

H. B. 4185

(By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

[By Request of the Executive]

[Introduced January 15, 2014; referred to the
Committee on Government Organization then the Judiciary.]

1
2
3
4
5
6
7
8
9
10 A BILL to amend and reenact §5A-1-1 of the Code of West Virginia,
11 1931, as amended; to amend said code by adding thereto a new
12 section, designated §5A-1-10; to amend and reenact §5A-3-1,
13 §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-
14 3-30 and §5A-3-31 of said code; and to amend said code by
15 adding thereto three new sections, designated §5A-3-10d, §5A-
16 3-10e and §5A-3-60, all relating generally to purchasing;
17 revising the definition of "commodities"; eliminating the
18 definition of "contractual services"; defining "contract,"
19 "grant," "procurement," "public funds," and "services";
20 revising the definition of "vendor"; requiring state spending
21 units to purchase commodities and services on a competitive
22 basis; authorizing the secretary of the Department of
23 Administration to issue a notice to cease and desist when
24 purchases are not made on a competitive basis; clarifying the

1 purposes and policies of the Purchasing Division; clarifying
2 the applicability of the article; clarifying that procurements
3 must include adequate specifications and descriptions;
4 authorizing the director of purchasing to issue a notice to
5 cease and desist when purchases are not made on a competitive
6 basis; adding the term "services" to where "commodities" is
7 referenced throughout the code; removing reference to
8 "contractual services"; authorizing reverse auctions for
9 purchasing commodities; defining "reverse auction"; permitting
10 third-party vendors to administer reverse auctions; affording
11 the director of the Purchasing Division rule-making authority
12 to implement reverse auctions; authorizing prequalification
13 agreements and the secondary bid process for the direct
14 procurement of certain commodities; defining "information
15 technology," "state," "prequalification agreement,"
16 "prequalified vendor," and the "secondary bid process";
17 requiring approval of the director of the Purchasing Division
18 for prequalification agreements, secondary bid process
19 commodities procurements anticipated to cost in excess of
20 \$50,000 and information technology procurements anticipated to
21 cost in excess of \$1,000,000; affording the director of the
22 Purchasing Division rule-making authority to establish
23 procedures regarding prequalification agreements,
24 prequalification, the secondary bid process, and related

1 matters; clarifying circumstances in which grants are exempt
2 from competitive bidding requirements; imposing personal
3 liability upon spending officers and other responsible
4 individuals who have knowingly and willfully violated
5 competitive bidding requirements; expanding criminal penalties
6 for undermining competition; requiring certain executive
7 department officials to attend annual training on purchasing
8 procedures; and making technical corrections.

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

10 That §5A-1-1 of the Code of West Virginia, 1931, as amended,
11 be amended and reenacted; that said code be amended by adding
12 thereto a new section, designated §5A-1-10; that §5A-3-1, §5A-3-3,
13 §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-
14 31 of said code be amended and reenacted; and that said code be
15 amended by adding thereto three new sections, designated §5A-3-10d,
16 §5A-3-10e and §5A-3-60, all to read as follows:

17 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

18 **§5A-1-1. Definitions.**

19 For the purpose of this chapter:

20 (1) "Commodities" means supplies, material, equipment,
21 ~~contractual services~~, and any other articles or things used by or
22 furnished to a department, agency or institution of state
23 government.

24 ~~(2) "Contractual services" means telephone, telegraph,~~

1 ~~electric light and power, water and similar services.~~

2 (2) "Contract" means an agreement between a state spending
3 unit and a vendor relating to the procurement of commodities or
4 services, or both.

5 (3) "Debarment" means the exclusion of a vendor from the right
6 to bid on contracts to sell goods or supply services to the state
7 or its subdivisions for a specified period of time.

8 (4) "Director" means the director of the division referred to
9 in the heading of the article in which the word appears.

10 (5) "Electronic" means electrical, digital, magnetic, optical,
11 electromagnetic, or any other similar technology.

