

Senate Bill No. 369

(By Senators Snyder, Blair, Boley, Cann, Cookman,
Green, Yost, Unger, Kessler (Mr. President), Palumbo and
Stollings)

**Interim
Bill**

[Introduced January 16, 2014; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5A-1-10; and to
amend and reenact §5A-3-1, §5A-3-3, §5A-3-14 and §5A-3-17 of
said code, all relating to state procurement; requiring
spending units and subdivisions to purchase commodities and
services on a competitive basis; 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

1 competitive basis; requiring the Purchasing Division Director
2 to comply with federal law and authorized regulations when a
3 procurement involves the expenditure of federal assistance or
4 contract funds; requiring the Purchasing Division Director to
5 offer mandatory annual procurement training; and clarifying
6 any person found to have willfully entered into a contract
7 contrary to the article shall be subject to penalty.

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

9 That the Code of West Virginia, 1931, as amended, be amended
10 by adding thereto a new section, designated §5A-1-10; and that
11 §5A-3-1, §5A-3-3, §5A-3-14 and §5A-3-17 of said code be amended and
12 reenacted, all to read as follows:

13 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

14 **§5A-1-10. General procurement provisions for the state and its**
15 **subdivisions, and spending units.**

16 (a) Notwithstanding an exemption from chapter 5A, article 3 of
17 this code, purchases for commodities and services by spending units
18 and political subdivisions shall be based, whenever possible and
19 practicable, on a competitive basis.

20 (b) The secretary shall issue a notice to cease and desist to
21 any spending unit or political subdivision when the secretary has
22 credible evidence that a spending unit or political subdivision has
23 failed, when possible and practicable, to purchase commodities and

1 services on a competitive basis.

2 **ARTICLE 3. PURCHASING DIVISION.**

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

5 (a) The Purchasing Division within the Department of
6 Administration is continued ~~for the purpose of establishing~~
7 ~~centralized offices to provide purchasing, and travel services to~~
8 ~~the various state agencies.~~ The underlying purpose and policies of
9 the Purchasing Division are:

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

12 (2) To permit the continued development of procurement
13 policies and practices;

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

16 (4) To provide for increased public confidence in the
17 procedures followed in public procurement;

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

20 (6) To provide increased economy in procurement activities and
21 to maximize to the fullest extent practicable the purchasing value
22 of public funds;

23 (7) To foster effective broad-based competition within the

1 free enterprise system;

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

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

8 (b) The director of the Purchasing Division shall, at the time
9 of appointment:

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

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

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

18 (d) The provisions of this article do not apply to the
19 judicial branch, the legislative branch, to purchases of stock made
20 by the Alcohol Beverage Control Commissioner, and to purchases of
21 textbooks for the State Board of Education.

22 (e) The provisions of this article apply to every expenditure
23 of public funds for commodities and services irrespective of their

1 source, including federal assistance moneys, by this state, acting
2 through a governmental body, under any contract: *Provided, That*
3 nothing in this article or the rules promulgated hereunder prevents
4 any spending unit or political subdivision from complying with the
5 terms and conditions of any grant, gift, bequest, or cooperative
6 agreement.

7 **§5A-3-3. Powers and duties of director of purchasing.**

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

11 (1) Direct the activities and employees of the Purchasing
12 Division;

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

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

18 (4) Apply and enforce standard specifications established in
19 accordance with section five of this article as hereinafter
20 provided;

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

23 (6) Have charge of central storerooms for the supply of

1 spending units, as the director deems advisable;

2 (7) Establish and maintain a laboratory for the testing of
3 commodities and make use of existing facilities in state
4 institutions for that purpose as hereinafter provided, as the
5 director deems advisable;

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

10 (9) Examine the provisions and terms of every contract entered
11 into for and on behalf of the State of West Virginia that impose
12 any obligation upon the state to pay any sums of money for
13 commodities or services and approve each such contract as to such
14 provisions and terms; and the duty of examination and approval
15 herein set forth does not supersede the responsibility and duty of
16 the Attorney General to approve such contracts as to form:
17 *Provided*, That the provisions of this subdivision do not apply in
18 any respect whatever to construction or repair contracts entered
19 into by the Division of Highways of the Department of
20 Transportation: *Provided, however*, That the provisions of this
21 subdivision do not apply in any respect whatever to contracts
22 entered into by the University of West Virginia Board of Trustees
23 or by the Board of Directors of the State College System, except to

1 the extent that such boards request the facilities and services of
2 the director under the provisions of this subdivision; ~~and~~

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

14 (11) Issue a notice to cease and desist to a spending unit
15 when the director has credible evidence that a spending unit has
16 violated competitive bidding requirements established by this
17 article or the rules promulgated hereunder; and

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

22 **§5A-3-14. Mandatory training for spending units.**

23 (a) The director shall provide at least one seminar each year

1 for spending units to inform the spending units of the procurement
2 duties and requirements imposed by state law and rule. All
3 spending units shall cooperate with and assist in providing the
4 seminar if the director requests.

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

8 (c) The director may charge a registration fee for the seminar
9 to cover the cost of providing the seminar. The fee may be paid
10 from funds available to the spending unit and a spending unit may
11 approve an expense reimbursement for the attendance of its
12 employees.

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

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

17 (2) The spending units represented; and

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

20 **§5A-3-17. Purchases or contracts violating article void; personal**
21 **liability.**

22 If a spending unit purchases or contracts for commodities
23 contrary to the provisions of this article or the rules and

1 regulations made thereunder, such purchase or contract shall be
2 void and of no effect. ~~The head of such spending unit~~ Any person
3 found to have willfully entered into a contract contrary to the
4 provisions of this article shall be personally liable for the costs
5 of such purchase or contract, and, if already paid out of state
6 funds, the amount thereof may be recovered in the name of the state
7 in an appropriate action instituted therefor.

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; require the Purchasing Division director to comply with federal law and authorized regulations when a procurement involves the expenditure of federal assistance or contract funds; require the Purchasing Division director 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.

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

§5A-1-10 is new; therefore underlining has been omitted.