

1                                   **Senate Bill No. 358**

2        (By Senators Walters, Blair, Cole, D. Hall, Nohe, Palumbo,  
3                                   Snyder, Sypolt and Wells)

4                                   \_\_\_\_\_

5        [Introduced January 16, 2014; referred to the Committee on  
6                                   Government Organization.]

7                                   \_\_\_\_\_

8

9

10 A BILL to amend and reenact §5A-1-1 of the Code of West Virginia,  
11        1931, as amended; and to amend and reenact §5A-3-4 of said  
12        code, all relating to the Purchasing Division; defining  
13        “change orders”; requiring the Director of the Purchasing  
14        Division to approve certain change orders; limiting the time  
15        in which change orders must be approved or denied by the  
16        director; limiting the time in which change orders must be  
17        approved or denied by the responsible agency; and requiring  
18        the director to report annually to the Legislature the total  
19        value of certain change orders.

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

21        That §5A-1-1 of the Code of West Virginia, 1931, as amended,  
22        be amended and reenacted; and that §5A-3-4 of said code be amended  
23        and reenacted, all to read as follows:

24 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

1 **§5A-1-1. Definitions.**

2 For the purpose of this chapter:

3 ~~(1)~~ (1) "Change order" means any written alteration in  
4 specifications, delivery point, rate of delivery, period of  
5 performance, price, quantity or other provisions of any contract.

6 ~~(1)~~ (2) "Commodities" means supplies, material, equipment,  
7 contractual services, and any other articles or things used by or  
8 furnished to a department, agency or institution of state  
9 government.

10 ~~(2)~~ (3) "Contractual services" means telephone, telegraph,  
11 electric light and power, water and similar services.

12 ~~(3)~~ (4) "Debarment" means the exclusion of a vendor from the  
13 right to bid on contracts to sell goods or supply services to the  
14 state or its subdivisions for a specified period of time.

15 ~~(4)~~ (5) "Director" means the director of the division referred  
16 to in the heading of the article in which the word appears.

17 ~~(5)~~ (6) "Electronic" means electrical, digital, magnetic,  
18 optical, electromagnetic, or any other similar technology.

19 ~~(6)~~ (7) "Electronic transmission" or "electronically  
20 transmitted" means any process of communication not directly  
21 involving the physical transfer of paper that is suitable for the  
22 retention, retrieval and reproduction of information by the  
23 recipient.

24 ~~(7)~~ (8) "Expendable commodities" means those commodities

1 which, when used in the ordinary course of business, will become  
2 consumed or of no market value within the period of one year or  
3 less.

4 ~~(8)~~ (9) "Nonprofit workshops" means an establishment: (a)  
5 Where any manufacture or handiwork is carried on; (b) which is  
6 operated either by a public agency or by a cooperative or by a  
7 nonprofit private corporation or nonprofit association, in which no  
8 part of the net earnings thereof inures, or may lawfully inure, to  
9 the benefit of any private shareholder or individual; (c) which is  
10 operated for the primary purpose of providing remunerative  
11 employment to blind or severely disabled persons who cannot be  
12 absorbed into the competitive labor market; and (d) which shall be  
13 approved, as evidenced by a certificate of approval, by the state  
14 Board of Vocational Education, Division of Vocational  
15 Rehabilitation.

16 ~~(9)~~ (10) "Printing" means printing, binding, ruling,  
17 lithographing, engraving and other similar services.

18 ~~(10)~~ (11) "Record" means information that is inscribed on a  
19 read-only tangible medium or that is stored in an electronic or  
20 other medium and is retrievable in perceivable form.

21 ~~(11)~~ (12) "Removable property" means any personal property not  
22 permanently affixed to or forming a part of real estate.

23 ~~(12)~~ (13) "Request for quotations" means a solicitation for a  
24 bid where cost is the primary factor in determining the award.

1       ~~(13)~~ (14) "Responsible bidder" means a vendor who has the  
2 capability to fully perform the contract requirements, and the  
3 integrity and reliability which will assure good faith performance.

4       ~~(14)~~ (15) "Responsive bidder" means a vendor who has submitted  
5 a bid which conforms in all material respects to the bid  
6 solicitation.

7       ~~(15)~~ (16) "Secretary" means the Secretary of Administration.

8       ~~(16)~~ (17) "Spending officer" means the executive head of a  
9 spending unit, or a person designated by him or her.

10       ~~(17)~~ (18) "Spending unit" means a department, agency or  
11 institution of the state government for which an appropriation is  
12 requested, or to which an appropriation is made by the Legislature.

13       ~~(18)~~ (19) "The state and its subdivisions" means the State of  
14 West Virginia, every political subdivision thereof, every  
15 administrative entity that includes such a subdivision, all  
16 municipalities and all county boards of education.

17       ~~(19)~~ (20) "Vendor" means any person or entity that is  
18 registered with the Purchasing Division to supply the state or its  
19 subdivisions with commodities or services and lessors of real  
20 property.