12 (6) "Electronic transmission" or "electronically transmitted"
13 means any process of communication not directly involving the
14 physical transfer of paper that is suitable for the retention,
15 retrieval and reproduction of information by the recipient.

16 (7) "Expendable commodities" means those commodities which,
17 when used in the ordinary course of business, will become consumed
18 or of no market value within the period of one year or less.

19 (8) "Grant" means the furnishing of assistance (financial or
20 otherwise) to any person or entity to support a program authorized
21 by law.

22 ~~(8)~~ (9) "Nonprofit workshops" means an establishment: (a)
23 Where any manufacture or handiwork is carried on; (b) which is
24 operated either by a public agency or by a cooperative or by a

1 nonprofit private corporation or nonprofit association, in which no
2 part of the net earnings thereof inures, or may lawfully inure, to
3 the benefit of any private shareholder or individual; (c) which is
4 operated for the primary purpose of providing remunerative
5 employment to blind or severely disabled persons who cannot be
6 absorbed into the competitive labor market; and (d) which shall be
7 approved, as evidenced by a certificate of approval, by the state
8 Board of Vocational Education, Division of Vocational
9 Rehabilitation.

10 ~~(9)~~ (10) "Printing" means printing, binding, ruling,
11 lithographing, engraving and other similar services.

12 (11) "Procurement" means the buying, purchasing, renting,
13 leasing or otherwise obtaining of commodities or services.

14 (12) "Public funds" means funds of any character, including
15 federal moneys, belonging to or in the custody of any state
16 spending unit.

17 ~~(10)~~ (13) "Record" means information that is inscribed on a
18 read-only tangible medium or that is stored in an electronic or
19 other medium and is retrievable in perceivable form.

20 ~~(11)~~ (14) "Removable property" means any personal property not
21 permanently affixed to or forming a part of real estate.

22 ~~(12)~~ (15) "Request for quotations" means a solicitation for a
23 bid where cost is the primary factor in determining the award.

24 ~~(13)~~ (16) "Responsible bidder" means a vendor who has the

1 capability to fully perform the contract requirements, and the
2 integrity and reliability which will assure good faith performance.

3 ~~(14)~~ (17) "Responsive bidder" means a vendor who has submitted
4 a bid which conforms in all material respects to the bid
5 solicitation.

6 ~~(15)~~ (18) "Secretary" means the Secretary of Administration.

7 (19) "Services" means the furnishing of labor, time, expertise
8 or effort by a contractor, not involving the delivery of a specific
9 end commodity or product, other than one that may be incidental to
10 the required performance.

11 ~~(16)~~ (20) "Spending officer" means the executive head of a
12 spending unit, or a person designated by him or her.

13 ~~(17)~~ (21) "Spending unit" means a department, agency or
14 institution of the state government for which an appropriation is
15 requested, or to which an appropriation is made by the Legislature.

16 ~~(18)~~ (22) "The state and its subdivisions" means the State of
17 West Virginia, every political subdivision thereof, every
18 administrative entity that includes such a subdivision, all
19 municipalities and all county boards of education.

20 ~~(19)~~ (23) "Vendor" means any person or entity that may,
21 through contract or expression of interest, ~~is registered with the~~
22 ~~Purchasing Division to~~ supply the state or its subdivisions with
23 commodities or services and lessors of real property.

24 **§5A-1-10. General procurement provisions for the state and its**

1 subdivisions, and spending units.

2 (a) Unless this code specifically provides to the contrary,
3 purchases for commodities and services by spending units shall be
4 based, whenever possible, on a competitive process.

5 (b) The secretary shall issue a notice to cease and desist to
6 any spending unit when the secretary has credible evidence that a
7 spending unit has failed, where possible, to purchase commodities
8 and services on a competitive basis.

