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(By Delegates Howell, Ferns, Border-Sheppard,
Faircloth, Romine, Kump, Folk, Cadle, R. Smith,
Arvon and Azinger)

[Introduced February 10, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5A-1-10; to amend
said code by adding thereto a new section, designated
§5A-3-14; to amend and reenact §5A-3-1, §5A-3-3 and §5A-3-17
of said code; and to amend and reenact §61-5A-7 of said code,
all relating to state procurement; requiring spending units
and subdivisions to purchase commodities and services on a
competitive basis except during a declared state of emergency;
authorizing the secretary of the Department of Administration
to issue a notice to cease and desist when purchases are not
made on a competitive basis; clarifying the purposes and
policies of the Purchasing Division; clarifying the
applicability of the article; authorizing the director of the
Purchasing Division to issue a notice to cease and desist when
purchases are not made on a competitive basis; requiring the
Purchasing Division director to comply with federal law and

1 authorized regulations when a procurement involves the
 2 expenditure of federal assistance or contract funds; requiring
 3 the Purchasing Division director to offer mandatory annual
 4 procurement training; and clarifying any person found to have
 5 willfully entered into a contract contrary to the article
 6 shall be subject to penalty; establishing criminal offenses
 7 for a person or combination of persons, to agree, plan or
 8 scheme to submit bids, not to submit bids or to withdraw bids
 9 in a manner prearranged among themselves in order to arrive at
 10 a predetermined result; and providing criminal penalties upon
 11 conviction.

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

13 That the Code of West Virginia, 1931, as amended, be amended
 14 by adding thereto a new section, designated §5A-1-10; that said
 15 code be amended by adding thereto a new section, designated
 16 §5A-3-14; that §5A-3-1, §5A-3-3 and §5A-3-17 of said code be
 17 amended and reenacted; and that §61-5A-7 of said code be amended
 18 and reenacted, all to read as follows:

19 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

20 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

21 **§5A-1-10. General procurement provisions for the state and its**
 22 **subdivisions, and spending units.**

23 **(a) Notwithstanding an exemption from chapter 5A, article 3 of**

1 this code, purchases for commodities and services by spending units
2 and political subdivisions shall be based on a competitive basis,
3 except during a state of emergency.

4 (b) The secretary shall issue a notice to cease and desist to
5 any spending unit or political subdivision when the secretary has
6 credible evidence that a spending unit or political subdivision has
7 failed, when possible and practicable, to purchase commodities and
8 services on a competitive basis.

9 **ARTICLE 3. PURCHASING DIVISION.**

10 **§5A-3-1. Division created; purpose; director; applicability of**
11 **article; continuation.**

12 (a) The Purchasing Division within the Department of
13 Administration is continued. ~~for the purpose of establishing~~
14 ~~centralized offices to provide purchasing, and travel services to~~
15 ~~the various state agencies.~~ The underlying purpose and policies of
16 the Purchasing Division are:

17 (1) To simplify, clarify, and modernize the law governing
18 procurement by this state;

19 (2) To permit the continued development of procurement
20 policies and practices;

21 (3) To make as consistent as possible the procurement laws
22 among the various spending units;

23 (4) To provide for increased public confidence in the
24 procedures followed in public procurement;

1 (5) To ensure the fair and equitable treatment of all persons
2 who deal with the procurement system of this state;

3 (6) To provide increased economy in procurement activities and
4 to maximize to the fullest extent practicable the purchasing value
5 of public funds;

6 (7) To foster effective broad-based competition within the
7 free enterprise system;

8 (8) To provide safeguards for the maintenance of a procurement
9 system of quality and integrity; and

10 (9) To obtain in a cost-effective and responsive manner the
11 materials, services, and construction required by spending units in
12 order for those spending units to better serve this state's
13 businesses and residents.

14 (b) The director of the Purchasing Division shall, at the time
15 of appointment:

16 (1) Be a graduate of an accredited college or university; and

17 (2) Have spent a minimum of ten of the fifteen years
18 immediately preceding his or her appointment employed in an
19 executive capacity in purchasing for any unit of government or for
20 any business, commercial or industrial enterprise.

21 (c) The provisions of this article apply to all of the
22 spending units of state government, except as otherwise provided by
23 this article or by law.

24 (d) The provisions of this article do not apply to the

1 judicial branch, the legislative branch, to purchases of stock made
2 by the Alcohol Beverage Control Commissioner, and to purchases of
3 textbooks for the State Board of Education.

4 (e) The provisions of this article apply to every expenditure
5 of public funds for commodities and services irrespective of their
6 source, including federal assistance moneys, by this state, acting
7 through a governmental body, under any contract: *Provided, That*
8 nothing in this article or the rules promulgated hereunder
9 prevents any spending unit or political subdivision from complying
10 with the terms and conditions of any grant, gift, bequest, or
11 cooperative agreement.

12 (f) Notwithstanding an exemption to this article, the director
13 of the Purchasing Division shall oversee purchases made by any
14 spending unit that exceed ninety percent of the largest purchase
15 contract amount entered into by the spending unit during the
16 current fiscal year or during the fiscal year immediately preceding
17 the current fiscal year.

