, engineering and
16 architectural works, museums, other public buildings, incinerator
17 plants, land-fill or other garbage disposal systems, hospitals,
18 piers, docks, terminals, airports, drainage systems, flood control
19 systems, floodwalls, sewers, culverts, bridges (including
20 approaches, causeways, viaducts, underpasses and connecting
21 roadways), public markets, cemeteries, motor vehicle parking
22 facilities (including parking lots, buildings, ramps, curb-line
23 parking, meters and other facilities deemed necessary, appropriate,
24 useful, convenient or incidental to the regulation, control and

1 parking of motor vehicles), stadiums, gymnasiums, sports arenas,
2 auditoriums, public recreation centers, public recreation parks,
3 swimming pools, roller-skating rinks, ice-skating rinks, tennis
4 courts, golf courses, polo grounds or other public improvements, or
5 the grading, regrading, paving, repaving, surfacing, resurfacing,
6 curbing, recurbing, widening or otherwise improving of any highway,
7 street, avenue, road, alley, sidewalk, way and any other structure,
8 facility or improvement constructed or undertaken by a public
9 agency.

10 (b) All public works construction contracts shall include a
11 provision requiring completion of the project by a certain date,
12 including a monetary penalty of not less than \$1,000 per day for
13 every day that passes beyond the agreed-upon completion date.

14 (c) A request for an extension of time beyond an agreed upon
15 completion date may only be granted in the event of an
16 unforeseeable emergency, to accommodate significant changes made by
17 the public agency with which the contract exists, or because of the
18 fortuitous existence of extreme inclement weather conditions:
19 Provided, That, for the purpose of this section "extreme inclement
20 weather conditions" means the existence of meteorological elements
21 and conditions that vary, at least ten percent beyond the average
22 meteorological elements and conditions for the particular temporal
23 period at issue, based on the recorded meteorological elements and
24 conditions of the previous ten years, which so demonstrably hamper

1 the necessary activities for completion of the project, consistent
2 with applicable industry standards, that the requirement of
3 completion on the agreed upon date becomes unreasonable.

4 (d) If there are change orders for related additional
5 services, extensions may not be granted which exceed twenty
6 percent, either as to an increase to the original contract price,
7 or as to an extension of time relative to the agreed upon
8 completion date: *Provided*, That if an additional service is
9 expressly included as an option in the original contract, the
10 restrictions contained in this subsection do not apply unless
11 expressly provided in the contract.

12 (e) The Secretary of the Department of Administration shall
13 propose rules for legislative approval in accordance with the
14 provisions of article three, chapter twenty-nine-a of this code
15 designed to implement the provisions of this section.

NOTE: The purpose of this bill is to require that each state public works contract include a provision requiring a definitive completion date and that contractors awarded such contracts be required to meet the time restriction. The bill also defines "public works construction contract" and provides a monetary penalty for failure to complete a public works construction project on the agreed-upon completion date. It also provides exceptions in which extensions may be granted while providing limitations upon an increase in the contract price or extension of time to complete a project in the event of change orders. Finally, it directs the Secretary of the Department of Administration to propose legislative rules designed to implement the law.

This section is new; therefore, it has been completely underscored.