

H. B. 2576

(By Delegates Kump, Folk and Faircloth)
[Introduced February 20, 2013; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then the Judiciary.]

A BILL to repeal §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6,
§21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10 and §21-5A-11 of the
Code of West Virginia, 1931, as amended; to amend and reenact
§7-11B-14 of said code; to amend and reenact §7-20-22 of said
code; to amend and reenact §17-27-16 of said code; to amend
and reenact §17-28-9 of said code; and to amend and reenact
§18-5-9a of said code, all relating to repealing requirements
that prevailing wages be paid in connection with the
construction of public improvements.

Be it enacted by the Legislature of West Virginia:

That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-5, §21-5A-6,
§21-5A-7, §21-5A-8, §21-5A-9, §21-5A-10 and §21-5A-11 of the Code
of West Virginia, 1931, as amended, be repealed; that §7-11B-14 of
said code be amended and reenacted; that §7-20-22 of said code be
amended and reenacted; that §17-27-16 of said code be amended and

1 reenacted; that §17-28-9 of said code be amended and reenacted; and
 2 that §18-5-9a of said code be amended and reenacted, all to read as
 3 follows:

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

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

6 **§7-11B-14. Projects financed by tax increment financing**
 7 **considered to be public improvements subject to**
 8 **~~prevailing wage,~~ local labor preference and**
 9 **competitive bid requirements.**

10 (a) Any project acquired, constructed, or financed, in whole
 11 or in part, by a county commission or municipality under this
 12 article ~~shall be~~ is considered to be a "public improvement" within
 13 the meaning of the provisions of ~~articles~~ article one-c, ~~and five-a~~
 14 chapter twenty-one of this code.

15 (b) The county commission or municipality shall, except as
 16 provided in subsection (c) of this section, solicit or require
 17 solicitation of competitive bids and require ~~the payment of~~
 18 ~~prevailing wage rates as provided in article five-a, chapter~~
 19 ~~twenty-one of this code~~ and compliance with article one-c of said
 20 chapter twenty-one of this code for every project or infrastructure
 21 project funded pursuant to this article exceeding \$25,000 in total
 22 cost.

23 (c) Following the solicitation of the bids, the construction

1 contract shall be awarded to the lowest qualified responsible
2 bidder, who shall furnish a sufficient performance and payment
3 bond: *Provided*, That the county commission, municipality or other
4 person soliciting the bids may reject all bids and solicit new bids
5 on the project.

6 (d) No officer or employee of this state or of any public
7 agency, public authority, public corporation, or other public
8 entity, and no person acting or purporting to act on behalf of ~~such~~
9 the officer or employee or public entity ~~shall~~ may require that any
10 performance bond, payment bond, or bid bond required or permitted
11 by this section be obtained from any particular surety company,
12 agent, broker or producer.

13 (e) This section does not:

14 (1) Apply to work performed on construction projects not
15 exceeding a total cost of \$50,000 by regular full-time employees of
16 the county commission or the municipality: *Provided*, That no more
17 than \$50,000 ~~shall~~ may be expended on an individual project in a
18 single location in a twelve-month period;

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

22 (3) Apply to emergency repairs to building components and
23 systems: *Provided*, That the term "emergency repairs" means repairs
24 that, if not made immediately, will seriously impair the use of the

1 building components and systems or cause danger to those persons
 2 using the building components and systems; or

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

11 (f) The provisions of subsection (b) of this section apply to
 12 privately owned projects or infrastructure projects constructed on
 13 lands not owned by the county commission, a municipality or a
 14 government agency or instrumentality when the owner or the owner's
 15 agent or person financing the owner's project receives money from
 16 the tax increment financing fund for the owner's project.

17 **ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.**

18 **§7-20-22. Special infrastructure projects financed by service fee**
 19 **considered to be public improvements subject to**
 20 **~~prevailing~~ wage, local labor preference and**
 21 **competitive bid requirements.**

22 (a) Any special infrastructure project acquired, constructed
 23 or financed, in whole or in part, by service fees imposed by a

1 county commission under section twelve of this article ~~shall be~~
2 ~~considered to be~~ is a "public improvement" within the meaning of
3 the provisions of ~~articles~~ article one-c, ~~and five-a~~ chapter
4 twenty-one of this code.

5 (b) The county commission shall, except as provided in
6 subsection (c) of this section, solicit or require solicitation of
7 competitive bids and require ~~the payment of prevailing wage rates~~
8 ~~as provided in article five-a, chapter twenty-one of this code and~~
9 compliance with article one-c, ~~of said~~ chapter twenty-one of this
10 code for any special infrastructure project funded pursuant to
11 section twelve of this article exceeding \$25,000 in total cost.

