WEST VIRGINIA CODE CHAPTER 21 ARTICLE 1C

WV Legislature

§21-1C-1. Short title.

This article shall be called the "West Virginia Jobs Act".

WV Legislature

§21-1C-2. Definitions.

As used in this article:

(1) The term “commissioner” means the Commissioner of the West Virginia Division of Labor, or his or her authorized representatives.

(2) The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than $500,000. The term "construction project" does not include temporary or emergency repairs;

(3) The term “domicile” or “primary residence” means an individual’s true, fixed, principal, and permanent home, to which he or she returns or intends to return, even though currently residing elsewhere. Presentation of a valid, government-issued identification card shall be conclusive proof of domicile.

(4) (A) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

(B) The term "employee" does not include:

(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(ii) Bona fide independent contractors; or

(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

(5) The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

(6) The term "local labor market" means every county in West Virginia, and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia;

(7) The term "public authority" means any officer, board, commission or agency of the State of West Virginia and its subdivisions, including counties and municipalities. Further, the economic grant committee, economic development authority, infrastructure and jobs development council and School Building Authority shall be required to comply with the provisions of this article for loans, grants or bonds provided for public improvement construction projects;

(8) The term "public improvement" includes, the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks,

WV Legislature

airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

WV Legislature

§21-1C-3. Legislative findings; statement of policy.

The Legislature finds that the rate of unemployment in this state is significantly higher than that of most other states and that a majority of West Virginia counties are designated as labor surplus areas by the United States department of labor.

The Legislature finds that the employment of persons from outside the local labor market on public improvement construction projects contracted for and subsidized by the taxpayers of the state contributes significantly to the rate of unemployment and the low per capita income among qualified state residents who would otherwise be hired for these jobs.

Therefore, the Legislature declares that residents of local labor markets should be employed for the construction of public improvement projects which directly utilize taxpayer funding, in whole or in part.

WV Legislature

§21-1C-4. Local labor market utilization on public improvement construction projects; waiver certificates.

(a) Employers shall hire at least seventy-five percent of employees for public improvement construction projects domiciled in the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

(b) Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of Workforce West Virginia of the number of qualified employees needed and provide a job description of the positions to be filled.

(c) If, within three business days following the placing of a job order, Workforce West Virginia is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then Workforce West Virginia shall issue a waiver to the employer stating the unavailability of applicants and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

WV Legislature

§21-1C-5. Applicability and scope of article; reporting requirements.

(a) This article applies to expenditures for construction projects by any public authority for public improvements as defined by this article.

(b) For public improvement projects let pursuant to this article, the public authority shall file, or require an employer as defined in section two of this article to file, with the Division of Labor copies of the waiver certificates and certified payrolls, pursuant to article five-a of this chapter, or other comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation.

(c) The Division of Labor shall compile the information required by this section and submit it annually to the Joint Committee on Government and Finance by October 15, . The joint committee may forward these reports to the Legislative Auditor to review and make comments regarding the usefulness of the information collected and to suggest changes to the division's method of reporting to ensure the information collected will prove useful in evaluating the effectiveness of the provisions of this article.

(d) Each public authority has the duty to implement the reporting requirements of this article. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this article.

(e) The Division of Labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in section six of this article and transmittal of data to the Joint Committee on Government and Finance.

WV Legislature

§21-1C-6. Penalties for violation of article, notice of violations; administrative remedies.

(a) If, after inspection or investigation, the commissioner determines that an employer has violated any provision of this article, the commissioner shall provide a written notice of violation to the employer and the public authority, setting forth the number of violations, a description of every violation and the amount of the penalty that will be imposed if the employer continues to violate any provision of this article after receipt of the notice of violation, and shall direct the public authority to withhold final payment to the employer until the employer has paid the penalty or the matter has been otherwise resolved.

(b) Any employer who violates any provision of this article is subject to a civil penalty of $250 per each employee less than the required threshold of seventy-five percent per day of violation after receipt of a notice of violation issued by the commissioner. This civil penalty terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

(c) Any employer that continues to violate any provision of this article more than fourteen calendar days after receipt of a notice of violation is subject to a civil penalty of $500 per each employee less than the required threshold of seventy-five percent per day of violation. This civil penalty terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

(d) All civil penalties paid pursuant to this section shall be paid to the commissioner and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the “West Virginia Jobs Act Fund” and expended for the implementation and enforcement of this article.

WV Legislature

§21-1C-7.

Repealed.

Acts, 2006 Reg. Sess., Ch. 131.

WV Legislature