9 **ARTICLE 3. PURCHASING DIVISION.**

10 **§5A-3-1. Division created; purpose; director; applicability of**
11 **article; continuation.**

12 (a) The Purchasing Division within the Department of
13 Administration is continued. ~~for the purpose of establishing~~
14 ~~centralized offices to provide purchasing, and travel services to~~
15 ~~the various state agencies.~~ The underlying purposes and policies
16 of the Purchasing Division are:

17 (1) To establish centralized offices to provide purchasing and
18 travel services to the various state agencies;

19 (2) To simplify, clarify, and modernize the law governing
20 procurement by this state;

21 (3) To permit the continued development of procurement
22 policies and practices;

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

1 (5) To provide for increased public confidence in the
2 procedures followed in public procurement;

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

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

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

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

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

16 (b) The director of the Purchasing Division shall, at the time
17 of appointment:

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

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

23 (c) The provisions of this article apply to all of the
24 spending units of state government, except as otherwise provided by

1 this article or by law.

2 (d) The provisions of this article do not apply to the
3 judicial branch, the legislative branch, to purchases of stock made
4 by the Alcohol Beverage Control Commissioner, and to purchases of
5 textbooks for the State Board of Education.

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

9 **§5A-3-3. Powers and duties of director of purchasing.**

10 The director, under the direction and supervision of the
11 secretary, shall be the executive officer of the Purchasing
12 Division and shall have the power and duty to:

13 (1) Direct the activities and employees of the Purchasing
14 Division;

15 (2) Ensure that the purchase of or contract for commodities
16 and services shall be based, whenever possible, on competitive bid;

17 (3) ~~Purchasing~~ Purchase or contract for, in the name of the
18 state, the commodities, services and printing required by the
19 spending units of the state government;

20 (4) Apply and enforce standard specifications established in
21 accordance with section five of this article as hereinafter
22 provided;

23 (5) Transfer to or between spending units or sell commodities
24 that are surplus, obsolete or unused as hereinafter provided;

1 (6) Have charge of central storerooms for the supply of
2 spending units, as the director deems advisable;

3 (7) Establish and maintain a laboratory for the testing of
4 commodities and make use of existing facilities in state
5 institutions for that purpose as hereinafter provided, as the
6 director deems advisable;

7 (8) Suspend the right and privilege of a vendor to bid on
8 state purchases when the director has evidence that such vendor has
9 violated any of the provisions of the purchasing law or the rules
10 and regulations of the director;

11 (9) Examine the provisions and terms of every contract entered
12 into for and on behalf of the State of West Virginia that impose
13 any obligation upon the state to pay any sums of money for
14 commodities or services and approve each such contract as to such
15 provisions and terms; and the duty of examination and approval
16 herein set forth does not supersede the responsibility and duty of
17 the Attorney General to approve such contracts as to form:
18 *Provided*, That the provisions of this subdivision do not apply in
19 any respect whatever to construction or repair contracts entered
20 into by the Division of Highways of the Department of
21 Transportation: *Provided, however*, That the provisions of this
22 subdivision do not apply in any respect whatever to contracts
23 entered into by the University of West Virginia Board of Trustees
24 or by the board of Directors of the state College System, except to

1 the extent that such boards request the facilities and services of
2 the director under the provisions of this subdivision; ~~and~~

3 (10) Assure that the specifications and ~~commodity~~ descriptions
4 in all ~~"requests for quotations"~~ procurements are prepared so as to
5 ~~permit~~ provide all potential suppliers-vendors who can meet the
6 requirements of the state an opportunity to bid and to assure that
7 the specifications and descriptions do not favor a particular brand
8 or vendor. If the director determines that any such specifications
9 or descriptions as written favor a particular brand or vendor or if
10 it is decided, either before or after the bids are opened, that a
11 commodity or service having different specifications or quality or
12 in different quantity can be bought, the director may rewrite the
13 ~~"requests for quotations"~~ request at issue and the matter shall be
14 rebid; and

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

21 **§5A-3-4. Rules of director.**

22 (a) 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 to:

1 (1) Authorize a spending unit to purchase specified
2 commodities and services directly and prescribe the manner in which
3 such purchases shall be made;

4 (2) Authorize, in writing, a spending unit to purchase
5 commodities and services in the open market for immediate delivery
6 in emergencies, ~~defines~~ define emergencies and prescribe the manner
7 in which such purchases shall be made and reported to the director;

8 (3) Prescribe the manner in which commodities and services
9 shall be purchased, delivered, stored and distributed;

10 (4) Prescribe the time for making requisitions and estimates
11 of commodities and services, the future period which they are to
12 cover, the form in which they shall be submitted and the manner of
13 their authentication;

14 (5) Prescribe the manner of inspecting all deliveries of
15 commodities, and making chemical and physical tests of samples
16 submitted with bids and samples of deliveries to determine
17 compliance with specifications;

18 (6) Prescribe the amount and type of deposit or bond to be
19 submitted with a bid or contract and the amount of deposit or bond
20 to be given for the faithful performance of a contract;

21 (7) Prescribe a system whereby the director shall be required,
22 upon the payment by a vendor of an annual fee established by the
23 director, to give notice to such vendor of all bid solicitations
24 for commodities and services of the type with respect to which such

1 vendor specified notice was to be given, but no such fee shall
2 exceed the cost of giving the notice to such vendor, nor shall such
3 fee exceed the sum of \$125 per fiscal year nor shall such fee be
4 charged to persons seeking only reimbursement from a spending unit;

5 (8) Prescribe that each state contract entered into by the
6 Purchasing Division shall contain provisions for liquidated
7 damages, remedies or provisions for the determination of the amount
8 or amounts which the vendor shall owe as damages, in the event of
9 default under such contract by such vendor, as determined by the
10 director;

11 (9) Prescribe contract management procedures for all state
12 contracts except government construction contracts including, but
13 not limited to, those set forth in article twenty-two, chapter five
14 of this code;

15 (10) Prescribe procedures by which oversight is provided to
16 actively monitor spending unit purchases, including, but not
17 limited to, all technology and software commodities and ~~contractual~~
18 services exceeding \$1 million, approval of change orders and final
19 acceptance by the spending units;

20 (11) Prescribe that each state contract entered into by the
21 Purchasing Division contain provisions for the cancellation of the
22 contract upon thirty days' notice to the vendor;

23 (12) Prescribe procedures for selling surplus commodities to
24 the highest bidder by means of an Internet auction site;

1 (13) Provide such other matters as may be necessary to give
2 effect to the foregoing rules and the provisions of this article;
3 and

4 (14) Prescribe procedures for encumbering purchase orders to
5 ensure that the proper account may be encumbered before sending
6 purchase orders to vendors.

7 (b) The director shall propose rules for legislative approval
8 in accordance with the provisions of article three, chapter twenty-
9 nine-a of this code to prescribe qualifications to be met by any
10 person who is to be employed in the Purchasing Division as a state
11 buyer. The rules must provide that a person may not be employed as
12 a state buyer unless he or she at the time of employment either is:

13 (1) A graduate of an accredited college or university; or

14 (2) Has at least four years' experience in purchasing for any
15 unit of government or for any business, commercial or industrial
16 enterprise.

17 Persons serving as state buyers are subject to the provisions
18 of article six, chapter twenty-nine of this code.

19 **§5A-3-5. Purchasing section standard specifications -**
20 **Promulgation and adoption by director; applicable to**
21 **all purchases.**

22 The director shall promulgate and adopt standard
23 specifications based on scientific and technical data for
24 appropriate commodities and services, which shall establish the

1 quality to which commodities to be purchased and services to be
2 contracted for by the state must conform. Standard specifications
3 shall apply to every future purchase of or contract for the
4 commodities or services described in the specifications and shall
5 include information relating to the cost of maintenance and
6 expected life of the commodity if the director determines there are
7 nationally accepted industry standards for the commodity. No
8 purchases by any spending unit may be exempt from compliance with
9 the standard specifications so established, but the director may
10 exempt the purchase of particular items from the standard
11 specifications if it is considered necessary and advisable. The
12 director shall update the standard specifications, as necessary.

