WEST VIRGINIA CODE CHAPTER 5a

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§5A-1-1. Definitions.

For the purpose of this chapter:

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

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

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

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

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

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

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

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

(9) "Nonprofit workshops" means an establishment: (A) Where any manufacture or handiwork is carried on; (B) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual; (C) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market; and (D) which shall be approved, as evidenced by a certificate of approval, by the State Board of Vocational Education, Division of Vocational Rehabilitation.

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

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

(12) "Public funds" means funds of any character, including federal moneys, belonging to or

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in the custody of any state spending unit.

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

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

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

(16) "Responsible bidder" means a vendor who has the capability to fully perform the contract requirements, and the integrity and reliability which will assure good-faith performance.

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

(18) "Secretary" means the Secretary of Administration.

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

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

(21) "Spending unit" means a department, bureau, department, division, office, board commission, authority, agency or institution of the state government for which an appropriation is requested of the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from this chapter is provided in this code.

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

(23) "Vendor" means any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities or services, and lessors of real property.

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§5A-1-2. Department of Administration and Office of Secretary; secretary; divisions; directors.

(a) The Department of Administration and the Office of Secretary of Administration are continued in the executive branch of state government. The secretary is the chief executive officer of the department and shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(b) The Department of Administration may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in §6-7-2a of this code.

(d) There shall be in the Department of Administration an Aviation Division, at the discretion of the secretary, a Finance Division, a Fleet Management Division, a General Services Division, Division of Personnel, and a Purchasing Division. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary.

(e) There shall also be in the Department of Administration those agencies, boards, commissions, and councils specified in §5F-2-1 of this code.

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§5A-1-2a.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

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§5A-1-2b.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-1-2c.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

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§5A-1-3. Powers and duties of secretary, division heads and employees.

The secretary shall have control and supervision of the Department of Administration and shall be responsible for the work of each of its employees. The secretary shall have such power and authority as specified in section two, article two, chapter five-f of this code. The secretary shall also have the authority to employ such assistants and attorneys as may be necessary for the efficient operation of the department. The secretary, the division heads and the employees of the department shall perform the duties herein specified and shall also perform such other duties as the Governor may prescribe.

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§5A-1-4. Council of finance and administration.

(a) The council of finance and administration is hereby created and shall be composed of eleven members, five of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the secretary of the Department of Administration, the secretary of revenue, the Attorney General or his or her designee, the state Treasurer or his or her designee and the State Auditor or his or her designee; such designees being authorized voting ones. From the membership of the Legislature, the President of the Senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the Speaker of the House of Delegates shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the President of the Senate and the Speaker of the House of Delegates shall serve at the will and pleasure of the officer making their appointment. The secretary of administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof. It shall be the duty of the chairman to call no less than four meetings in each fiscal year, one in each quarter, or more often as necessary, and all meetings shall be open to the public. All meetings of the council shall be held at the capitol building in a suitable committee room which shall be made available by the Legislature for such purpose: Provided, That the second quarterly meeting in each fiscal year shall be held in November and shall be a joint meeting with the Joint Committee on Government and Finance of the Legislature called jointly by the President of the Senate, Speaker of the House of Delegates and secretary of administration.

(b) The council shall serve the Department of Administration and the director of the budget in an advisory capacity for purposes of reviewing the performance of the administrative and fiscal procedures of the state, including the oversight of all federal funds, and shall have the following duties:

(1) To advise with the director of the budget in respect to matters of budgetary intent and efficiency, including the budget bill and budget document detail and format;

(2) To advise with the secretary and the director of the budget concerning studies of government and administration concerning fiscal policy as it considers appropriate;

(3) To advise with the secretary and the director of the budget in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies; and

(4) To advise with the secretary and the director of the budget in respect to the application for, and receipt and expenditure of, anticipated or unanticipated federal funds.

(c) The appointed, nonex officio members of the council shall be entitled to receive compensation and reimbursement for expenses in connection with performance of their duties, during interim periods, if not otherwise receiving the same for identical periods, as is

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authorized by the applicable sections of article two-a, chapter four of the code in respect to performance of duties either within the state or, if necessary, out of state. Compensation and expenses shall be incurred and paid only after approval by the Joint Committee on Government and Finance.

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§5A-1-5. Reports by secretary.

The secretary shall make an annual report to the Governor concerning the conduct of the department and the administration of the state finances as they pertain to programs administered by the Department of Administration. The secretary shall also make other reports as the Governor may require.

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§5A-1-6. Oath and bond of secretary; bond required for director of the Purchasing Division; bonds for other directors and employees; cost of bonds.

The secretary, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by Section 5, Article IV of the Constitution of West Virginia. Notwithstanding any other provisions to the contrary, the secretary shall execute a bond in the penalty of $100,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, approved by the Governor, in form prescribed by the Attorney General and conditioned upon the faithful performance of his duties and the accounting for all money and property coming into his hands by virtue of his office. The oath and bond shall be filed with the Secretary of State.

The director of the Purchasing Division shall execute a bond in the penalty of $100,000 and any person employed as a state buyer in accordance with article three of this chapter shall execute a bond in the penalty of $50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, approved by the Governor, in form prescribed by the Attorney General and conditioned upon the faithful performance of his duties under the provisions of this chapter and all rules and regulations promulgated pursuant to such chapter and the accounting for all money and property coming into his hands by virtue of his office or position. The bonds shall be filed with the Secretary of State. In lieu of separate bonds for state buyers, a blanket surety bond may be obtained. The other division directors and all other employees of the department shall be covered by bonds in cases where the secretary thinks it necessary, which bonds shall be in the penalty prescribed by the secretary and shall be filed with the Secretary of State.

The cost of all such surety bonds shall be paid from funds appropriated to the Department of Administration.

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§5A-1-7. Delegation of powers and duties by secretary.

The powers and duties vested in the secretary may be delegated by him to his assistants and employees, but the secretary shall be responsible for all official acts of the department.

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§5A-1-8. Right of appeal from interference with functioning of agency.

Upon occasion of a showing that the application of the authority vested under the provisions of this chapter may interfere with the successful functioning of any department, institution or agency of the government, such department, institution or agency may have the right of appeal to the Governor for review of the case and the decision or conclusion of the Governor shall govern in such cases.

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§5A-1-9. Reporting of state assets held to secretary and State Treasurer.

On or before July 1, 1990, the secretary of administration shall, pursuant to chapter twenty-nine-a of this code, promulgate rules requiring any and all banks, savings and loans or other financial institutions in possession of property or other assets belonging to the State of West Virginia to report on at least an annual basis, to the secretary and State Treasurer, the nature and value of said property.

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§5A-1-10. General procurement provisions for state spending units.

(a) Unless this code specifically provides to the contrary, all spending units, whenever possible, shall base purchases for commodities and services on a competitive process and utilize available statewide contracts.

(b) The secretary shall issue a notice to cease and desist to any spending unit when the secretary has credible evidence that a spending unit has failed, whenever possible, to purchase commodities and services on a competitive basis or to use available statewide contracts. Failure to abide by such notice may result in penalties set forth in section seventeen, article three of this chapter.

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§5A-1-11. State of West Virginia Equal Opportunity Coordinator.

(a) There is continued within the Department of Administration the position of the State Equal Opportunity Coordinator, who shall be appointed by the Secretary of the Department of Administration.

(b) The coordinator must be an employee of the Department of Administration and possess an in-depth working knowledge of the federal Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, The Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1977, Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008. The coordinator shall also have an in-depth working knowledge of the challenges facing West Virginians covered under these Acts.

(c) The coordinator shall:

(1) Advise the Director of Personnel in the development of comprehensive policies and programs for the development, implementation, and monitoring of a statewide program to assure compliance with 42 U.S.C. §12101, *et seq*., the federal Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, The Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1977, Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008;

(2) Assist in the formulation of rules and standards relating to the review, investigation, and resolution of complaints of discrimination in employment, education, housing, and public accommodation;

(3) Consult and collaborate with state and federal agency officials to develop compliance programs;

(4) Consult, train, and collaborate with, state agencies and state employees on the federal Equal Employment Opportunity Act, Americans with Disabilities Act, and related issues;

(5) Represent the state on local, state, and national committees and panels related to the Americans with Disabilities Act and the Equal Employment Opportunity Act;

(6) Advise the Governor and agency heads on federal Americans with Disabilities Act and Equal Employment Opportunity Act issues;

(7) Consult with state agencies on the hiring and employment of persons with disabilities; and

(8) Be available to inspect and advise the Real Estate Division, General Services Division, and the Purchasing Division on physical properties owned or leased by the State of West Virginia for compliance with 42 U.S.C. §12101, *et seq*., the federal Americans with

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Disabilities Act.

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§5A-1-12. Procedural rules required for exempt agencies.

(a) An agency that has been exempted from some or all of the requirements of this chapter, by either a provision of this chapter or in another provision of this code, shall adopt procedural rules, under §29A-3-1 *et seq.* or §29A-3A-1 *et seq.* of this code, establishing its purchasing procedures.

(b) For agencies that have been exempted prior to the effective date of this section, the written procedures shall be filed no later than September 1, 2020. After September 1, 2020, any agency which has not filed its procedural rule as required by this section shall follow the procurement requirements established by the Purchasing Division.

(c) For agencies that are exempted after the effective date of this section, the written procedures shall be filed before the exemption may take effect.

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§5A-1A-1. Employee suggestion award program continued.

[Repealed].

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§5A-1A-2. Board created; term of members.

[Repealed].

WV Legislature

§5A-1A-3. Duties of board; excluded employees.

[Repealed].

WV Legislature

§5A-1A-4. Awards.

[Repealed].

WV Legislature

§5A-1A-5. State ownership of suggestions.

[Repealed].

WV Legislature

§5A-2-1. Finance Division created; director; sections; powers and duties.

(a) The Finance Division of the Department of Administration is continued. The Finance Division shall be under the supervision and control of a director, who shall be appointed by the secretary. There shall be in the Finance Division a Shared Services Section and a Financial Accounting and Reporting Section.

(b) The Shared Services Section shall have the duties conferred upon it by this article, §5A-2B-1 et seq. of this code, and by the secretary, including, but not limited to, general financial accounting, payroll, accounts payable, and accounts receivable for the spending units that have entered into agreements with the Shared Services Section.

(c) The Financial Accounting and Reporting Section shall establish and maintain the centralized accounting system required by §5A-2-24 of this code and issue annual general purpose financial statements in accordance with generally accepted accounting principles and with this article.

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§5A-2-2.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-3.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-4.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-5.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-6.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-7.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-8.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-9.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-10.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-11.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-12.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-13.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-14.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-14a.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-15.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-16.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-17.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-18.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-19.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-19a. Special reports by spending units; notification of pending matters having impact on future expenditure requirements.

(a) Within ninety days following the end of each fiscal year, each spending unit within state government shall submit a detailed report and accounting of all substantial unbudgeted contingent liabilities that may have a substantial and material impact on spending obligations in subsequent fiscal years. Each report is to include, but not be limited to, pending legal actions, unresolved audit findings and any other activities that are reasonably predicted to have an impact on future expenditures by the state.

(b) All reports are to be submitted to the secretary on forms and in the manner prescribed by the secretary. Within thirty days of receipt of each final report, the secretary shall forward a copy to the Joint Committee on Government and Finance.

(c) The secretary shall propose for promulgation all rules required for the implementation of this section in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rules are to include, but not be limited to, definitions of the types of substantial unbudgeted contingent liabilities that are reportable under the provisions of this section.

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§5A-2-20.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-21.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-22.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-23.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-24. Management accounting.

(a) It is the intent of this section to establish a centralized accounting system for the offices of the Auditor, treasurer, Board of Investments, secretary of administration and each spending unit of state government to provide more accurate and timely financial data and increase public accountability.

(b) Notwithstanding any provision of this code to the contrary, the secretary of administration shall develop and implement a new centralized accounting system for the planning, reporting and control of state expenditures in accordance with generally accepted accounting principles to be used by the Auditor, treasurer, Board of Investments, secretary and all spending units. The accounting system shall provide for adequate internal controls, accounting procedures, recording income collections, systems operation procedures and manuals, and periodic and annual general purpose financial statements, as well as provide for the daily exchange of needed information among users.

(c) The financial statements shall be audited annually by outside independent certified public accountants, who shall also issue an annual report on federal funds in compliance with federal requirements.

(d) The secretary shall implement the centralized accounting system no later than December 31, 1993, and, after approval of the system by the Governor, shall require its use by all spending units. The Auditor, treasurer, Board of Investments, secretary and every spending unit shall maintain their computer systems and data files in a standard format in conformity with the requirements of the centralized accounting system. Any system changes must be approved in advance of the change by the secretary. The Auditor, treasurer, Board of Investments, budget director and secretary of administration shall provide on-line interactive access to the daily records maintained by their offices.

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§5A-2-25. System of accounting to be certified to legislative Auditor.

The secretary shall certify the system of accounting and reporting installed pursuant to the provisions of this article, and any changes made therein, to the Legislative Auditor.

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§5A-2-26.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-27.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-28.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-29.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-30.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

WV Legislature

§5A-2-31.

Repealed.

Acts, 2004 Reg. Sess., Ch. 239.

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§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; misdemeanor penalty for noncompliance.

(a) The provisions of section twenty-five of this article requiring the secretary to supply copies of the documents specified therein to the Legislative Auditor shall be strictly adhered to by the secretary.

(b) Any failure by a secretary to comply with the provisions of subsection (a) of this section shall be a misdemeanor and, upon conviction thereof, the secretary shall be fined the sum of $1,000. This penalty shall be in addition to other penalties provided elsewhere in this article and other remedies provided by law.

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§5A-2-33. Financial accounting and reporting section; comptroller; powers and responsibilities.

(a) The financial accounting and reporting section created under section one of this article shall be under the control and supervision of a comptroller. The provisions of this section shall apply to all component units of state government, as defined by generally accepted accounting principles.

(b) The comptroller, under the direction and supervision of the director of the Finance Division, has the power and responsibility to:

(1) Maintain financial records supporting the Comprehensive Annual Financial Report required under subdivision (8) of this subsection, in accordance with generally accepted accounting principles;

(2) Maintain the official chart of accounts of the state;

(3) Maintain the centralized accounting system;

(4) Maintain the statewide accounting policies and procedures;

(5) Direct the establishment and maintenance of an adequate internal control structure by the various component units of state government;

(6) Verify the periodic reconciliation of assets as reported by the board of Investments and budgetary fund balances as reported by the State Auditor;

(7) Issue management financial reports by component unit and department, as well as consolidated management financial reports, as follows:

(A) Monthly budgetary basis reports by revenue and expense, budget compared to actual, and encumbrances; and

(B) Financial position reports, including, but not limited to, cash, investments, indebtedness, obligations and accounts payable.

(8) Issue a comprehensive annual financial report.

(A) When all state agencies meet the financial reporting deadlines set by the financial accounting and reporting section, the report shall be issued on or before December 31 of the calendar year in which the reporting period ends.

(B) When any agency fails to meet the reporting deadline, the report shall be issued within 60 days of receiving the last agency report.

(C) The financial report will be prepared in accordance with generally accepted accounting

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principles;

(9) Have the general purpose financial statements of the state audited annually by independent certified public accountants;

(10) Require the state pension systems, workers' compensation commission, Public Employees Insurance Agency, Board of Risk and Insurance Management and the various other component units of the state to prepare financial statements audited by independent certified public accountants and submit the audited financial statements to the financial accounting and reporting section in the form and within the time frames established by the financial accounting and reporting section;

(11) Maintain controls over access to the centralized accounting system and the required modifications, as well as edits, controls and tables;

(12) Promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code to effectuate the intent and purpose of this section: *Provided,* That such rules may initially be implemented by emergency rule; and

(13) Do all things necessary and convenient to maintain the centralized accounting system, to issue financial reports of the state and to carry out its powers and responsibilities.

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§5A-2-34. Study of centralized accounting system.

[Repealed]

WV Legislature

§5A-2-35.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-2-36.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-2-37.

Repealed.

Acts, 1965 Reg. Sess., Ch. 51.

WV Legislature

§5A-2-38.

Repealed.

Acts, 1965 Reg. Sess., Ch. 51.

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§5A-2A-1. Definitions.

[Repealed.]

WV Legislature

§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

[Repealed.]

WV Legislature

§5A-2A-3. Regulation of compressed natural gas.

[Repealed.]

WV Legislature

§5A-2A-4. Prohibition of subsidies or incentive payments.

[Repealed.]

WV Legislature

§5A-2B-1. Shared Services Section created; purpose; deputy director.

(a) There is hereby created within the Finance Division the Shared Services Section for the purpose of establishing centralized accounting and financial reporting services for state spending units.

(b) The Shared Services Section shall be under the supervision of a deputy director, who shall be appointed by the Secretary of the Department of Administration and who shall, at a minimum, have:

(1) A bachelor's degree from an accredited four-year college or university;

(2) Six years of full-time experience in finance or accounting, with two years of experience as an administrator or supervisor; and

(3) Knowledge of generally accepted accounting principles and budgeting.

(c) The Shared Services Section is authorized to employ necessary personnel, including, but not limited to, accountants, auditors, and procurement officers, to discharge the duties of this article.

(d) The Shared Services Section shall provide, at a minimum, accounting, financial reporting, and budgeting services to spending units who enter into agreements pursuant to §5A-2B-3 of this code. The deputy director may charge a reasonable fee to spending units for the accounting and financial reporting services provided to agencies.

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§5A-2B-2. Cost analysis and reporting.

(a) The Department of Administration shall maintain a cost-performance assessment for use by each state spending unit to measure costs of that spending unit providing its own accounting and financial reporting services.

(b) Annually, on or before April 1, all state spending units shall report to the Shared Services Section information related to costs of providing accounting and financial reporting services based upon the metrics identified by the Shared Services Section in the cost-performance assessment. The deputy director shall evaluate the cost information provided by spending units to determine if the same services could be provided by the Shared Services Section at a lower cost and in a more efficient manner.

