

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 783

By Senators Jeffries, Swope, and Plymale

[Introduced February 14, 2024; referred
to the Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §18-9H-1, §18-9H-2, §18-9H-3, §18-9H-4, §18-9H-5, §18-9H-6, §18-9H-7,
 3 §18-9H-8, §18-9H-9, §18-9H-10, §18-9H-11, §18-9H-12, §18-9H-13, and §18-9H-14,
 4 all relating to enacting the West Virginia School Construction Alternatives Pilot Program
 5 Act; defining terms; authorizing county boards to engage in construction management
 6 at risk contracts in accordance with the delivery system provided herein; providing
 7 definitions; requiring county boards to adopt policies and procedures before entering
 8 into a construction management at risk contract; requiring county boards that request to
 9 utilize the construction management at risk delivery method to provide notice to the
 10 authority during the regular needs cycle process; requiring county boards to issue letters of
 11 interest for proposals; establishing the criteria a request for proposal must contain;
 12 providing standards and criteria for the evaluation of proposals; requiring county boards to
 13 create a proposal selection committee; establishing the required members of a proposal
 14 selection committee; providing evaluation criteria and weight the proposal selection
 15 committee must give to aspects of proposals; authorizing county boards to amend
 16 contracts after acceptance; limiting the number of construction management at risk
 17 contracts which may be entered into by county boards; providing certain exceptions for
 18 special maintenance projects; and providing for a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9H. WEST VIRGINIA SCHOOL CONSTRUCTION ALTERNATIVES PILOT

PROGRAM

ACT.

§18-9H-1. Short title; applicability of article.

1 This act shall be known and may be cited as the West Virginia School Construction
 2 Alternatives Pilot Program Act. The provisions of this article may be used to select construction
 3 managers at risk for authorized school construction projects.

§18-9H-2. Legislative purpose.

1 The purpose of the West Virginia School Construction Alternatives Pilot Program Act is to
2 authorize a county board to enter into a construction management at risk contract for a public
3 project if the county board complies with the provisions of this article.

§18-9H-3. Definitions.

1 As used in this article:

2 (1) "Authority" means the School Building Authority of West Virginia;

3 (2) "Construction management at risk contract" means a contract by which a construction
4 manager (a) assumes the legal responsibility to deliver a construction project within a contracted
5 price to the county board, (b) acts as a construction consultant to the county board during the
6 design development phase of the project when the county board's architect or engineer designs
7 the project, and (c) is the builder during the construction phase of the project;

8 (3) "Construction manager" means the legal entity which proposes to enter into a
9 construction management at risk contract pursuant to the provisions of this article;

10 (4) "County board" or "board" means a county board of education.

11 (5) "Letter of interest" means a statement indicating interest to enter into a construction
12 management at risk contract for a project pursuant to the act;

13 (6) "Lowest qualified responsible bidder" shall have the same meaning as it is defined by
14 §5-22-1(b) of this code.

15 (7) "Proposal" means an offer in response to a request for proposals by a construction
16 manager to enter into a construction management at risk contract for a project pursuant to the
17 provisions of this article;

18 (8) "Request for letters of interest" means the documentation or publication by which a
19 county board solicits letters of interest; and

20 (9) "Request for proposals" means the documentation by which a county board solicits
21 proposals.

§18-9H-4. Authorization of construction management at risk contracts for school construction; adoption of delivery system.

1 (a) Notwithstanding any other provision of this code to the contrary, a county board which
2 complies with the provisions of this article may solicit and execute a construction management at
3 risk contract.

4 (b) Before a county board may execute a construction management at risk contract, the
5 county board shall adopt a resolution selecting the construction management at risk contract
6 delivery system provided for under the provisions of this article. The resolution shall require the
7 affirmative vote of at least 75 percent of the county board.

8 (c) For projects funded by the authority, either in whole or in part, a request from a county
9 board to utilize the construction management at risk delivery method pursuant to the provisions of
10 this article shall be made to and approved by the authority during the authority's regular needs
11 cycle process.

§18-9H-5. Construction management at risk contract rules.