13 **§5A-3-10d. Reverse auctions.**

14 (a) Notwithstanding any other provision of this code, the
15 director is hereby authorized to initiate reverse auctions to
16 procure commodities. The director may not use reverse auctions for
17 the procurement of services under any circumstances.

18 (b) Reverse auctions may be utilized if the director
19 determines their use would be fair, economical and in the best
20 interests of the state, and the commodities to be procured:

21 (1) Are subject to low price volatility;

22 (2) Have specifications that are common and not complex;

23 (3) Vary little between suppliers;

24 (4) Are sourced primarily based on price, with limited

1 ancillary considerations;

2 (5) Require little collaboration from suppliers; and

3 (6) Are sold by a large, competitive supply base.

4 (c) For purposes of this section, "reverse auction" means a
5 process by which bidders compete to provide commodities in an open
6 and interactive market, including, but not limited to, the
7 Internet. Reverse auction bids are opened and made public upon
8 receipt by the director, and then bidders are given the opportunity
9 to submit revised bids until the bidding process is complete. The
10 contract is awarded to the lowest responsible bidder.

11 (d) The director may contract with qualified, industry-
12 recognized third-party vendors to conduct reverse auctions on
13 behalf of the director.

14 (e) The director shall propose rules for legislative approval
15 in accordance with the provisions of article three, chapter twenty-
16 nine-a of this code to establish the procedures for conducting
17 reverse auctions. The rules shall include procedures for
18 contracting with qualified, industry-recognized third-party
19 vendors.

20 **§5A-3-10e. Prequalification agreements; secondary bid process.**

21 (a) Subject to the limitations of this section, the director
22 may permit the state and its spending units to procure commodities
23 directly through a secondary bid process if the director determines
24 the process is fair, economical and in the best interests of the

1 state.

2 (b) Definitions. For purposes of this section:

3 (1) "Information technology" means hardware and software
4 related to electronic processing, and storage, retrieval,
5 transmittal and manipulation of data.

6 (2) "Prequalification agreement" means an agreement between
7 the state and at least two prequalified vendors authorizing the
8 state to purchase a commodity directly and on a recurrent basis
9 through the secondary bid process.

10 (3) "Prequalified vendor" means a "vendor," as that term is
11 defined in section one, article one, chapter five-a of this code,
12 that has entered into a prequalification agreement with the state
13 and may use the secondary bid process subject to the terms and
14 conditions of the prequalification agreement.

15 (4) "Secondary bid process" means the competitive bidding
16 process whereby the prequalified vendors that are parties to a
17 prequalification agreement may submit sealed bids to provide a
18 commodity identified in the prequalification agreement subject to
19 the limitations set forth in this section.

20 (5) "State" means the State of West Virginia and its spending
21 units.

22 (c) Prequalification procedures.

23 (1) For each prequalification agreement, the director shall
24 set forth the requirements, technical or otherwise, under which a

1 vendor may be qualified to supply a commodity through the secondary
2 bid process.

3 (2) A prequalification agreement may authorize the secondary
4 bid process for only one type of commodity.

5 (3) A vendor may submit information to the director to
6 establish that it meets the requirements set forth in the
7 prequalification agreement.

8 (4) If the director determines that a vendor meets the
9 requirements set forth in the prequalification agreement, the
10 vendor may enter into the prequalification agreement as a
11 prequalified vendor.

12 (d) Secondary bid procedures.

13 (1) The state may commence the secondary bid process by
14 issuing a request for a commodity identified in the
15 prequalification agreement, stating in the request the quantity of
16 the commodity to be procured in that particular instance.

