

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2206

FISCAL
NOTE

2015 Carryover

(BY DELEGATE OVERINGTON, HOUSEHOLDER,
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FOLK, FOSTER, AZINGER AND BLAIR)

[Introduced January 13, 2016; referred to the
Committee on Industry and Labor then the Judiciary.]

1 A BILL to repeal §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7, §21-
 2 5A-8, §21-5A-9, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as
 3 amended; to amend and reenact §5D-1-5 of said code; to amend and reenact §7-11B-14
 4 of said code; to amend and reenact §7-20-22 of said code; to amend and reenact §11-
 5 13Q-9 of said code; to amend and reenact §18-5-9a of said code; to amend and reenact
 6 §25-7-4 of said code; and to amend and reenact §31-15A-15 of said code, all relating to
 7 repealing the requirement of paying prevailing hourly rate of wages for construction of
 8 public improvements.

Be it enacted by the Legislature of West Virginia:

1 That §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7, §21-5A-8,
 2 §21-5A-9, §21-5A-10 and §21-5A-11 of the Code of West Virginia, 1931, as amended, be
 3 repealed; that §5D-1-5 of said code be amended and reenacted; that §7-11B-14 of said code be
 4 amended and reenacted; that §7-20-22 of said code be amended and reenacted; that §11-13Q-9
 5 of said code be amended and reenacted; that §18-5-9a of said code be amended and reenacted;
 6 that §25-7-4 of said code be amended and reenacted; and that §31-15A-15 of said code be
 7 amended and reenacted, all to read as follows:

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

1 The West Virginia Public Energy Authority has and may exercise all powers necessary or
 2 appropriate to execute its corporate purpose. The authority may:

- 3 (1) Adopt, amend and repeal bylaws necessary and proper for the regulation of its affairs

4 and the conduct of its business and rules to implement and make effective its powers and duties,
5 such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this
6 code.

7 (2) Adopt and use an official seal and alter the same at pleasure.

8 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly
9 designated or provided.

10 (4) Sue and be sued in its own name and plead and be impleaded in its own name, and
11 particularly to enforce the obligations and covenants made under this article. Any actions
12 against the authority shall be brought in the circuit court of Kanawha County.

13 (5) Foster, encourage and promote the mineral development industry. The authority is
14 encouraged to maximize the use of the West Virginia mineral development industry, but is not
15 prohibited from utilizing nonstate mineral resources.

16 (6) Represent the state with respect to national initiatives concerning the mineral
17 development industry and international marketing activities affecting the mineral development
18 industry.

19 (7) Engage in strategic planning to enable the state to cope with changes affecting or
20 which may affect the mineral development industry.

21 (8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise,
22 any electric power project or natural gas transmission project. In the event that an electric power
23 project to be constructed pursuant to this article is designed to utilize coal wastes for the
24 generation of electricity or the production of other energy, such project shall also be capable of
25 using coal as its primary energy input: *Provided*, That it shall be demonstrated to the authority's
26 satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for
27 such project for the term of the bonds or notes issued by the authority to finance the project and

28 are accessible to the project.

29 (9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or
30 otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its
31 electric power projects or natural gas transmission projects for such rentals or amounts and upon
32 such terms and conditions as the Public Energy Authority Board may deem advisable.

33 (10) Finance one or more electric power projects or natural gas transmission projects by
34 making secured loans to persons other than governmental agencies to provide funds for the
35 acquisition, by purchase, construction or otherwise, of any such project or projects.

36 (11) Issue bonds for the purpose of financing the cost of acquisition and construction of
37 one or more electric power projects or natural gas transmission projects or any additions,
38 extensions or improvements thereto which will be sold, leased with an option by the lessee to
39 purchase, leased or otherwise disposed of to persons other than governmental agencies or for
40 the purpose of loaning the proceeds thereof to persons other than governmental agencies for the
41 acquisition and construction of said projects or both. Such bonds shall be issued and the
42 payment of such bonds secured in the manner provided by the applicable provisions of sections
43 seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of
44 this code: *Provided*, That the principal and interest on such bonds shall be payable out of the
45 revenues derived from the lease, lease with an option by the lessee to purchase, sale or other
46 disposition of or from loan payments in connection with the electric power project or natural gas
47 transmission project for which the bonds are issued, or any other revenue derived from such
48 electric power project or natural gas transmission project.