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

18 (d) No officer or employee of this state or of any public
19 agency, public authority, public corporation or other public entity
20 and no person acting or purporting to act on behalf of ~~such~~ the
21 officer or employee or public entity ~~shall~~ may require that any
22 performance bond, payment bond or bid bond required or permitted by
23 this section be obtained from any particular surety company, agent,
24 broker or producer.

1 (e) This section does not:

2 (1) Apply to work performed on construction projects not
3 exceeding a total cost of \$50,000 by regular full-time employees of
4 the county commission: *Provided*, That no more than \$50,000 ~~shall~~
5 may be expended on an individual project in a single location in a
6 twelve-month period;

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

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

15 (4) Apply to any situation where the county commission comes
16 to an agreement with volunteers, or a volunteer group, by which the
17 county commission will provide construction or repair materials,
18 architectural, engineering, technical or any other professional
19 services and the volunteers will provide the necessary labor
20 without charge to, or liability upon, the county commission:
21 *Provided*, That the total cost of the construction or repair
22 projects does not exceed \$50,000.

23

CHAPTER 17. ROADS AND HIGHWAYS.

1 **ARTICLE 27. PUBLIC-PRIVATE TRANSPORTATION FACILITIES ACT.**

2 **§17-27-16. Qualifying a transportation facility as a public**
3 **improvement subject to competitive bidding.**

4 ~~All qualifying transportation facilities authorized under this~~
5 ~~article are public improvements and are subject to article five-a,~~
6 ~~chapter twenty-one of this code. Article twenty-two, chapter five~~
7 of this code applies to all qualifying transportation facilities
8 authorized under this article. All construction, reconstruction,
9 repair or improvement of qualifying transportation facilities
10 authorized under this article shall be awarded by competitive
11 bidding. Competitive bids shall be solicited by the division for
12 each construction contract in excess of \$25,000 in total cost.
13 Construction costs should be of sufficient size that the
14 performance and payment bonds are in the \$10 million to \$30 million
15 range, where possible. Competitive bids shall be solicited by the
16 division through publication of a Class II legal advertisement, in
17 compliance with the provisions of article three, chapter fifty-nine
18 of this code. ~~and~~ The publication area is the county or
19 municipality in which the transportation facility is to be located.
20 The advertisement shall also be published as a Class II
21 advertisement in a newspaper of general circulation published in
22 the city of Charleston. The advertisement shall solicit sealed
23 proposals for the construction of the transportation facility,
24 stating the time and place for the opening of bids. All bids shall

1 be publicly opened and read aloud. Construction contracts shall be
 2 awarded to the lowest qualified responsible bidder, who shall
 3 furnish a sufficient performance or payment bond: *Provided*, That
 4 both the division and the private entity have the right to reject
 5 all bids and solicit new bids for the construction contract. The
 6 provisions of article one-c, chapter twenty-one of this code apply
 7 to the construction of all qualifying transportation facilities
 8 approved under this article.

9 **ARTICLE 28. WEST VIRGINIA COMMUNITY EMPOWERMENT TRANSPORTATION**
 10 **ACT.**

11 **§17-28-9. Qualifying a transportation project as a public**
 12 **improvement subject to competitive bidding.**

13 ~~All transportation projects authorized under this article are~~
 14 ~~public improvements and are subject to article five-a, chapter~~
 15 ~~twenty-one of this code.~~ Article twenty-two, chapter five of this
 16 code applies to all transportation projects authorized under this
 17 article. All construction, reconstruction, repair or improvement
 18 of transportation projects under this article ~~will~~ shall be awarded
 19 by competitive bidding. Competitive bids ~~are to~~ shall be solicited
 20 by the governmental entity sponsoring a transportation project for
 21 each construction contract in excess of \$25,000 in total cost.
 22 Competitive bids ~~must~~ shall be solicited by the sponsoring
 23 governmental entity through publication of a Class II legal

1 advertisement, as required by article three, chapter fifty-nine of
2 this code. ~~and~~ The publication area is the county or municipality
3 where the transportation facility is to be located. The
4 advertisement ~~must also~~ shall be published as a Class II
5 advertisement in a newspaper of general circulation published in
6 the city of Charleston. The advertisement is to include the
7 solicitations of sealed proposals for the construction of the
8 transportation project, stating the time and place for the opening
9 of bids. All bids ~~will~~ shall be publicly opened and read aloud.
10 Construction contracts ~~must~~ shall be awarded to the lowest
11 qualified responsible bidder, who furnishes a sufficient
12 performance or payment bond. The sponsoring governmental entity
13 ~~has the right to~~ may reject all bids and solicit new bids for the
14 construction contract. Article one-c, chapter twenty-one of this
15 code applies to the construction of all transportation projects
16 approved under this article.