(c) Annually, on or before December 31, the deputy director shall report to the Governor and the Joint Committee on Government and Finance the cost savings and efficiencies resulting from providing accounting and financial reporting services by the Shared Services Section.

(d) The Department of Administration may promulgate legislative rules, including emergency rules, to develop the assessment, any forms necessary for reporting costs, and any other information necessary pursuant to §29A-3-1 *et seq*. of this code.

(e) This section does not apply to the Legislature.

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§5A-2B-3. Applicability and exemptions.

(a) Those spending units with a cost-performance assessment greater than the baseline cost set by the Shared Services Section, as determined by the provisions set forth in §5A-2B-2 of this code, shall enter into an agreement with the Shared Services Section for the provision of accounting and financial services.

(b) Any spending unit seeking accounting and financial reporting services may voluntarily request an agreement for the provision of accounting and financial reporting services by the Shared Services Section.

(c) Those spending units with one full-time equivalent position or less dedicated to providing accounting and financial reporting services shall enter into an agreement with the deputy director of the Shared Services Section for the provision of accounting and financial reporting services, provided the deputy director determines the implementation of the agreement would be feasible and documents that the agreement will result in cost savings or efficiencies to the state.

(d) Those spending units that fail to provide any required report or information to the Department of Administration necessary for the completion of any required federal report, including the single audit required by the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156, as well as any subsequent amendments, by the deadlines established by the Department of Administration will be given a one-year probationary period with a plan of corrective action defined by the Department of Administration.

(1) The plan of corrective action shall include defined benchmarks for completing all reports or information necessary for the consolidated annual financial report by the deadline in the next fiscal year.

(2) If a spending unit fails to meet established deadlines by the end of the probationary period, the spending unit shall, at the deputy director’s discretion, enter into an agreement for the provision of accounting and financial reporting services by the Shared Services Section.

(e) The deputy director may decline to enter into an agreement under this section only upon a determination that the complexities of providing accounting, financial reporting, and budgeting services to the spending unit exceed the expertise of the Shared Services Section and that developing that expertise would outweigh any potential cost savings to the state.

(f) When a spending unit has entered into an agreement with the Shared Services Section for the provision of accounting and financial reporting services pursuant to subsection (a) of this section, the spending unit may cancel the agreement at the end of the fiscal year when documentation showing the spending unit can provide the services at a lower cost to the

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state is approved by the deputy director.

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§5A-2B-4. Special revenue fund; payments into fund; disbursements.

There is created in the State Treasury a special revenue fund designated the Shared Services Section Fund. The fund consists of appropriations by the Legislature, funds received for services provided pursuant to this article, and any gifts, grants, or donations received. Expenditures from the fund shall be made by the deputy director for the purposes set forth in this article, and are not authorized from collections, but are to be made only in accordance with appropriation from the Legislature and in §12-3-1 et seq. of this code, and upon the fulfillment of the provisions of §11-2B-1 et seq. of this code.

WV Legislature

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The provisions of this article do not apply to:

(1) The judicial branch;

(2) The West Virginia State Police;

(3) The West Virginia Office of Laboratory Services;

(4) The legislative branch;

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(5) Purchases of stock made by the Alcohol Beverage Control Commissioner;

(6) Purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications, and technical services by the State Board of Education for use in and in support of the public schools; and

(7) Purchases of voter registration systems, voting systems, electronic pollbooks, election results reporting systems, and other technologies used to register, maintain, or process voters or used in the conduct of an election by the West Virginia Secretary of State, which are critical election infrastructure protected by 42 U.S.C. § 5195c: *Provided*, That when any purchase or procurement has been made pursuant to this subdivision, the Secretary of State shall submit all bids, quotes, requested specifications, and contracts related to the purchase or procurement, as well as any subsequent change orders and amendments and addenda to contracts related to the purchase or procurement, to the director to be posted and publicly accessible on the division's website: *Provided, however*, That the Secretary of State is not required to submit to the director any document or portion of a document that would be exempt from disclosure if the document or portion of a document were requested pursuant to §29B-1-1 *et seq*. of this code.

(d) The provisions of this article do not apply to any contract, agreement, or memorandum of understanding between a spending unit of state government and West Virginia School of Osteopathic Medicine, West Virginia University, or Marshall University for services, except that any contract entered into under §9-2-6(5) of this code for the provision of Medicaid services by a risk-bearing entity is not exempt from the provisions of this article.

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

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

WV Legislature

§5A-3-1a. Prescription drug products.

In addition to other provisions of this article, the division is authorized, on behalf of the Public Employees Insurance Agency, the schools of medicine of the state colleges and universities, the department of vocational rehabilitation and the Department of Human Services, to negotiate and enter into agreements directly with manufacturers and distributors whose prescription drug products are sold in the state for sole-source and multiple-source drugs to be paid for under a state program for eligible recipients. Such agreements shall provide for a rebate of a negotiated percentage of the total product cost to be paid by the manufacturer or distributor of a specific product. Each agency is authorized to establish, either singularly or together with other agencies, a drug formulary.

Prescription drug products are included in the drug formulary only upon completion of the application to and approval of the division. Those products for which a rebate is successfully negotiated are automatically included in the drug formulary for a period of time coterminous with the negotiated rebate.

If there has been a failure to negotiate or renew a rebate agreement for a specific prescription drug product, the pharmaceutical manufacturer of that product shall disclose to the division its most favorable pricing arrangements available to state and nonstate government purchasers. If the division determines that the product needs to be included in the drug formulary, with the approval of the agency the division shall establish the amount to be reimbursed for the product based upon the price information provided by the manufacturer. The determination as to whether a product should be included in the drug formulary is based on the product's efficiency, cost, medical necessity and safety. Any rebate returns, as a result of the provisions of this section regarding prescription drugs, shall be deposited in the General Revenue Fund.

It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency that administers the state's Medicaid program. Therefore, the Department of Human Services is authorized to negotiate rebates as provided for in this section.

WV Legislature

§5A-3-2. Books and records of director.

The director shall keep accurate books, accounts and records of all transactions of his or her division, and such books, accounts and records shall be public records, and shall at all proper times be available for inspection by any taxpayer of the state.

WV Legislature

§5A-3-3. Authority of Director of Purchasing.

The director, under the direction and supervision of the secretary, is the executive officer of the Purchasing Division and has the authority to:

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

(2) Ensure that the purchase of or contract for commodities and services are based on competitive bid, except when another method of procurement is determined to be in the best interest of the state;

(3) Purchase or contract for, or assist and facilitate the purchase or contract for the spending units of the state government, in the name of the state, the commodities, services, and printing required by the spending units of the state government;

(4) Apply and enforce standard specifications established in accordance with §5A-3-5 of this code as hereinafter provided;

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

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

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

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

(9) Timely provide guidance to and assist any spending unit in the development of the provisions and terms of contracts entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve contracts as to such provisions and terms; and the duties of providing guidance and assistance and approval herein set forth do not supersede the responsibility and duty of the Attorney General to approve the contracts as to form; *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation or to construction or reclamation contracts entered into by the Department of Environmental Protection; *Provided, however*, That the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by the board of directors of the state college system, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: *Provided further*, That the provisions of this subdivision do not apply to the West

WV Legislature

Virginia State Police and the West Virginia Office of Laboratory Services: *And provided further*, That the provisions of this subdivision shall not apply to contracts for any natural disaster recovery activities entered into by the West Virginia State Conservation Committee or the West Virginia Conservation Agency;

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

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

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

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

WV Legislature

§5A-3-3a. Additional exemptions from purchasing requirements.

(a) The provisions of §5A-3-3(9) of this code do not apply to the Division of Emergency Management created by §15-5-1 *et seq*. of this code: *Provided*, That if work on a purchase or contract has been started by the Purchasing Division, on behalf of the Division of Emergency Management, prior to the effective date of this section, the Purchasing Division shall continue to perform services for the Division of Emergency Management on that purchase or contract until the contract is awarded or the purchase is made, or the Division of Emergency Management decides not to make the purchase or award the contract.

(b) Notwithstanding any other provision of this code, the Agency for Surplus Property is hereby empowered to transfer funds generated from the sale of vehicles, other equipment, and commodities belonging to the West Virginia Division of Emergency Management to a special revenue account within the Division of Emergency Management entitled the West Virginia Division of Emergency Management, WV Interoperable Radio Project Account.

WV Legislature

§5A-3-3b. Exemption of facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health Facilities.

Notwithstanding any provisions of section one or three of this article to the contrary, the provisions of this article do not apply to facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health Facilities: *Provided*, That on or before July 1, 2020, the Legislative Auditor shall audit the purchasing procedures of the facilities described in this section and report the results to the Joint Committee on Government and Finance on the effects of exempting said facilities from the provisions of this article, including, but not limited to, any realized cost savings and changes in purchasing policies resulting from such exemption.

WV Legislature

§5A-3-3c. Exemptions from purchasing requirements for contracts entered into as part of recovery from a declared state of emergency.

(a) The provisions of this article do not apply to contracts entered into during a state of emergency declared by the Governor pursuant to §15-5-6 of this code, so long as the contract is directly and solely related to the recovery from the declared state of emergency.

(b) The provisions of this article do not apply to the renewal of a contract entered into during a state of emergency declared pursuant to §15-5-6 of this code, if the contract is directly and solely related to the recovery from the declared state of emergency during which the contract was initially entered. For purposes of this subsection, recovery does not include permanent reconstruction after the initial state of emergency has ended.

(c) The provisions of this article do not apply to the purchase of goods or services from the federal government, or an agency thereof, if the purchase of those goods and services is directly and solely related to the recovery from a state of emergency declared pursuant to §15-5-6 of this code.

(d) At the discretion of the Chief Information Officer, the provisions of this article may not apply to the purchase, procurement, or implementation of information technology in response to a qualified cyber security incident, as defined by §5A-6C-3 of this code: *Provided*, That the information technology is imminently necessary to protect the state's infrastructure or data.

(e) To qualify for the exemption contained in this section, the Director of the Division of Homeland Security and Emergency Management must certify that the contract or purchase is directly and solely related to the recovery from a declared state of emergency and attach a copy of the proclamation issued by the Governor's office to the certification. Such certifications shall be maintained by the Division of Homeland Security and Emergency Management until the contracts or purchase agreements have been fully executed.

(f) For purposes of this section, "directly and solely related" means that the goods or services being purchased or contracted for will be used for recovery from the state of emergency only and will not be used for any other purpose.

WV Legislature

§5A-3-3d. Exemption of Rural Health Transformation Program.

(a) The Legislature hereby finds and declares:

(1) That the federal Rural Health Transformation Program presents an unprecedented opportunity for the State to make critical improvements to health care in rural areas, modernize various aspects of health care delivery systems, enhance educational and work force pathways for health care, and expand the technological boundaries of health care science, analytics, and technology for the benefit of all West Virginians;

(2) That the federal Rural Health Transformation Program places many significant compliance requirements on the use of federal funds granted to the Department of Health, that use of funds received from the federal Rural Health Transformation Program must be used in accordance with the requirements and limitations of that program reflected in guidance and documentation from U.S. Center for Medicare and Medicaid Services ("CMS");

(3) That CMS will be closely monitoring the progress of the State's implementation of the program outlined in its application for funding submitted to CMS on November 5, 2025, and granted an award on or about December 29, 2025;

(4) That the federal Rural Health Transformation Program requires rapid, targeted deployment of the awarded funds; and

(5) That such utilization be performed within rigid time frames, with the understanding that failures to comply with the limitations on how these funds may be used—as well as requirements on proper processes for the deployment—may result in clawbacks of funds both currently awarded as well as jeopardizing future awards by CMS.

(b) To ensure conformity with the unique requirements of the federal Rural Health Transformation Program, notwithstanding any provisions of §5A-3-1 or § 5A-3-3 of this code to the contrary, the provisions of this article shall not apply to the State's implementation of the Rural Health Transformation Program, for which the program office is located within the Department of Health.

WV Legislature

§5A-3-4. Rules of director.

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

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

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

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

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

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

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

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

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

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

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

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spending units;

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

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

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

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

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

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

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

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

WV Legislature

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

(a) The director shall promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities and services, which shall establish the quality to which commodities to be purchased and services to be contracted for by the state must conform.

(b) Standard specifications shall apply to every future purchase of or contract for the commodities or services described in the specifications and shall include information relating to the cost of maintenance and expected life of the commodity if the director determines there are nationally accepted industry standards for the commodity.

(c) No purchases by any spending unit may be exempt from compliance with the standard specifications so established, but the director may exempt the purchase of particular items from the standard specifications if it is considered necessary and advisable.

(d) The director shall update the standard specifications, as necessary.

WV Legislature

§5A-3-6. Purchasing section standard specifications -- Advisers from spending units.

The secretary may from time to time request any official or employee of any spending unit to aid and advise the director in formulating, revising or amending the schedule of standard specifications provided for in section five of this article. Such official or employee shall act at the request of the secretary and shall be entitled to receive his necessary expenses incurred in compliance therewith, but shall receive no additional compensation therefor.

WV Legislature

§5A-3-7. Director to advise with heads of state and other institutions producing commodities, services and printing.

The director shall advise with the heads of the various state and other institutions producing commodities, services and printing, with the view to making these articles suitable for the needs of state spending units. Notwithstanding any provision of this code to the contrary, in the event of conflict between state and other institutions producing commodities, services and printing with preference in accordance with the code, the director shall determine which institution shall provide a commodity, service or printing, basing such determination on quality, price and the efficient and economical operation of state government.

WV Legislature

§5A-3-8. Facilities of division available to local governmental bodies.

The director shall make available the facilities and services of his or her division to counties, county schools, municipalities, urban mass transportation authorities, created pursuant to §8-27-1 et seq. of this code, mass transportation divisions of county and municipal governments, fire departments, and other local governmental bodies within this state. The actual expenses incurred thereby shall be paid by the local governmental body.

WV Legislature

§5A-3-8a. Facilities of division available to volunteer fire departments and emergency medical services.

The director shall make available the facilities and services of his or her division to fire departments and companies, including volunteer and part-volunteer departments and companies, as well as to emergency medical services agencies that are designated to provide emergency response by one or more county emergency dispatch centers. The director shall provide, whether by legislative rule proposed pursuant to §29-3-1 et seq. of this code or other agreement entered into between the director and another governmental body or agency of the state, for the implementation of this section.

WV Legislature

§5A-3-9. Examination and testing of purchases; report required.

Within the limit of funds available, the director, or some person appointed by the director, shall determine whether commodities delivered or services performed conform to contractual requirements. Nonconformity shall be reported to the director and chief officer of the spending unit purchasing such commodities or services for remedial action.

WV Legislature

§5A-3-9a. Creation of a fund.

The "Vendor Registration Payment Fund" is hereby redesignated and continued as the "Vendor Fee Fund," and the balance remaining upon the effective date of this section shall remain upon redesignation. Moneys deposited in this fund shall be administered by the Purchasing Division and used for the purposes established in this article. Expenditures are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year beginning July 1, 2006, expenditures are authorized from deposits rather than pursuant to appropriations by the Legislature.

Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and used for other purposes by appropriation of the Legislature.

WV Legislature

§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.

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

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

(c) Spending units shall not make an individual purchase in excess of the delegated procurement limit established in subsection (b) of this section, issue a series of requisitions for the same or similar commodity or service or divide or plan procurements with the intention to circumvent the delegated procurement limit established in subsection (b), or otherwise avoid the use of sealed bids. Any spending unit that discovers it has awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period shall file copies of all contracts awarded or orders placed for the commodity, service, or printing in question within the 12 preceding months with the director upon exceeding the delegated limit, along with a statement explaining how either the multiple contract awards or orders do not circumvent the delegated procurement limit, or how the contracts or orders were not intended to circumvent the delegated limit. If the spending unit does not report to the director within a reasonable period, the director shall contact the spending unit to request such statement and may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection, as determined appropriate. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, in consultation with the relevant spending unit, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on January 1 and July 1 of each year the spending units which have reported under this subsection and the findings of the director.

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

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

WV Legislature

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

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

(g) For all commodities and services in an amount exceeding $1 million, if the procurement of the commodity or service is continuing in nature, 12 months prior to the expiration of the contract or final renewal option, whichever is later, the spending unit shall coordinate with the Purchasing Division on a new procurement for such commodity or service under the requirements of this article. This procurement shall be awarded or terminated no later than 180 days after the procurement specifications have been finally approved by the Purchasing Division.

WV Legislature

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

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

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

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

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

(4) "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities.

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

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

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

WV Legislature

(2) The debtor is in employer default.

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

(d) By submitting a bid or contract proposal or entering into a contract with the state or any of its political subdivisions, the vendor or prospective vendor is deemed to be affirming that the vendor or prospective vendor or a related party to the vendor or prospective vendor is not in employer default and does not owe any debt in an amount in excess of $1,000 or, if a debt is owed, that the provisions of subsection (c) of this section apply. This affirmation, combined with verification of State tax compliance, will satisfy the public contracting entities verification requirements contained in §5-22-1(j) of this code.

WV Legislature

§5A-3-10b. Best value procurement.

(a) The director may utilize best value procurement to enter into a contract when he or she determines in writing that it is advantageous to the state.

(b) A solicitation for bids under best value procurement shall be made in the same manner as provided in §5A-3-10 of this code.

(c) Best value procurement awards shall be based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. Those criteria include, but are not limited to, price and the total cost of acquiring, operating, maintaining, and supporting a commodity or service over its projected lifetime, as well as technical criteria. The technical criteria may include, but are not limited to, the evaluated technical merit of the bidder's bid or proposal, the bidder's past performance, the degree to which a proposal exceeds other proposals in technical merit, the utility of any novel or unrequested items in the proposal, and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the business objectives set forth in the solicitation.

