

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4499

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Passed March 9, 2022; in effect from passage.]

1 AN ACT to amend and reenact §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-10, §5A-3-10a, §5A-3-11, §5A-
2 3-12, §5A-3-17, §5A-3-18, §5A-3-29, §5A-3-35, and §5A-3-45 of the Code of West
3 Virginia, 1931, as amended; and to amend and reenact §6D-1-2 of said code, all relating
4 generally to making procurement process more efficient by modifying and updating
5 outdated processes and requirements and encouraging earlier communication with and
6 assistance from experts within Purchasing Division regarding manner and process of
7 procurement of commodities and services by spending units of the state; authorizing open
8 market procurement in emergencies; eliminating outdated references to audits of
9 exempted agencies; allowing director to exempt certain transactions from the
10 requirements of §5A-3-1 *et seq.*; allowing division resources to be made available to
11 exempt spending units; clarifying that grant recipients need not pay registration fees as a
12 vendor; establishing qualifications for state buyer and for director positions; authorizing
13 other procurement methods in lieu of formal competitive bidding when determined to be
14 in best interest of state; granting director discretion to increase delegated procurement
15 limits; making procurement from nonprofit workshops optional; clarifying timing required
16 on rebidding; changing requirement for affidavit verifying that no debt is owed to
17 affirmation; granting director discretion to increase \$2,500 no bid limit; eliminating
18 outdated information reporting requirements for vendor registration; clarifying
19 procurement penalties and inventory submission language; removing surplus fees for
20 inter-agency asset transfers; requiring inter-agency asset transfers be recorded in
21 accordance with governmental accounting standards; shifting time for disclosure of
22 interested party information from date of contract award to before work begins to make
23 procurement process more efficient; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

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 serve as a source of expertise in procurement methods and practices for the various
4 state agencies, and to assist and facilitate state agencies in procurement matters, including for
5 travel services;

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

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

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

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

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

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

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

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

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

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

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

30 (d) Notwithstanding any other provisions of this article, commodities and services may be
31 purchased by a spending unit in the open market for immediate delivery in emergencies:
32 *Provided*, That the purchase and a description of the circumstances warranting such emergency
33 purchase are timely reported by the agency head or other authorized agent of the spending unit
34 under the provisions of § 5A-3-4(a)(2) of this code.

35 (e) The provisions of this article apply to every expenditure of public funds by a spending
36 unit for commodities and services irrespective of the source of the funds, except as otherwise
37 provided by this article or by law.

§5A-3-3. Authority 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 authority 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 on
5 competitive bid, except when another method of procurement is determined to be in the best
6 interest of the state;
- 7 (3) Purchase or contract for, or assist and facilitate the purchase or contract for the
8 spending units of the state government, in the name of the state, the commodities, services, and
9 printing required by the spending units of the state government;
- 10 (4) Apply and enforce standard specifications established in accordance with §5A-3-5 of
11 this code as hereinafter provided;

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

14 (6) Have charge of central storerooms for the supply of spending units as the director
15 considers advisable;

16 (7) Establish and maintain a laboratory for the testing of commodities and make use of
17 existing facilities in state institutions for that purpose as hereinafter provided as the director
18 considers advisable;

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

22 (9) Timely provide guidance to and assist any spending unit in the development of the
23 provisions and terms of contracts entered into for and on behalf of the State of West Virginia that
24 impose any obligation upon the state to pay any sums of money for commodities or services and
25 approve contracts as to such provisions and terms; and the duties of providing guidance and
26 assistance and approval herein set forth do not supersede the responsibility and duty of the
27 Attorney General to approve the contracts as to form; *Provided*, That the provisions of this
28 subdivision do not apply in any respect whatever to construction or repair contracts entered into
29 by the Division of Highways of the Department of Transportation or to construction or reclamation
30 contracts entered into by the Department of Environmental Protection; *Provided, however*, That
31 the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into
32 by the University of West Virginia Board of Trustees or by the board of directors of the state
33 college system, except to the extent that such boards request the facilities and services of the
34 director under the provisions of this subdivision: *Provided further*, That the provisions of this
35 subdivision do not apply to the West Virginia State Police and the West Virginia Office of
36 Laboratory Services: *And provided further*, That the provisions of this subdivision shall not apply
37 to contracts for any natural disaster recovery activities entered into by the West Virginia State
38 Conservation Committee or the West Virginia Conservation Agency;