1 (a) The county board shall adopt policies for entering into a construction management at
2 risk contract. The policies shall require that such contracts include the following:

3 (1) Procedures for the preparation and content of requests for proposals;

4 (2) Procedures and standards to be used to prequalify construction managers. The
5 procedures and standards shall provide that the county board will evaluate prospective
6 construction managers based on the information submitted to the county board in response to a
7 request for letters of interest and will select design-builders or construction managers who are
8 prequalified and consequently eligible to respond to the request for proposals;

9 (3) Procedures for preparing and submitting proposals;

10 (4) Procedures for evaluating proposals in accordance with §18-9H-8 of this code;

11 (5) Procedures for negotiations between the county board and the construction managers

12 submitting proposals prior to the acceptance of a proposal if any such negotiations are
13 contemplated; and

14 (6) Procedures for filing and acting on formal protests relating to the solicitation or
15 execution of construction management at risk contracts.

16 (b) For projects funded by the authority, either in whole or in part, the authority may require
17 supplemental conditions to a construction management at risk agreement and any modifications to
18 the agreement will be communicated to all parties prior to the execution of the contract.

§18-9H-6. Invitation for letters of interest.

1 (a) A county board shall prepare a request for letters of interest for construction manager
2 at risk contract proposals and shall prequalify construction managers in accordance with the
3 provisions of this section. The request for letters of interest shall describe the project in sufficient
4 detail to permit a construction manager to submit a letter of interest.

5 (b) The request for letters of interest shall be:

6 (1) Published in a newspaper of general circulation within the jurisdiction of the county
7 board at least 30 days prior to the deadline for receiving letters of interest; and

8 (2) Sent by first-class mail to any construction manager upon request.

§18-9H-7. Requests for proposals.

1 A county board shall prepare a request for proposals for each construction management at
2 risk contract in accordance with the provisions of this section. At least 30 days prior to the
3 deadline for receiving and opening proposals, notice of the request for proposals shall be
4 published in a newspaper of general circulation within the jurisdiction of the county board and filed
5 with the state superintendent of schools. The request for proposals shall contain, at a minimum,
6 the following elements:

7 (1) The identity of the county board for which the project will be built and the name of the
8 county board that will execute the contract;

9 (2) Policies adopted by the county board in accordance with §18-9H-5 of this code;

10 (3) The proposed terms and conditions of the construction manager at risk contract,
11 including any terms and conditions which are subject to further negotiation. The proposed general
12 terms and conditions shall be consistent with nationally recognized model general terms and
13 conditions which are standard in the design and construction industry in West Virginia. The
14 proposed terms and conditions may set forth an initial determination of the manner by which the
15 construction manager selects any subcontractor and shall require that any work subcontracted
16 be awarded to the lowest qualified responsible bidder;

17 (4) Any bonds and insurance required by law or as may be additionally required by the
18 county board;

19 (5) General information about the project which will assist the county board in its selection of
20 the construction manager, including a project statement which contains information about the
21 scope and nature of the project, the project site, and the project schedule;

22 (6) The criteria for evaluation of proposals and the relative weight of each criterion; and

23 (7) A description of any other information which the county board may require.

§18-9H-8. Evaluation of proposals; selection of construction managers.

1 (a) A county board shall evaluate proposals for a construction management at risk contract
2 in accordance with the provisions of this section.

3 (b) The county board shall evaluate and rank each proposal on the basis of best meeting
4 the criteria in the request for proposals and taking into consideration the recommendation of the
5 selection committee pursuant to §18-9H-9 of this code.

6 (c) The county board shall attempt to negotiate a construction management at risk contract
7 with the highest ranked construction manager and may execute a construction management at
8 risk contract after negotiations. The negotiations shall include a final determination of the manner
9 by which the construction manager selects each subcontractor. If the county board is unable to
10 negotiate a satisfactory contract with the highest ranked construction manager, the county board
11 may terminate negotiations with that construction manager. The county board may then undertake

12 negotiations with the second highest ranked construction manager and may execute a
13 construction management at risk contract after negotiations. If the county board is unable to
14 negotiate a satisfactory contract with the second highest ranked construction manager, the county
15 board may undertake negotiations with the third highest ranked construction manager, if any, and
16 may execute a construction management at risk contract after negotiations.

17 (d) The county board shall file a copy of all construction management at risk contract
18 documents with the state superintendent of schools within 30 days after execution. Within 30 days
19 after completion of the project, the construction manager shall file a copy of all contract
20 modifications and change orders with the state superintendent of schools.

21 (e) For projects funded by the authority, either in whole or in part, the county board shall file
22 a copy of all construction management at risk contract documents with the authority within 30
23 days after execution. Within 30 days after completion of the project, the construction manager
24 shall file with the authority a copy of all contract modifications and change orders for projects
25 funded, either in whole or in part, by the authority.