(d) The award must be made to the highest scoring responsive and responsible bidder whose bid is determined, in writing, to be most advantageous to the state, taking into consideration all evaluation factors set forth in the best value solicitation.

(e) The director may not use best value procurement to enter into government construction contracts, including, but not limited to, those set forth in §5-22-1 et seq. of this code.

WV Legislature

§5A-3-10c. Direct award procurement.

(a) The director may make a direct award of a contract without competitive bidding if:

(1) The spending unit requests a direct award in writing;

(2) The spending unit provides written justification showing that the direct award is in the best interest of the state;

(3) The spending unit provides written confirmation that competition is not available because there is no other source for the commodity or service, or that no other source would be willing or able to replace the existing source without a detrimental effect on the spending unit, the existence of a detrimental effect being determined by the director in his or her sole discretion;

(4) The director publicly advertises a notice of intent to make a direct award without competition in the state's official bid notification system, as well as any other public advertisement that the director deems appropriate, for no less than 10 business days; and

(5) No other vendor expresses an interest in providing the commodity or service in question.

(b) If a vendor expresses an interest in providing the commodity or service described in the notice of intent to make a direct award, then the spending unit must convert the direct award to a competitive bid, unless the director determines that the interest expressed by a vendor is unreasonable. The competitive bid may, at the discretion of the director, be either a request for quotation or request for proposal.

(c) The notice of intent to make a direct award shall contain the following information:

(1) A description of the commodity or service for which a direct award will be made;

(2) A time period by which delivery must be made or performance must occur;

(3) The price that will be paid for the commodity or service;

(4) Any limitations that a competing vendor would need to satisfy;

(5) An invitation to all vendors interested in providing the commodity or service to make that interest known; and

(6) Contact information for the director or his or her designee, and instructions to submit a statement of interest to the director or his or her designee.

(d) The director may refuse a spending unit's request to utilize a direct award procurement if the commodities or services have previously been obtained through competitive bidding.

WV Legislature

(e) On or before December 1, 2018, and annually thereafter, the director shall report to the Governor and the Joint Committee on Government and Finance on the spending units that have requested a direct award for their commodities or services, the type of commodity or service, and results of the direct award process.

WV Legislature

§5A-3-10d. Reverse auctions.

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

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

(1) Are subject to low price volatility;

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

(3) Vary little between suppliers;

(4) Are sourced primarily based on price, with limited ancillary considerations;

(5) Require little collaboration from suppliers; and

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

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

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

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

WV Legislature

§5A-3-10e. Prequalification agreement; agency-delegated bidding.

(a) Subject to the limitations of this section, the director may permit spending units to procure commodities and services from a preapproved vendor through a prequalification agreement and delegated prequalification bidding if the director determines the process is fair, economical, and in the best interests of the state.

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

"Prequalification agreement" means an agreement, having a term of no more than three years, between the Purchasing Division and at least two prequalified vendors authorizing a spending unit to purchase a commodity or service on a recurrent basis through the delegated prequalification bidding process defined in the prequalification agreement.

"Prequalified vendor" means a "vendor", as that term is defined in §5A-1-1 *et seq*. of this code, that has entered into a prequalification agreement with the Purchasing Division and may participate in the delegated prequalification bidding subject to the terms and conditions of the prequalification agreement.

"Delegated prequalification bidding" means the competitive bidding process whereby the prequalified vendors that are parties to a prequalification agreement may submit sealed bids directly to spending units to provide a commodity or service identified in the prequalification agreement subject to the limitations set forth in this section.

(c) Prequalification agreement. —

(1) For each prequalification agreement, the director shall set forth the requirements, technical or otherwise, under which a vendor may be qualified to supply a commodity or service through the delegated prequalification bidding. For each prequalification agreement, the director shall follow the notice and advertising requirements set forth in §5A-3-10 of this code.

(2) A prequalification agreement may authorize the delegated prequalification bidding for only one type of commodity or service.

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

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

(d) Delegated prequalification bidding procedures. —

(1) A spending unit may commence the delegated prequalification bidding process by issuing a request for a commodity or service identified in the prequalification agreement stating in

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the request the quantity of the commodity or if a service, the scope of work to be completed, to be procured.

(2) The prequalified vendor that submits the lowest bid, or if the solicitation is a best value procurement, the highest scoring responsive and responsible bidder when evaluating all factors in the best value procurement, in response to the request shall be awarded the procurement: *Provided*, That the solicitation for a best value procurement include the scoring criteria and all factors used to determine the highest scoring responsive and responsible bidder when the procurement request is released.

(3) The delegated prequalification bidding may not be utilized for any request for commodities or services anticipated to cost more than $1 million, unless approved in writing by the Director of the Purchasing Division. The state may not issue a series of orders each anticipated to cost less than $1 million to circumvent the monetary limitation in this subsection. The limit expressed herein applies to each delegated prequalification bid conducted pursuant to the prequalification agreement and not to total spending under the prequalification agreement.

(e) Rule-making authority. — The Director of the Purchasing Division shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement this section, including, but not limited to, provisions to establish procedures for the solicitation and authorization of prequalification agreements, prequalification of vendors, and implementation of delegated prequalification bidding.

WV Legislature

§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.

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

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

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

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

(e) All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder or bidders, taking into consideration the qualities of the commodities or services to be supplied, their conformity with specifications, their suitability to the requirements of the government, the delivery terms and, if the director determines there are nationally accepted industry standards, cost of maintenance and the expected life of the commodities: *Provided*, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board’s Minimum Standards for Design and Equipment of School Buses. County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected.

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

(g) The bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing

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Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and hour of the bid opening. All bids will be opened publicly by two or more persons from the Purchasing Division. Vendors will be given notice of the day, time and place of the public bid opening. Bids may be viewed immediately after being opened.

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

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

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

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

WV Legislature

§5A-3-11a. Negotiation when all bids exceed budget in requisition.

(a) Spending units shall include the maximum budgeted amount available for each purchase in a requisition submitted to the Purchasing Division. No person may disclose this maximum budgeted amount to any vendor prior to the award of a contract. If all bids submitted pursuant to a solicitation exceed the funds available for the purchase, then a negotiated award may be made as set forth in this section.

(1) If the director determines in writing that there is only one responsive and responsible bidder, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(2) If the Purchasing Division solicits bids with a request for quotation and there is more than one bidder, the director may negotiate with bidders determined in writing to be responsive and responsible, based on criteria contained in the bid invitation: Provided, That the director must negotiate first with the lowest bidder. If the director does not award the bid to the lowest bidder, he or she may close negotiations with that bidder and enter into negotiations with the next lowest bidder, and may continue to do so in like manner with the remaining responsive and responsible bidders. The director may not extend an offer to any bidder that is not first extended to the prior bidders in order of rank.

(3) If the Purchasing Division solicits bids utilizing a best value procurement, as set forth in section ten-b of this section, and there is more than one bidder, the director may negotiate with bidders determined in writing to be responsive and responsible, based on criteria contained in the bid invitation: Provided, That the director must negotiate first with the highest scoring bidder. If the director does not award the bid to the highest scoring bidder, he or she may close negotiations with that bidder and enter into negotiations with the next highest scoring bidder, and may continue to do so in like manner with the remaining responsive and responsible bidders. The director may not extend an offer to any bidder that is not first extended to the prior bidders in order of rank.

(b) After negotiations occur pursuant to subsection (a) of this section, if the director determines that more than fifteen percent of the value of the bid must be renegotiated by revising the specifications of the original solicitation, only a resolicitation may be initiated or the solicitation may be withdrawn.

(c) The director may not renegotiate with any bidder after closing negotiations with that bidder and entering into negotiations with the next bidder.

WV Legislature

§5A-3-11b. Discussion and final offers.

(a) As provided in the bid solicitation, the director may conduct discussions with, and obtain best and final offers from, responsive and responsible bidders who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Bidders must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing bidders.

(b) The following contracts are exempt from this section:

(1) Government construction contracts, including, but not limited to, those set forth in article twenty-two, chapter five of this code; and

(2) The purchase of supplies and material.

WV Legislature

§5A-3-11c. Multiple awards.

The director may elect to award a contract to one or more responsive and responsible bidders if the director determines in writing that a single award to an individual bidder would be insufficient: Provided, That the basis for the selection among multiple contracts at the time of purchase shall be the most practical and economical alternative and shall be in the best interests of the state.

WV Legislature

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

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

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

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

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

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

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

(6) The vendor's tax identification number.

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

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

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

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

WV Legislature

§5A-3-13. Contracts to be approved as to form; filing.

Contracts shall be approved as to form by the Attorney General. A contract that requires more than six months for its fulfillment shall be filed with the State Auditor.

WV Legislature

§5A–3-14.

Repealed.

Acts, 2010 Reg. Sess., Ch 169.

WV Legislature

§5A-3-14a.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-3-15. Emergency purchases in open market.

The director may authorize, in writing, a state spending unit to purchase in the open market, without filing requisition or estimate, specific commodities for immediate delivery to meet bona fide emergencies arising from unforeseen causes, including delays by contractors, delays in transportation and unanticipated volume of work. A report of any such purchase, together with a record of the competitive bids upon which it was based, shall be submitted at once to the director by the head of the state spending unit concerned, together with a full account of the circumstances of the emergency: Provided, That the director may waive the need for the record of competitive bids. Such report shall be entered on a record and shall be open to public inspection.

WV Legislature

§5A-3-16. Special fund; purposes; how composed.

There is hereby created a special revenue fund to be administered by the director to facilitate the following functions of the director:

(1) Purchase commodities in volume and maintain stocks to supply the needs of state spending units; and

(2) Performance of mimeographing, photostating, microfilming, multilithing, multigraphing and other work needed by spending units as provided by section twenty-seven of this article.

The amount of the fund may be fixed and changed by the Governor upon the recommendation of the secretary. If at the end of each fiscal year the cash balance plus value of commodity inventories on hand exceeds the amount so fixed, the excess in cash shall be transferred by the Governor upon recommendation of the secretary to the General Revenue Fund and become a part of the general revenue of the state. The fund shall be composed of the following:

(1) The cash balance and inventories of the fund heretofore established by this section; and

(2) Charges made by the director for commodities sold and services rendered to the state spending units as herein described: Provided, That charges shall not exceed total cost to the fund, which total cost shall include storage, supplies, equipment and salaries and wages of employees necessary to supply commodities and services in addition to purchase price of commodities.

WV Legislature

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

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

WV Legislature

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

If a spending unit requests the purchase of a commodity bearing a particular trade name or brand, the director may substitute, after consultation with the relevant spending unit, a commodity bearing a different trade name or brand, if the substituted commodity reasonably conforms to the adopted standard specifications and can be obtained at an equal or lower price.

WV Legislature

§5A-3-19. Purchases from federal government and other sources.

(a) Notwithstanding any other provision of this article, the director may, upon the recommendation of a state spending unit, participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for the purchase of commodities or services with agencies of the federal government, agencies of other states, other public bodies or other state agencies, if available and financially advantageous. At the discretion of the director, bids may be solicited to determine whether participation in such a cooperative purchasing agreement or consortium is financially advantageous.

(b) The Department of Administration may approve administrative fees, not to exceed the amount of $50,000, necessary to participate in a cooperative purchasing agreement. Fees which exceed $50,000 are subject to the competitive bid requirements of this article.

WV Legislature

§5A-3-20. Spending units to submit lists of expendable commodities.

The head of every spending unit shall submit a list of expendable commodities such spending unit has on hand whenever requested to do so by the director.

WV Legislature

§5A-3-21.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-22.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-23.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-24.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-25.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-26.

Repealed.

Acts, 2010 Reg. Sess., Ch. 132.

WV Legislature

§5A-3-27.

Repealed.

Acts, 2008 Reg. Sess., Ch. 4.

WV Legislature

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

(a) Neither the secretary, nor the director nor any employee of the Division of Purchasing, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any commodities, services or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the secretary, nor the director nor any employee of the Division of Purchasing, shall accept or receive directly or indirectly from any person, firm or corporation, known by such secretary, director or employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward or compensation.

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

WV Legislature

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

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

WV Legislature

§5A-3-30. Statement of purpose; obtaining money and property under false pretenses or by fraud from the state; penalties; definition.

(a) The Legislature of the State of West Virginia hereby declares that the purpose of this statute is to promote equal and fair bidding for the purchase of commodities and services by the state, to eliminate fraud in the procurement of commodities and services by the state.

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

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

(d) For the purpose of this section, "inferior commodities" includes, but shall not be limited to: (1) Any commodity which does not meet the specification or standard issued by the purchasing agency and the Division of Purchasing, or any change order approved by both the purchasing agency and Division of Purchasing; and (2) any commodity which is of a lesser quality, quantity or measure of any kind set forth within the specification or standard issued by the purchasing agency and the Division of Purchasing.

WV Legislature

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

(a) It shall be unlawful for any person to corruptly act alone or combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of services, commodities or printing to the state under the provisions of this article if the purpose or effect of such action, combination, collusion or conspiracy is either to: (1) Lessen competition among prospective vendors; or (2) cause the state to pay a higher price for such services, commodities or printing than would be or would have been paid in the absence of such action, combination, collusion or conspiracy; or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors.

(b) Any person who violates any provision of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years, and be fined not exceeding $10,000.

WV Legislature

§5A-3-32. Power of director to suspend right to bid; notice of suspension.

The director shall have the power and authority to suspend, for a period not to exceed one year, the right and privilege of a vendor to bid on state purchases when the director has reason to believe that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director. Every vendor whose right to bid has been so suspended shall be notified thereof by a letter posted by certified mail containing the reason for such suspension.

WV Legislature

§5A-3-33. Review of suspension by secretary.

Any vendor whose right to bid on state purchases has been suspended by the director under the authority of the preceding section shall have the right to have the director's action reviewed by the secretary, who shall have the power and authority to set aside such suspension.

WV Legislature

§5A-3-33a.

Repealed.

Acts, 2006 Reg. Sess., Ch. 2.

WV Legislature

§5A-3-33b. Scope.

The provisions of sections thirty-three-a through thirty-three-f of this article govern the debarment of vendors with regard to bids under the following provisions of this code:

(a) Section one, article twenty-two, chapter five, relating to bids for construction contracts by the state and its subdivisions;

(b) Section eleven, article three, chapter five-a, relating to the purchase of supplies and printing by the state;

(c) Section eleven, article one, chapter seven, relating to bids for the purchase of commodities and printing by county commissions;

(d) Sections nineteen and twenty, article four, chapter seventeen, relating to bids for construction and reconstruction of state roads and bridges and the furnishing of materials and supplies therefor;

(e) Article nine-d, chapter eighteen, relating to the awarding of contracts by the School Building Authority; and

(f) Sections four and five, article five, chapter eighteen-b, relating to expenditures by the governing boards for higher education.

WV Legislature

§5A-3-33c. Duties.

The director has primary responsibility for administering the debarment process. The director's duties include:

(a) Obtaining lists of vendors declared ineligible under federal laws and regulations;

(b) Notification of all contracting officials for the state and its subdivisions regarding debarred vendors;

(c) Compiling and maintaining a current, consolidated list of all vendors that have been debarred or declared ineligible, the period of such debarment, and the reasons therefor;

(d) Investigating complaints about vendors from the officials of the state and its subdivisions responsible for contracting with vendors for supplies and services;

(e) Initiating and conducting debarment procedures;

(f) Proposing rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, for the operation of the debarment process described in the provisions of sections thirty-three-a through thirty-three-f of this article.

WV Legislature

§5A-3-33d. Grounds for debarment.

(a) Grounds for debarment are:

(1) Conviction of an offense involving fraud or a felony offense related to obtaining or attempting to obtain a public contract or subcontract;

(2) Conviction of any federal or state antitrust statute relating to the submission of offers;

(3) Conviction of an offense involving embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property related to the performance of a contract;

(4) Conviction of a felony offense demonstrating a lack of business integrity or business honesty that affects the present responsibility of the vendor or subcontractor;

(5) Default on obligations owed to the state, including, but not limited to, obligations owed to the workers' compensation funds, as defined in §23-2C-1 et seq. of this code, and obligations under the West Virginia Unemployment Compensation Act and West Virginia state tax and revenue laws. For purposes of this subdivision, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the Bureau of Employment Programs or the Insurance Commission, the director may waive debarment under §5A-3-33f of this code: Provided, That in no event may debarment be waived with respect to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state;

(6) The vendor is not in good standing with a licensing board, in that the vendor is not licensed when licensure is required by the law of this state, or the vendor has been found to be in violation of an applicable licensing law after notice, opportunity to be heard, and other due process required by law;

(7) The vendor is an active and knowing participant in dividing or planning procurements to circumvent the $25,000 threshold requiring a sealed bid or otherwise avoiding the use of a sealed bid;

(8) Violation of the terms of a public contract or subcontract for:

(A) Willful failure to substantially perform in accordance with the terms of one or more public contracts;

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(B) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;

(C) Use of substandard materials on one or more public contracts or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder; or

(D) A repeated pattern or practice of failure to perform so serious and compelling as to justify debarment; or

(9) Any other cause of a serious and compelling nature amounting to knowing and willful misconduct of the vendor that demonstrates a wanton indifference to the interests of the public and that caused, or that had a substantial likelihood of causing, serious harm to the public.

(b) For the purposes of this section, the term “conviction” includes, but may not be limited to, the entering of a deferred prosecution agreement or a plea of guilty or nolo contendere, including pleading to a lesser or related offense in exchange for some form of prosecutorial leniency.

WV Legislature

§5A-3-33e. Debarment procedure.

(a) The director shall obtain lists of vendors declared ineligible under federal laws and regulation and lists of vendors who are in default on state obligations, and shall initiate debarment proceedings with respect to such vendors, except when good cause is shown which includes evidence that the vendor has become responsible.