39 (10) Timely provide guidance to and assist any spending unit in the development of the
40 specifications and descriptions in solicitations to be prepared so as to provide all potential
41 suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure
42 that the specifications and descriptions do not favor a particular brand or vendor; If the director
43 determines that any such specifications or descriptions as written favor a particular brand or
44 vendor or if it is decided by the relevant spending unit, in consultation with the director, either
45 before or after the bids are opened, that a commodity or service having different specifications or
46 quality or in different quantity can be acquired to better achieve the ends sought by the relevant
47 spending unit, the solicitation may be rewritten and the matter shall be rebid or another
48 procurement method pursued, where determined appropriate;

49 (11) Issue a notice to cease and desist to a spending unit when the director has credible
50 evidence that a spending unit has violated the requirements of this article and the rules
51 promulgated hereunder. Failure to abide by the notice may result in penalties set forth in §5A-3-
52 17 of this code; and

53 (12) Exempt particular transactions, or particular categories of transactions, from the
54 requirements of this article; provided that the director, in consultation with any relevant spending
55 unit, shall determine such exemption to be in the best interest of the state.

56 (13) Make the resources and expertise of the division available to spending units
57 exempted from the requirements of this article: *Provided*, That the director may, in consultation
58 with the relevant spending unit, assess an exempt spending unit for the division's reasonable
59 costs in order to ensure sufficient staffing and other resources to timely provide all necessary or
60 requested assistance to the various spending units of the state.

§5A-3-4. Rules of director.

1 (a) The director shall propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 *et seq.* of this code to:

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

5 (2) Prescribe the manner in which emergency purchases made under § 5A-3-1(d) shall be
6 reported to the director;

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

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

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

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

17 (7) Prescribe a system whereby the director shall be required, upon the payment by a
18 vendor of an annual fee established by the director, to give notice to such vendor of all bid
19 solicitations for commodities and services of the type with respect to which such vendor specified
20 notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor,
21 nor shall such fee exceed the sum of \$125 per fiscal year nor shall such fee be charged to persons
22 or entities seeking only reimbursement from a spending unit or to persons or entities only seeking
23 to accept moneys granted by a spending unit under a grant agreement;

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

28 (9) Prescribe contract management procedures for all state contracts except government
29 construction contracts including, but not limited to, those set forth in §5-22-1 *et seq.* of this code;

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

33 (11) Prescribe that each state contract entered into by the Purchasing Division contain
34 provisions for the cancellation of the contract upon 30 days' notice to the vendor;

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

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

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

41 (b) A person may not be employed as a state buyer unless he or she at the time of
42 employment fulfills either of the following requirements:

43 (1) A graduate of an accredited college or university in a field determined relevant by the
44 director; or

45 (2) Has at least two years' experience in purchasing for any unit of government or for any
46 business, commercial or industrial enterprise.

47 Persons serving as State buyers are subject to the provisions of §29-6-1 *et seq.* of this
48 code. Any director of the Purchasing Division hired after July 1, 2022, shall serve at the will and
49 pleasure of the secretary and may not be subject to the provisions of §29-6-1 *et seq.* of this code.

**§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of
products of nonprofit workshops; employee to assist in dealings with nonprofit
workshops; continuing procurements over \$1 million.**

1 (a) A purchase of and contract for commodities, printing, and services shall be based on
2 competitive bids, except when another method of procurement is determined to be in the best
3 interest of the State.

4 (b) The director shall solicit, on behalf of spending units, sealed bids for the purchase of
5 commodities and printing which is estimated to exceed \$25,000. The director may delegate the
6 procurement of commodities, services, or printing estimated to be \$25,000 or less to the spending
7 unit. The director may set a higher or lower delegated procurement limit for a particular spending
8 unit if the director determines that such action would be in the best interest of the spending unit
9 and the State. In no event may the director authorize more than \$100,000 of delegated
10 procurement authority to a spending unit.

11 (c) Spending units shall not make an individual purchase in excess of the delegated
12 procurement limit established in subsection (b) of this section, issue a series of requisitions for
13 the same or similar commodity or service or divide or plan procurements with the intention to
14 circumvent the delegated procurement limit established in subsection (b), or otherwise avoid the
15 use of sealed bids. Any spending unit that discovers it has awarded multiple contracts for the
16 same or similar commodity or service to an individual vendor over any 12-month period shall file
17 copies of all contracts awarded or orders placed for the commodity, service, or printing in question
18 within the 12 preceding months with the director upon exceeding the delegated limit, along with a
19 statement explaining how either the multiple contract awards or orders do not circumvent the
20 delegated procurement limit, or how the contracts or orders were not intended to circumvent the
21 delegated limit. If the spending unit does not report to the director within a reasonable period, the
22 director shall contact the spending unit to request such statement and may suspend the
23 purchasing authority of the spending unit until the spending unit complies with the reporting
24 requirement of this subsection, as determined appropriate. The director may conduct a review of
25 any spending unit to ensure compliance with this subsection. Following a review, in consultation
26 with the relevant spending unit, the director shall complete a report summarizing his or her findings
27 and forward the report to the spending unit. In addition, the director shall report to the Joint

