

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2161**

BY DELEGATES STATLER AND ROHRBACH

[ Introduced February 8, 2017; Referred  
to the Committee on Government Organization then  
Finance.]

1 A BILL to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section, designated §12-3-10h, all relating to  
 3 purchasing requirements for the Division of Highways; permitting the Division of Highways  
 4 to make purchases of up to \$100,000 without engaging in competitive bidding and  
 5 prohibiting the Division of Highways from requiring purchasing card users in district offices  
 6 to secure bids for purchases under a certain amount.

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

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

## **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

### **ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops.**

1 (a) A purchase of and contract for commodities, printing and services shall be based,  
 2 whenever possible, on competitive bids.

3 (b) The director shall solicit sealed bids for the purchase of commodities and printing which  
 4 is estimated to exceed \$25,000: Provided, That the requirements of this subsection do not apply  
 5 to the Division of Highways purchases. No spending unit shall issue a series of requisitions or  
 6 divide or plan procurements to circumvent this \$25,000 threshold or otherwise avoid the use of  
 7 sealed bids. Any spending unit which awards multiple contracts for the same or similar commodity  
 8 or service to an individual vendor over any twelve-month period, the total value of which exceeds  
 9 \$25,000, shall file copies of all contracts awarded to the vendor within the twelve preceding  
 10 months with the director immediately upon exceeding the \$25,000 limit, along with a statement

11 explaining how the multiple contract awards do not circumvent the \$25,000 threshold. If the  
12 spending unit does not immediately report to the director, the director may suspend the  
13 purchasing authority of the spending unit until the spending unit complies with the reporting  
14 requirement of this subsection. The director may conduct a review of any spending unit to ensure  
15 compliance with this subsection. Following a review, the director shall complete a report  
16 summarizing his or her findings and forward the report to the spending unit. In addition, the  
17 director shall report to the Joint Committee on Government and Finance on January 1, and July  
18 of each year the spending units which have reported under this subsection and the findings of the  
19 director.

20 (c) The director may permit bids by electronic transmission to be accepted in lieu of sealed  
21 bids.

22 (d) Bids shall be solicited by public notice. The notice may be published by any advertising  
23 medium the director deems advisable. The director may also solicit sealed bids by sending  
24 requests by mail or electronic transmission to prospective vendors.

25 (e) The director shall, without competitive bidding, purchase commodities and services  
26 produced and offered for sale by nonprofit workshops, as defined in section one, article one of  
27 this chapter, which are located in this state: *Provided*, That such commodities and services shall  
28 be of a fair market price and of like quality comparable to other commodities and services  
29 otherwise available as determined by the director with the advice of the committee on the  
30 purchase of commodities and services from the handicapped.

31 To encourage contracts for commodities and services with nonprofit workshops, the  
32 director shall employ a person whose responsibilities in addition to other duties shall be to identify  
33 all commodities and services available for purchase from nonprofit workshops, to evaluate the  
34 need of the state for commodities and services to coordinate the various nonprofit workshops in  
35 their production efforts and to make available to such workshops information about available  
36 opportunities within state government for purchase of commodities or services which might be

37 produced and sold by such workshops. Funds to employ such a person shall be included annually  
38 in the budget.

39 (f) The director shall solicit sealed bids for any purchase of commodities and printing by  
40 the Division of Highways which is estimated to exceed \$100,000. The Division of Highways may  
41 not issue a series of requisitions or divide or plan procurements to circumvent the \$100,000  
42 threshold or otherwise avoid the use of sealed bids. If the Division of Highways awards multiple  
43 contracts for the same or similar commodity or service to an individual vendor over any twelve-  
44 month period, the total value of which exceeds \$100,000, the Commissioner of Highways shall  
45 file copies of all contracts awarded to the vendor within the twelve preceding months with the  
46 director immediately upon exceeding the \$100,000 limit, along with a statement explaining how  
47 the multiple contract awards do not circumvent the \$100,000 threshold. If the Division of  
48 Highways does not immediately report to the director, the director may suspend the purchasing  
49 authority of the Division of Highways until the Division of Highways complies with the reporting  
50 requirement of this subsection. The director may conduct a review of the Division of Highways to  
51 ensure compliance with this subsection. Following a review, the director shall complete a report  
52 summarizing his or her findings and forward the report to the Division of Highways. In addition,  
53 the director shall report to the Joint Committee on Government and Finance on January 1 and  
54 July 1 of each year whether the Division of Highways has reported under this subsection and the  
55 findings of the director.

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

#### **§12-3-10h. Purchasing card requirements for district offices of the Division of Highways.**

1 (a) Definitions. -- For the purposes of this section "district" means one of the ten road  
2 maintenance districts established by the West Virginia Division of Highways.

3 (b) Findings.-- According to an independent audit report submitted to the Joint Committee

4 on Government and Finance on January 10, 2016:

5 (1) Certain requirements for Division of Highways purchasing card transactions at the  
6 district-level are outdated, as the cost of materials and equipment have increased since the last  
7 purchasing manual update;

8 (2) Processing purchase orders through Division of Highways headquarters can be time  
9 consuming; and

10 (3) An increase in thresholds for purchasing card transaction requirements can expedite  
11 the processing duration for purchasing orders.

12 (c) Purchasing card requirements for district offices.--

13 (1) Notwithstanding any other provision of this code or legislative rule to the contrary, the  
14 Division of Highways may not require an authorized purchasing card user for a district office to  
15 secure verbal bids before using a purchasing card to make a purchase that is less than \$10,000.

16 (2) Notwithstanding any other provision of this code or legislative rule to the contrary, the  
17 Division of Highways may not require an authorized purchasing card user for a district office to  
18 secure written bids before using a purchasing card to make a purchase that is less than \$25,000.

NOTE: The purpose of this bill is to increase the threshold cost of purchases which the Division of Highways may make without engaging in competitive bidding from \$25,000 to \$100,000 and to prohibit the Division of Highways from requiring purchasing card users in district offices to secure bids for purchases under a certain amount.

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