26 (f) If the county board is unable to negotiate a satisfactory contract with any of the ranked
27 construction managers, the count board may either revise the request for proposals and solicit
28 new proposals or cancel the construction management at risk process.

§18-9H-9. Proposal selection committee; criteria for evaluation by selection committee.

1 (a) In evaluating proposals in accordance with §18-9H-8 and §18-9H-10, the county board
2 shall refer the proposals for recommendation to a selection committee. The selection committee
3 shall be a group of at least five persons designated by the county board. Members of the selection
4 committee shall include, at a minimum:

5 (1) A member of the county board;

6 (2) A member of the school administration or staff;

7 (3) The school's architect or engineer when evaluating proposals from construction
8 managers under §18-9H-8 of this code;

9 (4) Any person having special expertise relevant to selection of a construction manager
10 under the provisions of this article; and

11 (5) A resident of the county where the project is located other than an individual designated to
12 satisfy subdivisions (1) through (5) of this subsection.

13 (b) A member of the selection committee designated under §18-9H-9(a)(4)-(5) shall not be
14 employed by or have a financial or other interest in a construction manager who has a proposal being
15 evaluated and shall not be employed by the county board.

16 (c) The selection committee and the county board shall evaluate proposals taking into
17 consideration the criteria enumerated in subdivisions (1) through (7) of this subsection with the
18 maximum percentage of total points for evaluation which may be assigned to each criterion set
19 forth following the criterion. The following criteria shall be evaluated, when applicable:

20 (1) The financial resources of the construction manager to complete the project, 10
21 percent;

22 (2) The ability of the proposed personnel of the construction manager to perform, 20
23 percent;

24 (3) The character, integrity, reputation, judgment, experience, and efficiency of the
25 construction manager, 20 percent;

26 (4) The quality of performance on previous projects, 20 percent;

27 (5) The ability of the construction manager to perform within the time specified, 10
28 percent;

29 (6) The previous and existing compliance of the construction manager with laws relating to
30 the contract, 10 percent; and

31 (7) Such other information as may be secured having a bearing on the selection, 10
32 percent.

33 (d) The records of the selection committee in evaluating proposals and making
34 recommendations shall be considered public records for purposes of §29B-1-1 et seq. of this code.

§18-9H-10. Amendments to construction management at risk contract after acceptance.

1 A construction management at risk contract may be conditioned upon later refinements in
2 scope and price and may permit the county board in agreement with the construction manager to
3 make changes in the project without invalidating the contract. Later refinements to a contract
4 pursuant to the provisions of this section shall not exceed the scope of the project statement
5 contained in the request for proposals pursuant to §18-9H-7 or §18-9H-9 of this code.

§18-9H-11. No effect on bonding and insurance requirements.

1 Nothing contained within the provisions of this article shall be construed to limit or reduce
2 existing statutory or regulatory requirements regarding bonding or insurance.

§18-9H-12. Limitations on use of construction management at risk contracts by

congressional district.

1 (a) No more than 16 contracts total shall be executed pursuant to the provisions of this
2 article as follows:

3 (1) For contracts of at least \$5 million but under \$10 million, four contracts in each
4 congressional district; and

5 (2) For contracts of \$10 million or more, four contracts in each congressional district.

6 (b) For purposes of this section, the physical location of the project shall be considered the
7 location of the contract for that project.

8 (c) The date the contract is executed shall be utilized to determine whether the limitations on
9 contracts imposed by this section have been exceeded. A contract in excess of the limitation on
10 contracts contained within this section shall be void.

§18-9H-13. Specialty Maintenance Projects.

1 (a) A county board shall not use a construction management at risk contract for a
2 construction project with locations on parcels of land which are not contiguous except for specialty
3 maintenance projects.

4 (b) For purposes of this section:

5 (1) A specialty maintenance project is a construction project for the maintenance of an
 6 existing facility with a specialty contractor, such as an electrical contractor or plumbing contractor;
 7 and

8 (2) Parcels are considered contiguous if they would be contiguous but for the existence of a
 9 public road.

§18-9H-14. **Sunset** **date.**

1 A county board may not execute a construction management at risk contract pursuant to
 2 the provisions of this article after June 30, 2029.

NOTE: The purpose of this bill is to enact the West Virginia School Construction Alternatives Pilot Program Act to authorize county boards of education to enter into construction management at risk contracts for public school construction projects.

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