17 (2) The prequalified vendor that submits the lowest secondary
18 bid in response to the request shall be awarded the procurement in
19 that particular instance.

20 (3) The secondary bid process may not be utilized for any
21 request for commodities, other than information technology,
22 anticipated to cost more than \$50,000, unless approved in writing
23 by the director of purchasing. The state may not issue a series of
24 orders each anticipated to cost less than \$50,000 to circumvent the

1 monetary limitation in this subsection.

2 (4) The secondary bid process may not be utilized for any
3 request for information technology anticipated to cost more than
4 \$1,000,000, unless approved in writing by the director of
5 purchasing. The state may not issue a series of orders each
6 anticipated to cost less than \$1,000,000 to circumvent the monetary
7 limitation in this subsection.

8 (e) Rulemaking authority. The director of the Purchasing
9 Division shall propose rules for legislative approval in accordance
10 with the provisions of article three, chapter twenty-nine-a of this
11 code, to establish, among other things, procedures by which
12 prequalification agreements shall be solicited and entered into;
13 procedures by which interested vendors may be prequalified; and
14 procedures by which the secondary bid process shall be conducted.

15 **§5A-3-11. Purchasing in open market on competitive bids;**
16 **debarment; bids to be based on written**
17 **specifications; period for alteration or withdrawal**
18 **of bids; awards to lowest responsible bidder;**
19 **uniform bids; record of bids; requirements of**
20 **vendors to pay taxes, fees and debts; and**
21 **exception; and grant exemption.**

22 (a) The director may make a purchase of commodities, printing,
23 and services of \$25,000 or less in amount in the open market, but

1 the purchase shall, wherever possible, be based on at least three
2 competitive bids, and shall include the cost of maintenance and
3 expected life of the commodities if the director determines there
4 are nationally accepted industry standards for the commodities
5 being purchased.

6 (b) The director may authorize spending units to purchase
7 commodities, printing and services in the amount of \$2,500 or less
8 in the open market without competitive bids: *Provided*, That the
9 cost of maintenance and expected life of the commodities must be
10 taken into consideration if the director determines there are
11 nationally accepted industry standards for the commodities being
12 purchased.

13 (c) Bids shall be based on the written specifications in the
14 advertised bid request and may not be altered or withdrawn after
15 the appointed hour for the opening of the bids.

16 (d) A vendor who has been debarred pursuant to the provisions
17 of sections thirty-three-a through thirty-three-f, article three,
18 chapter five-a of this code, may not bid on or be awarded a
19 contract under this section.

20 (e) All open market orders, purchases based on advertised bid
21 requests or contracts made by the director or by a state department
22 shall be awarded to the lowest responsible bidder or bidders,
23 taking into consideration the qualities of the commodities or
24 services to be supplied, their conformity with specifications,

1 their suitability to the requirements of the government, the
2 delivery terms and, if the director determines there are nationally
3 accepted industry standards, cost of maintenance and the expected
4 life of the commodities: *Provided*, That state bids on school buses
5 shall be accepted from all bidders who shall then be awarded
6 contracts if they meet the state board's "Minimum Standards for
7 Design and Equipment of School Buses." County boards of education
8 may select from those bidders who have been awarded contracts and
9 shall pay the difference between the state aid formula amount and
10 the actual cost of bus replacement. Any or all bids may be
11 rejected.

12 (f) If all bids received on a pending contract are for the
13 same unit price or total amount, the director has the authority to
14 reject all bids, and to purchase the required commodities, printing
15 and services in the open market, if the price paid in the open
16 market does not exceed the bid prices.

17 (g) The bid must be received by the Purchasing Division prior
18 to the specified date and time of the bid opening. The failure to
19 deliver or the nonreceipt of the bid by the Purchasing Division
20 prior to the appointed date and hour shall result in the rejection
21 of the bid. The vendor is solely responsible for the receipt of
22 bid by the Purchasing Division prior to the appointed date and hour
23 of the bid opening. All bids will be opened publicly by two or
24 more persons from the Purchasing Division. Vendors will be given

1 notice of the day, time and place of the public bid opening. Bids
2 may be viewed immediately after being opened.

