

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4573**

BY DELEGATES A. EVANS, HAMILTON, KELLY AND

ZATEZALO, ROWAN, ROMINE

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL

PROTECTION

[Introduced February 16, 2016; Referred  
to the Committee on Government Organization then  
the Judiciary.]

1 A BILL to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to exempting the Department of Environmental Protection’s construction or reclamation  
 3 contracts from the review and approval requirements of the Division of Purchasing.

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

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

**ARTICLE 3. PURCHASING DIVISION.**

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

1 The director, under the direction and supervision of the secretary, ~~shall be~~ is the executive  
 2 officer of the Purchasing Division and ~~shall have~~ has the power and duty to:

- 3 (1) Direct the activities and employees of the Purchasing Division;
- 4 (2) Ensure that the purchase of or contract for commodities and services ~~shall be~~ are  
 5 based, whenever possible, on competitive bid;
- 6 (3) Purchase or contract for, in the name of the state, the commodities, services and  
 7 printing required by the spending units of the state government;
- 8 (4) Apply and enforce standard specifications established in accordance with section five  
 9 of this article as hereinafter provided;
- 10 (5) Transfer to or between spending units or sell commodities that are surplus, obsolete  
 11 or unused as hereinafter provided;
- 12 (6) Have charge of central storerooms for the supply of spending units, as the director  
 13 ~~deems~~ considers advisable;
- 14 (7) Establish and maintain a laboratory for the testing of commodities and make use of  
 15 existing facilities in state institutions for that purpose as hereinafter provided, as the director  
 16 ~~deems~~ considers advisable;
- 17 (8) Suspend the right and privilege of a vendor to bid on state purchases when the director  
 18 has evidence that ~~such~~ the vendor has violated any of the provisions of the purchasing law or the

19 rules ~~and regulations~~ of the director;

20 (9) Examine the provisions and terms of every contract entered into for and on behalf of  
21 the State of West Virginia that impose any obligation upon the state to pay any sums of money  
22 for commodities or services and approve ~~each such~~ the contract as to such provisions and terms;  
23 and the duty of examination and approval herein set forth does not supersede the responsibility  
24 and duty of the Attorney General to approve ~~such~~ the contracts as to form: *Provided*, That the  
25 provisions of this subdivision do not apply in any respect whatever to construction or repair  
26 contracts entered into by the Division of Highways of the Department of Transportation or to  
27 construction or reclamation contracts entered into by the Department of Environmental Protection:  
28 *Provided, however*, That the provisions of this subdivision do not apply in any respect whatever  
29 to contracts entered into by the University of West Virginia Board of Trustees or by the board of  
30 Directors of the state College System, except to the extent that such boards request the facilities  
31 and services of the director under the provisions of this subdivision: *Provided further*, That the  
32 provisions of this subdivision do not apply to the West Virginia State Police Forensic Laboratory  
33 and the West Virginia Office of Laboratory Services;

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

41 (11) Issue a notice to cease and desist to a spending unit when the director has credible  
42 evidence that a spending unit has violated competitive bidding or other requirements established  
43 by this article and the rules promulgated hereunder. Failure to abide by ~~such~~ the notice may result  
44 in penalties set forth in section seventeen of this article.

NOTE: The purpose of this bill is to exempt the Department of Environmental Protection's construction and reclamation contracts from the requirement of review and approval by the Division of Purchasing.

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