

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2772

BY DELEGATE JENNINGS

[Introduced February 26, 2021; Referred to the
Committee on Government Organization then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §5A-3-62, relating generally to transferring the duties of the Purchasing
 3 Division to the State Auditor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

**§5A-3-62. Transfer of certain powers and duties of Tax Commissioner to State Auditor;
 rules; interagency agreement; report to Legislature.**

1 (a) Effective July 1, 2022, the State Auditor shall be the director of the purchasing division
 2 created under this article.

3 The State Auditor shall assume and perform those duties previously vested in the director
 4 of the purchasing division under this article and any section of this code relating to the purchasing
 5 division, which sections are identified in subsection (d) of this section, pertaining to:

6 (1) Directing the activities and employees of the Purchasing Division;

7 (2) Ensuring that the purchase of or contract for commodities and services are based,
 8 whenever possible, on competitive bid;

9 (3) Purchasing or contracting for, in the name of the state, the commodities, services, and
 10 printing required by the spending units of the state government;

11 (4) Applying and enforcing standard specifications established in accordance with §5A-3-
 12 5 of this code as hereinafter provided;

13 (5) Transferring to or between spending units or sell commodities that are surplus,
 14 obsolete, or unused as hereinafter provided;

15 (6) Having charge of central storerooms for the supply of spending units as the director
 16 considers advisable;

17 (7) Establishing and maintaining a laboratory for the testing of commodities and make use
 18 of existing facilities in state institutions for that purpose as hereinafter provided as the director
 19 considers advisable;

20 (8) Suspending the right and privilege of a vendor to bid on state purchases when the
21 director has evidence that the vendor has violated any of the provisions of the purchasing law or
22 the rules and regulations of the director;

23 (9) Examining the provisions and terms of every contract entered into for and on behalf of
24 the State of West Virginia that impose any obligation upon the state to pay any sums of money
25 for commodities or services and approve the contract as to such provisions and terms; and the
26 duty of examination and approval herein set forth does not supersede the responsibility and duty
27 of the Attorney General to approve the contracts as to form.

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

35 (11) Issuing a notice to cease and desist to a spending unit when the director has credible
36 evidence that a spending unit has violated competitive bidding or other requirements established
37 by this article and the rules promulgated hereunder. Failure to abide by the notice may result in
38 penalties set forth in §5A-3-17 of this code.

39 (b) Effective July 1, 2022, all records, property of whatever kind and character, including,
40 but not limited to, current office space occupied by the purchasing division, all personnel in
41 positions assigned to the purchasing division and the funds established in sections nine, sixteen,
42 fifty-two and fifty-eight of this article shall be transferred to the State Auditor.

43 (c) The State Auditor shall propose rules for legislative approval in accordance with the
44 provisions of §29A-3-1 et seq. of this code to implement the provisions of this section and any
45 section of this code relating to the Purchasing Division.

46 (d) Notwithstanding any provision of this code to the contrary, after June 30, 2022,
47 whenever the words “Purchasing Division” or “Director” as it relates to the Purchasing Division
48 appear in this code, these words shall mean the “State Auditor in his or her capacity as the director
49 of purchasing for the State of West Virginia”.

50 (e) On or before July 1, 2022, the State Auditor and the Director of the Purchasing Division
51 shall file with the Governor, the President of the Senate and the Speaker of the House of
52 Delegates, an interagency agreement clarifying transition procedures and respective powers of
53 the Auditor and Purchasing Division. A copy of the interagency agreement shall be filed with the
54 Secretary of State, and shall be a public record.

55 (f) On or before December 1, 2021, the State Auditor and the Director of the Purchasing
56 Division shall jointly report to the Legislature as to any conflicts in this code created by the
57 enactment of this section for which legislation is recommended for enactment during the 2021
58 Regular Session.

NOTE: The purpose of this bill is to transfer the Purchasing Division from the Department of Administration to the elected State Auditor.

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