

H. B. 4439

(By Delegates Morgan and Stephens)

[Introduced February 7, 2012; referred to the
Committee on Political Subdivisions then Government
Organizations.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §8-12-10a, relating
to municipal authority; permitting a Class I city to use the
design-build process.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §8-12-10a, to read as
follows:

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

§8-12-10a. Design-build.

(a) Upon certification by the city engineer that sufficient

1 performance criteria exist or can be developed, the city manager of
2 a Class I city may make application to the finance committee for
3 permission to issue a solicitation for design-build services by
4 filing an application with the city clerk.

5 (b) An application to solicit design-build services shall
6 contain the following information:

7 (1) A description of the project and scope of work;

8 (2) The project budget or estimated cost range and the sources
9 of funding;

10 (3) Known project timing or scheduling considerations;

11 (4) Known considerations for coordination of design and
12 construction expertise;

13 (5) A request for authorization to retain a performance
14 criteria developer, if necessary, and the manner by which the
15 professional services will be procured;

16 (6) A description of the proposed procurement/selection
17 process which shall include:

18 (A) Application requirements;

19 (B) Qualification selection criteria;

20 (C) The basis for recommending an award and whether price is
21 determined by sealed bid or by negotiation; and

22 (D) The make-up of the evaluation committee, which shall
23 consist of not less than five members.

24 (c) The application shall be noticed as an item of business on

1 the agenda of the next regularly scheduled finance committee
2 meeting. A copy of the application along with a proposed request
3 for design-build services shall be posted on the city's website at
4 least five calendar days prior to consideration of the same by the
5 finance committee. Members of the public wishing to address the
6 finance committee on the merits of the application shall be
7 afforded a reasonable opportunity to do so. The chair of the
8 finance committee has discretion to limit the time and manner of
9 address according to the rules of council for hearings or as
10 required by decorum.

11 (d) When presented with an application, the finance committee
12 shall take into consideration the following:

13 (1) The nature of the project, including its complexity,
14 schedule, budget and source of funding;

15 (2) Value propositions, including the need for an open and
16 competitive selection process and the balance struck between
17 professional qualifications, unique performance guarantees and
18 competitive pricing; and

19 (3) Any other matters that it may considers relevant and
20 appropriate.

21 (e) After presentation and consideration of an application,
22 the finance committee shall take one of the following actions:

23 (1) Approve as submitted, in whole or in part, with or without
24 modification;

1 (2) Disapprove as submitted; or

2 (3) Hold in abeyance for further consideration until the next
3 regularly scheduled meeting.

4 (f) Upon approval by the finance committee of an application
5 and the procurement/selection process set forth the application,
6 the city manager may issue a solicitation for design-build
7 services. At the conclusion of the approved procurement/selection
8 process, the evaluation committee shall make a recommendation to
9 the finance committee to authorize the award of a design-build
10 contract to the responsible and qualified firm whose proposal is
11 determined to represent the best value to the city, considering the
12 nature of the project, price, and other factors relevant to the
13 project.

14 (g) The award of a design-build contract may be conditioned
15 upon subsequent refinements in scope and price and may allow the
16 city to make modifications in the project scope without
17 invalidating a design-build contract.

NOTE: The purpose of this bill is to permit a Class I city to use the design-build process.

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