WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 352

(By Senator Hunter, et al)

PASSED March 8, 2003

In Effect March 15, 2003
ENROLLED

Senate Bill No. 352

(BY SENATORS HUNTER, UNGER, BAILEY, HELMICK, ROWE, KESSLER, PLYMALE, DEMPSEY, WHITE, BOWMAN, EDGELL, MCCABE, LOVE, SPROUSE, MINARD, SNYDER, CALDWELL, CHAFIN, ROSS, SHARPE, GUILLIS, JENKINS, FANNING, PREZIOSO AND MINEAR)

[Passed March 8, 2003; to take effect March 15, 2003.]

AN ACT to amend and reenact sections five and seven, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia jobs act; requiring reporting to the state tax department; and changing the effective date.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five and seven, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.
As used in this article:

(1) 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 one million dollars. The term "construction project" does not include temporary or emergency repairs;

(2) (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;

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

(4) The term "local labor market" means every county in West Virginia and all counties bordering West Virginia that fall within seventy-five miles of the border of West Virginia;

(5) 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;
(6) The term “public improvement” includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, 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.

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

1 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.

2 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.

3 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.

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

1 (a) Employers shall hire at least seventy-five percent of employees for public improvement construction projects from 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.

2 (b) Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs’ division of employment services 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, the division is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the employer stating the unavailability of applicant and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or 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.

§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 to the joint committee on government and finance by the fifteenth day of October, two thousand five, for a legislative audit to be prepared for the December, two thousand five, interim session. Beginning with the legislative interim meetings in May, two thousand three, and continuing through the interim period ending in November, two thousand five, the division of labor shall provide quarterly reports to the
joint committee on government and finance on the information compiled pursuant to this article. 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 and transmittal of data to the joint committee on government and finance.

§21-1C-7. Effective date.

This article is effective from passage through the fifteenth day of March, two thousand six.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect March 15, 2003.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is disapproved this the 14th Day of March, 2003.

Governor