

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 461

BY SENATORS HALL, TAKUBO AND STOLLINGS

[Originating in the Committee on Finance; reported on

March 20, 2017]

1 A BILL to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as
2 amended, all relating to exempting the West Virginia State Police from state purchasing
3 requirements; requiring the Legislative Auditor to audit purchasing made by the West
4 Virginia State Police and report the findings to the Joint Committee on Government and
5 Finance; and requiring the West Virginia State Police report to the Joint Committee on
6 Government and Finance on the effects of exempting said agency from state purchasing
7 requirements.

Be it enacted by the Legislature of West Virginia:

1 That §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

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

1 (a) The Purchasing Division within the Department of Administration is continued. The
2 underlying purposes and policies of the Purchasing Division are:

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

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

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

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

9 (5) To provide for increased public confidence in the procedures followed in public
10 procurement;

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

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

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

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

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

21 (b) The Director of the Purchasing Division shall, at the time of appointment:

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

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

26 (c) The provisions of this article apply to all of the spending units of state government,
27 except as otherwise provided by this article or by law.

28 (d) The provisions of this article do not apply to the judicial branch, the West Virginia State
29 Police, ~~Forensics Laboratory~~, the West Virginia Office of Laboratory Services, the legislative
30 branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to
31 purchases of textbooks, instructional materials, digital content resources, instructional
32 technology, hardware, software, telecommunications and technical services by the State Board
33 of Education for use in and in support of the public schools.

34 (e) During the 2018 calendar year, the Legislative Auditor shall audit purchasing
35 procedures of the West Virginia State Police pursuant to the exemption provided in subsection
36 (d) of this section and report the results to the Joint Committee on Government and Finance.

37 (f) During the 2019 calendar year, the Legislative Auditor shall audit purchasing
38 procedures of the West Virginia State Police pursuant to the exemption provided in subsection
39 (d) of this section and report the results to the Joint Committee on Government and Finance.

40 (g) On or before December 31, 2020, the West Virginia State Police shall report to the
41 Joint Committee on Government and Finance on the effects of exempting said agency from the
42 provisions of this article, including but not limited to, any realized cost savings and changes in
43 purchasing policies resulting from such exemption.

44 ~~(e)~~ (h) The provisions of this article apply to every expenditure of public funds by a
45 spending unit for commodities and services irrespective of the source of the funds.

§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 section five
9 of this article 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 entered into
26 by the Division of Highways of the Department of Transportation or to construction or reclamation
27 contracts entered into by the Department of Environmental Protection: *Provided, however*, That
28 the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into
29 by the University of West Virginia Board of Trustees or by the board of directors of the state
30 College System, except to the extent that such boards request the facilities and services of the
31 director under the provisions of this subdivision: *Provided further*, That the provisions of this
32 subdivision do not apply to the West Virginia State Police Forensic Laboratory and the West
33 Virginia Office of Laboratory Services;

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

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

NOTE: The purpose of this bill is to exempt the West Virginia State Police from state purchasing requirements.

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