

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 474**

BY SENATORS CLEMENTS, SWOPE, STOLLINGS,

ROBERTS, ROMANO, AND PLYMALE

[Originating in the Committee on Transportation and

Infrastructure; reported on March 24, 2021]



1 A BILL to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating  
2 to expanding the authority of the Division of Highways to utilize its own purchasing and  
3 contracting system and expanding the exemption from requirements of the Purchasing  
4 Division within the Department of Administration.

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

**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, 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 §5A-3-5 of  
9 this code 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 that include  
26 equipment, supplies, materials, or labor, or all or a combination of the same, and are entered into  
27 by the Division of Highways of the Department of Transportation or to construction or reclamation  
28 contracts entered into by the Department of Environmental Protection: *Provided, however*, That  
29 the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into  
30 by the University of West Virginia Board of Trustees or by the board of directors of the state  
31 college system, except to the extent that such boards request the facilities and services of the  
32 director under the provisions of this subdivision: *Provided further*, That the provisions of this  
33 subdivision do not apply to the West Virginia State Police and the West Virginia Office of  
34 Laboratory Services: *And provided further*, That the provisions of this subdivision shall not apply  
35 to contracts for any natural disaster recovery activities entered into by the West Virginia State  
36 Conservation Committee or the West Virginia Conservation Agency;

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

44           (11) Issue a notice to cease and desist to a spending unit when the director has credible  
45 evidence that a spending unit has violated competitive bidding or other requirements established

46 by this article and the rules promulgated hereunder. Failure to abide by the notice may result in  
47 penalties set forth in §5A-3-17 of this code.