(1) In the case of federal ineligibility restrictions applicable to state agencies, the director shall also notify the appropriate agencies of any ineligibility determined under federal authority.

(2) The director may also initiate debarment proceedings if he or she finds probable cause for debarment for any ground set forth in section thirty-three-d of this article.

(3) The director shall initiate debarment proceedings when any state agency requests debarment of a vendor and the director finds that probable cause for debarment exists.

(b) The director shall notify the vendor by certified mail, return receipt requested, of the following:

(1) The reasons for the proposed debarment in sufficient detail to put the vendor on notice of the conduct or transactions upon which the proposed debarment is based;

(2) The causes relied upon for the proposed debarment;

(3) That within thirty working days after receipt of the notice, the vendor may submit in writing information and argument in opposition to the proposed debarment;

(4) The procedures governing debarment decision-making; and

(5) The potential effect of the proposed debarment.

(c) In the event a vendor wishes to contest the debarment decision, the director shall decide the matter in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(d) In any debarment decision, the director shall make a specific finding, based on the substantial record, whether the public interest requires that the debarment decision extend to all commodities and services of the vendor, or whether the public interest allows the debarment decision to be limited to specific commodities or services.

(e) In any debarment decision, the director shall specify the length of the debarment period. The debarment period must be for the period of time that the director finds necessary and proper to protect the public from an irresponsible vendor.

(f) Proof of grounds for debarment must be clear and convincing.

WV Legislature

§5A-3-33f. Effects of debarment.

(a) Unless the director determines in writing that there is a compelling reason to do otherwise, the state and its subdivisions may not solicit offers from, award contracts to, nor consent to subcontract with a debarred vendor during the debarment period.

(b) The contracting officer may not exercise an option to renew or otherwise extend a current contract with a debarred vendor, nor a contract which is being performed in any part by a debarred subcontractor, unless the director approves the action in writing, based on compelling reasons for exercise of the option or extension.

(c) The debarment decision may extend to all commodities and services of the vendor, or may be limited to specific commodities or services, as the director specifically finds, in the debarment procedure under §5A-3-33e of this code, to be in the public interest based on the substantial record.

(d) The director may extend the debarment to include a related party of the vendor. The director shall follow the same procedure, and afford the affiliate like notice, hearing, and other rights, for extending the debarment to the affiliate as provided for under §5A-3-33e of this code for the debarment of the vendor. For purposes of this section, a "related party" may include:

(1) Spouses, parents, children, siblings, grandparents, or grandchildren of a debarred vendor or individual;

(2) Any individual or entity that partially or completely owns, controls, or influences, or is partially or completely owned, controlled, or influenced by the actions of a debarred vendor or individual;

(3) Entities that are related under common ownership or control with a debarred vendor; or

(4) A business entity or individual that has contracted with or employed a debarred vendor or individual to perform work on one or more public contracts.

(e) The director may reduce the period or extent of debarment, upon the vendor's request supported by documentation, for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which debarment was based;

(3) Elimination of the causes for which the debarment was imposed; or

(4) Other good cause shown, including evidence that the vendor has become responsible.

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(f) The director may extend the debarment period for an additional period if the director determines that the extension is necessary to protect the interests of the state. Upon the expiration of a debarment period, the director shall extend the debarment period for any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, exempting the current calendar quarter, and for any vendor who is in default on a repayment agreement with an agency of the state, until such time as the cause for the extended debarment is removed. If the director extends the debarment period, the director shall follow the same procedures, and afford the vendor like notice, hearing, and other rights for extending the debarment, as provided for debarment under §5A-3-33e of this code.

(g) A debarment under this article may be waived by the director with respect to a particular contract if the director determines the debarment of the vendor would severely disrupt the operation of a governmental entity to the detriment of the general public or would not be in the public interest.

WV Legislature

§5A-3-34. Authority over inventories and property.

The director shall, under the direction and supervision of the secretary, have full authority over inventories and property.

WV Legislature

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

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

WV Legislature

§5A-3-36. Inventory of removable property.

The director has the power and duty to make and keep current an inventory of all removable property belonging to the state. Such inventory shall be kept on file in the office of the director as a public record. The inventory shall disclose the name and address of the vendor, the date of purchase, the price paid for the property therein described and the disposition thereof.

WV Legislature

§5A-3-37. Reciprocal preference; preference for resident vendors for certain contracts.

(a) For purposes of this section, a vendor shall be deemed to be a resident of this state if such vendor:

(1) Is registered in accordance with §11-12-1 et seq. of this code to transact business within the State of West Virginia;

(2) Maintains its headquarters or principal place of business in the state;

(3) Has actually paid, and not just applied to pay, personal property taxes imposed by chapter 11 of this code on equipment used in the regular course of supplying services or commodities of the general type offered; and

(4) Has actually paid, and not just applied to pay, all required business taxes imposed by chapter 11 of this code.

(b) Except as provided in §5A-3-37(c) of this code, in any instance that a purchase of commodities or printing by the director or by a state spending unit is required under the provisions of this article to be made upon competitive bids, preference shall only be given to resident vendors of West Virginia against a nonresident vendor from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the preference given or required by the state of the nonresident vendor for that particular supply.

(c)(1) In any instance that a purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is required under the provisions of this article to be made upon competitive bids, the successful bid shall be determined as provided in this subsection.

(2) For purposes of this subsection, a successful bid shall be determined and accepted as follows:

(A) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of 100 state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor’s bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted: Provided, That for purposes of this paragraph, any partnership, association, or corporation resident vendor of this state which does not meet the requirements of this paragraph solely because of the

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continuous four-year residence requirement, shall be considered to meet the requirement if at least 80 percent of the ownership interest of the resident vendor is held by another individual, partnership, association, or corporation resident vendor who otherwise meets the requirements of this paragraph, including the continuous four-year residency requirement: Provided, however, That the Purchasing Division shall promulgate rules relating to attribution of ownership among several resident vendors for purposes of determining the 80 percent ownership requirement; or

(B) From a resident vendor, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(C) From a nonresident vendor, which employs a minimum of 100 state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of 100 state residents, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(D) From a vendor who meets either the requirements of both §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(B) of this code or §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(C) of this code, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; or

(E) From an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or

(F) From a resident vendor who is a veteran of the United States armed forces, the reserves

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or the National Guard, if, for purposes of producing or distributing motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(G) Notwithstanding any provisions of §5A-3-37(c)(2)(A), §5A-3-37(c)(2)(B), §5A-3-37(c)(2)(C), §5A-3-37(c)(2)(D), §5A-3-37(c)(2)(E), or §5A-3-37(c)(2)(F) of this code to the contrary, if any nonresident vendor that is bidding on the purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is also certified as a small-, women-, or minority-owned business pursuant to §5A-3-59, the nonresident vendor shall be provided the same preference made available to any resident vendor under the provisions of this subdivision.

(3) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

(4) The Purchasing Division shall promulgate any rules necessary to: (A) Determine that vendors have met the residence requirements described in this section; (B) establish the procedure for vendors to certify the residency requirements at the time of submitting their bids; (C) establish a procedure to audit bids which make a claim for preference permitted by this section and to reject noncomplying bids; and (D) otherwise accomplish the objectives of this subsection.

(d) If the Purchasing Division determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the contract for which the preference was received the Purchasing Division may: (1) Reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the contract.

(e) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: Provided, That prior to soliciting any competitive bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes

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are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.

WV Legislature

§5A–3-37a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-38.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-39.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-40.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-40a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 214.

WV Legislature

§5A–3-41.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-42.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-43. State agency for surplus property created.

There is hereby established within the Purchasing Division and under the supervision of the director of the Purchasing Division the state agency for surplus property.

WV Legislature

§5A-3-44. Authority and duties of state agency for surplus property.

(a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America such property, including equipment, materials, books or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational, fire protection and prevention, rescue, or public health purposes, including research; (2) to warehouse property acquired; and (3) to distribute the property to tax-supported medical institutions, hospitals, clinics, fire departments, rescue squads, health centers, school systems, schools, colleges and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, volunteer fire departments, volunteer rescue squads, health centers, schools, colleges and universities within the state which have been held exempt from taxation under the Internal Revenue Code of 1986, as amended.

(b) For the purpose of executing its authority under this article, the state agency for surplus property is authorized and empowered to adopt, amend or rescind rules and regulations as may be deemed necessary, and take other action necessary and suitable in the administration of this article, including the enactment and promulgation of rules and regulations necessary to bring this article and its administration into conformity with any federal statutes or rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(c) The state agency for surplus property is authorized and empowered to appoint advisory boards or committees necessary to the end that this article and the rules and regulations promulgated hereunder conform with federal statutes and rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(d) The state agency for surplus property is authorized and empowered to take action, make expenditures and enter into contracts, agreements and undertakings for and in the name of the state, require reports, and make investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing and distribution of property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as a clearinghouse of information for the public and private nonprofit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which the property may be obtained, to receive requests from the above-mentioned institutions and agencies and to transmit to them all available information in reference to the property, and to aid and assist the institutions and agencies in every way possible in the consummation or acquisition of transactions hereunder.

(f) The state agency for surplus property shall cooperate to the fullest extent consistent with the provisions of this article, with the departments or agencies of the United States of

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America and shall make reports in the form and containing the information the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for property donable or donated to the state.

WV Legislature

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

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

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

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

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

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

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

(5) Properly disposing of the commodities as waste;

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

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

(c) Upon the sale to the general public, or upon the sale of commodities or expendable

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commodities to an eligible organization, the agency shall set the price to be paid by the receiving eligible organization, with due consideration given to current market prices.

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

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

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds out of which the purchase of the particular commodities or expendable commodities was made: *Provided*, That the agency may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale, and distribution of state property disposed of or sold pursuant to the provisions of this section. Notwithstanding §5A-3-45(e) of this code, if the fund or funds out of which the purchase was made no longer exist, the spending unit may designate an alternate fund within which the proceeds must be deposited.

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

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

WV Legislature

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

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable and, if so, how well it operates;

(vi) How the agency will dispose of the remaining parts of the commodity; and

(vii) Who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

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

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable;

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

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

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

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

(h)(1) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that allow State agencies to dispose of commodities in a landfill, or by other lawful means of waste disposal, if the value of the commodity is less than

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the benefit that may be realized by the state by disposing of the commodity using another method authorized in this section. The procedures shall specify circumstances where the State agency for surplus property shall inspect the condition of the commodity prior to authorizing the disposal and those circumstances when the inspection is not necessary prior to the authorization.

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

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

WV Legislature

§5A-3-46. Warehousing, transfer, etc., charges.

Any charges made or fees assessed by the state agency for surplus property for the acquisition, warehousing, distribution or transfer of any property acquired by donation from the United States of America for educational purposes or public health purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipts, warehousing, distribution or transfer by the state agency for surplus property. All charges designated herein shall be used by the state agency for surplus property to defray the general operating expenses of the state agency for surplus property.

WV Legislature

§5A-3-47. Department of agriculture and other agencies exempted.

Notwithstanding any provisions or limitations of this article, the state Department of Agriculture and any other state departments or agencies hereafter so designated are authorized and empowered to distribute food, food stamps, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and the state Department of Agriculture and any other state departments or agencies hereafter so designated are authorized and empowered to adopt rules and regulations in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, food stamps, commodities and agricultural products. To the extent set forth in this section, the provisions of this article shall not apply to the state Department of Agriculture and any other state departments or agencies hereafter so designated for the purposes set forth in this section.

WV Legislature

§5A-3-48. Travel rules; exceptions.

(a) The Secretary of Administration shall promulgate rules, including emergency rules, relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities.

(b) If, in the judgment of the Secretary of Administration, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or those he or she may designate, to be kept in garages and other places of storage and to be made available in a manner and under the terms necessary for the official use of any departments, institutions, agencies, officers, agents and employees of the state as designated by the secretary in rules promulgated pursuant to this section.

(c) The secretary may administer the travel regulations promulgated by the Governor in accordance with section eleven, article three, chapter twelve of this code, unless otherwise determined by the Governor.

WV Legislature

§5A-3-49

Repealed

Acts, 2018 Reg. Sess., Ch. 106.

WV Legislature

§5A-3-50. Acquiring and disposing of vehicles and aircraft.

The secretary shall be empowered to purchase new vehicles and aircraft and dispose of old vehicles and aircraft as is practical from time to time.

WV Legislature

§5A-3-51. Maintenance and service to vehicles and aircraft.

The secretary may utilize any building or land owned by the state, any department, institution or agency thereof, for the storing, garaging, and repairing of such motor vehicles and aircraft. The secretary shall provide for the employment of personnel needed to manage said motor pool and to repair and service such vehicles and aircraft and for the purchase of gasoline, oil, and other supplies for use in connection therewith, and may utilize the facilities, services and employees of any department, institution or agency of the state to effectuate the purposes thereof.

WV Legislature

§5A-3-52. division; fund.

(a) The secretary may establish an aviation division within the Department of Administration to:

(1) Manage all aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities: Provided, That, such aircraft shall not be used for personal purposes;

(2) Administer the rules, including emergency rules, promulgated under the provisions of §5A-3-48 of this code; and

(3) Perform any duties relating to aircraft owned or possessed by the State of West Virginia assigned by the secretary, which duties may include those set out in §5A-3-50 through §5A-3-53 of this code.

(b) The special revenue account, known as the Aviation Fund, is hereby continued and shall be administered by the director of the division, or in the absence of a director, by the secretary. Expenditures from this fund are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §11B-2-1 et seq. of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. All costs and expenses incurred pursuant to §5A-3-52 of this code, including administrative, shall be paid from those funds. Charges for operating, repairing and servicing aircraft made against any institution, agency, or department shall be paid into the Aviation Fund by that institution, department, or agency.

WV Legislature

§5A-3-53. Enforcement of travel management regulations.

If any state officer, agent or employee fails to comply with any rule or regulation of the secretary made pursuant to section forty-eight of this article, the State Auditor shall, upon order of the secretary, refuse to issue any warrant or warrants on account of expenses incurred, or to be incurred, in the purchase, operation, maintenance, or repairs of any motor vehicle or aircraft now or to be in the possession or under the control of such officer, agent or employee. The secretary may take possession of any state-owned vehicle or aircraft and transfer it to the central motor pool or to make such other disposition thereof as the secretary may direct.

WV Legislature

§5A–3-54.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-55.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A–3-55a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 169.

WV Legislature

§5A-3-56. Preference for the use of domestic steel products in state contract projects; exceptions; civil penalties.

(a)(1) Except when authorized pursuant to the provisions of subsection (b) of this section, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States.

(2) As used in this section:

(A) "State contract project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after the effective date of this section.

(B) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process.

(C) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the director of the Purchasing Division may, in writing, authorize the use of foreign steel products if:

(1) The cost for each contract item used does not exceed one tenth of one percent of the total contract cost or $2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

(2) The director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

(c) A contractor who uses steel products in violation of subsection (a) of this section shall pay a civil penalty equal to one and one-half times the cost of the steel products used in violation of said subsection: Provided, That any contractor in violation of this section who relied in good faith upon documents of title and origin indicating that the steel products were made in the United States shall not be subject to the civil penalty. All civil penalties paid pursuant to this section shall be collected by the director and deposited in the General Revenue Fund of the state.

(d) When the director of the Purchasing Division has reasonable cause to believe that a contractor has used or is using steel products in violation of subsection (a) of this section,

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the director shall conduct an investigation to determine whether the contractor has used or is using steel products in violation of said subsection. Upon a finding by the director pursuant to the investigation that the contractor has used or is using steel products in violation of subsection (a) of this section, the director shall request the Attorney General to commence an action under this section against the contractor for the violation. Any action under this section is a civil action.

(e) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then such requirement or provision shall be void and of no force and effect.

(f) It is the intent of the Legislature that the provisions of article nineteen, chapter five of this code continue in force, except to the extent that if any provision of said article is construed to conflict with a provision of this section, the conflict shall be resolved in favor of the provisions of this section.

(g) This section may be cited as the "West Virginia American Steel Act of 2001."

WV Legislature

§5A-3-57. Buy American task force; study; report.

(a) Findings. -- The Legislature finds that:

(1) The production of iron, steel, manufactured goods, coal and timber provides jobs and family income to many individuals in this state and, in turn, the jobs and family incomes of millions of persons in the United States;

(2) The taxes paid to the state and its political subdivisions by employers and employees engaged in the production and sale of iron, steel, manufactured goods, coal and timber are a large source of public revenues for West Virginia;

(3) The economy and general welfare of West Virginia and its people and the economy and general welfare of the United States are inseparably linked to the preservation and development of manufacturing, harvesting and mineral extraction industries in this state, as well as all the other states of this nation;

(4) The state's taxpayer dollars are better spent if reinvested with its individual and employer taxpayers in order to foster job retention and growth, particularly within the manufacturing, harvesting and mineral extraction sectors, and to ensure a broad and healthy tax base for future investments vital to the state's infrastructure; and

(5) West Virginia's procurement policies should reflect the state's and the nation's principles ensuring that the products of those companies and workers who abide by workplace safety and environmental laws, rules and regulations should be rewarded with a commonsense preference in government contracting.

(b) Declaration of policy. -- It is the policy of West Virginia that the state and its political subdivisions should aid and promote the economy of this state and the United States by requiring a preference for the procurement of iron, steel, manufactured goods, coal and timber produced in the United States in all contracts for the construction, reconstruction, repair, improvement or maintenance of public buildings and public works projects.

(c) The Purchasing Division and the Division of Labor shall jointly convene the task force created in subsection (d) of this section to study the use of American-made construction materials and manufactured goods in the various aspects of the construction and maintenance of public buildings and public works projects of the state and its political subdivisions which are funded in part by state grants, state loans or state appropriations.