28 Committee on Government and Finance on January 1 and July 1 of each year the spending units
29 which have reported under this subsection and the findings of the director.

30 (d) The director may permit bids by electronic transmission to be accepted in lieu of sealed
31 bids.

32 (e) Bids shall be solicited by public notice. The notice may be published by any advertising
33 medium the director considers advisable. The director may also solicit sealed bids by sending
34 requests by mail or electronic transmission to prospective vendors.

35 (f) (1) The director may, without competitive bidding, purchase commodities and services
36 produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code, which
37 are located in this state: *Provided*, That the commodities and services shall be of a fair market
38 price and of like quality comparable to other commodities and services otherwise available as
39 determined by the director.

40 (2) To encourage contracts for commodities and services with nonprofit workshops, the
41 director shall employ a person whose responsibilities in addition to other duties are to identify all
42 commodities and services available for purchase from nonprofit workshops, to evaluate the need
43 of the state for commodities and services to coordinate the various nonprofit workshops in their
44 production efforts, and to make available to the workshops information about available
45 opportunities within state government for purchase of commodities or services which might be
46 produced and sold by such workshops. Funds to employ such a person shall be included annually
47 in the budget.

48 (g) For all commodities and services in an amount exceeding \$1 million, if the procurement
49 of the commodity or service is continuing in nature, 12 months prior to the expiration of the
50 contract or final renewal option, whichever is later, the spending unit shall coordinate with the
51 Purchasing Division on a new procurement for such commodity or service under the requirements

52 of this article. This procurement shall be awarded or terminated no later than 180 days after the
53 procurement specifications have been finally approved by the Purchasing Division.

**§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the State or
its political subdivisions.**

1 (a) Unless the context clearly requires a different meaning, for the purposes of this section,
2 the terms:

3 (1) "Debt" means any assessment, premium, penalty, fine, tax or other amount of money
4 owed to the state or any of its political subdivisions because of a judgment, fine, permit violation,
5 license assessment, amounts owed to the Workers' Compensation Funds as defined in §23-2C-
6 1 *et seq.* of this code, penalty or other assessment or surcharge presently delinquent or due and
7 required to be paid to the state or any of its political subdivisions, including any interest or
8 additional penalties accrued thereon.

9 (2) "Debtor" means any individual, corporation, partnership, association, limited liability
10 company or any other form or business association owing a debt to the state or any of its political
11 subdivisions, and includes any person or entity that is in employer default.

12 (3) "Employer default" means having an outstanding balance or liability to the old fund or
13 to the uninsured employers' fund or being in policy default, as defined in §23-2C-2 of this code,
14 failure to maintain mandatory workers' compensation coverage, or failure to fully meet its
15 obligations as a workers' compensation self-insured employer. An employer is not in employer
16 default if it has entered into a repayment agreement with the Insurance Commissioner and
17 remains in compliance with the obligations under the repayment agreement.

18 (4) "Political subdivision" means any county commission; municipality; county board of
19 education; any instrumentality established by a county or municipality; any separate corporation
20 or instrumentality established by one or more counties or municipalities, as permitted by law; or

21 any public body charged by law with the performance of a government function and whose
22 jurisdiction is coextensive with one or more counties or municipalities.

23 (5) "Related party" means a party, whether an individual, corporation, partnership,
24 association, limited liability company or any other form or business association or other entity
25 whatsoever, related to any vendor by blood, marriage, ownership or contract through which the
26 party has a relationship of ownership or other interest with the vendor so that the party will actually
27 or by effect receive or control a portion of the benefit, profit or other consideration from
28 performance of a vendor contract with the party receiving an amount that meets or exceeds five
29 percent of the total contract amount.

30 (b) No contract or renewal of any contract may be awarded by the state or any of its
31 political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor
32 or a related party to the vendor or prospective vendor is a debtor and:

33 (1) The debt owed is an amount greater than \$1,000 in the aggregate; or

34 (2) The debtor is in employer default.