49 (12) In the event that the electric power project or natural gas transmission project is to be
50 owned by a governmental agency, apply to the economic development authority for the issuance
51 of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this

52 code: *Provided*, That the economic development authority shall not issue any such bonds
53 except by an act of general law. ~~–*Provided, however*, That the authority shall require that in the~~
54 ~~construction of any such project, prevailing wages shall be paid as part of a project specific~~
55 ~~agreement which also takes into account terms and conditions contained in the West Virginia–~~
56 ~~Ohio valley market retention and recovery agreement or a comparable agreement.~~

57 (13) Acquire by gift or purchase, hold and dispose of real and personal property in the
58 exercise of its powers and the performance of its duties as set forth in this article.

59 (14) Acquire in the name of the state, by purchase or otherwise, on such terms and in
60 such manner as it deems proper, or by the exercise of the right of eminent domain in the manner
61 provided in chapter fifty-four of this code, such real property or parts thereof or rights therein,
62 rights-of-way, property, rights, easements and interests it deems necessary for carrying out the
63 provisions of this article and compensation shall be paid for public or private lands so taken; and
64 the authority may sell any of the real property or parts thereof or rights therein, rights-of-way,
65 property, rights, easements and interests acquired hereunder in such manner and upon such
66 terms and conditions as the authority deems proper: *Provided*, That if the authority determines
67 that land or an interest therein acquired by the authority through the exercise of the power of
68 eminent domain for the purpose of this article is no longer necessary or useful for such purposes,
69 and if the authority desires to sell such land or interest therein, the authority shall first offer to sell
70 such land or interest to the owner or owners from whom it was acquired, at a price equal to its fair
71 market value: *Provided, however*, That if the prior owner or owners shall decline to reacquire
72 the land or interest therein, the authority shall be authorized to dispose of such property by direct
73 sale, auction, or competitive bidding. In no case shall such land or an interest therein acquired
74 under this subdivision be sold for less than its fair market value. This article does not authorize
75 the authority to take or disturb property or facilities belonging to any public utility or to a common

76 carrier, which property or facilities are required for the proper and convenient operation of such
77 public utility or common carrier, except for the acquisition of easements or rights-of-way which will
78 not unreasonably interfere with the operation of the property or facilities of such public utility or
79 common carrier, and in the event of the taking or disturbance of property or facilities of public
80 utility or common carrier, provision shall be made for the restoration, relocation or duplication of
81 such property or facilities elsewhere at the sole cost of the authority.

82 The term "real property" as used in this article is defined to include lands, structures,
83 franchises and interests in land, including lands under water and riparian rights, and any and all
84 other things and rights usually included within the said term, and includes also any and all interests
85 in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and
86 all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including
87 terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all
88 claims for damages for such real estate.

89 For the purposes of this section, "fair market value" shall be determined by an appraisal
90 made by an independent person or firm chosen by the authority. The appraisal shall be
91 performed using the principles contained in the "Uniform Appraisal Standards for Federal Land
92 Acquisitions" published under the auspices of the Interagency Land Acquisition Conference,
93 United States Government Printing Office, 1972.

94 (15) Make and enter into all contracts and agreements and execute all instruments
95 necessary or incidental to the performance of its duties and the execution of its powers:
96 *Provided*, That if any electric power project or natural gas transmission project is to be constructed
97 by a person other than a governmental agency, and with whom the authority has contracted to
98 lease, sell or finance such project upon its completion, then the authority shall not be required to
99 comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation

100 of competitive bids for the construction of such a project.

101 (16) Employ managers, superintendents and other employees, and retain or contract with
102 consulting engineers, financial consultants, accountants, architects, attorneys, and such other
103 consultants and independent contractors as are necessary in its judgment to carry out the
104 provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be
105 payable solely from the proceeds of bonds issued by the economic development authority, from
106 the proceeds of bonds issued by or loan payments, lease payments or other payments received
107 by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

108 (17) Receive and accept from any federal agency, or any other source, grants for or in aid
109 of the construction of any project or for research and development with respect to electric power
110 projects, natural gas transmission projects or other energy projects, and receive and accept aid
111 or contribution from any source of money, property, labor or other things of value to be held, used
112 and applied only for the purpose for which such grants and contributions are made.