18 **§5A-3-3. Powers and duties of director of purchasing.**

19 The director, under the direction and supervision of the
20 secretary, shall be the executive officer of the Purchasing
21 Division and shall have the power and duty to:

22 (1) Direct the activities and employees of the Purchasing
23 Division;

24 (2) Ensure that the purchase of or contract for commodities

1 shall be based, whenever possible, on competitive bid;

2 (3) Purchasing or contract for, in the name of the state, the
3 commodities and printing required by the spending units of the
4 state government;

5 (4) Apply and enforce standard specifications established in
6 accordance with section five of this article as hereinafter
7 provided;

8 (5) Transfer to or between spending units or sell commodities
9 that are surplus, obsolete or unused as hereinafter provided;

10 (6) Have charge of central storerooms for the supply of
11 spending units, as the director deems advisable;

12 (7) Establish and maintain a laboratory for the testing of
13 commodities and make use of existing facilities in state
14 institutions for that purpose as hereinafter provided, as the
15 director deems advisable;

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

20 (9) Examine the provisions and terms of every contract entered
21 into for and on behalf of the State of West Virginia that impose
22 any obligation upon the state to pay any sums of money for
23 commodities or services and approve each such contract as to such
24 provisions and terms; and the duty of examination and approval

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

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

23 (11) Issue a notice to cease and desist to a spending unit
24 when the director has credible evidence that a spending unit has

1 violated competitive bidding requirements established by this
2 article or the rules promulgated hereunder; and

3 (12) When a procurement involves the expenditure of federal
4 assistance or contract funds, the director shall comply with such
5 federal law and authorized regulations which are mandatorily
6 applicable and which are not presently reflected in this article.

7 **§5A-3-14. Mandatory training for spending units.**

8 (a) The director shall provide at least one seminar each year
9 for spending units to inform the spending units of the procurement
10 duties and requirements imposed by state law and rule. All
11 spending units shall cooperate with and assist in providing the
12 seminar if the director requests.

13 (b) The head of each spending unit and the head procurement
14 officer for the spending unit shall annually attend at least one
15 seminar provided under this section.

16 (c) The director may charge a registration fee for the seminar
17 to cover the cost of providing the seminar. The fee may be paid
18 from funds available to the spending unit and a spending unit may
19 approve an expense reimbursement for the attendance of its
20 employees.

21 (d) Prior to January 1 of each year, the director shall
22 provide to the chairs of the Joint Standing Committee on Government
23 Organization a list of:

24 (1) The names and titles of persons who attended the seminar;

1 (2) The spending units represented; and

2 (3) The number and dates of the seminars offered by the
 3 director during the previous year.

4 **§5A-3-17. Purchases or contracts violating article void; personal**
 5 **liability.**

6 If a spending unit purchases or contracts for commodities
 7 contrary to the provisions of this article or the rules and
 8 regulations made thereunder, such purchase or contract shall be
 9 void and of no effect. ~~The head of such spending unit~~ Any person
 10 found to have willfully entered into a contract contrary to the
 11 provisions of this article shall be personally liable for the costs
 12 of such purchase or contract, and, if already paid out of state
 13 funds, the amount thereof may be recovered in the name of the state
 14 in an appropriate action instituted therefor.

15 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

16 **ARTICLE 5A. BRIBERY AND CORRUPT PRACTICES.**

17 **§61-5A-7. Bid Rigging prohibited.**

18 It is unlawful:

19 (a) For any public servant in any department, agency,
 20 division, board, bureau or commission of government exercising
 21 regulatory functions, or conducting inspections or investigations,
 22 or carrying on civil or criminal litigation on behalf of the
 23 government, to conspire, agree or plan, directly or indirectly, in

1 any person's, or combination of person's, agreement, plan or scheme
2 to submit bids, not to submit bids or to withdraw bids in a manner
3 prearranged among themselves in order to arrive at a predetermined
4 result.

5 (b) For any person, or combination of persons, to agree, plan
6 or scheme in which, in response to a call or request for bids,
7 proposals or tenders, one or more bidders agree not to submit a
8 bid, or two or more bidders agree to submit bids or to withdraw
9 bids that have been prearranged among themselves in order to arrive
10 at a predetermined result.

11 (c) (1) A person who violates this section with regard to a
12 contract of \$100,000 or more in value is guilty of a felony,
13 designated as first degree bid rigging, and, upon conviction
14 thereof, shall be imprisoned in a correctional facility not less
15 than one nor more than ten years, or, in the discretion of the
16 court, be confined in jail not more than one year and shall be
17 finned not more than \$20,000.

18 (2) If a person violates this section with regard to a
19 contract of less than \$100,000 dollars in value, the person is
20 guilty of a misdemeanor, of first degree bid rigging, and, upon
21 conviction thereof, shall be confined in jail for a term not to
22 exceed one year or fined not to exceed \$10,000, or both fined and
23 confined, in the discretion of the court.

NOTE: The purpose of this bill is to require spending units and subdivisions to purchase commodities and services on a competitive basis; authorize the secretary of the Department of Administration to issue a notice to cease and desist when purchases are not made on a competitive basis; clarify the purposes and policies of the Purchasing Division; clarify the applicability of the article; authorize the Director of the Purchasing Division to issue a notice to cease and desist when purchases are not made on a competitive basis except during a declared state of emergency; require the Director of the Purchasing Division to comply with federal law and authorized regulations when a procurement involves the expenditure of federal assistance or contract funds; require the Director of the Purchasing Division to offer mandatory annual procurement training; and clarify that any person found to have willfully entered into a contract contrary to the article shall be subject to penalty. The bill also establishes criminal offenses for a person or combination of persons, to agree, plan or scheme to submit bids, not to submit bids or to withdraw bids in a manner prearranged among themselves in order to arrive at a predetermined result; and providing criminal penalties upon conviction.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§5A-1-10 and §5A-3-14 are new, and §61-5A-7 is totally rewritten; therefore they are completely underscored.