17 **CHAPTER 18. EDUCATION.**

18 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

19 **§18-5-9a. Energy-savings contracts.**

20 (a) For the purposes of this section:

21 (1) "Energy-conservation measures" means goods or services, or
22 both, to reduce energy consumption operating costs of school
23 facilities. These include, but are not limited to, installation of
24 two or more of the following:

1 (A) Insulation of a building structure and systems within a
2 building;

3 (B) Storm windows or doors, caulking or weather stripping,
4 multi-glazed windows or doors, heat-absorbing or heat-reflective
5 glazed and coated window or door systems or other window or door
6 modifications that reduce energy consumption;

7 (C) Automatic energy control systems;

8 (D) Heating, ventilating or air conditioning systems,
9 including modifications or replacements;

10 (E) Replacement or modification of lighting fixtures to
11 increase energy efficiency;

12 (F) Energy recovery systems;

13 (G) Cogeneration systems that produce steam or another form of
14 energy for use by the county board of education in a building or
15 complex of buildings owned by the board of education; or

16 (H) Energy-conservation maintenance measures that provide
17 long-term operating cost reductions of the building's present cost
18 of operation.

19 (2) "Energy-savings contract" means a contract for the
20 evaluation and recommendation of energy operations conservation
21 measures and for implementation of one or more such measures. The
22 contract shall provide that payments, except obligations upon
23 termination of the contract before its expiration, are ~~to be~~ made
24 over time. A county board of education may supplement these

1 payments with federal, state or local funds to reduce the annual
2 cost or to lower the initial amount to be financed.

3 (3) "Qualified provider" means a person, firm or corporation
4 experienced in the design, implementation and installation of
5 energy-conservation measures.

6 (b) County boards of education ~~are hereby authorized to~~ may
7 enter into performance-based contracts with qualified providers of
8 energy-conservation measures for the purpose of reducing energy
9 operating costs of school buildings.

10 (c) A board of education may enter into an energy-savings
11 contract with a qualified provider to significantly reduce energy
12 operating costs. Before entering into ~~such~~ a contract or before
13 the installation of equipment, modifications or remodeling to be
14 furnished under ~~such a~~ the contract, the qualified provider shall
15 first issue a proposal summarizing the scope of work to be
16 performed. ~~Such a~~ The proposal shall contain estimates of all
17 costs of installation, modifications or remodeling including the
18 costs of design, engineering, installation, maintenance, repairs or
19 debt service as well as estimates of the amounts by which energy
20 operating costs will be reduced. If the board finds, after
21 receiving the proposal, that the proposal includes more than one
22 energy-conservation measure designed to save energy operating
23 costs, the board may enter into a contract with the provider
24 pursuant to this section.

1 (d) An energy-savings contract shall include the following:

2 (1) A guarantee of a specific minimum amount of money that the
3 board will save in energy operating costs each year during the term
4 of the contract; and

5 (2) A statement of all costs of energy-conservation measures
6 including the costs of design, engineering, installation,
7 maintenance, repairs and operations.

8 (e) An energy-savings contract which is performance-based and
9 includes a guarantee of savings and a comprehensive approach of
10 energy-conservation measures for improving comfort is subject to
11 competitive bidding requirements. ~~The requirements of article~~
12 ~~five-a, chapter twenty-one of this code as to prevailing wage rates~~
13 ~~shall apply to the construction and installation work performed~~
14 ~~under such a contract.~~

15 (f) A board may enter into a "lease with an option to
16 purchase" contract for the purchase and installation of
17 energy-conservation measures if the term of the lease does not
18 exceed fifteen years and the lease contract includes the provisions
19 ~~hereinafter~~ contained in subsection (g) of this section and meets
20 federal tax requirements for tax-exempt municipal leasing or
21 long-term financing.

22 (g) An energy-savings contract may extend beyond the fiscal
23 year in which it first becomes effective except that ~~such~~ the a
24 contract may not exceed a fifteen-year term and ~~shall be~~ is void

1 unless ~~such~~ the agreement provides the board the option to
2 terminate the agreement during each fiscal year of the contract.
3 The board may include in its annual budget for each fiscal year any
4 amounts payable under long-term energy-savings contracts during
5 that fiscal year.

6 (h) ~~Nothing contained in This section requires or permits~~ does
7 not require or permit the replacement of jobs performed by service
8 personnel employed by the local school board pursuant to sections
9 eight and eight-a, article four, chapter eighteen-a of the code, as
10 amended.

NOTE: The purpose of this bill is to repeal requirements that prevailing wages be paid in connection with the construction of public improvements.

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