

Senate Bill No. 364

(By Senators M. Hall, Snyder, D. Hall, Plymale and Facemire)

[Introduced January 29, 2015;

referred to the Committee on Finance.]

A BILL to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, all relating to exempting the West Virginia State Police Forensic Laboratory from state purchasing guidelines.

Be it enacted by the Legislature of West Virginia:

That §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

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

1 (a) The Purchasing Division within the Department of Administration is continued. The
2 underlying purposes and policies of the Purchasing Division are:

3 (1) To establish centralized offices to provide purchasing and travel services to the various
4 state agencies;

5 (2) To simplify, clarify and modernize the law governing procurement by this state;

6 (3) To permit the continued development of procurement policies and practices;

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1 (4) To make as consistent as possible the procurement rules and practices among the various
2 spending units;

3 (5) To provide for increased public confidence in the procedures followed in public
4 procurement;

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

7 (7) To provide increased economy in procurement activities and to maximize to the fullest
8 extent practicable the purchasing value of public funds;

9 (8) To foster effective broad-based competition within the free enterprise system;

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

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

15 (b) The Director of the Purchasing Division shall, at the time 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 immediately preceding his or her
18 appointment employed in an executive capacity in purchasing for any unit of government or for any
19 business, commercial or industrial enterprise.

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

22 (d) The provisions of this article do not apply to the judicial branch, the West Virginia State

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1 Police Forensic Laboratory, the legislative branch, purchases of stock made by the Alcohol Beverage
2 Control Commissioner and purchases of textbooks for the State Board of Education.

3 (e) The provisions of this article apply to every expenditure of public funds by a spending
4 unit for commodities and services irrespective of the source of the funds.

5 **§5A-3-3. Powers and duties of Director of Purchasing.**

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

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

9 (2) Ensure that the purchase of or contract for commodities and services shall be based,
10 whenever possible, on competitive bid;

11 (3) Purchase or contract for, in the name of the state, the commodities, services and printing
12 required by the spending units of the state government;

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

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

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

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

22 (8) Suspend the right and privilege of a vendor to bid on state purchases when the director

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1 has evidence that such vendor has violated any of the provisions of the purchasing law or the rules
2 and regulations of the director;

3 (9) Examine the provisions and terms of every contract entered into for and on behalf of the
4 State of West Virginia that impose any obligation upon the state to pay any sums of money for
5 commodities or services and approve each such contract as to such provisions and terms; and the
6 duty of examination and approval herein set forth does not supersede the responsibility and duty of
7 the Attorney General to approve such contracts as to form: *Provided*, That the provisions of this
8 subdivision do not apply in any respect whatever to construction or repair contracts entered into by
9 the Division of Highways of the Department of Transportation: *Provided, however*, That the
10 provisions of this subdivision do not apply in any respect whatever to contracts entered into by the
11 University of West Virginia Board of Trustees or by the Board of Directors of the State College
12 System, except to the extent that such boards request the facilities and services of the director under
13 the provisions of this subdivision: *Provided further*, That the provisions of this subdivision do not
14 apply to the West Virginia State Police Forensic Laboratory;

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

22 (11) Issue a notice to cease and desist to a spending unit when the director has credible

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1 evidence that a spending unit has violated competitive bidding or other requirements established by
2 this article and the rules promulgated hereunder. Failure to abide by such notice may result in
3 penalties set forth in section seventeen of this article.

(NOTE: The purpose of this bill is to exempt the West Virginia State Police Forensic Laboratory from state purchasing guidelines.

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