

Changes in Labor Requirements on Public--Including School-- Construction Projects

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Just before it closed its session, the West Virginia Legislature passed a bill that will impact construction--including that of school buildings and facilities--beginning in June of 2010. The bill, which Governor Manchin signed March 19, 2010, is intended to strengthen the State's efforts to promote the use of local labor on construction projects within the State.

The West Virginia Jobs Act was first passed in 2001 with the intent of employing residents of local labor markets on public improvement projects, funded in whole or in part using taxpayer funding. At the time, the Legislature noted that many counties in West Virginia were designated as labor surplus areas by the United States Department of Labor and that the use of persons from outside local labor markets contributed to the State's higher-than-average unemployment rate.

To remedy this, the West Virginia Jobs Act required employers working on public improvement projects costing \$1,000,000 or more to hire at least 75% of their employees from the local labor market. Employers were permitted to hire at least two employees from outside the local labor market, and they could seek an exemption if postings at the nearest office of the bureau of employment programs' division of employment services did not yield sufficient qualified workers. Violation of the Act resulted in a penalty of \$100 per day of the violation. Were they not covered by the language of the Act, the School Building Authority's Supplemental, General, and Special Conditions require that all contractors and subcontractors working on SBA-funded projects comply with the Act.

The Legislature's most recent action expands significantly when the Act will apply. *The Act now applies to all construction projects of \$500,000 or more, instead of \$1,000,000.* The Act continues to exclude temporary and emergency repairs, but the reduction of the threshold to \$500,000 will certainly mean that the Act applies to the vast majority of school construction projects.

The Legislature also clarified and limited the definition of local labor market. The definition previously was somewhat ambiguous and included all counties within West Virginia and "all counties bordering West Virginia that fall within seventy-five miles of the border of West Virginia." The ambiguity regarded counties that do not touch the West Virginia border but some part of which fall within seventy-five miles of the border. *The local labor market now includes only those counties within West Virginia and those counties outside West Virginia if any portion of that county is within fifty miles of the West Virginia border.*

Though the Act technically imposes requirements on employers and the civil penalties apply to employers who violate the Act, school boards should take note of these changes, as they are nearly always placed in the position of ensuring that employers/contractors comply.

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore & Shohl's [Education Law Practice Group](#).