

WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSION

Introduced

Senate Bill 2006

**FISCAL
NOTE**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced October 17, 2017; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §21-1C-2, §21-1C-4 and §21-1C-6 of the Code of West Virginia,
 2 1931, as amended, all relating generally to the West Virginia Jobs Act; defining terms;
 3 requiring Workforce West Virginia to provide a waiver to an employer if unable to refer
 4 certain amount of qualified job applicants to the employer within three business days;
 5 increasing and adding civil penalties for violations; providing for written notice of violation
 6 to employer for violations; creating a special revenue account; and other technical
 7 corrections.

Be it enacted by the Legislature of West Virginia:

1 That §21-1C-2, §21-1C-4 and §21-1C-6 of the Code of West Virginia, 1931, as amended,
 2 be amended and reenacted, all to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

1 As used in this article:

2 (1) The term "commissioner" means the Commissioner of the West Virginia Division of
 3 Labor, or his or her authorized representatives.

4 ~~(1)~~ (2) The term "construction project" means any construction, reconstruction,
 5 improvement, enlargement, painting, decorating or repair of any public improvement let to
 6 contract in an amount equal to or greater than \$500,000. The term "construction project" does not
 7 include temporary or emergency repairs;

8 (3) The term "domicile" or "primary residence" means an individual's true, fixed, principal,
 9 and permanent home, to which he or she returns or intends to return, even though currently
 10 residing elsewhere. Presentation of a valid, government-issued identification card shall be
 11 conclusive proof of domicile.

12 ~~(2)~~ (4) (A) The term "employee" means any person hired or permitted to perform hourly
 13 work for wages by a person, firm or corporation in the construction industry;

14 (B) The term "employee" does not include:

15 (i) Bona fide employees of a public authority or individuals engaged in making temporary
16 or emergency repairs;

17 (ii) Bona fide independent contractors; or

18 (iii) Salaried supervisory personnel necessary to assure efficient execution of the
19 employee's work;

20 ~~(3)~~ (5) The term "employer" means any person, firm or corporation employing one or more
21 employees on any public improvement and includes all contractors and subcontractors;

22 ~~(4)~~ (6) The term "local labor market" means every county in West Virginia, and any county
23 outside of West Virginia if any portion of that county is within fifty miles of the border of West
24 Virginia;

25 ~~(5)~~ (7) The term "public authority" means any officer, board, commission or agency of the
26 State of West Virginia and its subdivisions, including counties and municipalities. Further, the
27 economic grant committee, economic development authority, infrastructure and jobs development
28 council and School Building Authority shall be required to comply with the provisions of this article
29 for loans, grants or bonds provided for public improvement construction projects;

30 ~~(6)~~ (8) The term "public improvement" includes, the construction of all buildings, roads,
31 highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports
32 and all other structures that may be let to contract by a public authority, excluding improvements
33 funded, in whole or in part, by federal funds.

**§21-1C-4. Local labor market utilization on public improvement construction projects;
waiver certificates.**

1 (a) Employers shall hire at least seventy-five percent of employees for public improvement
2 construction projects from the local labor market, to be rounded off, with at least two employees
3 from outside the local labor market permissible for each employer per project.

4 (b) Any employer unable to employ the minimum number of employees from the local
5 labor market shall inform the nearest office of ~~the Bureau of Employment Programs' division of~~

6 ~~employment services~~ Workforce West Virginia of the number of qualified employees needed and
7 provide a job description of the positions to be filled.

8 (c) If, within three business days following the placing of a job order, ~~the division~~ Workforce
9 West Virginia is unable to refer any qualified job applicants to the employer or refers less qualified
10 job applicants than the number requested, then ~~the division~~ Workforce West Virginia shall issue
11 a waiver to the employer stating the unavailability of applicants and shall permit the employer to
12 fill any positions covered by the waiver from outside the local labor market. The waiver shall be
13 ~~either oral or~~ in writing and shall be issued within the prescribed three days. A waiver certificate
14 shall be sent to both the employer for its permanent project records and to the public authority.

§21-1C-6. Penalties for violation of article, notice of violations; administrative remedies.

1 Any employer who violates any provision of this article is subject to a civil penalty of \$100
2 per day of violation.

3 (a) If, after inspection or investigation, the commissioner determines that an employer has
4 violated any provision of this article, the commissioner shall provide a written notice of violation
5 to the employer and the public authority, setting forth the number of violations, a description of
6 every violation and the amount of the penalty that will be imposed if the employer continues to
7 violate any provision of this article after receipt of the notice of violation, and shall direct the public
8 authority to withhold final payment to the employer until the employer has paid the penalty or the
9 matter has been otherwise resolved.

10 (b) Any employer who violates any provision of this article is subject to a civil penalty of
11 \$250 per employee less than the required threshold of seventy-five percent per day of violation
12 after receipt of a notice of violation issued by the commissioner. This civil penalty terminates
13 upon compliance or upon issuance of a waiver by Workforce West Virginia.

14 (c) Any employer that continues to violate any provision of this article more than fourteen
15 calendar days after receipt of a notice of violation is subject to a civil penalty of \$500 per employee
16 less than the required threshold of seventy-five percent per day of violation. This civil penalty

17 terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.
18 (d) All civil penalties paid pursuant to this section shall be paid to the commissioner and
19 deposited in an appropriated special revenue account hereby created in the State Treasury to be
20 known as the "West Virginia Jobs Act Fund" and expended for the implementation and
21 enforcement of this article.

NOTE: The purpose of this bill is to amend the West Virginia Jobs Act to ensure available jobs go to qualified West Virginia workers.

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