(d) A task force is hereby created to assist the divisions with this study. The task force shall consist of:

(1) An architect, an engineer and a contractor, each designated by his or her respective licensing board;

(2) One representative of the largest organization representing West Virginia manufacturers;

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(3) One representative each from the Division of Highways, the School Building Authority, the Water Development Authority, the General Services Division and the Higher Education Policy Commission; and

(4) Four labor representatives chosen by the largest labor organization in the state.

(e) The study shall include, but not be limited to:

(1) The need to maintain a list of all suppliers qualified to provide construction materials and manufactured goods produced in the United States;

(2) The percentage of domestically produced construction materials and manufactured goods to be included in a construction project to qualify it as built with American made construction materials and manufactured goods; and

(3) Possible changes to the bid process, including waiver requirements.

(f) The directors of the Purchasing Division and the Division of Labor shall report the Joint Committee on Government and Finance, by December 31, 2012, on the task force's findings on the best methods of promoting the American production of iron, steel, manufactured goods, coal and timber and creating jobs through a buy American mandate, as well as the burdens and benefits of such mandate on the construction industry in West Virginia and the state's public building and public works projects.

WV Legislature

§5A-3-58. Creation of the Purchasing Improvement Fund.

There is hereby created in the state Treasury a special revenue account to be known as the Purchasing Improvement Fund. The Purchasing Improvement Fund shall receive funds transferred from the Purchasing Card Administration Fund by the Auditor pursuant to section ten-d, article three, chapter twelve of this code and shall be administered by the secretary. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2008, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

WV Legislature

§5A-3-59. Small, women, and minority-owned businesses.

(a) As used in this section:

(1) "Minority individual" means an individual who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

(A) "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

(B) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands, including, but not limited to, Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

(C) "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

(D) "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

(2) "Minority-owned business" means a business concern that is at least 51 percent owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

(3) "Small business" means a business, independently owned or operated by one or more persons who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years.

(4) "State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town.

(5) "Women-owned business" means a business concern that is at least 51 percent owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership

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or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or noncitizens who are in full compliance with United States immigration law.

(b) The Department of Administration shall propose rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, to implement certification programs for small, women, and minority-owned businesses. These certification programs shall deny certification to vendors from states that deny like certifications to West Virginia-based small, women, or minority-owned businesses or that provide a preference for small, women, or minority-owned businesses based in that state that is not available to West Virginia-based businesses. The rules shall:

(1) Establish minimum requirements for certification of small, women, and minority-owned businesses;

(2) Provide a process for evaluating existing local, state, private sector and federal certification programs that meet the minimum requirements; and

(3) Mandate certification, without any additional paperwork or fee, of any prospective state vendor that has obtained certification under any certification program that is determined to meet the minimum requirements established in the regulations.

WV Legislature

§5A-3-60. Annual purchasing training.

(a) All executive department secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads are hereby required to take two hours of training on purchasing procedures and purchasing cards annually.

(b) The Director of the Purchasing Division and the Auditor shall offer the two-hour training required by this section at least two times per year and shall develop its substance in accordance with the requirements of this article and other relevant provisions of this code. The training shall be recorded by audio and visual means and shall be made available to the individuals listed in subsection (a) of this section in the event they are unable to attend the training in person.

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

WV Legislature

§5A-3-61. Standardization.

(a) Notwithstanding any provision in this article to the contrary, a spending unit may utilize the process described in this section to standardize purchases of commodities used by the spending unit on a repeated basis. Such standardization may result in a determination that only a specific brand name for the commodity in question will be used.

(b) Standardization is limited to commodities that represent a core function of the spending unit's mission; would yield a savings of time and money if standardized; and either require testing or evaluation to determine accuracy or consistency or require interoperability in a larger system or network. Savings of time and money must be shown without considering the traditional procurement process or the standardization process.

(c) Any standardization established under this section shall be valid for no more than four years. Upon expiration, the spending unit establishing the standardization may either take no action, which would allow the standardization to end, or undertake the process outlined in this section to establish a new standard.

(d) A spending unit desiring to establish a standard must use the following procedure:

(1) The head of the spending unit must identify the commodity to be standardized and request approval from the director to establish a standard. The head of the spending unit shall provide to the director written certification and supporting evidence verifying that the requirements for standardization have been met.

(2) The spending unit must identify the individual or individuals that will be evaluating the commodity for standardization. Each individual must certify that he or she has no conflict of interest and can evaluate the information used to standardize without favoritism or bias. At least one individual involved in the standardization evaluation must be the spending unit's procurement officer. If the spending unit has no procurement officer, the individual responsible for the spending unit's procurement must participate in the evaluation.

(3) The spending unit must advertise the intent to standardize as a request for information in the system used at that time to solicit competitive bids. The spending unit should also identify all known entities that would have an interest in providing a commodity for evaluation and ensure that they receive notice of the request for information. The request for information must be advertised and allow for responses for no less than 30 calendar days. The request for information must notify the vendor community of the following:

(A) That the spending unit is attempting to standardize state procurements for the commodity in question;

(B) That any entity interested in having its products considered for standardization should provide information on the benefits and drawbacks of that entity's products;

WV Legislature

(C) Any evaluation criteria that the spending unit will use in the standardization decision;

(D) The date and time by which documentation must be provided; and

(E) The approximate date and time by which a decision will be made.

(4) If the spending unit desires to conduct product testing, it must notify vendors in the request for information and establish a time period during which tests will be performed. Vendors may provide commodities for demonstration, testing, and evaluation so long as such items are provided at no cost and no risk to the state. A written record describing the nature of the testing performed and a written record of the results of that testing shall be produced pursuant to any testing conducted on all the commodities being considered. The written record of testing and results shall be provided to the Purchasing Division and preserved.

(5) The spending unit will evaluate the information received in response to the request for information, information the spending unit has obtained from its own research, the results of any product testing, and anything else the spending unit finds relevant to establish a pending standardization.

(6) The spending unit must advertise the pending standardization as a request for information in the system used at that time to solicit competitive bids for a minimum of 15 calendar days. The request for information must notify the vendor community and any vendor who has participated in the standardization evaluation process of the following:

(A) The pending decision to standardize, including any brand name that has been tentatively selected the standard;

(B) The rationale for the selection made in the pending standardization;

(C) That comments may be submitted for review for a period of 15 calendar days from the date of the advertisement;

(D) The date and time by which a final decision will be made, which will be no less than three days after the comment period has ended; and

(E) The location where the final decision will be posted.

(7) The spending unit must review the comments submitted in response to the pending standardization advertisement and make any adjustments that it deems necessary.

(8) The head of the spending unit shall notify the director of a selection of the standard commodity, and the director shall post the results of the standardization decision on the Purchasing Division’s website. The spending unit shall also specifically notify any vendor who participated in the standardization evaluation process of the results in writing, within five business days of the final standardization selection.

WV Legislature

(e) Any vendor that participated in the standardization process may appeal the standardization decision to the head of the spending unit. The head of the spending unit shall consider the appeal in accordance with the administrative procedures established in chapter 29A of this code.

(f) Once a standard has been established, the Purchasing Division is authorized to solicit competitive bids on behalf of the spending unit in the form of a request for quotation for the standardized commodity.

(g) The director may develop any necessary forms and reporting templates for use in standardization approval, testing, reporting, or any other forms necessary to carry out the provisions of this section. Such forms and reports shall be maintained by the Purchasing Division.

WV Legislature

§5A-3-62. Prohibited contract clauses.

(a) Any term or condition in any contract entered into by the state shall be void ab initio to the extent that it requires the state to:

(1) Indemnify or hold harmless any entity;

(2) Agree to binding arbitration or any other binding extra-judicial dispute resolution process;

(3) Limit liability for direct damages for bodily injury, death, or damage to property (tangible or intangible) caused by the negligence or willful misconduct of such person's employees or agents;

(4) Agree to shorten statutes of limitation established by this code;

(5) Allow automatic renewal of contracts without express written consent of the state;

(6) Agree to payment in advance (unless specifically authorized by statute or the policy of the West Virginia State Auditor);

(7) Agree to jurisdiction anywhere other than a court authorized by the West Virginia Legislature to hear the dispute;

(8) Be governed by any law other than the laws of the State of West Virginia or required federal law;

(9) Pay court costs;

(10) Pay taxes;

(11) Waive defenses;

(12) Permit assignment of contracts without express written consent from the state;

(13) Treat information as confidential contrary to the state's disclosure responsibilities under any applicable bid disclosure laws and the Freedom of Information Act;

(14) Agree to unsigned third-party terms and conditions;

(15) Limit the state's ability to cancel a contract for convenience with 30 days' notice;

(16) Give up its ownership rights or interest in any information or data, including confidential information, provided to, or collected by, a vendor on behalf of the state;

(17) Maintain any type of insurance; or

WV Legislature

(18) Permit modification of contract terms without prior approval from the state.

(b) No official, employee, agent, or representative of the state has the authority to contravene this section, and no oral or written expression of consent to any term or condition declared void ab initio by this section, or signature on a contract, may be deemed as such. Any contract that contains a term or condition declared void ab initio by this section shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the state, except for contracts with another government, shall be governed by West Virginia law notwithstanding any term or condition to the contrary.

WV Legislature

§5A-3-63. Prohibition on contracting with companies that boycott Israel.

(a) The Legislature finds that:

(1) The State of Israel is one of the United States' closest allies and international trading partners; and

(2) In recent years, the State of Israel and Israeli-owned businesses have been the target of boycotts that attempt to isolate Israel within the international community have served as a vehicle for spreading anti-Semitism and advocating for the elimination of the Jewish State of Israel.

(3) The State of West Virginia has an economic and a humanitarian obligation to denounce and reject the Boycott, Divestment, and Sanctions Movement against Israel, and to prevent the state or any of its instrumentalities from contracting with companies that engage in the movement;

(b) *Definitions*. – For the purposes of this section:

(1) "Boycott of Israel" means engaging in actions that are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel.

(2) "Company" means a corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, organization, association, or any other business entity that has 10 or more employees and operates to earn a profit: *Provided*, That the term does not include a sole proprietorship.

(3) "Public entity" means the state of West Virginia, or any political subdivision thereof, and all spending units of state government including those otherwise excluded from applicability under §5A-3-1 of this code.

(c) Effective July 1, 2022, a public entity may not enter into a contract with a company for goods or services valued at $100,000 or more unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel.

(d) Any contract that violates the requirements of this section shall be void as against public policy.

(e) The Director of the Purchasing Division is authorized to promulgate legislative rules, including emergency rules, to implement the provisions of this section.

WV Legislature

§5A-3-64. First Amendment Preservation Act.

(a) This section shall be known and may be cited as the First Amendment Preservation Act and is hereby established by the Legislature for the purpose of preventing the state and its agencies from contracting with advertising agencies that use the services of misinformation or disinformation media reliability and bias monitors to ensure that state moneys do not fund viewpoint discrimination and that state funding advertising reaches the broadest possible audience without regard for political ideology or viewpoint.

(b) For the purposes of this section:

"Agency" means any state department, division, board, commission, institution, or other administrative agency of state government, institutions of higher education using state funds, or any political subdivisions of the state.

"Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, or parent companies that exist for the purpose of making a profit or that are nonprofit entities.

"Media reliability and bias monitor" means a company whose primary or principal function is rating or ranking news and information sources for the factual accuracy of their content, whether published online, in print, by audio, or digitally, or by broadcasting via radio, television, cable, streaming service, or any other ways news is delivered to the public, or that provide ratings or rankings of news sources based on misinformation, bias, adherence to journalistic standards, or ethics, including, but not limited to, organizations that claim to engage in fact checking or determining overall news accuracy. For purposes of this section, the term "media reliability and bias monitor" does not include a company that only rates media outlets for audience size, viewership, and demographic information, or that monitors media outlets for the purposes of compiling press or video clippings or aggregating news sources.

(c) Notwithstanding any other provision of this code to the contrary, an agency may not:

(1) Enter into any contract or other agreement with any media reliability and bias monitor for purposes of directing the agency's advertising placements or for use of the agency's programmatic advertising purchases;

(2) Enter into any contract or agreement with any advertising or marketing agency that uses the services of a media reliability and bias monitor for purposes of directing the agency's advertising placements or for use of the agency's programmatic advertising purchases; or

(3) Enter into any contract with an entity directly or indirectly associated with any person or entity connected to:

WVLegislature

(A) The list of persons determined to be foreign adversaries by the Secretary of Commerce of the United States under 15 C.F.R. 791.4;

(B) The terrorist exclusion list compiled by the Secretary of State of the United States in consultation with the Attorney General of the United States under 8 U.S.C. 1182;

(C) The list of countries determined by the Secretary of State of the United States that have repeatedly provided support for acts of international terrorism under 50 U.S.C. 4813(c) and 22 U.S.C. 2780(d); and

(D) The list of individual and entities designated by, or in accordance with Executive Order 13224, issued by the President of the United States on September 23, 2021, or Executive Order 13268, issued by the President of the United States on July 2, 2002.

(d) Any agency seeking to contract for advertising or marketing services shall require all companies submitting a bid or proposal to provide written certification that the company is neither a media reliability and bias monitor nor planning to use the services of a media reliability and bias monitor for the purposes of the contract or agreement with the agency. Prior to extending, renewing, or otherwise changing or modifying an agreement or contract for advertising or marketing services in effect prior to the effective date of this section, an agency shall obtain written certification from the contractor it is neither a media reliability and bias monitor nor planning to use the services of a media reliability and bias monitor for the purposes of the contract or agreement with the agency.

(e) Nothing in this section shall be construed to prevent an agency from contracting for services which aggregate news articles and information relevant to the agency or its constituents or to prevent a company from providing analytical or statistical information on the performance of advertisements placed by an agency.

(f) The provisions of this section enacted apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after July 1, 2026.

WV Legislature

§5A-3A-1. Purpose.

The purpose of this article is to further the state's policy of encouraging disabled persons to achieve maximum personal independence by engaging in productive activities and in addition to provide state agencies, institutions and political subdivisions with a method for achieving conformity with purchasing procedures and requirements of nondiscrimination, affirmative action, in employment matters related to disabled persons.

WV Legislature

§5A-3A-2. Central nonprofit agency.

A central nonprofit agency approved by the director of the Division of Rehabilitation Services is established for the purpose of coordinating purchases under the provisions of section ten, article three of this chapter, between various "spending units" of the state and "nonprofit workshops." This agency shall have the following responsibilities:

(a) Represent qualified nonprofit workshops in dealing with state purchasing agents and the other bodies charged with purchasing responsibilities;

(b) Evaluating the qualifications and capabilities of workshops and entering, as necessary, into contracts with government procuring entities for the furnishing of the commodities or services provided by the workshops;

(c) Overseeing workshops to ensure compliance with contract performance and quality standards; list the commodities and services of participating workshops, research and assist the workshops in developing new products and upgrading existing ones, and shall survey applicable private industry to provide input on fair market prices; and

(d) Present an annual report for each fiscal year concerning the operations of its nonprofit workshops to the director of the Division of Rehabilitation Services.

WV Legislature

§5A-3A-3. Committee for the purchase of commodities and services from the handicapped.

(a) The committee for the purchase of commodities and services from the handicapped is hereby created as a part of the Department of Administration and shall be composed of the following six members who are to be appointed by the Governor with the advice and consent of the Senate: A private citizen who is conversant with the problems incidental to the employment of handicapped persons; a representative of a producing nonprofit workshop; a representative of the Division of Rehabilitation Services; a representative of the Department of Administration who is knowledgeable in the purchasing requirements of the state; a representative of private business who is knowledgeable in the activities involved in the sale of commodities or services to governmental entities; and a representative of organized labor who is knowledgeable in matters relating to employment of the disabled. The Governor shall appoint one member to serve as chairperson.

(b) Members of the committee are appointed to serve two-year terms expiring on January 31 of odd-numbered years. Members who are not state employees shall receive compensation for their service of $50 per day for each day actually engaged in the work of the committee and all members shall receive reimbursement by the state for expenses incurred in performing their duties as members.

(c) The committee shall have as an executive secretary the person charged with program management in section ten, article three of this chapter. The executive secretary shall be responsible for the day-to-day management of the committee and shall coordinate with the central nonprofit agency to perform the duties outlined in section ten, article three of this chapter.

WV Legislature

§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped.

The committee shall have the following duties and responsibilities:

(a) Determining the fair market price of all commodities, printing and services produced by nonprofit workshops and offered for sale by the central nonprofit agency to the various departments and political subdivisions of the state. Prices shall be revised periodically to reflect changing market conditions.

(b) Monitoring the activities of the central nonprofit agency to assure that the interests of the state's handicapped citizens are advanced by the agency. The committee shall make rules necessary to monitor the agency as well as matters related to the state's use of the products and services produced by the handicapped. Except as stated in section ten, article three of this chapter, rules shall reflect agreement with the policies and procedures established by the state's purchasing units.

(c) Monitoring the performance of the central nonprofit agency to see that the commodities and services produced meet state specifications (or in the absence of specifications meet standards in use by the federal government or industry) as to quality and delivery. The committee shall provide procedures for formal and informal resolution of provider and consumer grievances or complaints.

(d) Maintaining records pertaining to its activities under the act including records of sales, formal grievances, number of handicapped workers employed, a summary of disabilities for workers providing services, a list of workshop products and services, and the geographic distribution of provider workshops. On or before January 1, of each year the committee shall file with the Governor and the presiding officer of each house of the Legislature a written report summarizing the above records and giving a detailed accounting for all funds received and disbursed by the committee during the preceding year.

WV Legislature

§5A-3A-5. Rules.

The committee may adopt rules for the implementation, extension, administration, or improvement of the program authorized by this article.

WV Legislature

§5A-3A-6. Exceptions.

