

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Originating**

## **Senate Bill 686**

BY SENATORS HALL, BOLEY, BLAIR, BOSO, FERNS,  
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[Originating in the Committee on Finance; Reported  
on March 24, 2017]



1 A BILL to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as  
2 amended, all relating to facilities providing direct patient care services that are managed,  
3 directed, controlled and governed by the Secretary of the Department of Health and  
4 Human Resources; exempting such facilities from statewide purchasing requirements and  
5 from the otherwise required oversight and review by the Purchasing Division of the  
6 Department of Administration; and requiring the Legislative Auditor to audit purchasing  
7 made by facilities and report the findings to the Joint Committee on Government and  
8 Finance.

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

1 That §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended  
2 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;

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

9 (5) To provide for increased public confidence in the procedures followed in public  
10 procurement;

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

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

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

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

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

21 (b) The Director of the Purchasing Division shall, at the time of appointment:

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

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

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

28 (d) (1)The provisions of this article do not apply to the judicial branch, the West Virginia  
29 State Police Forensics Laboratory, the West Virginia Office of Laboratory Services, the legislative  
30 branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to  
31 purchases of textbooks, instructional materials, digital content resources, instructional  
32 technology, hardware, software, telecommunications and technical services by the State Board  
33 of Education for use in and in support of the public schools.

34 (2) The provisions of this article do not apply to facilities providing direct patient care  
35 services that are managed, directed, controlled and governed by the Secretary of the Department  
36 of Health and Human Resources: *Provided*, That on or before July 1, 2020, the Legislative Auditor  
37 shall audit the purchasing procedures of the facilities described in this subdivision and report the  
38 results to the Joint Committee on Government and Finance on the effects of exempting said

39 facilities from the provisions of this article, including but not limited to, any realized cost savings  
40 and changes in purchasing policies resulting from such exemption.

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

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

1 The director, under the direction and supervision of the secretary, is the executive officer  
2 of the Purchasing Division and 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 are based,  
5 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 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 considers advisable;
- 17 (8) Suspend the right and privilege of a vendor to bid on state purchases when the director  
18 has evidence that the vendor has violated any of the provisions of the purchasing law or the rules  
19 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 the contract as to such provisions and terms; and the  
23 duty of examination and approval herein set forth does not supersede the responsibility and duty  
24 of the Attorney General to approve the contracts as to form: *Provided*, That the provisions of this  
25 subdivision do not apply in any respect whatever to construction or repair contracts entered into  
26 by the Division of Highways of the Department of Transportation or to construction or reclamation  
27 contracts entered into by the Department of Environmental Protection: *Provided, however*, That  
28 the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into  
29 by the University of West Virginia Board of Trustees or by the Board of Directors of the State  
30 College System, except to the extent that such boards request the facilities and services of the  
31 director under the provisions of this subdivision: *Provided further*, That the provisions of this  
32 subdivision do not apply to the West Virginia State Police Forensic Laboratory, facilities providing  
33 direct patient care services that are managed, directed, controlled and governed by the Secretary  
34 of the Department of Health and Human Resources and the West Virginia Office of Laboratory  
35 Services;

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

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

NOTE: The purpose of this bill is to exempt facilities providing direct patient care that are managed, directed, controlled and governed by the Secretary of the Department of Health and Human Resources. from the otherwise required oversight and review by the Purchasing Division of the Department of Administration and to require the Legislative Auditor to audit purchasing made by such facilities and report the findings to the Joint Committee on Government and Finance.

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