113 (18) Purchase property coverage and liability insurance for any electric power project or
114 natural gas transmission project or other energy project and for the principal office and suboffices
115 of the authority, insurance protecting the authority and its officers and employees against liability,
116 if any, for damage to property or injury to or death of persons arising from its operations and any
117 other insurance which may be provided for under a resolution authorizing the issuance of bonds
118 or in any trust agreement securing the same.

119 (19) Charge, alter and collect transportation fees and other charges for the use or services
120 of any natural gas transmission project as provided in this article.

121 (20) Charge and collect fees or other charges from any energy project undertaken as a
122 result of this article.

123 (21) When the electric power project is owned and operated by the authority, charge

124 reasonable fees in connection with the making and providing of electric power and the sale thereof
125 to corporations, states, municipalities or other entities in the furtherance of the purposes of this
126 article.

127 (22) Purchase and sell electricity or other energy produced by an electric power project in
128 and out of the State of West Virginia.

129 (23) Enter into wheeling contracts for the transmission of electric power over the authority's
130 or another party's lines.

131 (24) Make and enter into contracts for the construction of a project facility and joint
132 ownership with another utility and the provisions of this article shall not constrain the authority
133 from participating as a joint partner therein.

134 (25) Make and enter into joint ownership agreements.

135 (26) Establish or increase reserves from moneys received or to be received by the
136 authority to secure or to pay the principal of and interest on the bonds issued by the economic
137 development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code
138 or bonds issued by the authority.

139 (27) Broker the purchase of natural gas for resale to end-users: *Provided*, That whenever
140 there are local distribution company pipelines already in place the authority shall arrange to
141 transport the gas through such pipelines at the rates approved by the Public Service Commission
142 of West Virginia.

143 (28) Engage in market research, feasibility studies, commercial research, and other
144 studies and research pertaining to electric power projects and natural gas transmission projects
145 or any other functions of the authority pursuant to this article.

146 (29) Enter upon any lands, waters and premises in the state for the purpose of making
147 surveys and examinations as it may deem necessary or convenient for the purpose of this article,

148 and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed
149 an entry under any condemnation proceedings which may be then pending and the authority shall
150 make reimbursement for any actual damages resulting to such lands, waters and premises as a
151 result of such activities.

152 (30) Participate in any reorganization proceeding pending pursuant to the United States
153 Code (being the act of congress establishing a uniform system of bankruptcy throughout the
154 United States, as amended) or any receivership proceeding in a state or federal court for the
155 reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file
156 its claim against any such responsible buyer or responsible tenant in any of the foregoing
157 proceedings, vote upon any question pending therein, which requires the approval of the creditors
158 participating in any reorganization proceeding or receivership, exchange any evidence of such
159 indebtedness for any property, security or evidence of indebtedness offered as a part of the
160 reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire
161 the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as
162 a part of any such reorganization.

163 (31) Make or enter into management contracts with a second party or parties to operate
164 any electric power project or any gas transmission project and associated facilities, or other
165 related energy project, either during construction or permanent operation.

166 (32) Do all acts necessary and proper to carry out the powers expressly granted to the
167 authority in this article.

168 (33) Nothing herein shall be construed to permit the transportation of gas produced outside
169 of this state through a natural gas transmission project.

170 (34) The authority shall, after consultation with other agencies of state government having
171 environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-

172 a of this code, to establish standards and principles to be applied to all projects in assessing the
 173 effects of projects on the environment: *Provided*, That when a proposed project requires an
 174 environmental impact statement pursuant to the National Environmental Policy Act of 1969, a
 175 copy of the environmental impact statement shall be filed with the authority and be made available
 176 prior to any final decision or final approval of any project and prior to the conducting of any public
 177 hearings regarding the project, and in any such case, no assessment pursuant to the legislative
 178 rule need be made.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

**§7-11B-14. Projects financed by tax increment financing considered to be public
 improvements subject to ~~prevailing wage~~, local labor preference and competitive
 bid requirements.**

1 (a) Any project acquired, constructed, or financed, in whole or in part, by a county
 2 commission or municipality under this article shall be considered to be a "public improvement"
 3 within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

4 (b) The county commission or municipality shall, except as provided in subsection (c) of
 5 this section, solicit or require solicitation of competitive bids ~~and require the payment of prevailing~~
 6 ~~wage rates as provided in article five-a, chapter twenty-one of this code~~ and compliance with
 7 article one-c of said chapter for every project or infrastructure project funded pursuant to this
 8 article exceeding \$25,000 in total cost.

