ENROLLED

SENATE BILL NO. 759

(By Senator Bauman)

PASSED March 11, 2006

In Effect from Passage
ENROLLED

Senate Bill No. 759

(By Senator Bowman)

[Passed March 11, 2006; in effect from passage.]

AN ACT to repeal §17-4-17c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and 17-2D-5; and to amend and reenact §17-4-17b and §17-4-17d, all relating to construction of highways and bridges; creating the Highway Design-Build Pilot Program; listing requirements for approval of design-build projects; requiring monthly progress reports on design-build projects; requiring annual reports; revising authority to propose certain rules and requirements; establishing requirements for issuing invitations for bid; requiring a report to the legislature; creating procedure for removal, relocation or adjustment of utility lines or facilities to accommodate a highway project; requiring notice of need to remove, relocate or adjust a utility line or facility; requiring removal, relocation or adjustment plans; creating liability for not following plan; and requiring public utility to pay for relocation, removal or adjustment.

Be it enacted by the Legislature of West Virginia:

That §17-4-17c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding
thereunto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and §17-2D-5; and that §17-4-17b and §17-4-17d be amended and reenacted, all to read as follows:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.

§17-2D-1. Short title.

1 This article shall be known and may be cited as the West Virginia Highway Design-Build Pilot Program.

§17-2D-2. Establishment of a Highway Design-Build Pilot Program.

1 (a) Notwithstanding any provision of this code to the contrary, the Commissioner of the West Virginia Division of Highways may establish a pilot program to expedite the construction of no more than three special projects by combining the design and construction elements of a highway or bridge project into a single contract.

7 (b) A design-build project may not be let to contract before the first day of January, two thousand seven, and no more than three projects may be let to contract in the eighteen months thereafter.

11 (c) A design-build project may not be let to contract until the commissioner of the division of highways has established polices and procedures concerning design-build projects.

15 (d) After completion of the third project, no projects shall be commenced unless the West Virginia Legislature either approves additional projects to further study the effectiveness of the design-build process or makes the program permanent.

§17-2D-3. Invitation for bids.

1 (a) The division shall prepare an invitation for bids for pre-qualified design-builders, which must provide at a minimum:
(1) The procedures to be followed for submitting bids and the procedures for making awards;

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

(3) The description of the drawings, specifications or other information to be submitted with the bid, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

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

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

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

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

(b) The division shall make available to the qualified design-builders, approved subcontractors, suppliers and sureties, as applicable, additional information including, but not limited to, surveys, soils reports, drawings or information regarding existing structures, environmental studies, photographs or references to public records, or other pertinent information.

(c) The division shall set forth its needs with sufficient clarity to assure that there is a comprehensive understanding of the project's scope and requirement.

§17-2D-4. Acceptance of design-build bid.

(a) The design-builder shall submit the bid to the division as required in the invitation for bids.

(b) The design-builder shall furnish a bid bond not to exceed five percent of the maximum cost of the design-build contract.
(c) The selection committee may choose to reject all bids. If the selection committee chooses to accept a bid, the committee shall award the project to the qualified design-builder based on low bid or a value-based selection process combining technical qualifications and competitive bidding elements. The selection committee shall ascertain that the submissions comply with the requirements of this article and the polices and procedures of the commissioner.

§17-2D-5. Report to the Legislature.

On or before the first day of December, two thousand eight, the commissioner shall prepare and submit to the Joint Standing Committee on Government Organization a report evaluating the experience of the division of highways with each project, including whether the division realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received and other issues the commissioner considers appropriate.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines on highway construction projects.

(a) Whenever the division reasonably determines that any public utility line or facility located upon, across or under any portion of a state highway needs to be removed, relocated or adjusted in order to accommodate a highway project, the division shall give to the utility sixty (60) days' written notice directing it to begin the physical removal, relocation or adjustment of such utility obstruction or interference. If such notice is in conjunction with a highway improvement project, it will be provided at the date of advertisement or award. Prior to the notice directing the physical removal, relocation or adjustment of a utility line or facility, the utility shall adhere to the division's utility relocation procedures for public road
improvements which shall include, but not be limited to, the following:

(1) The division will submit to the utility a letter and a set of plans for the proposed highway improvement project;

(2) The utility must, within twenty (20) days, submit to the division a written confirmation acknowledging receipt of the plans and a declaration of whether or not its facilities are within the proposed project limits and the extent to which the facilities are in conflict with the project;

(3) If the utility is adjusting, locating or relocating facilities or lines from or into the division’s right-of-way, the utility must submit to the division plans showing existing and proposed locations of utility facilities. These utility plans must be submitted to the division within thirty (30) days of receipt of the highways plans or such longer time as may be provided in the letter accompanying the highway plans.

(4) The utility’s submission shall include with the plans a working time analysis demonstrating that the utility adjustment, location or relocation will be accomplished in a manner and time frame established by the division’s written procedures and instructions. Such working time plan shall specify the order and calendar days for removal, relocation or adjustment of the utility from or within the project site and any staging property acquisition, compensable work or other special requirements needed to complete the removal, relocation or adjustment. The division may approve the work plan, including any requests for compensation, submitted by a utility for a highway improvement project if it is submitted within the established schedule and does not adversely affect the letting date. The division will review the work plan to ensure compliance with the proposed improvement plans and schedule.
49  (b) If the utility does not thereafter begin removal within
50 the time specified in the work plan, the division may give
51 the utility a final notice directing that such removal shall
52 commence not later than ten (10) days from the receipt of
53 such final notice. If the utility does not, within the ten (10)
54 days from receipt of the final notice, begin to remove or
55 relocate the facility or, having so begun removal or
56 relocation, thereafter fails to complete the removal or
57 relocation within the time specified by the work plan, the
58 division may remove or relocate the same with its own
59 employees or by employing or contracting for the neces-
60 sary engineering, labor, tools, equipment, supervision,
61 materials and other necessary services to accomplish the
62 removal or relocation, and the expenses of such removal
63 may be paid and collected as provided at law. If addi-
64 tional utility removal, relocation, or adjustment work is
65 found necessary after the letting date of the highway
66 improvement project, the utility shall provide a revised
67 work plan within thirty (30) calendar days after becoming
68 aware of such additional work or upon receipt of the
69 division's written notification advising of such additional
70 work. The utility's revised work plan shall be reviewed by
71 the division to ensure compliance with the highway project
72 or improvement.

73  (c) In addition to the foregoing, the owner of the utility
74 shall be responsible for and liable to the division or its
75 contractors for damages resulting from its failure to
76 comply with the submitted and approved work plan. If the
77 utility owner fails to provide a work plan or fails to
78 complete the removal, relocation, or adjustment of its
79 facilities in accordance with the work plan approved by
80 the division, the owner shall be liable to the contractor for
81 all delay costs and liquidated damages incurred by the
82 contractor which are caused by or which grow out of the
83 failure of the utility owner to provide a work plan or a
84 revised work plan or to complete its work in accordance
85 with the approved work plan. The division may withhold
approval of permits for failure of the utility owner to comply with the requirements of this section.

§17-4-17d. Relocation of public utility lines and public service districts utility lines on state highway construction projects.

Whenever the Commissioner of Highways determines that any public utility line owned by a county or municipal governmental body located upon, across or under any portion of a state highway needs to be relocated in order to accommodate a highway project for which proportionate reimbursement of the cost is not available from any federal program, the commissioner shall notify the public utility owning or operating the facility which shall relocate the same in accordance with this section, and the cost of the relocation shall be paid out of the state road fund.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 31st Day of ______, 2006.

[Signature]
Governor