21 **ARTICLE 3. PURCHASING DIVISION.**

22 **§5A-3-4. Rules of director.**

23       (a) The director shall propose rules for legislative approval  
24 in accordance with the provisions of article three, chapter

1 twenty-nine-a of this code to:

2       (1) Authorize a spending unit to purchase specified  
3 commodities directly and prescribe the manner in which such  
4 purchases shall be made;

5       (2) Authorize, in writing, a spending unit to purchase  
6 commodities in the open market for immediate delivery in  
7 emergencies, defines emergencies and prescribe the manner in which  
8 such purchases shall be made and reported to the director;

9       (3) Prescribe the manner in which commodities shall be  
10 purchased, delivered, stored and distributed;

11       (4) Prescribe the time for making requisitions and estimates  
12 of commodities, the future period which they are to cover, the form  
13 in which they shall be submitted and the manner of their  
14 authentication;

15       (5) Prescribe the manner of inspecting all deliveries of  
16 commodities, and making chemical and physical tests of samples  
17 submitted with bids and samples of deliveries to determine  
18 compliance with specifications;

19       (6) Prescribe the amount and type of deposit or bond to be  
20 submitted with a bid or contract and the amount of deposit or bond  
21 to be given for the faithful performance of a contract;

22       (7) Prescribe a system whereby the director shall be required,  
23 upon the payment by a vendor of an annual fee established by the  
24 director, to give notice to such vendor of all bid solicitations

1 for commodities of the type with respect to which such vendor  
2 specified notice was to be given, but no such fee shall exceed the  
3 cost of giving the notice to such vendor, nor shall such fee exceed  
4 the sum of \$125 per fiscal year nor shall such fee be charged to  
5 persons seeking only reimbursement from a spending unit;

6 (8) Prescribe that each state contract entered into by the  
7 Purchasing Division shall contain provisions for liquidated  
8 damages, remedies or provisions for the determination of the amount  
9 or amounts which the vendor shall owe as damages, in the event of  
10 default under such contract by such vendor, as determined by the  
11 director;

12 (9) Prescribe contract management procedures for all state  
13 contracts except government construction contracts including, but  
14 not limited to, those set forth in article twenty-two, chapter five  
15 of this code;

16 (10) Prescribe procedures by which oversight is provided to  
17 actively monitor spending unit purchases, including, but not  
18 limited to, all technology and software commodities and contractual  
19 services exceeding \$1 million ~~approval of change orders~~ and final  
20 acceptance by the spending units;

21 (11) Prescribe procedures for Purchasing Division oversight of  
22 change orders, including, but not limited to:

23 (A) Requiring that requesting agencies and vendors submit  
24 written justification to the director for the director's written

1 approval or denial of any change order or combination of change  
2 orders that would increase the total price of any state contract  
3 over \$1 million by: Ii) Five percent or more of the total value of  
4 the original contract; or (ii) by \$100,000 or more;

5 (B) Requiring that the director approve or deny in writing any  
6 requested change order within five business days of Purchasing  
7 Division receipt of the request for state contracts over \$1  
8 million;

9 (C) Prescribing that any agency responsible for approving  
10 change orders for state contracts under \$1 million approve or deny  
11 in writing any requested change order within five business days of  
12 receipt of the request; and

13 (D) Submitting annual reports to the Legislature of the value  
14 of, justification for, and vendor and agency associated with all  
15 change orders approved by the director for state contracts over \$1  
16 million;

17 ~~(11)~~ (12) Prescribe that each state contract entered into by  
18 the Purchasing Division contain provisions for the cancellation of  
19 the contract upon thirty days' notice to the vendor;

20 ~~(12)~~ (13) Prescribe procedures for selling surplus commodities  
21 to the highest bidder by means of an Internet auction site;

22 ~~(13)~~ (14) Provide such other matters as may be necessary to  
23 give effect to the foregoing rules and the provisions of this  
24 article; and

1       ~~(14)~~ (15) Prescribe procedures for encumbering purchase orders  
2 to ensure that the proper account may be encumbered before sending  
3 purchase orders to vendors.

4       (b) The director shall propose rules for legislative approval  
5 in accordance with the provisions of article three, chapter  
6 twenty-nine-a of this code to prescribe qualifications to be met by  
7 any person who is to be employed in the Purchasing Division as a  
8 state buyer. The rules must provide that a person may not be  
9 employed as a state buyer unless he or she at the time of  
10 employment either is:

11       (1) A graduate of an accredited college or university; or

12       (2) Has at least four years' experience in purchasing for any  
13 unit of government or for any business, commercial or industrial  
14 enterprise.

15       Persons serving as state buyers are subject to the provisions  
16 of article six, chapter twenty-nine of this code.

NOTE: The purpose of this bill is to define change orders; to require the director of the Purchasing Division to approve certain change orders; to limit the time in which change orders must be approved or denied by the director; to limit the time in which change orders must be approved or denied by the responsible agency; and to require the director to report annually to the Legislature information about those change orders.

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