9 (c) Following the solicitation of the bids, the construction contract shall be awarded to the
 10 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:
 11 *Provided*, That the county commission, municipality or other person soliciting the bids may reject
 12 all bids and solicit new bids on the project.

13 (d) No officer or employee of this state or of any public agency, public authority, public
14 corporation, or other public entity, and no person acting or purporting to act on behalf of such
15 officer or employee or public entity shall require that any performance bond, payment bond, or
16 bid bond required or permitted by this section be obtained from any particular surety company,
17 agent, broker or producer.

18 (e) This section does not:

19 (1) Apply to work performed on construction projects not exceeding a total cost of \$50,000
20 by regular full-time employees of the county commission or the municipality: *Provided*, That no
21 more than \$50,000 shall be expended on an individual project in a single location in a twelve-
22 month period;

23 (2) Prevent students enrolled in vocational educational schools from being used in
24 construction or repair projects when such use is a part of the students' training program;

25 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
26 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the
27 use of the building components and systems or cause danger to those persons using the building
28 components and systems; or

29 (4) Apply to any situation where the county commission or municipality comes to an
30 agreement with volunteers, or a volunteer group, by which the governmental body will provide
31 construction or repair materials, architectural, engineering, technical or any other professional
32 services and the volunteers will provide the necessary labor without charge to, or liability upon,
33 the governmental body: *Provided*, That the total cost of the construction or repair projects does
34 not exceed \$50,000.

35 (f) The provisions of subsection (b) of this section apply to privately owned projects or
36 infrastructure projects constructed on lands not owned by the county commission, a municipality

37 or a government agency or instrumentality when the owner or the owner's agent or person
 38 financing the owner's project receives money from the tax increment financing fund for the owner's
 39 project.

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

**§7-20-22. Special infrastructure projects financed by service fee considered to be public
 improvements subject to ~~prevailing wage~~, local labor preference and competitive
 bid requirements.**

1 (a) Any special infrastructure project acquired, constructed or financed, in whole or in part,
 2 by service fees imposed by a county commission under section twelve of this article shall be
 3 considered to be a "public improvement" within the meaning of the provisions of articles one-c
 4 and five-a, chapter twenty-one of this code.

5 (b) The county commission shall, except as provided in subsection (c) of this section,
 6 solicit or require solicitation of competitive bids ~~and require the payment of prevailing wage rates~~
 7 ~~as provided in article five-a, chapter twenty-one of this code~~ and compliance with article one-c of
 8 said chapter for any special infrastructure project funded pursuant to section twelve of this article
 9 exceeding \$25,000 in total cost.

10 (c) Following the solicitation of the bids, the construction contract shall be awarded to the
 11 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:
 12 *Provided*, That the county commission or other person soliciting the bids may reject all bids and
 13 solicit new bids on the project.

14 (d) No officer or employee of this state or of any public agency, public authority, public
 15 corporation or other public entity and no person acting or purporting to act on behalf of such officer
 16 or employee or public entity shall require that any performance bond, payment bond or bid bond
 17 required or permitted by this section be obtained from any particular surety company, agent,

18 broker or producer.

19 (e) This section does not:

20 (1) Apply to work performed on construction projects not exceeding a total cost of \$50,000
21 by regular full-time employees of the county commission: *Provided*, That no more than \$50,000
22 shall be expended on an individual project in a single location in a twelve-month period;

23 (2) Prevent students enrolled in vocational educational schools from being used in
24 construction or repair projects when such use is a part of the students' training program;

25 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
26 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the
27 use of the building components and systems or cause danger to those persons using the building
28 components and systems; or

29 (4) Apply to any situation where the county commission comes to an agreement with
30 volunteers, or a volunteer group, by which the county commission will provide construction or
31 repair materials, architectural, engineering, technical or any other professional services and the
32 volunteers will provide the necessary labor without charge to, or liability upon, the county
33 commission: *Provided*, That the total cost of the construction or repair projects does not exceed
34 \$50,000.

