

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4504

BY DELEGATES BREWER, E. EVANS, ISNER, BATES,
HARTMAN, DISERIO, CAPUTO, LYNCH, R. MILLER AND
ROBINSON

[Introduced February 12, 2018; Referred
to the Committee on Industry and Labor then the
Judiciary.]

1 A BILL to amend and reenact §5A-3-10a of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §17-2A-24, all relating to
 3 prohibiting the awarding of public contracts to vendors and subcontractors indebted to the
 4 state or its political subdivisions; specifying that public construction contracts may not be
 5 awarded to vendors with debtor subcontractors; and establishing equivalent prohibitions
 6 on contracts for road and highway construction.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10a. Prohibition for awarding contracts to vendors and subcontractors which owe a debt to the state or its political subdivisions.

1 (a) Unless the context clearly requires a different meaning, for the purposes of this section,
 2 the terms:

3 (1) "Debt" means any assessment, premium, penalty, fine, tax, or other amount of money
 4 owed to the state or any of its political subdivisions because of a judgment, fine, permit violation,
 5 license assessment, amounts owed to the Workers' Compensation Funds as defined in §23-2C-
 6 1 *et seq.* of this code, penalty, or other assessment or surcharge presently delinquent or due and
 7 required to be paid to the state or any of its political subdivisions, including any interest or
 8 additional penalties accrued thereon.

9 (2) "Debtor" means any individual, corporation, partnership, association, limited liability
 10 company, or any other form or business association owing a debt to the state or any of its political
 11 subdivisions, and includes any person or entity that is in employer default.

12 (3) "Employer default" means having an outstanding balance or liability to the old fund or
 13 to the uninsured employers' fund or being in policy default, as defined in §23-2C-1 *et seq.* of this
 14 code, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its

15 obligations as a workers' compensation self-insured employer. An employer is not in employer
16 default if it has entered into a repayment agreement with the Insurance Commissioner and
17 remains in compliance with the obligations under the repayment agreement.

18 (4) "Political subdivision" means any county commission, municipality, county board of
19 education, any instrumentality established by a county or municipality, any separate corporation
20 or instrumentality established by one or more counties or municipalities, as permitted by law, or
21 any public body charged by law with the performance of a government function and whose
22 jurisdiction is coextensive with one or more counties or municipalities.

23 (5) "Related party" means a party, whether an individual, corporation, partnership,
24 association, limited liability company, or any other form or business association or other entity
25 whatsoever, related to any vendor by blood, marriage, ownership, or contract through which the
26 party has a relationship of ownership or other interest with the vendor so that the party will actually
27 or by effect receive or control a portion of the benefit, profit or other consideration from
28 performance of a vendor contract with the party receiving an amount that meets or exceeds five
29 percent of the total contract amount.

30 (b) No contract or renewal of any contract may be awarded by the state or any of its
31 political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor
32 or a related party to the vendor or prospective vendor is a debtor and:

33 (1) The debt owed is an amount greater than \$1,000 in the aggregate; or

34 (2) The debtor is in employer default.

35 (c) The prohibition of this section does not apply where a vendor has contested any tax
36 administered pursuant to Chapter 11 of this code, amount owed to the Workers' Compensation
37 Funds as defined in §23-2C-1 *et seq.* of this code, permit fee or environmental fee or assessment
38 and the matter has not become final or where the vendor has entered into a payment plan or
39 agreement and the vendor is not in default of any of the provisions of such plan or agreement.

40 (d) All bids, contract proposals or contracts with the state or any of its political subdivisions

41 submitted or approved under the provisions of this code shall include an affidavit that the vendor,
 42 prospective vendor or a related party to the vendor or prospective vendor is not in employer
 43 default and does not owe any debt in an amount in excess of \$1,000 or, if a debt is owed, that the
 44 provisions of subsection (c) of this section apply.