35 (c) The prohibition of this section does not apply where a vendor has contested any tax
36 administered pursuant to chapter 11 of this code, amount owed to the Workers' Compensation
37 Funds as defined in §23-2C-1 *et seq.* of this code, permit fee or environmental fee or assessment
38 and the matter has not become final or where the vendor has entered into a payment plan or
39 agreement and the vendor is not in default of any of the provisions of such plan or agreement.

40 (d) By submitting a bid or contract proposal or entering into a contract with the state or any
41 of its political subdivisions, the vendor or prospective vendor is deemed to be affirming that the
42 vendor or prospective vendor or a related party to the vendor or prospective vendor is not in
43 employer default and does not owe any debt in an amount in excess of \$1,000 or, if a debt is
44 owed, that the provisions of subsection (c) of this section apply. This affirmation, combined with

45 verification of State tax compliance, will satisfy the public contracting entities verification
46 requirements contained in §5-22-1(j) of this code.

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

1 (a) The director may make a purchase of commodities, printing and services of \$25,000
2 or less in amount in the open market, but the purchase shall, wherever possible, be based on at
3 least three competitive bids, and shall include the cost of maintenance and expected life of the
4 commodities if the director determines there are nationally accepted industry standards for the
5 commodities being purchased.

6 (b) The director may authorize spending units to purchase commodities, printing and
7 services in the amount of \$2,500 or less in the open market without competitive bids: *Provided,*
8 That the cost of maintenance and expected life of the commodities must be taken into
9 consideration if the director determines there are nationally accepted industry standards for the
10 commodities being purchased: *Provided, however,* That the director may authorize spending units
11 to purchase commodities, printing, and services in an amount greater than \$2,500 in the open
12 market without competitive bids, subject to the limitations set forth in §5A-3-10(b) of this Code.

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

15 (d) A vendor who has been debarred pursuant to the provisions of §5A-3-33b through
16 §5A-3-33f of this code may not bid on or be awarded a contract under this section.

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

21 terms and, if the director determines there are nationally accepted industry standards, cost of
22 maintenance and the expected life of the commodities: *Provided*, That state bids on school buses
23 shall be accepted from all bidders who shall then be awarded contracts if they meet the state
24 board's Minimum Standards for Design and Equipment of School Buses. County boards of
25 education may select from those bidders who have been awarded contracts and shall pay the
26 difference between the state aid formula amount and the actual cost of bus replacement. Any or
27 all bids may be rejected.

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

32 (g) The bid must be received by the Purchasing Division prior to the specified date and
33 time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing
34 Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is
35 solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and
36 hour of the bid opening. All bids will be opened publicly by two or more persons from the
37 Purchasing Division. Vendors will be given notice of the day, time and place of the public bid
38 opening. Bids may be viewed immediately after being opened.

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

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

47 (2) If a grant awarded to the state requires the procurement of commodities or services
48 that will directly benefit a spending unit, the procurement is not exempt from the competitive
49 bidding requirements set forth in this chapter.

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

**§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form
and contents; register of vendors; false certificates; penalties.**

1 (a) The director may not accept any bid received from any vendor unless the vendor has
2 paid the annual fee specified in §5A-3-4 of this code and has filed with the director a certificate of
3 the vendor or the certificate of a member of the vendor's firm or, if the vendor is a corporation, the
4 certificate of an officer, director or managing agent of the corporation, disclosing the following
5 information:

6 (1) If the vendor is an individual, his or her name and city and state of residence and
7 business address, and, if he or she has associates or partners sharing in his business, their
8 names and city and state of residence and business addresses;

9 (2) If the vendor is a firm, the name and city and state of residence and business address
10 of the firm;

11 (3) If the vendor is a corporation created under the laws of this state or authorized to do
12 business in this state, the name and business address of the corporation;

13 (4) A statement of whether the vendor is acting as agent for some other individual, firm or
14 corporation, and if so, a statement of the principal authorizing the representation shall be attached
15 to the certificate or whether the vendor is doing business as another entity;

16 (5) The vendor's latest Dun & Bradstreet number and rating, if there is any rating as to the
17 vendor; and

18 (6) The vendor's tax identification number.

19 (b) Whenever a change occurs in the information submitted as required, the change shall
20 be reported immediately in the same manner as required in the original disclosure certificate.

21 (c) The certificate and information received by the director shall be public record.

22 (d) The director may waive the above requirements in the case of any corporation listed
23 on any nationally recognized stock exchange and in the case of any vendor who or which is the
24 sole source for the commodity in question.

