

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5441

By Delegates Riley, Barnhart and Hott

[Originating in the Committee on Finance;

Reported on February 14, 2024]

1 A BILL to amend and reenact §8-16-5 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §16-13A-7 of said code; and to amend and reenact §16-13D-4 of said code, all
3 relating to raising the threshold from \$25,000 to \$50,000 for the requirement of bids for
4 municipal public works projects, including any municipal public utility projects, and for
5 public service district projects; establishing the threshold at \$50,000 for bids for projects
6 under the Regional Water And Wastewater And Stormwater Authority Act; and exempting
7 emergency repairs from bidding requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-5. Powers of board; bidding requirements; emergency repairs.

1 (a) The board shall have plenary power and authority to take all steps and proceedings,
2 and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient
3 or incidental to the performance of its duties and the execution of its powers and authority under
4 this article: *Provided*, That any contract or agreement relating to the financing, or the construction,
5 reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement,
6 increase, equipment, operation or maintenance of any such works, and any trust indenture with
7 respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

8 (b) The board may employ engineers, architects, inspectors, superintendents, managers,
9 collectors, attorneys and such other employees as in its judgment may be necessary in the
10 execution of its powers and duties, and may fix their compensation, all of whom shall do such work
11 as the board may direct. All compensation and expenses incurred in carrying out the provisions of
12 this article shall be paid solely from funds provided under the authority of this article, and the board
13 shall not exercise or carry out any power or authority herein given it so as to bind said board or any

14 municipality beyond the extent to which money shall have been, or may be provided under the
15 authority of this article.

16 (c) No contract or agreement with any contractor or contractors for labor or materials, or
17 both, exceeding in amount the sum of ~~\$25,000~~ \$50,000 shall ~~may~~ be made without advertising for
18 bids, which bids shall be publicly opened and an award made to the lowest responsible bidder,
19 with power and authority in the board to reject any and all bids: Provided, That for purposes of the
20 bid requirements imposed by this section, the term "board" includes the governing body of any
21 municipal public utility.

22 (d) After the construction, reconstruction, establishment, acquisition, renovation or
23 equipment of any such works, the board shall maintain, operate, manage and control the same,
24 and may order and complete any improvements, extensions, enlargements, increase or repair
25 (including replacements) of and to the works that the board may consider expedient, if funds
26 therefor be available, or are made available, as provided in this article, and shall establish rules for
27 the use, maintenance and operation of the works, and do all things necessary or expedient for the
28 successful operation thereof, and for stormwater systems and associated stormwater
29 management programs, those activities which include, but are not limited to, stormwater and
30 surface runoff water quality improvement activities necessary to comply with all federal and state
31 requirements. All public ways or public works damaged or destroyed by the board in carrying out
32 its authority under this article shall be restored or repaired by the board and placed in their original
33 condition, as nearly as practicable, if requested so to do by proper authority, out of the funds
34 provided under the authority of this article.

35 (e) Emergency repairs shall be exempt from the bidding requirements of subsection (c) of
36 this section. For the purpose of this ~~subdivision~~ subsection, the term emergency repairs means
37 repairs that if not made immediately will seriously impair the use of building components, systems,
38 and public infrastructure or cause danger to persons using the building components, systems, and
39 public infrastructure.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-7. Acquisition and operation of district properties; bidding requirements; contracts to respond to emergency situations.

1 The board of these districts shall have the supervision and control of all public service
2 properties acquired or constructed by the district, and shall have the power, and it shall be its duty,
3 to maintain, operate, extend and improve the same, including, but not limited to, those activities
4 necessary to comply with all federal and state requirements, including water quality improvement
5 activities. All contracts involving the expenditure by the district of more than ~~\$25,000~~ \$50,000 for
6 construction work or for the purchase of labor, materials equipment and improvements, extensions
7 or replacements, shall be entered into only after notice inviting bids shall have been published as a
8 Class I legal advertisement in compliance with the provision of article ~~three, chapter fifty-nine~~ §59-
9 3-1, et seq. of this code, and the publication area for such publication shall be as specified in
10 ~~section two of this article~~ §16-13A-2 of this code in the county or counties in which the district is
11 located. The publication shall not be less than ten days prior to the making of any such contract. To
12 the extent allowed by law, in-state contractors shall be given first priority in awarding public service
13 district contracts. Each bid shall be publicly opened and an award made to the lowest responsible
14 bidder, with power and authority in the board to reject any and all bids.