CHAPTER 11. TAXATION.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-9. New jobs percentage.

1 (a) *In general.* -- The new jobs percentage is based on the number of new jobs created in
2 this state directly attributable to the qualified investment of the taxpayer.

3 (b) *When a job is attributable.* -- An employee's position is directly attributable to the
4 qualified investment if:

5 (1) The employee's service is performed or his or her base of operations is at the new or
6 expanded business facility;

7 (2) The position did not exist prior to the construction, renovation, expansion or acquisition
8 of the business facility and the making of the qualified investment; and

9 (3) But for the qualified investment, the position would not have existed.

10 (c) *Applicable percentage.* -- For the purpose of subsection (a) of this section, the
11 applicable new jobs percentage is determined under the following table:

	If number of new jobs is at least:	The applicable percentage is:
	20	20%
	280	25%
	520	30%

18 (d) *Certification of new jobs.* -- With the annual return for the applicable taxes filed for the
19 taxable year in which the qualified investment is first placed in service or use in this state, the
20 taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by
21 it in this state within the period prescribed in subsection (f) of this section that are, or will be,
22 directly attributable to the qualified investment of the taxpayer. For purposes of this section,
23 "applicable taxes" means the taxes imposed by articles thirteen, twenty-one, twenty-three and
24 twenty-four of this chapter against which this credit is applied.

25 (e) *Equivalency of permanent employees.* -- The hours of part-time employees shall be
26 aggregated to determine the number of equivalent full-time employees for the purpose of this
27 section.

28 (f) *Redetermination of new jobs percentage.* -- With the annual return for the applicable

29 taxes imposed, filed for the third taxable year in which the qualified investment is in service or
30 use, the taxpayer shall certify the actual number of new jobs created by it in this state that are
31 directly attributable to the qualified investment of the taxpayer.

32 (1) If the actual number of jobs created would result in a higher new jobs percentage, the
33 credit allowed under this article shall be redetermined and amended returns filed for the first and
34 second taxable years that the qualified investment was in service or use in this state.

35 (2) If the actual number of jobs created would result in a lower new jobs percentage, the
36 credit previously allowed under this article shall be redetermined and amended returns filed for
37 the first and second taxable years. In applying the amount of redetermined credit allowable for
38 the two preceding taxable years, the redetermined credit shall first be applied to the extent it was
39 originally applied in the prior two years to personal income taxes, then to corporation net income
40 taxes, then to business franchise taxes and, lastly, to business and occupation taxes. Any
41 additional taxes due under this chapter shall be remitted with the amended returns filed with the
42 commissioner, along with interest, as provided in section seventeen, article ten of this chapter,
43 and a ten-percent penalty determined on the amount of taxes due with the amended return, which
44 may be waived by the commissioner if the taxpayer shows that the overclaimed amount of the
45 new jobs percentage was due to reasonable cause and not due to willful neglect.

46 (g) *Additional new jobs percentage.* -- When the qualified investment is \$20 million or more
47 ~~and the new or expanded business facility is constructed using construction laborers and~~
48 ~~mechanics who are paid an average wage equal to or greater than the prevailing wage for their~~
49 ~~respective classes of work determined under chapter twenty-one of this code~~, then, if the number
50 of full-time construction laborers and mechanics working at the job site of the new or expanded
51 business facility is seventy-five or more, or if the number of hours of all construction laborers and
52 mechanics working at the job site is equal to or greater than the number of hours seventy-five full-

53 time construction laborers and mechanics would have worked at the job site during a twelve
54 consecutive month period, a taxpayer that is allowed a new jobs percentage determined under
55 subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points
56 higher than the new jobs percentage allowed under subsection (a) of this section. In no event
57 may construction laborers and mechanics be used to attain or retain a subsection (a) new jobs
58 percentage. The number of full-time construction laborers and mechanics working at the job site
59 shall be determined by dividing the total number of hours worked by all construction laborers and
60 mechanics on a new or expanded business facility during a twelve consecutive month period by
61 two thousand eighty hours per year. A taxpayer may not claim the additional new jobs
62 percentage allowed by this section unless the taxpayer includes with the certification filed under
63 subsection (d) of this section a certification signed by the general contractor or the construction
64 manager certifying that construction laborers employed at the job site during a consecutive twelve
65 month period aggregated the equivalent of at least seventy-five full-time employees and the
66 taxpayer has received from the general contractor or construction manager records substantiating
67 the certification, which records shall be retained by the taxpayer for thirteen years after the day
68 the expansion to an existing business facility, or the new business facility, is first placed in service
69 or use by the taxpayer. For purposes of subsection (g) of this section:

70 (1) The term "construction laborers and mechanics" means those workers, utilized by a
71 contractor or subcontractor at any tier, whose duties are manual or physical in nature, including
72 those workers who use tools or are performing the work of a trade, as distinguished from mental
73 or managerial and working foremen who devote more than twenty percent of their time during a
74 workweek performing the duties of a laborer or mechanic; and

75 (2) The term "job site" is limited to the physical place or places where the construction
76 called for in the contract will remain when the work on it is completed and nearby property, as

77 described in subdivision (3) of this subsection, used by the contractor or subcontractor during
78 construction that, because of proximity, can reasonably be included in the "site".

79 (3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile
80 factories, batch plants, borrow pits, job headquarters and tool yards are part of the "job site"
81 provided they are dedicated exclusively, or nearly so, to performance of the contract or project
82 and are located in proximity to the actual construction location so that it would be reasonable to
83 include them.

84 (4) The term "job site" does not include permanent home offices, branch offices, branch
85 plant establishments, fabrication yards or tool yards of a contractor or subcontractor whose
86 locations and continuance in operation are determined without regard to the contract or
87 subcontract for construction of a new or expanded business facility.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-9a. Energy-savings contracts.

1 (a) For the purposes of this section:

2 (1) "Energy-conservation measures" means goods or services, or both, to reduce energy
3 consumption operating costs of school facilities. These include, but are not limited to, installation
4 of two or more of the following:

5 (A) Insulation of a building structure and systems within a building;

6 (B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors,
7 heat-absorbing or heat-reflective glazed and coated window or door systems or other window or
8 door modifications that reduce energy consumption;

9 (C) Automatic energy control systems;

10 (D) Heating, ventilating or air conditioning systems, including modifications or
11 replacements;

12 (E) Replacement or modification of lighting fixtures to increase energy efficiency;

13 (F) Energy recovery systems;

14 (G) Cogeneration systems that produce steam or another form of energy for use by the
15 county board of education in a building or complex of buildings owned by the board of education;
16 or

17 (H) Energy-conservation maintenance measures that provide long-term operating cost
18 reductions of the building's present cost of operation.

19 (2) "Energy-savings contract" means a contract for the evaluation and recommendation of
20 energy operations conservation measures and for implementation of one or more such measures.
21 The contract shall provide that payments, except obligations upon termination of the contract
22 before its expiration, are to be made over time. A county board of education may supplement
23 these payments with federal, state or local funds to reduce the annual cost or to lower the initial
24 amount to be financed.

25 (3) "Qualified provider" means a person, firm or corporation experienced in the design,
26 implementation and installation of energy-conservation measures.

27 (b) County boards of education are hereby authorized to enter into performance-based
28 contracts with qualified providers of energy-conservation measures for the purpose of reducing
29 energy operating costs of school buildings.

30 (c) A board of education may enter into an energy-savings contract with a qualified
31 provider to significantly reduce energy operating costs. Before entering into such a contract or
32 before the installation of equipment, modifications or remodeling to be furnished under such a
33 contract, the qualified provider shall first issue a proposal summarizing the scope of work to be

34 performed. Such a proposal shall contain estimates of all costs of installation, modifications or
35 remodeling including the costs of design, engineering, installation, maintenance, repairs or debt
36 service as well as estimates of the amounts by which energy operating costs will be reduced. If
37 the board finds, after receiving the proposal, that the proposal includes more than one energy-
38 conservation measure designed to save energy operating costs, the board may enter into a
39 contract with the provider pursuant to this section.

40 (d) An energy-savings contract shall include the following:

41 (1) A guarantee of a specific minimum amount of money that the board will save in energy
42 operating costs each year during the term of the contract; and

43 (2) A statement of all costs of energy-conservation measures including the costs of design,
44 engineering, installation, maintenance, repairs and operations.