3 (h) After the award of the order or contract, the director, or
4 someone appointed by him or her for that purpose, shall indicate
5 upon the successful bid that it was the successful bid.
6 Thereafter, the copy of each bid in the possession of the director
7 shall be maintained as a public record, shall be open to public
8 inspection in the office of the director and may not be destroyed
9 without the written consent of the Legislative Auditor.

10 (i)(1) A grant awarded by the state is exempt from the
11 competitive bidding requirements set forth in this chapter, unless
12 the grant is used to procure commodities or services that directly
13 benefit a spending unit.

14 (2) Where a grant awarded to the state requires the
15 procurement of commodities or services that will directly benefit
16 a spending unit, the procurement is not exempt from the competitive
17 bidding requirements set forth in this chapter.

18 (3) Where a grant awarded to the state requires the state to
19 transfer some or all of the grant to an individual, entity or
20 vendor as a subgrant to accomplish a public purpose, and no
21 contract for commodities or services directly benefitting a
22 spending unit will result, the subgrant is not subject to the
23 competitive bidding requirements set forth in this chapter.

24 **§5A-3-17. Purchases or contracts violating article void; personal**

1 **liability.**

2 If a spending unit purchases or contracts for commodities or
3 services contrary to the provisions of this article or the rules
4 and regulations made thereunder, such purchase or contract shall be
5 void and of no effect. The ~~head~~ spending officer of such spending
6 unit, or any other individual charged with responsibility for the
7 purchase or contract shall be personally liable for the costs of
8 such purchase or contract, and, if already paid out of state funds,
9 the amount thereof may be recovered in the name of the state in an
10 appropriate action instituted therefor: Provided, That the state
11 establishes by a preponderance of the evidence that the individual
12 acted knowingly and willfully.

13 **§5A-3-28. Financial interest of secretary, etc.; receiving reward**
14 **from interested party; penalty; application of bribery**
15 **statute.**

16 Neither the secretary, nor the director nor any employee of
17 the division of purchasing, shall be financially interested, or
18 have any beneficial personal interest, directly or indirectly, in
19 the purchase of any commodities, services or printing, nor in any
20 firm, partnership, corporation or association furnishing them.
21 Neither the secretary, nor the director nor any employee of the
22 division of purchasing shall accept or receive directly or
23 indirectly from any person, firm or corporation, known by such

1 secretary, director or employee to be interested in any bid,
2 contract or purchase, by rebate, gift or otherwise, any money or
3 other thing of value whatsoever, or any promise, obligation or
4 contract for future reward, or compensation.

5 A person who violates this section shall be guilty of a
6 misdemeanor, and, upon conviction thereof, shall be confined in
7 jail not less than three months nor more than one year, or fined
8 not less than \$50 nor more than \$1,000, or both, in the discretion
9 of the court: *Provided*, That any person who violates any of the
10 provisions of the last sentence of the first paragraph of this
11 section under circumstances constituting the crime of bribery under
12 the provisions of section three, article five-a, chapter sixty-one
13 of this code, shall, upon conviction of bribery, be punished as
14 provided in said article five-a.

15 **§5A-3-30. Statement of purpose; obtaining money and property under**
16 **false pretenses or by fraud from the state or a**
17 **political subdivision of the state; penalties;**
18 **definition.**

19 (a) The Legislature of the State of West Virginia hereby
20 declares that the purpose of this statute is to promote equal and
21 fair bidding for the purchase of commodities and services by the
22 state and any political subdivision of the state purchasing
23 commodities and services under any state contract; to eliminate

1 fraud in the procurement of commodities and services by the state.

