

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 376**

4 (By Senators Yost, Fitzsimmons, Kessler (Mr. President) and
5 Wells)

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported February 14, 2014.]
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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §21-3-22, relating to
14 safety and welfare of employees at certain public improvement
15 sites by public authorities; defining terms; requiring onsite
16 employees at certain public improvement sites to complete an
17 Occupational Safety and Health Administration-approved
18 ten-hour construction safety program; requiring the retention
19 of training records; providing for incremental implementation
20 period for mandate; providing the Commissioner of Labor to
21 issue cease-and-desist notices in certain situations;
22 providing civil penalties for violations; creating a
23 misdemeanor offense and providing criminal fines for
24 exhibiting false documents; exempting certain construction

1 activities and persons from application of this section; and
2 requiring a report from the Commissioner of Labor on
3 effectiveness of the safety training.

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

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new section, designated §21-3-22, to read as
7 follows:

8 **ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.**

9 **§21-3-22. OSHA construction safety program.**

10 (a) For the purposes of this section, the terms "public
11 improvement" and "public authority" shall have the same definitions
12 as those terms are given in section two, article one-d of this
13 chapter.

14 (b) No person or other business entity providing services as
15 a contractor or subcontractor under a contract, entered on or after
16 July 1, 2014, for the construction, reconstruction, alteration,
17 remodeling or repairs of any public improvement by or on behalf of
18 a public authority, where the total contract cost of all work to be
19 performed by all contractors and subcontractors is \$50,000 or more,
20 shall use, employ or assign any person to work at the work site who
21 has not successfully completed a ten-hour construction safety
22 program designed by the United States Occupational Safety and
23 Health Administration (OSHA) no later than twenty-one calendar days
24 after starting employment at a public improvement site: *Provided,*

1 That this training requirement does not apply to any employee who
2 does not work at the public improvement site any additional day
3 after the twenty-first calendar day following the employee's first
4 day of employment at the public improvement site: *Provided,*
5 *however,* That for the first year of the effective date of this
6 section enacted during the Regular Session of the Legislature,
7 2014, completion of the ten-hour construction safety program shall
8 occur no later than ninety days after starting employment at the
9 public improvement site.

10 (c) Every contractor and subcontractor providing services
11 shall make and maintain records of the persons he or she employs
12 pursuant to the contract and, for each employee, the date of the
13 employee's completion of the safety training program and the
14 identity of the provider of the training. These records shall be
15 preserved pursuant to the provisions of section five, article
16 five-c of this chapter and shall be maintained at the employer's
17 business office.

18 (d) If the Commissioner of Labor or his or her designee finds
19 a person who has not completed the OSHA safety training at a public
20 improvement site in violation of this section, the commissioner may
21 issue a notice for that person to cease and desist in performing
22 work at the site until the person has completed the training
23 program.

24 (e) The Commissioner of Labor may assess a civil penalty of

1 not less than \$100 nor more than \$1,000 to any person or business
2 entity who violates subsection (b) or (c) of this section for each
3 violation.

4 (f) Any person who, with knowledge that a document or other
5 record falsely represents that a person has completed the training
6 program identified in this section, provides or exhibits the
7 document or record to the Commissioner of Labor or to his or her
8 designee or to an employer shall be guilty of a misdemeanor and,
9 upon conviction thereof, shall be fined not less than \$250 nor more
10 than \$2,500.

11 (g) The following individuals are exempt from the training
12 requirements of this section:

13 (1) Law-enforcement officers involved with traffic control or
14 job-site security;

15 (2) Federal, state and municipal government employees and
16 inspectors; and

17 (3) Suppliers whose sole responsibility is to deliver
18 materials to the work site and other delivery personnel.

19 (h) The Commissioner of Labor shall report to the Joint
20 Committee on Government and Finance by January 1, 2017, on accident
21 and injury rates at affected construction sites the two years prior
22 and following implementation of this section, as enacted during the
23 Regular Session of the Legislature, 2014.