

1 COMMITTEE SUBSTITUTE

2 FOR

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 36**

6 (By Senator Klempa)

7 \_\_\_\_\_  
8 [Originating in the Committee on the Judiciary;  
9 reported February 24, 2012.]

10  
11 \_\_\_\_\_  
12  
13 A BILL to amend and reenact §5-22-1 of the Code of West Virginia,  
14 1931, as amended, relating to requiring the disclosure of  
15 subcontractors within one business day of the opening of bids  
16 for certain public construction contracts by the apparent low  
17 bidder when any subcontractor is providing over \$25,000 of  
18 services on the project; providing exceptions; providing what  
19 information is to be submitted to the Division of Purchasing;  
20 disqualifying bidders for failure to comply; obtaining  
21 approval from the division before substituting any  
22 subcontractor; providing circumstances when substitutions are  
23 permitted; and providing a sunset provision.

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

1           That §5-22-1 of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted to read as follows:

3 **ARTICLE 22.   GOVERNMENT CONSTRUCTION CONTRACTS.**

4 **§5-22-1.   Bidding required; government construction contracts to go**  
5           **to lowest qualified responsible bidder; procedures to**  
6           **be followed in awarding government construction**  
7           **projects; penalties for violation of procedures and**  
8           **requirements debarment; exceptions.**

9           (a) This section and the requirements set forth in this  
10 section may be referred to as the West Virginia Fairness In  
11 Competitive Bidding Act.

12           (b) As used in this section:

13           (1) "Lowest qualified responsible bidder" means the bidder  
14 that bids the lowest price and that meets, as a minimum, all the  
15 following requirements in connection with the bidder's response to  
16 the bid solicitation. The bidder must certify that it:

17           (A) Is ready, able and willing to timely furnish the labor and  
18 materials required to complete the contract;

19           (B) Is in compliance with all applicable laws of the State of  
20 West Virginia; and

21           (C) Has supplied a valid bid bond or other surety authorized  
22 or approved by the contracting public entity.

23           (2) "The state and its subdivisions" means the State of West  
24 Virginia, every political subdivision thereof, every administrative

1 entity that includes such a subdivision, all municipalities and all  
2 county boards of education.

3 (c) The state and its subdivisions shall, except as provided  
4 in this section, solicit competitive bids for every construction  
5 project exceeding \$25,000 in total cost: *Provided*, That a vendor  
6 who has been debarred pursuant to the provisions of sections  
7 thirty-three-a through thirty-three-f, inclusive, article three,  
8 chapter five-a of this code may not bid on or be awarded a contract  
9 under this section. All bids submitted pursuant to this chapter  
10 shall include a valid bid bond or other surety as approved by the  
11 State of West Virginia or its subdivisions.

12 (d) Following the solicitation of bids, the construction  
13 contract shall be awarded to the lowest qualified responsible  
14 bidder who shall furnish a sufficient performance and payment bond.  
15 ~~Provided, That~~ The state and its subdivisions may reject all bids  
16 and solicit new bids on the project.

17 (e) The apparent low bidder on a contract for the  
18 construction, alteration, decoration, painting or improvement of a  
19 new or existing building or structure with the Department of  
20 Administration, Division of Purchasing, valued at more than  
21 \$500,000.00 shall submit a list of all subcontractors who will  
22 perform more than \$25,000.00 of work on the project including labor  
23 and materials: *Provided*, That this section shall not apply to any  
24 other construction projects, such as highway, mine reclamation,

1 water or sewer projects. The list shall include the names of the  
2 bidders and the license numbers as required by article eleven,  
3 chapter twenty-one of this code. This information shall be  
4 provided to the Division of Purchasing within one business day of  
5 the opening of bids for review prior to the awarding of a  
6 construction contract. If no subcontractors are to be used to  
7 complete the project it will be so noted on the subcontractor list.  
8 Failure to submit the subcontractor list within one business day  
9 after the deadline for submitting bids shall result in  
10 disqualification of the bid.

11 (f) Written approval must be obtained from the Division of  
12 Purchasing before any subcontractor substitution is permitted.

13 Substitutions are not permitted unless:

14 (1) The subcontractor listed in the original bid has filed for  
15 bankruptcy;

16 (2) The Division of Purchasing refuses to approve a  
17 subcontractor in the original bid because the subcontractor is  
18 under a debarment pursuant to section thirty-three-d, article  
19 three, chapter five-a of this code or a suspension under section  
20 thirty-two, article three, chapter five-a of this code; or

21 (3) The contractor certifies in writing that the subcontractor  
22 listed in the original bill fails, is unable or refuses to perform  
23 his subcontract.

24 (g) The amendments to this section made during the 2012

1 regular session of the Legislature shall expire one year from the  
2 effective date of the amendments absent further action of the  
3 Legislature.

4       ~~(e)~~ (h) The contracting public entity may not award the  
5 contract to a bidder which fails to meet the minimum requirements  
6 set out in this section. As to any prospective low bidder which  
7 the contracting public entity determines not to have met any one or  
8 more of the requirements of this section or other requirements as  
9 determined by the public entity in the written bid solicitation,  
10 prior to the time a contract award is made, the contracting public  
11 entity shall document in writing and in reasonable detail the basis  
12 for the determination and shall place the writing in the bid file.  
13 After the award of a bid under this section, the bid file of the  
14 contracting public agency and all bids submitted in response to the  
15 bid solicitation shall be open and available for public inspection.

16       ~~(f)~~ (I) Any public official or other person who individually  
17 or together with others knowingly makes an award of a contract  
18 under this section in violation of the procedures and requirements  
19 of this section is subject to the penalties set forth in section  
20 twenty-nine, article three, chapter five-a of the Code of West  
21 Virginia.

22       ~~(g)~~ (j) No officer or employee of this state or of any public  
23 agency, public authority, public corporation or other public entity  
24 and no person acting or purporting to act on behalf of such officer

1 or employee or public entity shall require that any performance  
2 bond, payment bond or surety bond required or permitted by this  
3 section be obtained from any particular surety company, agent,  
4 broker or producer.

5 ~~(h)~~ (k) All bids shall be open in accordance with the  
6 provisions of section two of this article, except design-build  
7 projects which are governed by article twenty-two-a of this chapter  
8 and are exempt from these provisions.

9 ~~(I)~~ (1) Nothing in this section shall apply to:

10 (1) Work performed on construction or repair projects by  
11 regular full-time employees of the state or its subdivisions;

12 (2) Prevent students enrolled in vocational educational  
13 schools from being utilized in construction or repair projects when  
14 the use is a part of the student's training program;

15 (3) Emergency repairs to building components and systems. For  
16 the purpose of this subdivision, the term emergency repairs means  
17 repairs that if not made immediately will seriously impair the use  
18 of building components and systems or cause danger to those persons  
19 using the building components and systems; and

20 (4) Any situation where the state or a subdivision thereof  
21 reaches an agreement with volunteers, or a volunteer group, whereby  
22 the governmental body will provide construction or repair  
23 materials, architectural, engineering, technical or any other  
24 professional services and the volunteers will provide the necessary

1 labor without charge to, or liability upon, the governmental body.

---

(NOTE: Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)