

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 439

By Senators Smith, Caputo, Hamilton, Phillips, Taylor,

Swope, and Nelson

[Introduced January 23, 2023; referred
to the Committee on Energy, Industry, and Mining]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §22-34-1, §22-34-2, §22-34-3, and §22-34-4, relating generally to establishing
 3 a design-build program for the Department of Environmental Protection; providing a short
 4 title; establishing a design-build pilot program; providing for an invitation for bids; and
 5 setting forth bid requirements.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 34. DEPARTMENT OF ENVIRONMENTAL PROTECTION DESIGN-BUILD
 PILOT PROGRAM.**

§22-34-1. Short title.

1 This article shall be known as and may be cited as the West Virginia Department of
 2 Environmental Protection Design-Build Pilot Program.

§22-34-2. West Virginia Department of Environmental Protection Design-Build Program.

1 (a) Notwithstanding any provision of this code to the contrary, the cabinet secretary of the
 2 West Virginia Department of Environmental Protection may expedite the construction of projects
 3 by combining the design and construction elements of a project into a single contract as provided
 4 in this article.

5 (b) A design-build project may be let to contract only in accordance with the secretary's
 6 established policies and procedures concerning design-build projects.

§22-34-3. Invitation for bids.

1 (a) The West Virginia Department of Environmental Protection shall prepare an invitation
 2 for bids for prequalified design-builders, which must provide at a minimum:

3 (1) The procedures to be followed for submitting bids and the procedures for making
 4 awards;

5 (2) The proposed general terms and conditions for the design-build contract;

6 (3) The description of the drawings, specifications, or other information to be submitted

7 with the bid, with guidance as to the form and level of completeness of the drawings,
8 specifications, or submittals that will be acceptable;

9 (4) A proposed time schedule commencement and completion of the design-build contract;

10 (5) Budget limits for the design-build contract, if any;

11 (6) Requirements or restrictions for the subletting of specific portions of the design-build
12 contract, if any; and

13 (7) Requirements for performance bonds, payment bonds, insurance, professional liability
14 insurance, and workers' compensation coverage.

15 (b) The West Virginia Department of Environmental Protection shall set forth its needs with
16 sufficient clarity to assure that there is a comprehensive understanding of the project's scope and
17 requirement.

§22-34-4. Acceptance of design-build bid.

1 (a) The design-builder shall submit the bid to the West Virginia Department of
2 Environmental Protection as required in the invitation for bids.

3 (b) The design-builder shall furnish a bid bond not to exceed five percent of the maximum
4 cost of the design-build contract.

5 (c) The Secretary may choose to reject all bids. If the Secretary chooses to accept a bid,
6 the Secretary shall award the project to the qualified design-builder based on a value-based
7 selection process combining technical qualifications and competitive bidding elements. The
8 Secretary shall ascertain that the submissions comply with the requirements of this article and the
9 policies and procedures of the cabinet secretary.

NOTE: The purpose of this bill is to increase the speed and dexterity with which the Department of Environmental Protection is able to send out projects related to incoming federal infrastructure grants for bid and to construct those projects within the narrow timeframes allowed by the federal grant administrators. The bill provides a short title; establishes the West Virginia Department of Environmental Protection Design-Build Pilot Program; provides for an invitation for bids; and sets forth bid requirements.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.