

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2832**

BY DELEGATES EVANS, E., PAYNTER, BALDWIN AND

ROWE

[Introduced March 8, 2017; Referred  
to the Committee on Government Organization then  
Finance.]

1 A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §16-13-3 of said code; and to amend and reenact §16-13A-7 of said code, all  
 3 relating to raising the amount required for competitive bidding of construction contracts by  
 4 the state and its subdivisions from \$25,000 to \$50,000; raising the amount required for  
 5 competitive bidding of sanitary board construction contracts from \$10,000 to \$50,000;  
 6 excepting public service districts from competitive bidding for emergency repairs; and  
 7 raising the amount required for competitive bidding of public service district construction  
 8 contracts from \$25,000 to \$50,000.

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

1 That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; that §16-13-3 of said code be amended and reenacted; and that §16-13A-7 of said  
 3 code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

**§5-22-1. Bidding required; government construction contracts to go to lowest qualified  
 responsible bidder; procedures to be followed in awarding government  
 construction projects; penalties for violation of procedures and requirements  
 debarment; exceptions.**

1 (a) This section and the requirements in this section may be referred to as the West  
 2 Virginia Fairness in Competitive Bidding Act.

3 (b) As used in this section:

4 (1) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and  
5 that meets, as a minimum, all the following requirements in connection with the bidder's response  
6 to the bid solicitation. The bidder must certify that it:

7 (A) Is ready, able and willing to timely furnish the labor and materials required to complete  
8 the contract;

9 (B) Is in compliance with all applicable laws of the State of West Virginia; and

10 (C) Has supplied a valid bid bond or other surety authorized or approved by the contracting  
11 public entity.

12 (2) "The state and its subdivisions" means the State of West Virginia, every political  
13 subdivision thereof, every administrative entity that includes such a subdivision, all municipalities  
14 and all county boards of education.

15 (3) "State spending unit" means a department, agency or institution of the state  
16 government for which an appropriation is requested, or to which an appropriation is made by the  
17 Legislature.

18 (c) The state and its subdivisions shall, except as provided in this section, solicit  
19 competitive bids for every construction project exceeding ~~\$25,000~~ \$50,000 in total cost. A vendor  
20 who has been debarred pursuant to the provisions of sections thirty-three-b through thirty-three-  
21 f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under  
22 this section. All bids submitted pursuant to this chapter shall include a valid bid bond or other  
23 surety as approved by the State of West Virginia or its subdivisions.

24 (d) Following the solicitation of bids, the construction contract shall be awarded to the  
25 lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond.  
26 The state and its subdivisions may reject all bids and solicit new bids on the project.

27 (e) The apparent low bidder on a contract valued at more than \$250,000 for the  
28 construction, alteration, decoration, painting or improvement of a new or existing building or  
29 structure with a state spending unit shall submit a list of all subcontractors who will perform more

30 than \$25,000 of work on the project including labor and materials. This section does not apply to  
31 other construction projects such as highway, mine reclamation, water or sewer projects. The list  
32 shall include the names of the bidders and the license numbers as required by article eleven,  
33 chapter twenty-one of this code. This information shall be provided to the state spending unit  
34 within one business day of the opening of bids for review prior to the awarding of a construction  
35 contract. If no subcontractors who will perform more than \$25,000 of work are to be used to  
36 complete the project it will be noted on the subcontractor list. Failure to submit the subcontractor  
37 list within one business day after the deadline for submitting bids shall result in disqualification of  
38 the bid.

39 (f) Written approval must be obtained from the state spending unit before any  
40 subcontractor substitution is permitted. Substitutions are not permitted unless:

41 (1) The subcontractor listed in the original bid has filed for bankruptcy;

42 (2) The state spending unit refuses to approve a subcontractor in the original bid because  
43 the subcontractor is under a debarment pursuant to section thirty-three-d, article three, chapter  
44 five-a of this code or a suspension under section thirty-two, article three, chapter five-a of this  
45 code; or

46 (3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is  
47 unable or refuses to perform the subcontract.

48 (g) The contracting public entity may not award the contract to a bidder which fails to meet  
49 the minimum requirements set out in this section. As to a prospective low bidder which the  
50 contracting public entity determines not to have met one or more of the requirements of this  
51 section or other requirements as determined by the public entity in the written bid solicitation, prior  
52 to the time a contract award is made, the contracting public entity shall document in writing and  
53 in reasonable detail the basis for the determination and shall place the writing in the bid file. After  
54 the award of a bid under this section, the bid file of the contracting public agency and all bids  
55 submitted in response to the bid solicitation shall be open and available for public inspection.

56 (h) A public official or other person who individually or together with others knowingly  
57 makes an award of a contract under this section in violation of the procedures and requirements  
58 of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-  
59 a of the Code of West Virginia.