The purchasing unit is exempt from the operation of the mandatory provisions of section ten, article three of this chapter when:

(1) The director of purchasing determines that the commodity or service so produced or provided does not meet the reasonable requirements of the purchasing unit;

(2) The committee or central nonprofit agency determines that a nonprofit workshop cannot reasonably provide the commodity or service;

(3) The purchasing director determines, after considering any recommendation of the committee or bids which may have been offered, that the commodity or service is not of a fair market price; or

(4) The purchasing director determines, after consulting with the committee, that the commodity or service is not of like quality to other commodities or services available.

No purchasing unit may evade the intent of this section when required goods or services are reasonably available from nonprofit workshops: Provided, That if a purchasing unit is required or may be required by federal statute or regulations to purchase commodities or services with competitive bidding, or may otherwise be disqualified from federal funding or assistance if it fails to purchase commodities or services with competitive bidding, the purchasing unit shall not be required to purchase commodities or services from nonprofit workshops. Such purchasing units not required to purchase commodities or services from nonprofit workshops include military installations of the National Guard.

WV Legislature

§5A-3B-1. Definitions.

As used in this article:

(a) “Agency” means any state department, division, office, commission, authority, board or other unit authorized by law to enter into contracts for the provision of goods or services;

(b) “Energy-conservation measures” means goods or services, or both, to reduce energy consumption operating costs of agency facilities. They include, but are not limited to, installation of one or more of the following:

(1) Insulation of a building structure and systems within a building;

(2) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door modifications that reduce energy consumption;

(3) Automatic energy control systems;

(4) Heating, ventilating or air conditioning systems, including modifications or replacements;

(5) Replacement or modification of lighting fixtures to increase energy efficiency;

(6) Energy recovery systems;

(7) Cogeneration systems that produce steam or another form of energy for use by any agency in a building or complex of buildings owned by the agency; or

(8) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building's present cost of operation.

(c) “Energy-savings contract” means a performance-based contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more measures.

(d) “Qualified provider” means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

WV Legislature

§5A-3B-2. Energy-savings contracts.

(a) Agencies are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of agency owned buildings, subject to the requirements of this section.

(b) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates of all costs of installation, modifications or remodeling, including the costs of design, engineering, installation, maintenance, repairs or debt service, as well as estimates of the amounts by which energy operating costs will be reduced. If the agency finds, after receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the agency may enter into a contract with the provider pursuant to this section.

(c) An energy-savings contract must include the following:

(1) A guarantee of a specific minimum net percentage amount of at least five percent of energy operating costs each year over the term of the contract that the agency will save;

(2) A statement of all costs of energy-conservation measures, including the costs of design, engineering, installation, maintenance, repairs and operations; and

(3) A provision that payments, except obligations upon termination of the contract before its expiration, are to be made over time.

(4) A provision relating to guaranteed energy cost savings and payments due the State for any deficiency, in a form substantially similar to the following: In the event the energy and cost savings achieved during a guarantee year are less than the guaranteed energy cost savings for that year, the qualified provider shall pay the agency an amount equal to the deficiency. In no event shall a qualified provider use credit for excess savings to satisfy saving guarantees in future years of the contract. Savings achieved by the installed projects must comply with requirements contained in this section and sufficiently cover all project costs, including, as applicable, debt service and contractor fees, maintenance, monitoring, and other services, for the duration of the contract term. If a project does not generate the guaranteed level of savings in any predefined reconciliation term, the qualified provider is liable to the agency for the amount of the shortfall plus related costs.

(d) An agency may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(e) An energy-savings contract is subject to competitive bidding requirements and other

WV Legislature

requirements of article three of this chapter.

(f) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: *Provided*, That such a contract may not exceed a fifteen-year term: *Provided*, however, That the long term contract will be void unless the agreement provides that the agency shall have the option during each fiscal year of the contract to terminate the agreement.

(g) Agencies may enter into a "lease with an option to purchase" contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions contained in subsection (f) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

(h) The agency may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

(i) Upon the issuance of a request for proposals or request for quotations for an energy-savings contract, the agency shall provide a copy thereof to the Joint Committee on Government and Finance.

(j) Before signing an energy-savings contract or extending an existing energy-savings contract, the agency shall give thirty days' written notice, which notice shall include a copy of the proposal containing the information required by subsection (b) of this section, to the Joint Committee on Government and Finance.

WV Legislature

§5A-3C-1.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-2.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-3.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-4.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-5.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-6.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

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§5A-3C-7.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-8.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-9.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-10.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-11.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-12.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-13.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-14.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-15.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-16.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-3C-17.

Repealed.

Acts, 2009 Reg. Sess., Ch. 108.

WV Legislature

§5A-4-1. General services division; director.

There is hereby created a new General Services Division of the Department of Administration for the purpose of having the care, custody and control of the capitol buildings. The division shall be under the supervision of a director.

WV Legislature

§5A-4-1a.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-4-2. Care, control and custody of capitol buildings and grounds.

(a) The director has the full responsibility for the care, control and custody of the capitol buildings and in this connection he or she shall:

(1) Furnish janitorial services, which are to be provided by employees of the Department of Administration for the main capitol building, including east and west wings, together with all the departments in the building, or connected with the building, regardless of the budget or budgets, departmental or otherwise, from which the janitorial services are paid, and shall furnish janitorial supplies, light, heat and ventilation for all the rooms and corridors of the buildings: Provided, That nothing in this section shall be construed to prohibit contracts for janitorial services with sheltered workshops. The President of the Senate and Speaker of the House of Delegates, or their respective designees, have charge of the halls and committee rooms of their respective houses and any other quarters at the state Capitol provided for the use of the Legislature or its staff and shall keep the areas properly cleaned, warmed and in good order and shall do and perform any other duties in relation to the areas as either house may require;(2) Landscape and take care of the lawns and gardens; and

(3) Direct the making of all minor repairs to and alterations of the capitol buildings and Governor's mansion and the grounds of the buildings and mansion. Major repairs and alterations shall be made under the supervision of the director, subject to the direction of the secretary.

(b) The offices of the assistants and employees appointed to perform these duties shall be located where designated by the secretary, except that they shall not be located in any of the legislative chambers, offices, rooms or halls. Office hours shall be arranged so that emergency or telephone service is available at all times. The hours shall be arranged so that janitorial service shall not interfere with other employment during regular office hours.(c) There is created in the state Treasury a special revenue account to be named the "Capitol Dome and Capitol Improvements Fund". The fund shall consist of moneys received under section ten, article twenty-two-a, chapter twenty-nine of this code and funds from any other source. Moneys in the fund shall be expended for maintenance and repairs of the capitol dome and other capital improvements and repairs to state-owned buildings.

(d) There is hereby created in the state Treasury a special revenue fund to be known as the "Governor's Mansion Fund". The fund shall operate as a special revenue fund whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in the fund and be available for expenditure in succeeding fiscal years. This Fund shall consist of moneys deposited in the fund pursuant to the provisions of section two-a, article eight, chapter three of this code as well as interest earned on investments made from moneys deposited in the fund. Moneys from this fund shall be expended by the director for enhancement of the Governor's mansion subject to the direction of the secretary of administration and the discretion of the Governor: Provided, That any furniture, fixtures and equipment purchased with moneys from the Governor's Mansion Fund are property of the State of West Virginia.

WV Legislature

§5A-4-3. Security officers; appointment; oath; carrying weapons; powers and duties generally, etc.

In addition to the other powers given and assigned to the secretary in this chapter, he is hereby authorized to appoint bona fide residents of this state to act as security officers upon any premises owned or leased by the State of West Virginia and under the jurisdiction of the secretary, subject to the conditions and restrictions hereinafter imposed. Before entering upon the performance of his duties as such security officer, each person so appointed shall qualify therefor in the same manner as is required of county officers by taking and filing an oath of office as required by article one, chapter six of this code. No such person shall have authority to carry a gun or any other dangerous weapon until he shall have obtained a license therefor in the manner prescribed by section two, article seven, chapter sixty-one of this code.

It shall be the duty of any person so appointed and qualified to preserve law and order on any premises under the jurisdiction of the secretary to which he may be assigned by the secretary. For this purpose he shall as to offenses committed on such premises have and may exercise all the powers and authority and shall be subject to all the responsibilities of a deputy sheriff of the county. The assignment of security officers to any premises under the jurisdiction of the secretary shall not be deemed to supersede in any way the authority or duty of other peace officers to preserve law and order on such premises.

The secretary may at his pleasure revoke the authority of any such officer by filing a notice to that effect in the office of the clerk of each county in which his oath of office was filed, and in the case of officers licensed to carry a gun or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license therefor was granted.

WV Legislature

§5A-4-4. Unlawful to kill or molest animals, birds or fowls upon grounds of capitol; powers and duties of security officers; penalties.

In addition to the duties of persons appointed and qualified as security officers pursuant to section three, article four, chapter five-a of this code, to preserve law and order on any premises under the jurisdiction of the secretary to which may be assigned by the secretary, such security officers shall have authority and it shall be the duty of such security officers to enforce the provisions of this section. This authority and duty of security officers shall not be deemed to supersede in any way the authority or duty of other peace officers to enforce the provisions of this section.

It shall be unlawful at any time to kill or molest in any manner, any animals, birds or fowls on the grounds of the capitol buildings or Governor's mansion, except as may be deemed necessary by the secretary for the control or extermination of animals, birds or fowls deemed by to be pests or a danger to the health and safety. Any person who kills or molests in any manner, or knowingly allows a dog or other animal owned by to kill or molest in any manner any animals, birds or fowls on the grounds of the capitol buildings or Governor's mansion shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than $50 nor more than $500 or, in the discretion of the court, be imprisoned in the county jail for not more than six months, or both such fine and imprisonment.

It shall be unlawful for any person to knowingly allow a dog owned by to be upon the grounds of the capitol buildings or Governor's mansion unless such dog is under control by leash. Any person who knowingly allows a dog owned by to be upon the grounds of the capitol buildings or Governor's mansion while not under control by leash shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not less than $25 nor more than $100.

It shall further be unlawful for any person to knowingly allow a dog or other animal owned by or under his control to defecate upon the grounds of the capitol buildings or Governor's mansion. In the event that a dog or other animal owned by or under the control of a person defecates upon the grounds of the capitol buildings or Governor's mansion, the person shall remove such defecation. Any person who knowingly allows a dog or other animal owned by or under his control to defecate upon the grounds of the capitol buildings or Governor's mansion and who subsequently fails to remove said defecation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $100.

WV Legislature

§5A-4-5

Repealed.

Acts, 2016 Reg. Sess., Ch. 116

WV Legislature

§5A-4-5a. Construction of parking garage for general public; creation of fund.

(a) It is the intent of the Legislature to provide a parking facility for the general public and to direct the secretary of the Department of Administration to plan and construct a parking garage at the state Capitol complex that will provide sufficient and additional parking exclusively for the general public.

(b) There is created in the state Treasury to be administered by the Department of Administration a special fund to be named the "2004 capitol complex parking garage fund" into which shall be deposited funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on or adjacent to the state Capitol complex.

WV Legislature

§5A-4-6. Renovation and improvement of capitol building and capitol complex.

(a) It is the intent of the Legislature to provide renovation and improvement of the existing state capitol building and the capitol complex and to direct the secretary of the Department of Administration to plan and make renovations and improvements of the existing state capitol building and the capitol complex for the purpose of reversing deterioration to existing facilities, securing the safety of the general public and state employees, promoting efficiency of governmental operations and enhancing tourism in the state.

(b) There is created in the state Treasury to be administered by the Department of Administration a special fund to be named the "capitol renovation and improvement fund" into which shall be deposited funds that are appropriated and funds from other sources to be used for renovations and improvements of the existing state capitol building and the capitol complex.

WV Legislature

§5A-4-7.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-4A-1.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-4A-2.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-4A-3.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-5-1. Committee continued; appointment, terms, etc., of members; meetings and responsibilities; annual report.

There is hereby continued the Governor's mansion advisory committee within the Department of Administration. The secretary of administration or his designated representative, the commissioner of culture and history or his designated representative, and the spouse of any Governor during the term of office of that Governor, or the designated representative of such Governor, shall be ex officio members of the committee. In addition, the Governor shall appoint four additional members of the committee, one to be a curator in the field of fine arts, one to be an interior decorator who is a member of the American institute of decorators, one to be a building contractor, and one member to represent the interest of the general public. The appointive members of the committee shall serve for a term of four years. The members of the committee shall serve without compensation but shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties; except that in the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state. The Governor shall designate from the committee a chairman to serve for a term of one year. The secretary of administration shall serve as secretary. The committee shall meet upon the call of the chairman annually and may meet at such other times as may be necessary for the performance of its functions.

The committee shall be charged with the following responsibilities:

(1) To make recommendations to the Governor for the maintaining, preserving and replenishing of all articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art used or displayed in the state rooms of the Governor's mansion, which state rooms shall consist of the front hall, the reception room, the ballroom and its sitting room, the state dining room, the front upstairs hall and the music room;

(2) To make recommendations to the Governor as to the decor and arrangements best suited to enhance the historic and artistic values of the mansion in keeping with the architecture thereof and of such articles of furniture, fixtures, decorative objects, linens, silver, china, crystal and objects of art, which recommendations shall be considered by the Governor in decorating said mansion; and

(3) To invite interested persons to attend its meetings or otherwise to assist in carrying out its functions.

All departments, boards, agencies, commissions, officials and employees of the state are hereby authorized to cooperate with and assist the committee in the performance of its functions and duties whenever possible. As soon after the close of each fiscal year as possible, the committee shall make an annual report to the Governor and the Legislature with respect to its activities and responsibilities.

WV Legislature

§5A-5-2. Office of Governor's mansion director created; duties and responsibilities.

There is hereby created the office of Governor's mansion director, who shall be qualified by background and experience for such a position and shall be appointed by the Governor to serve at the will and pleasure of the Governor. The mansion director shall be charged with the following duties and responsibilities: To protect and preserve all articles of furniture, fixtures, table linens, silver, china, crystal and objects of art displayed in the state rooms in the mansion. The mansion director shall assist the Governor and/or the Governor's spouse in the scheduling of state government functions and entertainment at the mansion.

WV Legislature

§5A-5-3. Official use of state rooms in Governor's mansion; vacating private rooms of mansion.

(a) The state rooms of the mansion shall be used for official state government functions and entertainment: Provided, That tours of the state rooms of the mansion shall be permitted, and the mansion director shall assist in the scheduling of said tours and prescribe rules and regulations governing same.

(b) No personal furniture or furnishings of the first family may be placed in the state rooms of the mansion except for home entertainment equipment.

(c) No furniture or furnishings in the state rooms located on the first floor of the mansion may be replaced, removed or sold without prior approval of the Governor's mansion advisory committee.

(d) No items in the state rooms purchased by the West Virginia Mansion Preservation Foundation, Inc., may be replaced, removed or sold without prior approval of such corporation.

(e) The outgoing Governor and his family shall vacate the private rooms of the mansion at least seven days prior to the inauguration of a new Governor so that the mansion may be made suitable for the change in occupancy.

WV Legislature

§5A-5-4.

Repealed

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-5-5.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-6-1. Findings and purposes.

The Office of Technology is hereby continued as an integral part of the Department of Administration, for the purpose of establishing and developing information technology services for state agencies and promulgating information technology standards. The Office of Technology is authorized to advise and make recommendations to all state spending units on state information systems and to have the authority to oversee coordination of the state's technical infrastructure. Beginning July 1, 2024, the Information Services and Communications Division created under the Department of Administration is hereby dissolved and its functions assumed by the West Virginia Office of Technology.

WV Legislature

§5A-6-2. Definitions.

As used in this article:

“Information systems” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Information technology” means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

“Technology services” means professional services designed to provide functions, maintenance, and support of information technology devices, or services including, but not limited to, computer systems application development and maintenance; systems integration and interoperability; operating systems maintenance and design; computer systems programming; computer systems software support; planning and security relating to information technology devices; data management consultation; information technology education and consulting; information technology planning and standards; and establishment of local area network and workstation management standards.

“Telecommunications” means the preparation, transmission, communication, or related processing of information by electrical, electromagnetic, electromechanical, electro-optical, or electronic means.

“Chief Information Officer” means the person holding the position created in §5A-6-3 of this code and vested with authority to oversee state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the state and individual state spending units, and further the overall management goals and purposes of government: *Provided*, That reference to “Chief Technology Officer” in other articles of this code shall mean “Chief Information Officer”.

“Technical infrastructure” means all information systems, information technology, information technology equipment, telecommunications, and technology services as defined in this section.

“Technology project” means a project where technology is a significant component and is either valued at $250,000 or more, or will involve sensitive or restricted data.

“Steering committee” means an internal agency oversight committee established jointly by the Chief Information Officer and the agency proposing the project, which shall include representatives from the Office of Technology and at least one representative from the agency proposing the project.

“Technology portfolio” means a strategic management process documenting relationships

WV Legislature

between agency missions and information technology and telecommunications investments.

WV Legislature

§5A-6-3. Office of Technology; Chief Information Officer; appointment and qualifications; continuation of special funds.

(a) The Office of Technology is continued within the Department of Administration, to be led by a Chief Information Officer, who shall be appointed by and serve at the will and pleasure of the Governor. The Chief Information Officer shall have knowledge in the field of information technology, experience in the design and management of information systems, and an understanding of the special demands upon government with respect to budgetary constraints, the protection of privacy interests, and federal and state standards of accountability.

(b) On July 1, 2024, the administration of the Information Services and Communication Fund created under the former §5A-7-10 of this code is hereby transferred to, and thereafter shall be administered by, the Chief Information Officer of the Office of Technology, and is hereby renamed the Office of Technology Fund. The fund shall be a special revolving fund, consisting of funds received for services provided pursuant to this article and §5A-6B-1 *et seq*. and §5A-6C-1 *et seq*. of this code, and all gifts, grants, bequests or transfers from any source. Expenditures from the fund are authorized from collections for the purposes set forth in this article but are to be made only in accordance with appropriation by the Legislature and with the provisions of §12-3-1, *et seq*. of this code and upon the fulfillment of the provisions set forth in §11B-2-1, *et seq*. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(c) On July 1, 2024, the Chief Technology Officer Administration Fund created by prior enactment of this section shall be closed, and any unexpended balances remaining in the fund shall be transferred to the Office of Technology Fund.

