

**H. B. 2592**

(By Delegates Howell, Faircloth, Ihle, Cadle, Hill, Hamrick,  
Moffatt, R. Smith, Stansbury, Hartman and Morgan)

[Introduced February 4, 2015; referred to the  
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §5A-3-4, §5A-3-10a and §5A-3-60 the Code of West Virginia, 1931,  
as amended; and to amend said code by adding thereto two new sections, designated §5A-3-  
14 and §5A-3-14a, all relating to improving accountability in the state purchasing system;  
requiring the director to develop forms to officially document activities to monitor spending  
unit compliance; requiring vendors to provide the director with a statement of good standing  
for state taxes; requiring the director to conduct an ongoing review of spending unit activity;  
and requiring that all change orders on existing contracts be approved by the director and the  
Attorney General before the effective date of the change order.

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

That §5A-3-4, §5A-3-10a and §5A-3-60 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted; and that said code be amended by adding thereto two new sections,  
designated §5A-3-14 and §5A-3-14a, all to read as follows:

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-4. Rules of director.**

1 (a) The director shall propose rules for legislative approval in accordance with the provisions  
2 of article three, chapter twenty-nine-a of this code to:

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

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

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

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

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

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

18 (7) Prescribe a system whereby the director shall be required, upon the payment by a vendor  
19 of an annual fee established by the director, to give notice to such vendor of all bid solicitations for  
20 commodities and services of the type with respect to which such vendor specified notice was to be  
21 given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee  
22 exceed the sum of \$125 per fiscal year nor shall such fee be charged to persons seeking only

1 reimbursement from a spending unit;

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

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

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

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

14 (12) Prescribe procedures for selling surplus commodities to the highest bidder by means of  
15 an Internet auction site;

16 (13) Provide such other matters as may be necessary to give effect to the foregoing rules and  
17 the provisions of this article; and

18 (14) Prescribe procedures for encumbering purchase orders to ensure that the proper account  
19 may be encumbered before sending purchase orders to vendors.

20 (15) Prescribe official forms on which spending units shall be required to document every  
21 process employed by the division to monitor or control spending unit compliance with purchasing  
22 laws, including, but not limited to: A form to document division review and approval of requests

1 for quotation and requests for proposals; a form to document division review and approval of  
2 proposed vendor disqualifications; a form to document division review and approval of any other  
3 purchasing evaluations conducted by spending units; and a form to document review and approval  
4 of best value procurement procedures by a committee established by the division for that purpose.  
5 All forms developed pursuant to this subdivision shall require the signature and job titles of each  
6 individual reviewing or approving a purchasing procedure.

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

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

16 **§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state or its**  
17 **political subdivisions.**

18 (a) Unless the context clearly requires a different meaning, for the purposes of this section,  
19 the terms:

20 (1) "Debt" means any assessment, premium, penalty, fine, tax or other amount of money  
21 owed to the state or any of its political subdivisions because of a judgment, fine, permit violation,  
22 license assessment, amounts owed to the Workers' Compensation Funds as defined in article two-c,

1 chapter twenty-three of this code, penalty or other assessment or surcharge presently delinquent or  
2 due and required to be paid to the state or any of its political subdivisions, including any interest or  
3 additional penalties accrued thereon.

4 (2) "Debtor" means any individual, corporation, partnership, association, limited liability  
5 company or any other form or business association owing a debt to the state or any of its political  
6 subdivisions, and includes any person or entity that is in employer default.

7 (3) "Employer default" means having an outstanding balance or liability to the old fund or  
8 to the uninsured employers' fund or being in policy default, as defined in section two, article two-c,  
9 chapter twenty-three, of this code, failure to maintain mandatory workers' compensation coverage,  
10 or failure to fully meet its obligations as a workers' compensation self-insured employer. An  
11 employer is not in employer default if it has entered into a repayment agreement with the Insurance  
12 Commissioner and remains in compliance with the obligations under the repayment agreement.

13 (4) "Political subdivision" means any county commission; municipality; county board of  
14 education; any instrumentality established by a county or municipality; any separate corporation or  
15 instrumentality established by one or more counties or municipalities, as permitted by law; or any  
16 public body charged by law with the performance of a government function and whose jurisdiction  
17 is coextensive with one or more counties or municipalities.

18 (5) "Related party" means a party, whether an individual, corporation, partnership,  
19 association, limited liability company or any other form or business association or other entity  
20 whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party  
21 has a relationship of ownership or other interest with the vendor so that the party will actually or by  
22 effect receive or control a portion of the benefit, profit or other consideration from performance of

1 a vendor contract with the party receiving an amount that meets or exceeds five percent of the total  
2 contract amount.

3 (b) No contract or renewal of any contract may be awarded by the state or any of its political  
4 subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related  
5 party to the vendor or prospective vendor is a debtor and:

6 (1) The debt owed is an amount greater than \$1,000 in the aggregate; or

7 (2) The debtor is in employer default.

