

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2819

BY DELEGATES HOUSEHOLDER AND CRISS

[BY REQUEST OF THE WEST VIRGINIA STATE TAX

DIVISION]

[Introduced February 1, 2019; Referred

to the Committee on Finance.]

1 A BILL to amend and reenact §11-12-19 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §11-15-8b of said code, all relating generally to contractors; defining
 3 certain terms; clarifying business registration requirements in case of both nonresident
 4 contractors and nonresident subcontractors; clarifying bonding requirements in case of
 5 both nonresident contractors and nonresident subcontractors for purposes of consumers
 6 sales and service and use taxes, and including municipal consumers sales and use taxes
 7 and special district excise tax within bonding specifications, as applicable.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-19. Contractors and subcontractors.

1 (a) *General.* -- Every person who engages in this state in any contracting business or
 2 activity shall have a copy of his or her business registration certificate available at every
 3 construction site in this state until his or her work at ~~such the~~ site is completed.

4 (b) *Definitions.* -- For purposes of this section:

5 (1) "Contracting business or activity" means and includes the furnishing of work, or both
 6 work and materials for the erecting, building, constructing, altering, repairing, removing or
 7 demolishing of any road, bridge, pipeline, dam, building or other structure, or other improvement
 8 appurtenant to any such road, bridge, pipeline, dam, building or other structure, or for altering,
 9 improving or developing of property, under and by virtue of a contract with the owner for an agreed
 10 lump sum or upon any other basis of settlement and payment agreed to by the parties, whether
 11 ~~such the~~ contract ~~be is~~ an oral agreement or in writing. The term "contracting business or activity"
 12 ~~shall also include~~ includes the furnishing of work or both work and materials or equipment under
 13 and by virtue of a subcontract with a general contractor for an agreed contract price, or by day,
 14 or by piece, or by other basis of payment agreed to by parties, whether ~~such the~~ contract ~~be is~~ an
 15 oral agreement or in writing. Notwithstanding any provision of this code to the contrary, for
 16 purposes of §11-12-1 et seq., §11-15-1 et seq., and §11-15A-1 et seq. of this code, contracting

17 activity includes an infrastructure development and maintenance project regardless of how the
18 project is treated under generally accepted accounting principles.

19 (2) "Contractor" "or construction contractor" means every person, including a
20 subcontractor, who agrees by a written or oral contract to engage in contracting activity.

21 (3) "Construction site" means the area in which the contractor is working or beginning to
22 work when engaging in contracting activity.

23 (4) "Infrastructure development and maintenance project" means a project in this state the
24 purpose of which is to construct, improve, maintain, repair or otherwise extend the useful life of
25 new or existing infrastructure facilities. For purposes of this article, "infrastructure facility" means,
26 but is not limited to, transportation, communication, sewage, water and electric systems,
27 pipelines, roads, bridges, related facilities and other public improvements owned by the state or
28 any county, county board of education, municipality or public corporation created by any of the
29 preceding entities.

30 (5) "Nonresident contractor" means a construction contractor, or subcontractor, who is not
31 a resident contractor.

32 (6) "Principal place of business" means the place where the business's officers or
33 management employees direct, control, and coordinate the activities of the business.

34 (7) "Prime or general contractor" includes: (A) Any person who contracts with the owner,
35 lessee or other person having authority to enter into a contract involving the premises or property
36 that is the subject matter of the contract, to perform services or furnish materials, or both, for the
37 construction, alteration or improvement of any real property or project; or (B) any person who
38 owns or leases real estate for the purpose of developing the real estate other than for his or her
39 own occupancy, and who, in the development of the real estate, contracts, alters or makes
40 improvements on the real estate.

41 (8) "Resident contractor" means a construction contractor, or subcontractor, as the case
42 may be, who owns, or leases, real property located in this state that is continuously used by the

43 construction contractor, or subcontractor, as an office, warehouse, store, factory, or other regular
 44 and permanent place of business in this state and who maintains a permanent work force of three
 45 or more employees who are residents of this state. For purposes of this definition, a temporary
 46 office, building, storage site, or facility at the site of a construction project is not real property
 47 continuously used as an office, warehouse, store, factory, or other regular place of business in
 48 this state.

49 (9) "Subcontractor" means a person who is engaged in contracting and who contracts with
 50 a prime contractor, or general contractor, to perform all or any part of the contract of the prime
 51 contractor, or general contractor, or who contracts with a subcontractor who has contracted to
 52 perform any part of the contract entered into by the prime contractor, or general contractor.

53 (c) Penalty for failure to have available. -- In addition to other penalties provided by law,
 54 any contractor, or subcontractor, who fails to have available at the construction site during the
 55 time he or she is furnishing or performing contracting activity at ~~such~~ the site, his or her business
 56 registration certificate or a copy thereof, ~~shall~~ is not be entitled to enforce the mechanics' lien
 57 created by §38-2-1 or §38-2-2 of this code, for contracting or relating to activity provided by him
 58 or her at ~~such~~ the construction site.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8b. Nonresident contractor--registration, bond, etc.

1 (a) Every nonresident contractor and every nonresident subcontractor shall register with
 2 the Tax Commissioner as provided in §11-12-1 et seq. of this code prior to engaging in the
 3 performance of a contract or subcontract in this state.

4 (b) (1) At the time of registration, the contractor or subcontractor, as the case may be,
 5 shall deposit with the Tax Commissioner ~~six~~ seven percent of the amount the nonresident
 6 contractor, or nonresident subcontractor, as the case may be, is to receive for the performance
 7 of the contract, or subcontract, which deposit shall be held within a Contractors Use Tax Fund
 8 pending the completion of the contract, or subcontract, and pending the determination of the taxes

9 due this state under this article and §11-15A-1 *et seq.* of this code, ~~because of such~~ and any
 10 municipal consumers sales and use tax imposed under §8-13C-1 *et seq.* or §8-1-5a of this code,
 11 and any special district excise tax imposed under §7-22-1 *et seq.* or §8-38-1 *et seq.* of this code
 12 due on purchases and uses of tangible personal property and services relating to the contract, or
 13 subcontract, and the payment of the tax ~~taxes~~ due.

14 (2) In lieu of the deposit, the nonresident contractor, or nonresident subcontractor may
 15 provide a corporate surety bond to be approved by the Tax Commissioner as to form, sufficiency,
 16 value, amount, stability, and other features necessary to provide a guarantee of payment of the
 17 ~~compensating tax due this state~~ taxes due under the provisions subdivision (1) of this subsection.

18 (c) In addition, within 30 days after registration, under this section, ~~the~~ every nonresident
 19 contractor and every nonresident subcontractor, as the case may be, shall file a statement with
 20 the Tax Commissioner itemizing the machinery, materials, supplies, and equipment that he or she
 21 has or will have on hand at the time he or she begins the fulfillment of the contract, including
 22 where ~~such~~ the tangible personal property has been brought, shipped, or transported from outside
 23 this state upon which neither the tax imposed by this article nor §11-15A-1 *et seq.* of this code
 24 has been paid, and shall pay the tax due thereon at the time of filing the statement and thereafter
 25 shall report and pay the taxes as required by this article and §11-15A-1 *et seq.* of this code, and
 26 any other taxes due under the aforementioned provisions.

NOTE: The purpose of this bill is to amend §11-12-19 of the code so as to expressly clarify that fact that business registration requirements apply to both nonresident contractors and nonresident subcontractors, and to amend §11-15-8b of the code so that the requirement to post bond applies to both nonresident contractors and nonresident subcontractors, and to specifically include within the bonding requirement, municipal consumers sales and service tax and use tax, special district excise tax, as applicable.

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