(d) On July 1, 2024, the Telecommunications Services Payment and Reserve Fund created in the former §5A-7-4a of this code shall be closed, and any unexpended balances remaining in the fund shall be transferred to the Office of Technology Fund.

WV Legislature

§5A-6-4. Powers and duties of the Chief Information Officer generally.

(a) With respect to all state spending units the Chief Information Officer may:

(1) Establish information technology governance to align technology management with departmental and agency business goals, including, but not limited to:

(A) Standards necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the state receive the greatest possible security, value, and user experience from investments made in technology;

(B) Standards relating to the exchange, acquisition, storage, use, sharing, and distribution of data; and

(C) Standards for the connectivity, interoperability, and continuity of technology for government operations in times of disaster or emergency;

(2) Evaluate all information technology requisitions for compatibility with established information technology governance, including evaluation of the economic justification, system design, and suitability;

(3) Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of data;

(4) Broker contracts for or deliver directly information technology and technology services in support of state spending units: *Provided*, That other public bodies may utilize information technology and technology services offered by the Chief Information Officer with approval;

(5) Create new technologies to be used in government, convene conferences, and develop incentive packages to encourage the utilization of technology;

(6) Charge a fee to the state spending units and other public bodies for services provided under the provisions of this article §5A-6B-1 *et seq*. and §5A-6C-1 *et seq*. of this code;

(7) Periodically evaluate the feasibility of subcontracting information technology resources and services, and to subcontract only those resources that are feasible and beneficial to the state;

(8) Develop job descriptions and qualifications necessary to perform duties related to information technology as outlined in this article;

(9) Provide information technology related training to facilitate efficient use of state technology resources;

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(10) Submit resource and support requests to the federal government to support technology or cyber security initiatives or programs;

(11) Engage in any other activities as directed by the Governor; and

(12) Promulgate legislative rules, in accordance with the provisions of §29A-3-1 *et seq*. as may be necessary to standardize and make effective the administration of the provisions of this article.

(b) With respect to executive agencies, the Chief Information Officer may:

(1) Develop a unified and integrated structure for information systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and timelines for addressing the information technology requirements of executive agencies;

(3) Draw upon staff of other executive agencies for advice and assistance in the formulation and implementation of administrative and operational plans and policies;

(4) Recommend to the Governor transfers of equipment and human resources from any executive agency for the most effective and efficient uses of the fiscal resources of executive agencies to modernize information technology investments;

(5) Provide guidance and services where feasible to support proper cleansing of electronic data;

(6) Develop an information technology recycling program to redistribute or reuse properly cleansed technology equipment. Transfers and disposal of information technology equipment are specifically exempt from the surplus property requirements enumerated in §5A-3-43, §5A-3-44, §5A-3-45, and §5A-3-46 of this code; and

(7)(A) Provide guidance and services to support data retention and electronic discovery of executive agency data in compliance with agency data retention policies and directives: *Provided*, That executive agencies communicate such requirements.

(B) In furtherance of this goal, the Chief Information Officer, in conjunction with the appropriate authority of each executive agency, shall coordinate an effort to ensure that every executive branch agency establishes a written digital document retention and destruction policy to be posted on the agency's website accessible by the public and conducts an annual review of the components of such policy.

(c) The Chief Information Officer may employ the personnel necessary to carry out the work of the Office of Technology and may approve reimbursement of costs incurred by employees to obtain education and training.

WV Legislature

(d) The Chief Information Officer may oversee telecommunications services used by state spending units for the purpose of maximizing efficiency to the fullest possible extent including auditing telecommunications services and usage and negotiation of telecommunications contracts.

(e) The Chief Information Officer shall provide central mail services during regular business hours for state spending units. All state spending units having their offices in the capitol, except the legislative branch of government, shall dispatch all mail through the central mailing office: *Provided*, That mail prepared after gathering time and mail for special handling may be posted without utilizing the central mailing office upon approval of the Chief Information Officer. The Chief Information Officer is authorized to make such expenditures as necessary to process and presort all outgoing mail or to enter contracts to supply the service.

(f) The Chief Information Officer may convene and chair an advisory committee made up of a representative from each of the departments as identified in §5F-1-2 of this code, and any other members deemed necessary by the Chief Information Officer to provide advice and recommendations on technology issues for state agencies.

WV Legislature

§5A-6-4a.

[Repealed.]

Acts, 2019 Reg. Sess., Ch. 123.

WV Legislature

§5A-6-4b. Project management duties of the Chief Information Officer; establishment of the Project Management Office and authority of the Project Management Office.

(a) The Chief Information Officer is authorized to:

(1) Implement an approval process for technology projects proposed by state agencies to ensure that all technology projects conform to the statewide strategic plan and the overall technology strategy of the agency;

(2) Establish a methodology for conceiving, planning, scheduling, and providing appropriate oversight for technology projects, including oversight for the projects and a process for approving the planning, development, and procurement of technology projects; and

(3) Establish steering committees as needed to oversee technology projects.

(b) The Chief Information Officer shall create a Project Management Office within the Office of Technology. The Project Management Office shall:

(1) Implement the approval process for technology projects;

(2) Review technology project proposals submitted by agencies and recommend to the Chief Information Officer the approval of the proposals and any amendments thereto pursuant to §5A-6-4c of this code;

(3) Monitor the implementation of technology projects and periodically report findings to the Chief Information Officer;

(4) Implement technology portfolio management to assist the Chief Information Officer with aligning investment in technology with strategic goals of the state. The standard by which the projects within the technology portfolio will be evaluated are:

(A) Total cost of the project;

(B) Public or citizen interface with the project or number of people affected by the project;

(C) Whether the project is operationally critical to the agency.

(5) Provide oversight for technology projects; and

(6) Establish minimum qualifications and training standards for project managers.

WV Legislature

§5A-6-4c. Technology project proposals and the establishment of steering committees.

(a) Prior to proceeding with a technology project, a state agency shall submit a project proposal to the Project Management Office, outlining the business case, the proposed technology solution, if known, and an explanation of how the project will support the agency's business objective and the state's strategic plan for information technology. The Project Management Office may require the submission of additional information as needed to adequately review any proposal.

(b) The Project Management Office shall make recommendations on proposed projects to the Chief Information Officer for final disposition: *Provided*, That the Chief Information Officer may delegate approval authority.

(c) If the Chief Information Officer deems necessary, a steering committee may be appointed to:

(1) Provide ongoing oversight for the technology project;

(2) Have the authority to approve or reject any changes to the project's scope, schedule, or budget;

(3) Develop any necessary solicitation for the technology project; and

(4) Finalize data necessary for inclusion of the project in the technology portfolio.

WV Legislature

§5A-6-4d. Responsibilities of the Chief Information Officer to implement information technology modernization.

(a) For the purposes of this section, "cloud computing service" means a service that enables on demand self-service network access to a shared pool of configurable computer resources including, but not limited to, data storage, analytics, electronic commerce, streaming services, mobile services, electronic mail, document sharing, and document editing which can be rapidly provided and released with minimal management effort or service provider interaction.

(b) The Chief Information Officer shall develop a comprehensive strategy and implement standards for the procurement, adoption, and utilization of cloud computing services by the state and its agencies. In developing the strategy, the Chief Information Officer may consult with other relevant state or federal agencies and relevant private sector stakeholders.

(c) When implementing the comprehensive strategy described in subsection (b) of this section, the Chief Information Officer may:

(1) Consider activities that accelerate the development of standards addressing interoperability and portability of cloud computing services in collaboration with private sector stakeholders;

(2) Consider activities that advance the development of conformance testing to be performed by private sector stakeholders to support cloud computing standardization;

(3) Consider activities that support the development of appropriate security and architecture frameworks in consultation with private sector stakeholders; and

(4) Identify modern security control best practices to address security and privacy requirements, and to enable the use and adoption of cloud computing services, including practices defined in National Institute of Standards and Technology, Federal Risk and Authorization Management Program, and any equivalent state program adopted in West Virginia.

(d) Beginning on December 1, 2023, and on December 1 of each year after, the Chief Information Officer shall report annually the status of the state’s comprehensive strategy described in subsection (b) of this section to the Joint Committee on Government and Finance and to the Governor. To assist in the creation of the report, all relevant state agencies shall cooperate with the Chief Information Officer and provide any information required by the Chief Information Officer in an accurate and timely manner.

WV Legislature

§5A-6-4e. Digitization of state forms.

(a)(1) All state agencies shall explore existing paper-based forms and applications so that said forms and applications can be made conveniently available to state residents.

(2) The Chief Information Officer may work collaboratively with private sector vendors to establish contracts and services to enable state agencies in modernizing government services to be delivered through a digital media.

(3) The Chief Information Officer shall work with all state agencies to ensure that all paper-based forms and applications are made available to state residents through digital media by no later than July 1, 2025.

WV Legislature

§5A-6-5. Notice of request for proposals by state spending units required to make purchases through the state Purchasing Division.

Any state spending unit that pursues an information technology purchase that does not meet the definition of "technology project" and that is required to submit a request for proposal to the state Purchasing Division prior to purchasing goods or services shall obtain the approval of the Chief Information Officer, in writing, of any proposed purchase of goods or services related to its information technology and telecommunication systems. The proposal shall contain a brief description of the goods and services to be purchased. The state spending unit shall provide the proposal to the Chief Information Officer prior to the time it submits its request for proposal to the state Purchasing Division.

WV Legislature

§5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the state Purchasing Division.

(a) Any state spending unit that is not required to submit a request for proposal to the state Purchasing Division prior to purchasing goods or services shall notify the Chief Information Officer, in writing, of any proposed purchase of goods or services related to its information technology or telecommunication systems. The proposal shall contain a detailed description of the goods and services to be purchased. The state spending unit shall provide the proposal to the Chief Information Officer a minimum of 10 days prior to the time it requests bids on the provision of the goods or services.

(b) If the Chief Information Officer evaluates the suitability of the information technology and telecommunication equipment and related services under the provisions of §5A-6-4(a) of this code and determines that the goods or services to be purchased are not suitable, he or she shall, within 10 days of receiving the notice from the state spending unit, notify the state spending unit, in writing, of any recommendations he or she has regarding the proposed purchase of the goods or services. If the state spending unit receives a written notice from the Chief Information Officer within the time period required by this section, the state spending unit shall not put the goods or services out for bid less than 15 days following receipt of the notice from the Chief Information Officer.

WV Legislature

§5A-6-7. Biannual report.

The Chief Information Officer shall report biannually to the Legislative Joint Committee on Government and Finance on the activities of his or her office.

WV Legislature

§5A-6-8. Exemptions.

(a) The provisions of this article do not apply to the Legislature, the judiciary, or any state Constitutional Officer designated in §6-7-2 of this code.

(b) Notwithstanding any other provision of this article to the contrary, the provisions of this article do not apply to the West Virginia Board of Education, the West Virginia Department of Education, the county boards of education, the higher educational institutions, or the West Virginia Emergency Management Division of the Department of Homeland Security relating to the technology used with the Statewide Interoperable Radio Network, created by §15-14-1 *et seq*. of this code. However, the West Virginia Board of Education, the West Virginia Department of Education, the county boards of education, and the institutions of higher education shall cooperate and collaborate with the Chief Information Officer to the extent feasible.

(c) The Governor may by executive order exempt from the provisions of this article any entity created and organized to facilitate the public and private use of health care information and the use of electronic medical records throughout the state.

WV Legislature

§5A-6-9. West Virginia Task Force on Artificial Intelligence.

(a) As used in this Section, "Task Force" means the West Virginia Task Force on Artificial Intelligence established by this section.

(b) The West Virginia Task Force on Artificial Intelligence is created and shall be organized within the Office of the Governor.

(c) The Task Force shall be composed of the following members:

(1) One ex officio, non-voting member from the House of Delegates, appointed by the Speaker of the House of Delegates.

(2) One ex officio, non-voting member from the State Senate, appointed by the President of the Senate.

(3) The Chief Information Officer of the Office of Technology or his or her designee.

(4) The State Superintendent of Schools or his or her designee.

(5) The Chancellor of the West Virginia Higher Education Policy Commission or his or her designee.

(6) The Attorney General or his or her designee.

(7) The Secretary of the Department of Administration or his or her designee.

(8) The Secretary of the Department of Homeland Security or his or her designee.

(9) The Secretary of Health or his or her designee.

(10) One member representing the cybersecurity industry with experience relevant to the work of the Task Force, appointed by the Governor.

(11) One member representing the artificial intelligence industry with experience relevant to the work of the Task Force, appointed by the Governor.

(12) One member representing a statewide business association, appointed by the Governor.

(13) One member from the West Virginia Fusion Center.

(14) One member representing either the West Virginia University Health System or the Marshall Health Network, appointed by the Governor.

(d) The Governor shall designate the Chair of the Task Force.

(e) The responsibilities of the Task Force shall include, but not be limited to, the following:

WV Legislature

(1) Recommending a definition of artificial intelligence as it pertains to its use in technology for use in legislation;

(2) Determining the relevant state agency or agencies to develop and oversee artificial intelligence policy and implementation of that policy;

(3) Determining which public interest use cases exist or may exist for artificial intelligence;

(4) Developing best practices for public sector uses of artificial intelligence in the State;

(5) Recommending legislation to protect individual rights, civil liberties, and consumer data as it relates to generative artificial intelligence;

(6) Recommending model policies for schools to address the use of artificial intelligence by students in the classroom;

(7) Determining and making recommendations regarding whether the Task Force should be extended to monitor, analyze, and make findings and recommendations to keep pace with changes in artificial intelligence technology and uses of the technology;

(8) Assessing the use of artificial intelligence in the workforce and its effect on employment levels, types of employment, and the deployment of workers;

(9) Taking an inventory of the current or proposed use of artificial intelligence within state agencies;

(10) Identify economic opportunities related to AI that the state may support or promote;

(11) Other topics related to artificial intelligence that may arise from testimony or reports to the Task Force submitted by its members, invited guests, or the public.

(f) The Office of Technology shall provide administrative and technical support to the Task Force.

(g) All initial appointments to the task force shall be made not later than 90 days after the effective date of this section. Any vacancy shall be filled by the appointing authority, as applicable, within 90 days of such vacancy arising.

(h) The Task Force shall hold its first meeting not later than 120 days after the effective date of this section and shall meet quarterly thereafter with options to either attend in-person or online.

(i) The Task Force shall submit an annual electronic report by July 1, to the House of Delegates, Senate, and the Governor and present the report to the Joint Committee on Government and Finance covering the Task Force's findings and recommendations related to the responsibilities under subsection (e) of this section.

WV Legislature

(j) The Task Force shall terminate on, July 1, 2027.

WV Legislature

§5A-6A-1

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-2

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-3

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-4

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-5

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-6

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-7

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-8

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6A-9

Repealed.

Acts, 2016 Reg. Sess., Ch. 37

WV Legislature

§5A-6B-1. West Virginia Cybersecurity Office; scope; exemptions.

(a) There is hereby created the West Virginia Cybersecurity Office within the Office of Technology, to be led by the West Virginia Chief Information Security Officer. The office may set standards for cybersecurity and is charged with managing the cybersecurity framework.

(b) The provisions of this article are applicable to all state agencies, excluding higher education institutions, the State Police, state constitutional officers identified in §6-7-2 of this code, the Legislature, and the Judiciary.

WV Legislature

§5A-6B-2. Definitions.

As used in this article:

"Cybersecurity framework" means computer technology security guidance for organizations to assess and improve their ability to prevent, detect, and respond to cyber incidents.

"Cyber incident" means any event that threatens the security, confidentiality, integrity, or availability of information assets, information systems, or the networks that deliver the information.

"Cybersecurity program review" means the process of identifying, analyzing and evaluating risk, and applying the appropriate security controls relevant to the information custodian.

"Cyber risk management service" means technologies, practices, and policies that address threats and vulnerabilities in networks, computers, programs, and data flowing from or enabled by connection to digital infrastructure, information systems, networks, devices, or industrial control systems, including, but not limited to, information security, supply chain assurance, information assistance, and hardware or software assurance.

"Enterprise" means the collective departments, agencies, and boards within state government that provide services to citizens and other state entities.

"Framework" means cybersecurity framework as defined in this section.

"Incident" means cyber incident as defined in this section.

"Information custodian" means a state or local department, agency, office, board, commission, or other spending unit with custody of, or responsibility for, data assets residing on a state system, device, account, or networks owned, monitored, or maintained by the West Virginia Office of Technology.

"Plan of action and milestones" means a remedial plan, or the process of accepting or resolving risk, which helps the information custodian to identify and assess information system security and privacy weaknesses, set priorities, and monitor progress toward mitigating the weaknesses.

"Privacy impact assessment" means a procedure or tool for identifying and assessing privacy risks throughout the development life cycle of a program or system.

"Security controls" means safeguards or countermeasures to avoid, detect, counteract or minimize security risks to physical property, information, computer systems or other assets.

"User" means an entity or person with access to a state system, device, account, or network. This includes, but is not limited to, employees, contractors, vendors, automated systems, service accounts, and volunteers.

WV Legislature

§5A-6B-3. Powers and duties of Chief Information Security Officer; staff; rule-making.

(a) The West Virginia Cybersecurity Office is under the supervision and control of a Chief Information Security Officer appointed by the Chief Information Officer and shall be staffed appropriately by the Office of Technology to implement the provisions of this article.