15 It shall be the duty of the board to ensure that local in-state labor shall be utilized to the
16 greatest extent possible when hiring laborers for public service district construction or
17 maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use
18 American made products in their construction to the extent possible. Any obligations incurred of
19 any kind or character shall not in any event constitute or be deemed an indebtedness within the
20 meaning of any of the provisions or limitations of the Constitution, but all such obligations shall be
21 payable solely and only out of revenues derived from the operation of the public service properties

22 of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for
23 the purchase of materials or supplies or for furnishing the district with electrical energy or power
24 shall be entered into for a longer period than fifteen years.

25 Emergency repairs shall be exempt from the bidding requirements of this section. For the
26 purpose of this section, the term emergency repairs means repairs that if not made immediately
27 will seriously impair the use of building components, systems, and public infrastructure or cause
28 danger to persons using the building components, systems, and public infrastructure.

**ARTICLE 13D. REGIONAL WATER AND WASTEWATER AND STORMWATER
AUTHORITY ACT.**

**§16-13D-4. Furnishing of funds, personnel or services by certain public agencies,
agreements for purchase, sale, distribution, transmission, transportation,
collection, disposal, and treatment of water, wastewater, or stormwater; terms and
conditions; bidding requirements; emergency repairs.**

1 Any public agency acting individually to organize an authority or entering into an
2 agreement pursuant to this article may appropriate funds and may sell, lease, give, or otherwise
3 supply to the authority created the personnel or services for the operation of the authority as may
4 be within its legal power to furnish.

5 Subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this
6 code, any public agency, whether or not a party to an agreement pursuant to this article, and any
7 publicly or privately owned water distribution company may enter into contracts with any regional
8 authority created pursuant to this article for the purchase of water from the authority or the sale of
9 water to the authority, the treatment of water by either party, and the distribution or transmission of
10 water by either party and any such authority may enter into the contracts. The Public Service
11 Commission shall, within 30 days of the filing date, notify the parties to the contract whether they
12 have filed all required documentation regarding the contract. If the Commission determines that

13 additional information is needed it will inform the agency of the information needed. The Public
14 Service Commission shall act on a filing submitted hereunder within 90 days of the date that the
15 Commission has before it all necessary information from the parties to the contract. Failure of the
16 Commission to act on the filing within the 90-day period shall constitute approval thereof:
17 *Provided*, That the 90-day Commission review period may be extended upon request of the
18 parties to the contract.

19 Any public agency, whether or not a party to an agreement pursuant to this act, and any
20 publicly or privately owned wastewater transportation or treatment system may enter into
21 contracts with any regional authority created pursuant to this article for the transportation and
22 treatment of wastewater by either party and any authority may enter into the contracts, subject to
23 the prior approval of the Public Service Commission pursuant to §24-2-12 of this code. The Public
24 Service Commission shall, within 30 days of the filing date, notify the parties to the agreement
25 whether they have filed all required documentation regarding the contract. If the Commission
26 determines that additional information is needed it will inform the agency of the information
27 needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days
28 of the date that the Commission has before it all necessary information from the parties to the
29 contract. Failure by the Commission to act within the 90-day period shall constitute approval
30 thereof: *Provided*, That the 90-day Commission review period may be extended on upon request
31 of the parties to the contract.

32 No contract or agreement authorized by the provisions of this article with any contractor or
33 contractors for labor or materials, or both, exceeding in amount the sum of \$50,000 may be made
34 without advertising for bids, which bids shall be publicly opened and an award made to the lowest
35 responsible bidder, with power and authority in the commission to reject any and all bids.
36 Emergency repairs shall be exempt from the bidding requirements of this section. For the purpose
37 of this section, the term emergency repairs means repairs that if not made immediately will

38 seriously impair the use of building components, systems, and public infrastructure or cause
39 danger to persons using the building components, systems, and public infrastructure.

40 Any public agency, whether or not a party to an agreement pursuant to this article, and any
41 publicly or privately owned stormwater system may enter into contracts with any regional authority
42 created pursuant to this article for the collection and disposition of stormwater by either party and
43 any authority may enter into contracts.

44 Any contract may include an agreement for the purchase of water not actually received or
45 the treatment of wastewater not actually treated, or the collection and disposition of stormwater not
46 actually collected and disposed. No contract may be made for a period in excess of 40 years, but
47 renewal options may be included therein. The obligations of any public agency under any contract
48 shall be payable solely from the revenues produced from the public agency's water, stormwater
49 and wastewater system, and the Public Service Commission, in the case of a public agency whose
50 rates are subject to its jurisdiction, shall permit the public agency to recover through its rates
51 revenues sufficient to meet its obligations under the agreement.