45 (e) An energy-savings contract which is performance-based and includes a guarantee of
46 savings and a comprehensive approach of energy-conservation measures for improving comfort
47 is subject to competitive bidding requirements. ~~The requirements of article five-a, chapter~~
48 ~~twenty-one of this code as to prevailing wage rates shall apply to the construction and installation~~
49 ~~work performed under such a contract.~~

50 (f) A board may enter into a "lease with an option to purchase" contract for the purchase
51 and installation of energy-conservation measures if the term of the lease does not exceed fifteen
52 years and the lease contract includes the provisions hereinafter contained in subsection (g) and
53 meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

54 (g) An energy-savings contract may extend beyond the fiscal year in which it first becomes
55 effective except that such a contract may not exceed a fifteen-year term and shall be void
56 unless such agreement provides the board the option to terminate the agreement during each
57 fiscal year of the contract. The board may include in its annual budget for each fiscal year any

58 amounts payable under long-term energy-savings contracts during that fiscal year.

59 (h) Nothing contained in this section requires or permits the replacement of jobs performed
60 by service personnel employed by the local school board pursuant to sections eight and eight-a,
61 article four, chapter eighteen-a of the code, as amended.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.

§25-7-4. Correctional industries service contracts.

1 (a) The commissioner may enter into contracts with private entities under which inmate or
2 resident labor is provided through correctional industries for work involving the delivery of
3 products or for service work. Service work means work which includes, but is not limited to,
4 repairs, replacement of original manufactured items, packaging, sorting, recycling, labeling or
5 similar work that is not original equipment manufacturing. The use of inmate or resident labor may
6 not result in the displacement of civilian workers employed in the local region where the work is
7 performed. The division may negotiate the wage for inmate or resident labor under correctional
8 industries contracts. ~~and, except as provided in sections thirteen, fourteen, fifteen and sixteen of~~
9 ~~this article, the wage may be less than the prevailing wage for work of a similar nature in the~~
10 ~~private sector.~~

11 (b) The Division of Corrections, in cooperation with the Department of Commerce, shall
12 develop and maintain a marketing plan encouraging private sector businesses to employ inmates
13 through the correctional industries program.

CHAPTER 31. CORPORATIONS.

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT
COUNCIL.**

§31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

1 (a) No project or infrastructure project acquired, constructed, maintained or financed, in
2 whole or in part, by the water development authority shall be considered to be a "public
3 improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this
4 code as a result of the financing.

5 (b) The state and its subdivisions shall, except as provided in subsection (c) of this section,
6 solicit competitive bids ~~and require the payment of prevailing wage rates as provided in article~~
7 ~~five-a, chapter twenty-one of this code~~ for every project or infrastructure project funded pursuant
8 to this article exceeding \$25,000 in total cost.

9 Following the solicitation of the bids, the construction contract shall be awarded to the
10 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond:
11 *Provided*, That the state and its subdivisions may reject all bids and solicit new bids on the project.

12 (c) This section does not:

13 (1) Apply to work performed on construction or repair projects not exceeding a total cost
14 of \$50,000 by regular full-time employees of the state or its subdivisions: *Provided*, That no
15 more than \$50,000 shall be expended on an individual project in a single location in a twelve-
16 month period;

17 (2) Prevent students enrolled in vocational educational schools from being used in the
18 construction or repair projects when such use is a part of the students' training program;

19 (3) Apply to emergency repairs to building components and systems: *Provided*, That the
20 term "emergency repairs" means repairs that, if not made immediately, will seriously impair the
21 use of the building components and systems or cause danger to those persons using the building
22 components and systems; or

23 (4) Apply to any situation where the state or a subdivision of the state comes to an
24 agreement with volunteers, or a volunteer group, by which the governmental body will provide
25 construction or repair materials, architectural, engineering, technical or any other professional
26 services and the volunteers will provide the necessary labor without charge to, or liability upon,
27 the governmental body: *Provided*, That the total cost of the construction or repair projects does
28 not exceed \$50,000.

29 (d) The provisions of subsection (b) of this section do not apply to privately owned projects
30 or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.

NOTE: The purpose of this bill is to repeal requirements to pay prevailing wages for construction of public improvements.

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

Article 5A of Chapter 21 is repealed.