

# **WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL**

## **GUIDANCE DOCUMENT REGARDING ENROLLED COM. SUB. FOR SENATE BILL 352 Revision Number 1**

### WV Jobs Act

Background: The West Virginia Legislature enacted Enrolled Committee Substitute for Senate Bill 103 (“S.B. 103”) on April 14, 2001, in effect 90 days from passage (Friday, July 13, 2001). S.B. 103 added a new article called the “West Virginia Jobs Act” to the employment of residents of labor market to the West Virginia labor statute (the “Act”). This Act was revised by Senate Bill 352, effective March 15, 2003. The Legislature determined in Section 3 of the Act that residents of West Virginia should be hired for the construction of public improvements which depend in whole or part on state taxpayer funding. As defined by the Act, 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 \$1,000,000. The term “construction project” does not include temporary or emergency repairs. Section 5 of the Act applies to expenditures for construction projects by any public authority for public improvements as defined in the Act. The term “public improvement” is defined to include 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. “Public authority” is defined as any officer, board, commission or agency of the State and its subdivisions; further, the Economic Grant Committee, the Economic Development Authority, Infrastructure and Jobs Development Council and School Building Authority are required to comply with the Act for loans, grants or bonds provided for public improvement construction projects.

Procedure: The West Virginia Infrastructure and Jobs Development Council (the “Infrastructure Council”) is authorized to make loans, purchase bonds and make grants to governmental agencies. “Governmental agency” means any county, municipality, watershed improvement district, assessment district, soil conservation district, sanitary district, public service district, drains district, regional governmental authority and any other state governmental agency, entity, political subdivision, public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects.

In order for the Infrastructure Council to comply with the West Virginia Jobs Act, the Infrastructure Council has established the following guidelines:

1. Each recipient of a loan or grant for the construction of public improvements from the Council shall be required to comply with the provisions of the West Virginia Jobs Act unless the project meets the following exceptions:
  - a) the amount of the project subject to contract is less than \$1,000,000;
  - b) the project is funded in part by federal funds
    - West Virginia Clean Water State Revolving Loan Fund;
    - West Virginia Drinking Water Treatment Revolving Loan Fund;
    - Appalachian Regional Commission;
    - Small Cities Block Grants, funded through HUD;
    - Abandoned Mine Land Program;
    - United States Environmental Protection Agency;
    - Grants appropriated by Congress;
    - United States Department of Agriculture, Rural Utilities Service;
    - United States Army Corp of Engineers;
    - United States Economic Development Administration; and
    - US Soil Conservation Service;
    - Any other grants or loan programs established pursuant to legislation enacted by the United States Congress.
  - c) the project may be exempted from the West Virginia Jobs Act if it is for temporary or emergency repairs which are repairs to address situations which present an imminent danger to the public safety. The Infrastructure Council will seek the assistance of the Division of Labor in making these determinations
2. Each project sponsor that does not meet one of the above-referenced exceptions shall be required to comply with the West Virginia Jobs Act and the following procedure. The Infrastructure Council will require the following to evidence compliance with the Act:
  - a) the Loan Agreement between the project sponsor and the West Virginia Water Development Authority (the "Authority"), on behalf of the Infrastructure Council, shall contain a specific covenant that the project sponsor will comply with the Act, will require its contractors to comply with the Act and will file or caused to be filed with the West Virginia Division of Labor and the Infrastructure Council copies of waiver certificates and certified payrolls as required by the Act, or other comparable documents that include the number of employees, the county and state where the employees reside and their occupation;

- b) the project sponsor must covenant to follow the procedure established by the Division of Labor for the efficient collection of the data;
  - c) each contract or subcontract for each public improvement let by a project sponsor shall contain provisions conforming to the requirement of the Act;
  - d) at the bond or grant closing, the project sponsor shall provide a certificate which affirmatively acknowledges:
    - i) the requirements of the West Virginia Jobs Act and the project sponsor's certification that it will comply with the requirements;
    - ii) that the project sponsor has included the provisions of the West Virginia Jobs Act in each contract or subcontract that it has or will enter into for public improvements;
    - iii) that it has received or will receive prior to entering into construction contracts received from each contractor a certificate demonstrating compliance with Section 4 of the Act or waiver letters from the Division of Labor; and
    - iv) that it will provide the required reporting information to the Division of Labor and the Infrastructure Council following the procedure established by the Division of Labor.
3. During the course of the construction of the project and each time the project sponsor submits a requisition to the Infrastructure Council for an advance on either bond or grant proceeds, such requisition will contain an affirmative statement that the project sponsor is monitoring the compliance by its contractors and subcontractors and that the required information has been submitted. Failure to provide such certification will result in a denial of the funding requisition.

The guidelines set forth above shall apply to all project sponsors who do not meet an exception and opened bids after March 15, 2003. Projects advertising for bids after August 31, 2001 but before March 15, 2003 shall be subject to the policy adopted by the Infrastructure Council on September 5, 2001.

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Adopted: April 2, 2003 Revision 1