

Senate Bill No. 404

(By Senator Walters)

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[Introduced February 3, 2015; referred to the Committee on Government Organization; and then
to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5A-6-4c of the Code of West Virginia, 1931, as amended, relating
to audits of certain government contracts; requiring certain public entities to make routine
contract audits; requiring change orders be supported by certain documentation; requiring
a twenty-percent retainage on certain contracts; requiring post-audit review be completed on
certain contracts; and requiring retainage amounts not paid to vendors be deposited in the
state’s general revenue account.

Be it enacted by the Legislature of West Virginia:

That §5A-6-4c of the Code of West Virginia, 1931, as amended, be amended and reenacted
to read as follows:

ARTICLE 6. OFFICE OF TECHNOLOGY.

**§5A-6-4c. Major information technology projects proposals and the establishment of steering
committees.; contract audits; change orders.**

(a) Prior to proceeding with a major information technology project, an agency shall submit

1 a project proposal, outlining the business need for the project, the proposed technology solution, if
2 known, and an explanation of how the project will support the agency's business objective and the
3 state's strategic plan for information technology. The project manager may require the submission
4 of additional information as needed to adequately review any proposal.

5 (b) The proposal will further include:

6 (1) A detailed business case plan, including a cost-benefit analysis;

7 (2) A business process analysis, if applicable;

8 (3) System requirements, if known;

9 (4) A proposed development plan and project management structure;

10 (5) Business goals and measurement criteria, as appropriate; and

11 (6) A proposed resource or funding plan.

12 (c) The project manager assigned to review the project development proposal shall
13 recommend its approval or rejection to the Chief Technology Officer. If the Chief Technology
14 Officer approves the proposal, then he or she shall notify the agency of its approval.

15 (d) Whenever an agency has received approval from the Chief Technology Officer to proceed
16 with the development and acquisition of a major information technology project, the Chief
17 Technology Officer shall establish a steering committee.

18 (e) The steering committee shall provide ongoing oversight for the major information
19 technology project and have the authority to approve or reject any changes to the project's scope,
20 schedule or budget.

21 (f) The Chief Technology Officer shall ensure that the major information technology project
22 has in place adequate project management and oversight structures for addressing the project's

1 scope, schedule or budget and shall address issues that cannot be resolved by the steering committee.

2 (g) The Chief Technology Officer, through the steering committee, shall ensure that routine
3 audits are made of all major information technology projects that are approved. Documentation of
4 such routine audits shall be maintained by the steering committee and shall be made available in the
5 event a post-audit review is performed on the project.

6 (h) All change orders associated with major information technology projects shall be
7 supported by:

8 (1) Documented experience on similar work for which a cost history is available;

9 (2) Documented bid unit price experience which supports the cost reasonableness;

10 (3) Documented industry estimating publications supporting cost reasonableness; or

11 (4) Where there is no established cost history, support for the cost negotiation shall include,

12 but not be limited to:

13 (A) Labor rates and mark-up;

14 (B) Crew sizes, compositions and production rates for the respective work activities;

15 (C) Equipment description and estimated times of utilization; and

16 (D) Material volumes and costs.

17 (I) When a major information technology project is in an amount in excess of \$1 million, the
18 Chief Technology Officer shall require, as a term of the contract, that an amount equal to twenty
19 percent of the initial contract price be retained by the contracting agency until the project is complete
20 and a post-audit review of the project is performed.

21 (j) Before the twenty percent retainage is released to the vendor performing the project, a
22 post-audit review shall be completed by an independent third-party. The post-audit review shall

1 include, at a minimum, the following:

2 (1) A review of the routine audits that were performed during the completion of the project;

3 (2) Whether the project is satisfactorily completed in accordance with contract terms,
4 drawings and specifications;

5 (3) Whether all required approvals have been obtained;

6 (4) An evaluation of all change orders to ensure that they are not for work already required
7 by the contract and contain supporting documentation as required by this section;

8 (5) Whether the agency is entitled to damages on the contract for any reason; and

9 (6) After an evaluation of all factors, what amount, if any, of the twenty percent retainage
10 should not be paid to the contracting vendor.

11 (k) The post-audit review shall promptly be performed and completed after the major
12 information technology project is completed. A report of the post-audit review shall be made in
13 writing or electronically and set forth the reasons for the auditor's findings.

14 (l) The Chief Technology Officer and agency shall adhere to the post-audit report and retain
15 that amount, if any, the report indicates should not be paid to the contracting vendor. Such amount
16 shall be deposited into the General Revenue Fund of the State Treasury.

NOTE: The purpose of this bill is to require the Chief Technology Officer to ensure that routine audits are made of all major information technology projects that are approved. The bill requires that change orders to be supported by certain documentation. It requires a twenty percent retainage on contracts that are over \$1 million. The bill further requires that post-audit reviews be completed on contracts that are over \$1 million. The bill also requires that any retainage amounts not paid to vendors to be deposited in the state's general revenue account.

Strike-throughs indicate language that would be stricken from the present law, and

underscoring indicates new language that would be added.