25 (e) Any person who submits a false certificate or who knowingly files or causes to be filed
26 with the director, a certificate containing a false statement of a material fact or omitting any
27 material fact, is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000,
28 and, in the discretion of the court, confined in jail not more than one year. An individual convicted
29 of a misdemeanor under this subsection may never hold an office of honor, trust or profit in this
30 state, or serve as a juror.

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

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

§5A-3-18. Substituting for commodity bearing particular trade name or brand.

1 If a spending unit requests the purchase of a commodity bearing a particular trade name
2 or brand, the director may substitute, after consultation with the relevant spending unit, a

3 commodity bearing a different trade name or brand, if the substituted commodity reasonably
4 conforms to the adopted standard specifications and can be obtained at an equal or lower price.

§5A-3-29. Penalty for violation of article.

1 Any person who knowingly and willfully violates a provision of this article, except where
2 another penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof,
3 shall be confined in jail not less than ten days nor more than one year, or fined not less than ten
4 nor more than \$500, or both, in the discretion of the court.

§5A-3-35. Submission of annual inventories.

1 The head of every spending unit of State government shall, on or before July 15, of each
2 year, make an accounting and inventory of, and file with the director, all real and personal
3 property, and of all equipment, supplies and commodities in its possession as of the close of the
4 last fiscal year.

**§5A-3-45. Disposition of surplus state property; semiannual report; application of
proceeds from sale.**

1 (a) The State agency for surplus property has the exclusive power and authority to make
2 disposition of commodities or expendable commodities now owned or in the future acquired by
3 the State when the commodities are or become obsolete or unusable or are not being used or
4 should be replaced: *Provided*, That the director may grant authority to spending units to make
5 disposition of commodities or expendable commodities in appropriate circumstances when
6 determined by the director to be in the State's best interest.

7 (b) The agency shall determine what commodities or expendable commodities should be
8 disposed of and make disposition in the manner which will be most advantageous to the state.
9 The disposition may include:

10 (1) Transferring the particular commodities or expendable commodities between
11 departments, after consultation with any relevant spending units, and recording the transfer in
12 accordance with governmental accounting standards;

13 (2) Selling the commodities to county commissions, county boards of education,
14 municipalities, public service districts, county building commissions, airport authorities, parks and
15 recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section
16 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in
17 this state when the volunteer fire departments have been held exempt from taxation under Section
18 501(c) of the Internal Revenue Code 1986, as amended;

19 (3) Trading in the commodities as a part payment on the purchase of new commodities;

20 (4) Cannibalizing the commodities pursuant to procedures established under §5A-3-45(g)
21 of this code;

22 (5) Properly disposing of the commodities as waste;

23 (6) Selling the commodities to the general public at the posted price or to the highest
24 bidder by means of public auctions or sealed bids, after having first advertised the time, terms,
25 and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-
26 3-1 *et seq.* of this code. The publication area for the publication is the county in which the sale is
27 to be conducted. The sale may also be advertised in other advertising media that the agency
28 considers advisable. The agency may sell to the highest bidder or to any one or more of the
29 highest bidders, if there is more than one, or, if the best interest of the state will be served, reject
30 all bids; or

31 (7) Selling the commodities to the highest bidder by means of an internet auction site
32 approved by the director, as set forth in a legislative rule pursuant to the provisions of §29A-3-1
33 *et seq.* of this code.

34 (c) Upon the sale to the general public, or upon the sale of commodities or expendable
35 commodities to an eligible organization, the agency shall set the price to be paid by the receiving
36 eligible organization, with due consideration given to current market prices.

37 (d) The agency may sell expendable, obsolete, or unused motor vehicles owned by the
38 state to an eligible organization, other than volunteer fire departments. In addition, the agency

39 may sell expendable, obsolete, or unused motor vehicles owned by the state with a gross weight
40 in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with due
41 consideration given to fair market value as determined by an independent automotive pricing
42 guide, shall set the price at a fair market price to be paid by the receiving eligible organization for
43 motor vehicles sold pursuant to this provision. The fair market value shall be based on a thorough
44 inspection of the vehicle by an employee of the agency who shall consider the mileage of the
45 vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no
46 fair market value is available, the agency shall set the price to be paid by the receiving eligible
47 organization with due consideration given to current market prices. The duly authorized
48 representative of the eligible organization, for whom the motor vehicle or other similar surplus
49 equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor
50 vehicle to be vested only in the official name of the authorized governing body for whom the
51 purchase or transfer was made. The ownership or title, or both, shall remain in the possession of
52 that governing body and be nontransferable for a period of not less than one year from the date
53 of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment
54 prior to an elapsed period of one year may be made only by reason of certified unserviceability.

