

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 240**

5 (By Senators Kessler (Acting President) and Hall,  
6 By Request of the Executive)

7 \_\_\_\_\_  
8 [Originating in the Committee on Government Organization;  
9 reported February 23, 2011.]  
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12 A BILL to amend and reenact §5A-3-10 of the Code of West Virginia,  
13 1931, as amended, relating to purchasing practices;  
14 prohibiting the director from approving certain purchases;  
15 authorizing use of reverse auctions in certain circumstances;  
16 defining "reverse auction"; permitting the use of third-party  
17 vendors for reverse auctions; and providing rule-making and  
18 emergency rule-making authority to implement reverse auctions.

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

20 That §5A-3-10 of the Code of West Virginia, 1931, as amended,  
21 be amended and reenacted to read as follows:

22 **ARTICLE 3. PURCHASING DIVISION.**

23 **§5A-3-10. Competitive bids; publication of solicitations for**  
24 **sealed bids; purchase of products of nonprofit**

1                   **workshops; employee to assist in dealings with**  
2                   **nonprofit workshops.**

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

5           (b) The director shall solicit sealed bids for the purchase of  
6 commodities and printing which is estimated to exceed \$25,000. No  
7 spending unit shall issue a series of requisitions or divide or  
8 plan procurements to circumvent this \$25,000 threshold or otherwise  
9 avoid the use of sealed bids. Any spending unit which awards  
10 multiple contracts for the same or similar commodity or service to  
11 an individual vendor over any twelve-month period, the total value  
12 of which exceeds \$25,000, shall file copies of all contracts  
13 awarded to the vendor within the twelve preceding months with the  
14 director immediately upon exceeding the \$25,000 limit, along with  
15 a statement explaining how the multiple contract awards do not  
16 circumvent the \$25,000 threshold. If the spending unit does not  
17 immediately report to the director, the director may suspend the  
18 purchasing authority of the spending unit until the spending unit  
19 complies with the reporting requirement of this subsection. The  
20 director may conduct a review of any spending unit to ensure  
21 compliance with this subsection. Following a review, the director  
22 shall complete a report summarizing his or her findings and forward  
23 the report to the spending unit. In addition, the director shall  
24 report to the Joint Committee on Government and Finance on January

1 1 and July 1 of each year the spending units which have reported  
2 under this subsection and the findings of the director. The  
3 director may not approve purchases made in violation of this  
4 section.

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

7 (d) Notwithstanding any other provision of law, the director  
8 may permit the use of a reverse auction to purchase supplies,  
9 material or equipment if the director determines that the use of a  
10 reverse auction would be advantageous to the state: *Provided, That*  
11 the director may not use reverse auctions for the procurement of  
12 services, construction services, expressions of interest, or any  
13 other professional or business service not directly related to the  
14 commodity being purchased.

15 (1) For purposes of this subsection, "reverse auction" means  
16 a process in which bidders compete in an open and interactive  
17 environment, including the use of electronic media. The bids are  
18 opened and made public immediately, bidders are given an  
19 opportunity to submit revised bids until the bidding process is  
20 complete and the bid is awarded to the lowest responsible bidder.

21 (2) The director may contract with qualified, industry-  
22 recognized third-party vendors to conduct reverse auctions on  
23 behalf of the director.

24 (3) The director shall propose rules for legislative approval

1 in accordance with the provisions of article three, chapter twenty-  
2 nine-a of this code, for the implementation of the reverse auction  
3 process and the qualification and selection of qualified, industry-  
4 recognized third-party vendors to conduct reverse auctions on  
5 behalf of the director. The director is also authorized to propose  
6 emergency rules to implement the provisions of this subsection.

7 ~~(d)~~ (e) Bids shall be solicited by public notice. The notice  
8 may be published by any advertising medium the director deems  
9 advisable. The director may also solicit sealed bids by sending  
10 requests by mail or electronic transmission to prospective vendors.

11 ~~(e)~~ (f) The director shall, without competitive bidding,  
12 purchase commodities and services produced and offered for sale by  
13 nonprofit workshops, as defined in section one, article one of this  
14 chapter, which are located in this state: *Provided*, That such  
15 commodities and services shall be of a fair market price and of  
16 like quality comparable to other commodities and services otherwise  
17 available as determined by the director with the advice of the  
18 committee on the purchase of commodities and services from the  
19 handicapped.

20 (g) To encourage contracts for commodities and services with  
21 nonprofit workshops, the director shall employ a person whose  
22 responsibilities, in addition to other duties, ~~shall be~~ are to  
23 identify all commodities and services available for purchase from  
24 nonprofit workshops, to evaluate the need of the state for

1 commodities and services to coordinate the various nonprofit  
2 workshops in their production efforts and to make available to such  
3 workshops information about available opportunities within state  
4 government for purchase of commodities or services which might be  
5 produced and sold by such workshops. Funds to employ such a person  
6 shall be included annually in the budget.