

**H. B. 2759**

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)  
[By Request of the Executive]  
[Introduced January 24, 2011; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended, relating to purchasing practices generally; providing that the purchasing division director may not approve certain purchases; providing that reverse auctions may be used to purchase only commodities; defining the reverse auction process; permitting the use of third-party vendors for reverse auctions; providing purchasing division director with rule-making and emergency rule-making authority to implement reverse auctions; and providing technical clean-up.

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

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

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-10. Competitive bids; publication of solicitations for 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 commodities if  
9 the director determines that the use of a reverse auction would be  
10 advantageous to the state. The director may not, however, use  
11 reverse auctions for the procurement of services.

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

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

22 (3) The director shall propose rules for legislative approval  
23 in accordance with the provisions of article three, chapter twenty-  
24 nine-a of this code for the implementation of the reverse auction

1 process and the qualification and selection of qualified, industry-  
2 recognized third-party vendors to conduct reverse auctions on  
3 behalf of the director. The director is also authorized to propose  
4 emergency rules to implement the provisions of this subsection.

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

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

18 To encourage contracts for commodities and services with  
19 nonprofit workshops, the director shall employ a person whose  
20 responsibilities in addition to other duties ~~shall be~~ are to  
21 identify all commodities and services available for purchase from  
22 nonprofit workshops, to evaluate the need of the state for  
23 commodities and services to coordinate the various nonprofit  
24 workshops in their production efforts and to make available to such

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

NOTE: The purpose of this bill is to allow the Director of the Purchasing Division to conduct reverse auctions to purchase commodities.

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