55 (e) The agency shall report to the Legislative Auditor, semiannually, all sales of
56 commodities or expendable commodities made during the preceding six months to eligible
57 organizations. The report shall include a description of the commodities sold, the price paid by
58 the eligible organization which received the commodities, and to whom each commodity was sold.

59 (f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the
60 credit on a pro rata basis of the fund or funds out of which the purchase of the particular
61 commodities or expendable commodities was made: *Provided*, That the agency may charge and
62 assess fees reasonably related to the costs of care and handling with respect to the transfer,
63 warehousing, sale, and distribution of state property disposed of or sold pursuant to the provisions
64 of this section. Notwithstanding §5A-3-45(e) of this code, if the fund or funds out of which the

65 purchase was made no longer exist, the spending unit may designate an alternate fund within
66 which the proceeds must be deposited.

67 (g)(1) For purposes of this section, "cannibalization" means the removal of parts from one
68 commodity to use in the creation or repair of another commodity.

69 (2) The Director of the Purchasing Division shall propose for promulgation legislative rules
70 to establish procedures that permit the cannibalization of a commodity when it is in the best
71 interests of the state. The procedures shall require the approval of the director prior to the
72 cannibalization of the commodity under such circumstances as the procedures may prescribe.

73 (3)(A) Under circumstances prescribed by the procedures, state agencies shall be
74 required to submit a form, in writing or electronically, that, at a minimum, elicits the following
75 information for the commodity the agency is requesting to cannibalize:

- 76 (i) The commodity identification number;
- 77 (ii) The commodity's acquisition date;
- 78 (iii) The commodity's acquisition cost;
- 79 (iv) A description of the commodity;
- 80 (v) Whether the commodity is operable and, if so, how well it operates;
- 81 (vi) How the agency will dispose of the remaining parts of the commodity; and
- 82 (vii) Who will cannibalize the commodity and how the person is qualified to remove and
83 reinstall the parts.

84 (B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit
85 the following information for the commodity or commodities that will receive the cannibalized part
86 or parts:

- 87 (i) The commodity identification number;
- 88 (ii) The commodity's acquisition date;
- 89 (iii) The commodity's acquisition cost;

90 (iv) A description of the commodity;

91 (v) Whether the commodity is operable;

92 (vi) Whether the part restores the commodity to an operable condition; and

93 (vii) The cost of the parts and labor to restore the commodity to an operable condition
94 without cannibalization.

95 (C) If the agency intends to retain the cannibalized parts for future use, it shall provide
96 information justifying its request.

97 (D) The procedures shall provide for the disposal of the residual components of
98 cannibalized property.

99 (h)(1) The Director of the Purchasing Division shall propose for promulgation legislative
100 rules to establish procedures that allow State agencies to dispose of commodities in a landfill, or
101 by other lawful means of waste disposal, if the value of the commodity is less than the benefit that
102 may be realized by the state by disposing of the commodity using another method authorized in
103 this section. The procedures shall specify circumstances where the State agency for surplus
104 property shall inspect the condition of the commodity prior to authorizing the disposal and those
105 circumstances when the inspection is not necessary prior to the authorization.

106 (2) Whenever a State agency requests permission to dispose of a commodity in a landfill,
107 or by other lawful means of waste disposal, the state agency for surplus property has the right to
108 take possession of the commodity and to dispose of the commodity using any other method
109 authorized in this section.

110 (3) If the State agency for surplus property determines, within 15 days of receiving a
111 commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal
112 would be more beneficial to the state than disposing of the commodity using any other method
113 authorized in this section, the cost of the disposal is the responsibility of the agency from which it
114 received the commodity.

CHAPTER 6D. PUBLIC CONTRACTS.

ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.

§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.

1 (a) A State agency may not allow a vendor to perform work on an applicable contract that
2 has been awarded to a business entity unless and until the business entity submits to the state
3 agency a disclosure of interested parties to the applicable contract.

4 (b) The business entity shall submit the disclosure to the State agency prior to
5 commencing work on an applicable contract award.

6 (c) Within 30 days following the completion or termination of the applicable contract, the
7 business entity shall submit a supplemental disclosure of interested parties reflecting any new or
8 differing interested parties to the contract.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

.....
Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

.....
Governor