

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2897

BY DELEGATES CRISS AND LANE

[Introduced March 9, 2017; Referred
to the Committee on Industry and Labor then
Government Organization.]

1 A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, to amend
 2 and reenact §8-16-5 of said code; to amend and reenact §16-12-11 of said code; to amend
 3 and reenact §16-13-3 of said code; and to amend and reenact §16-13A-7 of said code, all
 4 relating to raising the amount required for competitive bidding of construction contracts by
 5 the state and its subdivisions from \$25,000 to \$50,000; raising the amount required for
 6 competitive bidding of construction contracts by municipalities from \$25,000 to \$50,000;
 7 exempting municipalities from competitive bidding of construction contracts in emergency
 8 situations; raising the amount required for competitive bidding of construction contracts by
 9 sanitary districts for sewage disposal from \$500 to \$50,000; exempting sanitary districts
 10 for sewage disposal from competitive bidding of construction contracts in emergency
 11 situations; raising the amount required for competitive bidding of sanitary board
 12 construction contracts from \$10,000 to \$50,000; excepting public service districts from
 13 competitive bidding for emergency repairs; and raising the amount required for competitive
 14 bidding of public service district construction contracts from \$25,000 to \$50,000; and
 15 exempting sanitary boards from competitive bidding of construction contracts in
 16 emergency situations.

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 §8-16-5 of said code be amended and reenacted; that §16-12-11 of said code be
 3 amended and reenacted; that §16-13-3 of said code be amended and reenacted; and that §16-
 4 13A-7 of said 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 8. MUNICIPAL CORPORATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

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
 11 work as the board may direct. All compensation and expenses incurred in carrying out the
 12 provisions of this article shall be paid solely from funds provided under the authority of this article,
 13 and the board shall not exercise or carry out any power or authority herein given it so as to bind

14 said board or any municipality beyond the extent to which money shall have been, or may be
15 provided under the 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 be made without advertising for bids,
18 which bids shall be publicly opened and an award made to the lowest responsible bidder, with
19 power and authority in the board to reject any and all bids.

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

33 (e) The board may declare an emergency situation if it finds there is a significant and
34 imminent threat to public health or safety, public or private property, or the environment. Any
35 contract or agreement the board finds necessary to respond to a declared emergency situation
36 shall be exempt from the requirements in subsection (c) of this section.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.

**§16-12-11. Letting contracts; manner and cost of building additions or extensions;
contracts to respond to emergency situations.**

1 All contracts for work to be done by such sanitary district, the expense of which will exceed
2 ~~\$500~~ \$50,000, shall be let to the lowest responsible bidder therefor. The board of trustees shall
3 cause to be published a notice informing the public and contractors of the general nature of the
4 work and of the fact that detailed plans, drawings and specifications are on file in the office of
5 such board of trustees and calling for sealed proposals for the construction of the work to be done
6 at a date not earlier than ten days after the last of such publications, such notice to be published
7 as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-
8 nine of this code, and the publication area for such publication shall be the sanitary district. Said
9 board of trustees shall require each bidder to deposit with his or her respective bid a certified
10 check for an amount not less than two and one-half percent of the engineer's estimate of such
11 work to insure the execution of the contract for which such bid is made. The board of trustees
12 may impose such conditions as it may deem necessary upon the bidders with regard to bond and
13 surety, guaranteeing the good faith and responsibility of such bidders, and the faithful
14 performance of such work according to contract, or for any other purpose. The board of trustees
15 shall have the right to reject any and all bids, but if it does reject all bids, before other bids may
16 be received notices shall be published as originally required. The board of trustees shall have
17 power to let portions of said proposed work under different contracts.

18 Any additions or extensions to any sewage disposal plant, or sewers or drains or any other
19 work constructed under the provisions of this article, shall be built under contract entered into
20 under the provisions of this section in the same manner as the contract for the original plant or
21 work. The cost of such additions or extensions, and of any additional lands or rights-of-ways
22 acquired by said board, may be met by the sale of additional bonds to be issued and sold by the
23 trustees, and the levy of taxes and/or the collection of service charges to retire such bonds, all as
24 provided in this article.

25 The board of trustees may declare an emergency situation if it finds there is a significant
26 and imminent threat to public health or safety, public or private property, or the environment. Any
27 contract the board of trustees finds necessary to respond to a declared emergency situation may,
28 in the board of trustees' discretion, be exempted from any or all of the requirements of this section.

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 ~~\$40,000~~ \$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; 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
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 involving the expenditure by the district of more than ~~\$25,000~~
6 \$50,000 for construction work or for the purchase of equipment and improvements, extensions or
7 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 of
9 this code, and the publication area for such publication shall be as specified in section two of this
10 article in the county or counties in which the district is located. The publication shall not be less

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

23 The board may declare an emergency situation if it finds there is a significant and imminent
24 threat to public health or safety, public or private property, or the environment. Any contract the
25 board finds necessary to respond to a declared emergency situation may, in the board's
26 discretion, be exempted from any or all of the requirements of this section.

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.