60 (i) No officer or employee of this state or of a public agency, public authority, public  
61 corporation or other public entity and no person acting or purporting to act on behalf of an officer  
62 or employee or public entity shall require that a performance bond, payment bond or surety bond  
63 required or permitted by this section be obtained from a particular surety company, agent, broker  
64 or producer.

65 (j) All bids shall be open in accordance with the provisions of section two of this article,  
66 except design-build projects which are governed by article twenty-two-a of this chapter and are  
67 exempt from these provisions.

68 (k) Nothing in this section applies to:

69 (1) Work performed on construction or repair projects by regular full-time employees of  
70 the state or its subdivisions;

71 (2) Prevent students enrolled in vocational educational schools from being utilized in  
72 construction or repair projects when the use is a part of the student's training program;

73 (3) Emergency repairs to building components and systems. For the purpose of this  
74 subdivision, the term emergency repairs means, repairs that if not made immediately will seriously  
75 impair the use of building components and systems or cause danger to persons using the building  
76 components and systems; and

77 (4) A situation where the state or subdivision thereof reaches an agreement with  
78 volunteers, or a volunteer group, in which the governmental body will provide construction or  
79 repair materials, architectural, engineering, technical or other professional services and the  
80 volunteers will provide the necessary labor without charge to, or liability upon, the governmental  
81 body.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.**

**§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.**

1           The board shall have power to take all steps and proceedings and to make and enter into  
2 all contracts or agreements necessary or incidental to the performance of its duties and the  
3 execution of its powers under this article: *Provided*, That any contract relating to the financing of  
4 the acquisition or construction of any works, or any trust indenture as provided for, shall be  
5 approved by the governing body of the municipality before the same shall be effective.

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

14           No contract or agreement with any contractor or contractors for labor and/or material,  
15 exceeding in amount the sum of ~~\$10,000~~ \$50,000, shall be made without advertising for bids,  
16 which bids shall be publicly opened and award made to the best bidder, with power in the board  
17 to reject any or all bids.

18           After the construction, installation, and completion of the works, or the acquisition thereof,  
19 the board shall operate, manage and control the same and may order and complete any  
20 extensions, betterments and improvements of and to the works that the board may consider  
21 expedient, if funds therefor be available or are made available as provided in this article, and shall

22 establish rules and regulations for the use and operation of the works, and of other sewers,  
23 stormwater conduits, and drains connected therewith so far as they may affect the operation of  
24 such works, and do all things necessary or expedient for the successful operation thereof,  
25 including, but not limited to, those activities necessary to comply with all federal and state  
26 requirements, including stormwater and surface runoff water quality improvement activities.

27 The sanitary board may declare an emergency situation in the event of collector line  
28 breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding  
29 requirements and enter into direct purchase agreements or contracts for the expenses. All public  
30 ways or public works damaged or destroyed by the board in carrying out its authority under this  
31 article shall be restored or repaired by the board and placed in their original condition, as nearly  
32 as practicable, if requested so to do by proper authority, out of the funds provided by this article.

#### **ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

##### **§16-13A-7. Acquisition and operation of district properties.**

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  
3 duty, to maintain, operate, extend and improve the same, including, but not limited to, those  
4 activities necessary to comply with all federal and state requirements, including water quality  
5 improvement activities. All contracts, excluding those needed for emergency repairs as defined  
6 in subdivision (3), subsection (k), section one, article twenty-two, chapter five of this code,  
7 involving the expenditure by the district of more than ~~\$25,000~~ \$50,000 for construction work or for  
8 the purchase of equipment and improvements, extensions or replacements, shall be entered into  
9 only after notice inviting bids shall have been published as a Class I legal advertisement in  
10 compliance with the provision of article three, chapter fifty-nine of this code, and the publication  
11 area for such publication shall be as specified in section two of this article in the county or counties  
12 in which the district is located. The publication shall not be less than ten days prior to the making  
13 of any such contract. To the extent allowed by law, in-state contractors shall be given first priority

14 in awarding public service district contracts. It shall be the duty of the board to ensure that local  
15 in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service  
16 district construction or maintenance repair jobs. It shall further be the duty of the board to  
17 encourage contractors to use American made products in their construction to the extent possible.  
18 Any obligations incurred of any kind or character shall not in any event constitute or be deemed  
19 an indebtedness within the meaning of any of the provisions or limitations of the Constitution, but  
20 all such obligations shall be payable solely and only out of revenues derived from the operation  
21 of the public service properties of the district or from proceeds of bonds issued as hereinafter  
22 provided. No continuing contract for the purchase of materials or supplies or for furnishing the  
23 district with electrical energy or power shall be entered into for a longer period than fifteen years.

NOTE: The purpose of this bill is to raising the amount required for competitive bidding of construction contracts by the state and its subdivisions, public service districts, and sanitary boards to \$50,000; and excepting public service districts from competitive bidding for emergency repairs.

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