

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 363**

4 (By Senators Kessler (Mr. President) and M. Hall,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on Government Organization;
8 reported March 27, 2013.]
9 _____

10
11 A BILL to amend and reenact §5A-3-3 of the Code of West Virginia,
12 1931, as amended; and to amend said code by adding thereto
13 three new sections, designated §5A-3-10d, §5A-3-60 and §5A-3-
14 61, all relating to the Purchasing Division; clarifying the
15 powers and duties of the director under the direction and
16 supervision of the Administration Secretary; prohibiting the
17 Purchasing Division from using the secondary bid process
18 commencing July 1, 2013; requiring annual purchasing training
19 for executive branch officials; creating a Purchasing Task
20 Force; study and reporting requirements for the task force;
21 and expense reimbursement for legislative members of the task
22 force.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §5A-3-3 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; and that said code be amended by adding
2 thereto three new sections, designated §5A-3-10d, §5A-3-60 and §5A-
3 3-61, all to read as follows:

4 **ARTICLE 3. PURCHASING DIVISION.**

5 **§5A-3-3. Powers and duties of director of purchasing.**

6 The director, under the direction and supervision of the
7 secretary, shall be the executive officer of the Purchasing
8 Division and shall have the power and duty to:

9 (1) Direct the activities and employees of the Purchasing
10 Division;

11 (2) Ensure that the purchase of or contract for commodities
12 shall be based, whenever possible, on competitive bid;

13 (3) Maintain a record of all procurements and purchases not
14 obtained under the competitive bid process set out in section ten
15 of this article;

16 (4) Propose rules for legislative approval in accordance with
17 the provisions of article three, chapter twenty-nine-a of this
18 code, that are consistent with, and not contrary to, the provisions
19 of this article;

20 (5) Provide a handbook that is consistent with, and not
21 contrary to, the provisions of this article;

22 ~~(3) Purchasing~~ (6) Purchase or contract for, in the name of
23 the state, the commodities and printing required by the spending
24 units of the state government;

1 ~~(4)~~ (7) Apply and enforce standard specifications established
2 in accordance with section five of this article; ~~as hereinafter~~
3 ~~provided~~

4 ~~(5)~~ (8) Transfer to or between spending units or sell
5 commodities that are surplus, obsolete or unused as ~~hereinafter~~
6 provided in this article;

7 ~~(6)~~ (9) Have charge of central storerooms for the supply of
8 spending units, as the director deems advisable;

9 ~~(7)~~ (10) Establish and maintain a laboratory for the testing
10 of commodities and make use of existing facilities in state
11 institutions for that purpose as ~~hereinafter~~ provided in this
12 article, as the director deems advisable;

13 ~~(8)~~ (11) Suspend the right and privilege of a vendor to bid on
14 state purchases when the director has evidence that such vendor has
15 violated any of the provisions of the purchasing law or the rules
16 ~~and regulations~~ of the director;

17 ~~(9)~~ (12) Examine the provisions and terms of every contract
18 entered into for and on behalf of the State of West Virginia that
19 impose any obligation upon the state to pay any sums of money for
20 commodities or services and approve each ~~such~~ contract as to ~~such~~
21 the provisions and terms, and ~~the~~ this duty of examination and
22 approval ~~herein set forth~~ does not supersede the responsibility and
23 duty of the Attorney General to approve such contracts as to form:
24 *Provided*, That the provisions of this subdivision do not apply ~~in~~

1 ~~any respect whatever~~ to construction or repair contracts entered
2 into by the Division of Highways of the Department of
3 Transportation: *Provided, however,* That the provisions of this
4 subdivision do not apply in any respect whatever to contracts
5 entered into by the University of West Virginia Board of Trustees
6 or by the Board of Directors of the State College System, except to
7 the extent that such boards request the facilities and services of
8 the director under the provisions of this subdivision; and

9 ~~(10)~~ (13) Assure that the specifications and commodity
10 descriptions in all "requests for quotations" are prepared so as to
11 permit all potential suppliers-vendors who can meet the
12 requirements of the state an opportunity to bid and to assure that
13 the specifications and descriptions do not favor a particular brand
14 or vendor. If the director determines that any such specifications
15 or descriptions as written favor a particular brand or vendor or if
16 it is decided, either before or after the bids are opened, that a
17 commodity having different specifications or quality or in
18 different quantity can be bought, the director may rewrite the
19 "requests for quotations" and the matter shall be rebid. If a
20 matter has to be rebid, then the director must state the reasons
21 for the rebid in writing and place it in the file.

22 **§5A-3-10d. Prohibition of secondary bid process.**

23 Commencing July 1, 2013, the Purchasing Division is prohibited
24 from using the secondary bid process to procure commodities and

1 services.

2 **§5A-3-60. Annual purchasing training.**

3 (a) Commencing July 1, 2013, all executive department
4 secretaries, commissioners, deputy commissioners, assistant
5 commissioners, directors, deputy directors, assistant directors,
6 department heads, deputy department heads and assistant department
7 heads are required to take one hour of training on purchasing
8 procedures annually.

9 (b) The Director of the Purchasing Division shall provide the
10 required one-hour training at least two times per year. The
11 training shall include purchasing requirements and procedures set
12 out in this article. The training shall be recorded by audio and
13 visual means and shall be made available to the individuals listed
14 in subsection (a) of this section in the event they are unable to
15 attend the training in person.

16 (c) All individuals listed in subsection (a) of this section
17 shall certify, in writing and on a form developed by the Director
18 of the Purchasing Division, the date, time, location and manner in
19 which they took the training. Completed forms shall be returned to
20 the director and maintained in his or her office.

21 **§5A-3-61. Purchasing Task Force; study; report.**

22 (a) The President of the Senate and the Speaker of the House
23 of Delegates shall convene a Purchasing Task Force to study:

24 (1) Purchasing procedures;

- 1 (2) The purchasing process;
- 2 (3) The current purchasing code and legislative rules;
- 3 (4) The Purchasing Division's Procedures Handbook;
- 4 (5) The possible adoption of the Model Procurement Act, in
5 whole or part;
- 6 (6) Procurement methods currently being used, including, but
7 not limited to, open-ended contracts, piggyback contracts and
8 contracts awarded to multiple vendors; and
- 9 (7) Alternative procurement methods, including, but not
10 limited to, reverse auctions and multiple-step sealed bidding.
- 11 (b) The Purchasing Task Force shall consist of:
- 12 (1) Three Senators appointed by the President of the Senate;
- 13 (2) Three Delegates appointed by the Speaker of the House of
14 Delegates; and
- 15 (3) One representative from the Governor's Office.
- 16 (c) The Purchasing Task Force shall report to the Joint
17 Committee on Government and Finance by January 1, 2014. The report
18 shall include recommendations and proposed legislation.
- 19 (d) A state agency shall provide information requested by the
20 Purchasing Task Force in a timely manner.
- 21 (e) The members of the Legislature appointed to the Purchasing
22 Task Force shall receive reimbursement for expenses incurred while
23 performing duties as members thereof, as provided in section seven,
24 article two-a, chapter four.