2 (b) It is unlawful for any person to obtain any services,
3 money, goods or other property from the state or any political
4 subdivision of the state under any contract made under the
5 provisions of this article, by false pretense, token or
6 representation, or by delivery of inferior commodities, with intent
7 to defraud. A person who violates this subsection is guilty of a
8 felony, and, upon conviction thereof, shall be confined in a state
9 correctional facility for not less than one year nor more than five
10 years, and shall be fined not exceeding \$1,000.

11 (c) It shall not be a defense to a charge under this section
12 that: (1) The commodities or services purchased were accepted and
13 used, or are being used, by the state or a political subdivision of
14 the state; or (2) the commodities or services are functional or
15 suitable for the purpose for which the commodities or services were
16 purchased by the state or a political subdivision of the state
17 notwithstanding the standard or specification issued by the
18 purchasing agency or the division of purchasing.

19 (d) For the purpose of this section, "inferior commodities"
20 includes, but shall not be limited to: (1) Any commodity which does
21 not meet the specification or standard issued by the purchasing
22 agency and the division of purchasing, or any change order approved
23 by both the purchasing agency and division of purchasing; and (2)
24 any commodity which is of a lesser quality, quantity, or measure of

1 any kind set forth within the specification or standard issued by
2 the purchasing agency and the division of purchasing.

3 **§5A-3-31. Corrupt actions, combinations, collusions or**
4 **conspiracies prohibited; penalties.**

5 It shall be unlawful for any person to corruptly act alone or
6 combine, collude or conspire with one or more other persons with
7 respect to the purchasing or supplying of services, commodities or
8 printing to the state under the provisions of this article if the
9 purpose or effect of such action, combination, collusion or
10 conspiracy is either to: (1) Lessen competition among prospective
11 vendors; or (2) cause the state to pay a higher price for such
12 services, commodities or printing than would be or would have been
13 paid in the absence of such action, combination, collusion or
14 conspiracy; or (3) cause one prospective vendor or vendors to be
15 preferred over one or more other prospective vendor or vendors.
16 Any person who violates any provision of this section shall be
17 guilty of a felony, and, upon conviction thereof, shall be confined
18 in ~~penitentiary~~ a correctional facility not less than one nor more
19 than five years, and be fined not exceeding \$5,000.

20 **§5A-3-60. Annual purchasing training.**

21 (a) All Executive Department secretaries, commissioners,
22 deputy commissioners, assistant commissioners, directors, deputy
23 directors, assistant directors, department heads, deputy department
24 heads, and assistant department heads are hereby required to take

1 one hour of training on purchasing procedures annually.

2 (b) The director of the Purchasing Division shall offer the
3 one-hour training contemplated by this section at least two times
4 per year and shall develop its substance in accordance with the
5 requirements of this article. The training shall be recorded by
6 audio and visual means and shall be made available to the
7 individuals listed in subsection (a) of this section in the event
8 they are unable to attend the training in person.

9 (c) All individuals listed in subsection (a) shall certify,
10 in writing and on a form developed by the director of the
11 Purchasing Division, the date, time, location and manner in which
12 they took the training. Completed forms shall be returned to the
13 director and maintained in his or her office.

NOTE: The purpose of this bill is to implement purchasing reforms. Specifically, the bill modifies and creates several definitions; clarifies the purposes of the purchasing provisions; authorizes the secretary of the Department of Administration and the director of purchasing to issue cease and desist notices when a spending unit has violated competitive bidding requirements; adds "services" to references of "commodities"; provides the Purchasing Division with alternative methods to purchase certain commodities, including the reverse auction and prequalification agreement/secondary bid processes; imposes a civil penalty on individuals who have knowingly and willingly violated competitive bidding requirements; imposes a criminal penalty on individuals who undermine the fair competitive bidding process; and requires certain executive department officials to attend annual training on purchasing procedures.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.

§5A-1-10, §5A-3-10d, §5A-3-10e, and §5A-3-60 are new; therefore, they have been completely underscored.