45 (e) No contract or renewal of any contract subject to the provisions of §5-22-1 et seq. of
 46 this code, may be awarded by the state or any of its political subdivisions to any vendor employing
 47 or proposing to employ a subcontractor under the contract if the subcontractor portion of the
 48 contract will cost more than \$25,000, including labor and materials, and the subcontractor is a
 49 debtor owing more than \$1,000 in the aggregate or is a debtor in employer default. This restriction
 50 shall not defeat a contractor’s opportunity to bid on, to be awarded, and to receive payments
 51 under, a contract with the state or any of its political subdivisions if, upon learning of a disqualifying
 52 debt of a subcontractor, the contractor promptly replaces the debtor subcontractor with a different
 53 subcontractor in compliance with state obligations.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-24. Prohibition for awarding contracts to vendors and subcontractors which owe a debt to the state or its political subdivisions.

1 (a) Unless the context clearly requires a different meaning, for the purposes of this section,
 2 the terms:

3 (1) “Debt” means any assessment, premium, penalty, fine, tax, or other amount of money
 4 owed to the state or any of its political subdivisions because of a judgment, fine, permit violation,
 5 license assessment, amounts owed to the Workers' Compensation Funds as defined in §23-2C-
 6 1 et seq. of this code, penalty, or other assessment or surcharge presently delinquent or due and
 7 required to be paid to the state or any of its political subdivisions, including any interest or
 8 additional penalties accrued thereon.

9 (2) “Debtor” means any individual, corporation, partnership, association, limited liability

10 company, or any other form or business association owing a debt to the state or any of its political
11 subdivisions, and includes any person or entity that is in employer default.

12 (3) "Employer default" means having an outstanding balance or liability to the old fund or
13 to the uninsured employers' fund or being in policy default, as defined in §23-2C-2 of this code,
14 failure to maintain mandatory workers' compensation coverage, or failure to fully meet its
15 obligations as a workers' compensation self-insured employer. An employer is not in employer
16 default if it has entered into a repayment agreement with the Insurance Commissioner and
17 remains in compliance with the obligations under the repayment agreement.

18 (4) "Related party" means a party, whether an individual, corporation, partnership,
19 association, limited liability company, or any other form or business association or other entity
20 whatsoever, related to any vendor by blood, marriage, ownership, or contract through which the
21 party has a relationship of ownership or other interest with the vendor so that the party will actually
22 or by effect receive or control a portion of the benefit, profit or other consideration from
23 performance of a vendor contract with the party receiving an amount that meets or exceeds five
24 percent of the total contract amount.

25 (b) No contract or renewal of any contract for construction or reconstruction of a road or
26 highway may be awarded by the division to any vendor or prospective vendor when the vendor
27 or prospective vendor or a related party to the vendor or prospective vendor is a debtor and:

28 (1) The debt owed is an amount greater than \$1,000 in the aggregate; or

29 (2) The debtor is in employer default.

30 (c) The prohibition of this section does not apply where a vendor has contested any tax
31 administered pursuant to Chapter 11 of this code, amount owed to the Workers' Compensation
32 Funds as defined in §23-2C-1 et seq. of this code, permit fee or environmental fee or assessment
33 and the matter has not become final or where the vendor has entered into a payment plan or
34 agreement and the vendor is not in default of any of the provisions of such plan or agreement.

35 (d) All bids, contract proposals, or contracts with the state or any of its political subdivisions

36 submitted or approved under the provisions of this code shall include an affidavit that the vendor,
37 prospective vendor, or a related party to the vendor or prospective vendor is not in employer
38 default and does not owe any debt in an amount in excess of \$1,000 or, if a debt is owed, that the
39 provisions of subsection (c) of this section apply.

40 (e) No contract or renewal of any contract for construction or reconstruction of a road or
41 highway may be awarded by the division to any vendor employing or proposing to employ a
42 subcontractor under the contract if the subcontractor portion of the contract will cost more than
43 \$25,000, including labor and materials, and the subcontractor is a debtor owing more than \$1,000
44 in the aggregate or is a debtor in employer default. This restriction shall not defeat a contractor's
45 opportunity to bid on, to be awarded, and to receive payments under, a contract with the state or
46 any of its political subdivisions if, upon learning of a disqualifying debt of a subcontractor, the
47 contractor promptly replaces the debtor subcontractor with a different subcontractor in compliance
48 with state obligations.

NOTE: The purpose of this bill is to prevent state agencies and political subdivisions from contracting with vendors and major subcontractors on public construction contracts if the vendor or subcontractor has outstanding debts to the state. This prohibition would apply to any subcontractor whose portion of the contract or potential contract would amount to more than \$25,000, including labor and materials.

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