

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 643**

BY SENATORS JEFFRIES, BEACH, MILLER, OJEDA,

PLYMALE, PREZIOSO, STOLLINGS AND UNGER

[Introduced March 17, 2017; Referred  
to the Committee on the Workforce; then to the  
Committee on Government Organization; and then to  
the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §21-5B-1, relating to construction of public improvements; creating a  
 3 preference for state citizens in contracts for construction of public improvements; creating  
 4 a secondary preference for citizens of the United States in contracts for construction of  
 5 public improvements; requiring certain language appear in certain contracts; prohibiting  
 6 violations of this section; providing a process for addressing violations; authorizing certain  
 7 civil actions with specified liquidated damages; and providing exceptions.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §21-5B-1, to read as follows:

**ARTICLE 5B. CONSTRUCTION OF PUBLIC IMPROVEMENTS WORKERS.**

**§21-5B-1. Preference to state citizens in construction of public improvements;  
 enforcement of violations.**

3 (a) In the employment of laborers, workers or mechanics in connection with any public  
 4 improvement, including, but not limited to, construction, reconstruction, improvement,  
 5 enlargement or repairing of any public facility, structure, building, road, highway, bridge, street,  
 6 alley, sewer, ditch, sewage disposal plant, waterworks, airport and all other structures upon which  
 7 construction may be let to contract by the State of West Virginia or any political subdivision thereof  
 8 or any of its agents or by persons contracting therewith, preference shall be given to residents of  
 9 the state, and, if they cannot be obtained in sufficient numbers, then to citizens of the United  
 10 States.

11 (b) Each contract where subsection (a) of this section applies, under the supervision of  
 12 the state or any of its agents, shall contain the following provisions: "In the employment of labor  
 13 to perform the work specified herein, preference shall be given to citizens of the United States,  
 14 who have continuously resided in the state at least three months prior to the date hereof." In no  
 15 event may these provisions or anything in this section be deemed to abrogate or supersede, in

16 any manner, any provision regarding residence requirements contained in a collective bargaining  
17 agreement to which the contractor is a party.

18 (c) No person who receives an award or contract from the state under subsection (a) of  
19 this section, or who receives an order or contract under said subsection for which a portion of  
20 funds is derived from the state, shall knowingly employ nonresidents of the state while residents  
21 who may qualify for such work are reasonably available for employment. In the employment of  
22 nonresidents, the construction supervisor or construction inspector assigned to the project shall  
23 verify that the contracting employer, by reasonable efforts, sought to obtain construction job  
24 applicants from existing employment sources in West Virginia. The agent contracting on behalf of  
25 the state or any political subdivision thereof shall investigate promptly any alleged violation of this  
26 section. If the investigating agent finds evidence of such a violation, he or she shall immediately  
27 notify the alleged violator of such evidence and allegations. If the alleged violator fails to take  
28 corrective action within one week, or to produce evidence which satisfies the agent that no  
29 violation has occurred, the agent shall notify the Division of Labor, which shall institute a civil  
30 action to recover as liquidated damages for the violation of the contract an amount equal to the  
31 wages paid to any employees employed in violation of this section and the costs of litigation,  
32 including reasonable attorney's fees and costs.

33 (d) This section does not apply where the state or any subdivision thereof may suffer the  
34 loss of revenue granted or to be granted from any agency or department of the federal government  
35 as a result of applying this section.

NOTE: The purpose of this bill is to ensure West Virginia residents and United States citizens are given preference in public improvement construction jobs.

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