8 (c) The prohibition of this section does not apply where a vendor has contested any tax  
9 administered pursuant to chapter eleven of this code, amount owed to the Workers' Compensation  
10 Funds as defined in article two-c, chapter twenty-three of this code, permit fee or environmental fee  
11 or assessment and the matter has not become final or where the vendor has entered into a payment  
12 plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

13 (d) All bids, contract proposals or contracts with the state or any of its political subdivisions  
14 submitted or approved under the provisions of this code shall include a Statement of Good Standing,  
15 issued by the state Tax Department, as well as an affidavit that the vendor, prospective vendor or a  
16 related party to the vendor or prospective vendor is not in employer default and does not owe any  
17 debt in an amount in excess of \$1,000 or, if a debt is owed, that the provisions of subsection (c) of  
18 this section apply.

19 **§5A-3-14. Ongoing review of spending unit activity.**

20 (a) Short title -- This section, section fourteen-a of this article and the amendments made to  
21 other sections of this article by this act, shall collectively be known and may be cited as the  
22 "Purchasing Compliance and Improvement Act."

1           (b) The director shall monitor spending unit activity on a continuous basis, including through  
2 any electronic means available, to prevent the following activities:

3           (1) Knowingly structuring contracts or a series of contracts in order to avoid competitive  
4 bidding requirements of this article, in violation of section thirty-one of this article.

5           (2) Inappropriate use of exemptions from purchasing requirements, which includes:

6           (A) Asserting an exemption, previously issued by the director for a contract or type of  
7 contract that was determined not possible to submit for competitive bidding, in order to avoid  
8 complying with the requirements of this article when a change in circumstances has made it possible  
9 to submit a contract or type of contract for competitive bidding.

10          (B) Asserting an exemption, previously issued by the director for a particular contract or type  
11 of contract that was determined not possible to submit for competitive bidding, to avoid complying  
12 with the requirements of this article when entering into a different contract or type of contract from  
13 the one contemplated in the original exemption.

14          (C) Asserting an exemption to otherwise avoid complying with the requirements of this  
15 section in relation to a contract that is possible to submit for competitive bid.

16          (3) Contracts violating any provision of this code or the rules promulgated by the director.

17          (c) If the director finds that a spending unit is engaging an activity described in subsection  
18 (b) of this section, the director shall notify the spending unit of the prohibited activity and if  
19 necessary, issue a notice to cease and desist, pursuant to subdivision (11), section three of this article.

20 **§5A-3-14a. Approval of change orders.**

21          (a) "Change order" means any modification of a contract, previously entered into by a  
22 spending unit, that causes a ten percent or greater change in the amount that the contract obligates

1 the spending unit to pay.

2 (b) A spending unit may not enter into an agreement for a change order to an existing contract  
3 until the director has reviewed and approved the proposed change order and the Attorney General  
4 has reviewed and approved the proposed change order as to form as required by subdivision (9),  
5 section three of this article.

6 (c) A spending unit may not permit a vendor to perform a service or provide a good that the  
7 spending unit anticipates will be added to a contract through a change order until such time as the  
8 change order has been formally approved by the Director and the Attorney General's office.

9 **§5A-3-60. Annual purchasing training.**

10 (a) For the purposes of this section "purchasing staff" means any employee of a spending unit  
11 who conducts purchasing as a primary job function.

12 ~~(a)~~ (b) All executive department secretaries, commissioners, deputy commissioners, assistant  
13 commissioners, directors, deputy directors, assistant directors, department heads, deputy department  
14 heads, and assistant department heads are hereby required to take two hours of training on  
15 purchasing procedures and purchasing cards annually.

16 (c) All purchasing staff are hereby required to take ten hours of training on purchasing  
17 procedures and purchasing cards annually.

18 ~~(b)~~ (d) The Director of the Purchasing Division and the Auditor shall offer the two-hour  
19 training and the ten-hour training sessions required by this section at least two times per year and  
20 shall develop its substance in accordance with the requirements of this article and other relevant  
21 provisions of this code. The training shall be recorded by audio and visual means and shall be made  
22 available to the individuals listed in subsection ~~(a)~~ (b) and (c) of this section in the event they are



1 unable to attend the training in person.

2 ~~(e)~~ (e) All individuals listed in subsections ~~(a)~~(b) and (c) of this section shall certify, in  
3 writing and on a form developed by the Director of the Purchasing Division, the date, time, location  
4 and manner in which they took the training. Completed forms shall be returned to the director and  
5 maintained in his or her office.

6 (f) The director shall promulgate rules to require all spending units to annually report to the  
7 director the names of each purchasing staff member employed by the spending unit and the names  
8 of all purchasing-related training sessions attended by each purchasing staff member.

NOTE: The purpose of this bill, which shall be known and may be cited as the "Purchasing Compliance and Improvement Act," is to improve accountability in the state purchasing system by requiring the director to develop forms to officially document activities to monitor spending unit compliance; requiring vendors to provide the director with a statement of good standing for state taxes; requiring the director to conduct an ongoing review of spending unit activity; and requiring that all change orders on existing contracts be approved by the Director and the Attorney General before the effective date of the change order.

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

§5A-3-14 and §5A-3-14a are new; therefore, they have been completely underscored.