(b) The Chief Information Security Officer may:

(1) Develop policies, procedures, and standards necessary to establish an enterprise cybersecurity program that recognizes the interdependent relationship and complexity of technology in government operations and the nature of shared risk of cyber threats to the state;

(2) Create a cyber risk management service designed to ensure that officials at all levels understand their responsibilities for managing their agencies "cyber risk";

(3) Designate a cyber risk standard based on federal and industry best practices and accepted principles for the cybersecurity framework;

(4) Establish the cyber risk assessment requirements such as assessment type, scope, frequency, and reporting;

(5) Provide agencies cyber risk guidance for information technology projects, including the recommendation of security controls and remediation plans;

(6) Assist agencies in the development of plans and procedures to manage, assist, and recover in the event of a cyber incident;

(7) Assist agencies in the management of the framework relating to information custody, classification, accountability, and protection;

(8) Ensure a minimum standard for uniformity and adequacy of the cyber risk assessments;

(9) Notwithstanding the provisions of §5A-6B-1(b) of this code, enter into fee-based agreements with state government entities exempted from the application of this article or other political subdivisions of the state that desire to voluntarily participate in the cybersecurity program administered pursuant to this article;

(10) Develop policy outlining use of the privacy impact assessment as it relates to safeguarding of data and its relationship with technology;

(11) Establish minimal training requirements for users of state networks, systems, or devices.

(12) Perform such other functions and duties as provided by law or directed by the Chief

WV Legislature

Information Officer.

(c) The Chief Information Security Officer, along with the Chief Information Officer, shall ensure that any state contract for licensing software applications, which are designed to run on generally available desktop or server hardware, shall not limit the state's ability to install or run the software on the hardware of the state's choosing.

(d) The Secretary of the Department of Administration shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement and enforce the provisions of this article.

WV Legislature

§5A-6B-4. Responsibilities for cybersecurity.

(a) Each information custodian receiving centralized support from the West Virginia Office of Technology, or any other entity subject to the provisions of this article, shall:

(1) Undergo an appropriate cyber risk assessment as required by the cybersecurity framework or as directed by the Chief Information Security Officer;

(2) Adhere to the cybersecurity standard established by the Chief Information Security Officer in the use of information technology infrastructure;

(3) Adhere to enterprise cybersecurity policies and standards;

(4) Manage cybersecurity policies and procedures where more restricted security controls are deemed appropriate;

(5) Submit all cybersecurity policy and standard exception requests to the Chief Information Security Officer for approval;

(6) Participate in at least one annual cybersecurity program review with representatives of the West Virginia Office of Technology before November 30 of each year. The review will provide the Office of Technology with an analysis and evaluation of each information custodian's cybersecurity readiness, ability to keep user data safe, data classifications, and other steps that the information custodian has taken towards safeguarding, risk management, cybersecurity readiness, or information technology modernization.

(b) If an information custodian fails to participate in the annual cybersecurity program review, the West Virginia Office of Technology may recover expenses associated with conducting any diagnostics or evaluations performed to assure safety of the network, devices, and systems. The amount charged to the information custodian may not exceed the actual costs incurred by the West Virginia Office of Technology in performing the review, resolving identified problems, and ensuring network security, protection, and continuity of operations.

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§5A-6B-5. Exemption from disclosure.

Any information, including, but not limited to, cyber risk assessments, cybersecurity program review, plans of action and milestones, remediation plans, or information indicating the cyber threat, vulnerability, information, or data that may identify or expose potential impacts or risk to agencies or to the state or that could threaten the technology infrastructure critical to government operations or services, public safety, or health is exempt from §29B-1-1 *et seq*. of this code.

WV Legislature

§5A-6B-6. Annual reports.

The Chief Information Security Officer shall annually, on December 1 of each year report to the Joint Committee on Government and Finance and to the Governor on the status of the cybersecurity program, including any recommended statutory changes. The report shall include a comprehensive summary of the annual cybersecurity program reviews completed pursuant to §5A-6B-4 of this code regarding the information custodian's cybersecurity readiness and a list of information technology modernization efforts taken by the West Virginia Office of Technology.

WV Legislature

§5A-6C-1. Definitions.

As used in this article:

“Cybersecurity Office” means the office created by §5A-6B-1 of this code.

“Incident” or “cybersecurity incident” means a violation, or imminent threat of violation, of computer security policies, acceptable use policies, or standard security practices.

WV Legislature

§5A-6C-2. Scope.

This article applies to all state agencies within the executive branch, constitutional officers, all local government entities as defined by §7-1-1 or §8-1-2 of this code, county boards of education as defined by §18-1-1 of this code, the Judiciary, and the Legislature.

WV Legislature

§5A-6C-3. Cyber Incident reporting; when required.

(a) Qualified cybersecurity incidents shall be reported to the Cybersecurity Office before any citizen notification, but no later than 10 days following a determination that the entity experienced a qualifying cybersecurity incident.

(b) A qualified cybersecurity incident meets at least one of the following criteria:

(1) State or federal law requires the reporting of the incident to regulatory or law-enforcement agencies or affected citizens;

(2) The ability of the entity that experienced the incident to conduct business is substantially affected; or

(3) The incident would be classified as emergency, severe, or high by the U.S. Cybersecurity and Infrastructure Security Agency.

(c) The report of the cybersecurity incident to the Cybersecurity Office shall contain at a minimum:

(1) The approximate date of the incident;

(2) The date the incident was discovered;

(3) The nature of any data that may have been illegally obtained or accessed; and

(4) A list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom the notice has been or will be provided.

(d) The procedure for reporting cybersecurity incidents shall be established by the Cybersecurity Office and disseminated to the entities listed §5A-6C-2 of this code.

WV Legislature

§5A-6C-4. Cybersecurity Office annual report.

(a) On or before December 31 of each year, and when requested by the Legislature, the Cybersecurity Office shall provide a report to the Joint Committee on Government and Finance containing the number and nature of incidents reported to it during the preceding calendar year. The report shall be transmitted to the members of the committee electronically and shall be sent to the legislative librarian to be posted on the legislative website. No hard copy of the report shall be issued; however, a member shall be provided a hard copy upon request.

(b) The Cybersecurity Office shall also make recommendations, if any, on security standards or mitigation that should be adopted.

WV Legislature

§5A-7-1. Definitions.

[Repealed].

WV Legislature

§5A-7-2. Division created; purpose; use of facilities; rules and regulations.

[Repealed].

WV Legislature

§5A-7-3. Director; appointment and qualifications.

[Repealed].

WV Legislature

§5A-7-4. Powers and duties of division generally; professional staff; telephone service.

[Repealed].

WV Legislature

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the Information and Communications Division and Secretary of Administration.

[Repealed].

WV Legislature

§5A-7-5. Control over central mailing office.

[Repealed].

WV Legislature

§5A-7-6. Central mailing office employees.

[Repealed].

WV Legislature

§5A-7-7. Central mailing office responsibilities.

[Repealed].

WV Legislature

§5A-7-8. Use of the central mailing office.

[Repealed].

WV Legislature

§5A-7-9. Preparation of mail for special rates.

[Repealed].

WV Legislature

§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund.

[Repealed].

WV Legislature

§5A-7-11. Confidential records.

[Repealed].

WV Legislature

§5A-8-1. Short title.

This article shall be known as the "Records Management and Preservation of Essential Records Act."

WV Legislature

§5A-8-2. Declaration of policy.

The Legislature declares that programs for the efficient and economical management of state and local records will promote economy and efficiency in the day-to-day record-keeping activities of state and local government and will facilitate and expedite government operations; that records containing information essential to the operation of government and to the protection of the rights and interests of persons must be protected against the destructive effects of all forms of disaster and must be available when needed. It is necessary, therefore, to adopt special provisions for the selection and preservation of essential state and local records thereby providing for the protection and availability of such information.

WV Legislature

§5A-8-3. Definitions.

As used in this article:

“Agency” means any department, office, commission, board, or other unit, however designated, of the executive branch of state government.

“Agency Records Manager” means an employee appointed by the agency’s chief executive officer or agency head to manage the agency’s records inventory and to act as liaison with the administrator.

“Disaster” means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature, or man, including an enemy of the United States.

“Local record” means a record of a county, city, town, authority, or any public corporation or political entity whether organized and existing under charter or under general law unless the record is designated or treated as a state record under state law.

“Preservation duplicate” means a copy of an essential state record which is used for the purpose of preserving such state record pursuant to this article.

“Record” means document, electronic file, book, paper, photograph, sound recording, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official state government business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this article.

“State record” means:

(A) A record of a department, office, commission, board, spending unit, or other agency, however designated, of the state government.

(B) A record of the State Legislature.

(C) A record of any court of record, whether of statewide or local jurisdiction.

(D) Any record designated or treated as a state record under state law.

www.legislature

§5A-8-3a.

Repealed.

Acts, 1990 Reg. Sess., Ch. 2.

WV Legislature

§5A-8-4. Categories of records to be preserved.

State or local records which are within the following categories are essential records which shall be preserved pursuant to this article:

Category A. Records containing information necessary to the operation of government in the emergency created by a disaster.

Category B. Records not within category A but containing information necessary to protect the rights and interest of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.

Category C. Records with historical value justifying permanent retention.

WV Legislature

§5A-8-5. State records administrator.

The Secretary of the Department of Administration is hereby designated the state records administrator, hereinafter called the administrator. The secretary may designate someone within the department to carry out the duties of the administrator. The administrator shall establish and administer in the Department of Administration of the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, and retention, preservation, and disposal of state records; and shall establish and maintain a program for the selection and preservation of essential state records and shall advise and assist in the establishment of programs for the selection and preservation of essential local records.

WV Legislature

§5A-8-6. Records management and preservation advisory committee.

[Repealed.]

WV Legislature

§5A-8-7. Duties of administrator.

The administrator shall, with due regard for the functions of the agencies concerned:

(a) Establish standards, procedures, and techniques for effective management of records;

(b) Make continuing surveys of document operations and recommend improvements in current records management practices including the use of space, technology, equipment, and supplies employed in creating, maintaining, storing, and servicing records;

(c) Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant storage;

(d) Solicit input from agencies on essential records and data classification of information contained in the records. In accordance with the rules and regulations promulgated by the administrator, each agency that has custody or control of state records shall: (1) Inventory the state records in his or her custody or control; (2) submit to the administrator a report thereon containing such information as the administrator directs and containing recommendations as to which state records are essential; and (3) periodically review his or her inventory and his or her report and, if necessary, revise the report so that it is current, accurate, and complete; and

(e) Obtain reports from agencies as are required for the administration of the program.

WV Legislature

§5A-8-8. Rules and regulations.

The administrator shall promulgate such rules and regulations concerning the management and selection and preservation of essential state records as are necessary or proper to effectuate the purpose of this article.

WV Legislature

§5A-8-9. Duties of agency heads.

The head of each agency shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency;

(b) Designate and notify the administrator of an agency records manager to act as a point of contact between the administrator and the agency on issues related to management of the state records within the agency's control or custody;

(c) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities;

(d) Submit to the administrator, in accordance with the standards established by him or her, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been received by the agency. Each agency records manager also shall submit lists of state records in custody of the agency that are not needed in the transaction of current business and that do not have sufficient administrative, legal, or fiscal value to warrant storage for disposal in conformity with the requirements of §5A-8-10 of this code;

(e) Designate those records of the agency that are essential state records, at least annually, and report the designated essential state records to the administrator;

(f) Provide for the preservation and safekeeping of essential state records in an appropriate manner;

(g) Cooperate with the administrator in the conduct of surveys made pursuant to the provisions of this article;

(h) Comply with the rules, regulations, standards, and procedures issued by the administrator; and

(i) First obtain the administrator's written approval before purchasing or acquiring any equipment, technology, or supplies used or to be used to store or preserve records of the agency.

WV Legislature

§5A-8-10. Essential state records – Preservation duplicates.

(a) The agency head may make or cause to be made preservation duplicates or may designate as preservation duplicates existing copies of essential state records. A preservation duplicate shall be durable, accurate, complete, and clear, and a preservation duplicate made by means of photography, microphotography, photocopying, film, microfilm, electronic file, or digital image stored on unalterable media shall be made in conformity with the standards prescribed therefor by the administrator.

(b) A preservation duplicate made by a photographic, photostatic, microfilm, microcard, miniature photographic, electronic file, digital image, or other process which accurately reproduces or forms a durable and unalterable medium for so reproducing the original, shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record.

WV Legislature

§5A-8-11. Essential state records – Safekeeping.

(a) The administrator shall prescribe a manner of safekeeping of essential state records and preservation duplicates and may establish, with the approval of the Legislature, storage facilities therefor. The administrator may provide for physical storage outside the state or electronic storage.

(b) When in the opinion of the administrator the legally designated or customary location of an essential state record is such that the essential state record may be destroyed or unavailable in the event of a disaster:

(1) The agency with custody of the essential state record shall store a preservation duplicate at another location and permit such state record to remain at its legally designated or customary location; or

(2) The agency shall store such state record at a location other than its legally designated or customary location and deposit at the legally designated or customary location a preservation duplicate for use in lieu of the state record; or

(3) The agency may store such state record at a location other than its legally designated or customary location, without providing for a preservation duplicate, upon a determination that it is impracticable to provide for a preservation duplicate and that the state record is not frequently used. Such determination shall be made by the administrator and the regularly designated custodian of such state record, but if they disagree the determination shall be made by the administrator.

(c) The requirements of subsection (b) of this section shall not prohibit the administrator from removing an essential state record or preservation duplicate from the legally designated or customary location of the state record if a disaster has occurred or is imminent.

WV Legislature

§5A-8-12. Essential state records – Maintenance, inspection, and use.

[Repealed.]

WV Legislature

§5A-8-13. Essential state records – Confidential records.

Any agency subject to this article shall control and at all times be the owner of its records. When a state record is required by law to be treated in a confidential manner and is an essential state record, the agency, in effectuating the purpose of this article with respect to such state record, shall protect its confidential nature.

WV Legislature

§5A-8-14. Essential state records – Review of program.

The administrator shall review the program at least annually for the selection and preservation of essential state records designated by the agencies, including the classification of records and the provisions for preservation duplicates, and for safekeeping of essential state records or preservation duplicates to ensure that the purposes of this article are accomplished.

WV Legislature

§5A-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of a county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. A county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code as proposed by the Records Management and Preservation Board.

(b) In the event a county government entity decides to destroy or otherwise dispose of a county record, the county government entity may, prior to destruction or disposal thereof, offer the record to the director of Archives and History within the Department of Arts, Culture, and History for preservation of the record as a document of historical value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c)(1) A preservation duplicate of a county government entity record may be stored in any format approved by the board in which the image of the original record is preserved in a form, including electronic file, in which the image is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved that truly and accurately depicts the image of the original county government record.

(2) Except for those formats, processes, and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the board in accordance with the provisions of Chapter 29A of this code. The board may prohibit the use of any format, process, or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration, or decay.

(3) Upon creation of a preservation duplicate that stores an original county government entity record in an approved format that is incapable of erasure or alteration and that may be retrieved in a format that truly and accurately depicts the image of the original record, the county government entity may destroy or otherwise dispose of the original in accordance with the provisions of §57-1-7c of this code.

WV Legislature

(d) A Records Management and Preservation Board for county government entities is continued, to be composed of 11 members.

(1) Three members shall serve ex officio. One member shall be the curator of the Department of Arts, Culture, and History or designee who shall be the chair of the board. One member shall be the Administrator of the Supreme Court of Appeals or designee. One member shall be the Chief Technology Officer or designee.

(2) The Governor shall appoint eight members of the board, with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and four members shall be appointed from each congressional district. Of the eight members appointed by the Governor:

(i) Five appointments shall be county elected officials, one of whom shall be a clerk of a county commission, one of whom shall be a circuit court clerk, one of whom shall be a county commissioner, one of whom shall be a county sheriff, and one of whom shall be a county assessor, to be selected from a list of 15 names. The names of three clerks of county commissions and three circuit court clerks shall be submitted to the Governor by the West Virginia Association of Counties. The names of three county commissioners shall be submitted to the Governor jointly by the West Virginia Association of Counties and the West Virginia County Commissioners Association. The names of three county sheriffs shall be submitted to the Governor by the West Virginia Sheriff's Association. The names of three county assessors shall be submitted to the Governor by the Association of West Virginia Assessors;

(ii) One appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia Prosecuting Attorneys Institute;

(iii) One appointment shall be an attorney licensed in West Virginia and in good standing as a member of the West Virginia State Bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the State Bar; and

(iv) One appointment shall be a representative of a local historical or genealogical society.

(e) The members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

(f) The staff of the board shall consist of the Director of Archives and History within the Department of Arts, Culture, and History and any additional staff as needed.

(g) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to establish a system of records management and

WV Legislature

preservation for county governments: *Provided*, That, for the retention and disposition of records of courts of record and magistrate courts, the implementation of the rule is subject to action by the Supreme Court of Appeals of West Virginia. The proposed rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state.

(h) In addition to the fees charged by the clerk of the county commission under the provisions of §59-1-10 of this code, the clerk shall charge and collect an additional $2 fee for every document containing less than 20 pages filed for recording and an additional $1 fee for each additional 10 pages of document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the Public Records and Preservation Revenue Account as established in the State Treasury all fees collected: *Provided*, That the clerk may retain not more than 10 percent of the fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for the collection and deposit in the State Treasury of all fees collected by the clerk under the provisions of this section.

(i) There is hereby created in the State Treasury a special account entitled the Public Records and Preservation Revenue Account. The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants, or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq*. of this code.

(j) Subject to the above provision, the board may expend the funds in the account to implement the provisions of this article. In expending funds from the account, the board shall allocate not more than 50 percent of the funds for grants to counties for records management, access, and preservation purposes. The board shall provide for applications, set guidelines, and establish procedures for distributing grants to counties, including a process for appealing an adverse decision on a grant application. Expenditures from the account shall be for the purposes set forth in this section, including the cost of additional staff of the Division of Archives and History.

WVLegislature

§5A-8-15a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5A-8-16. Assistance to legislative and judicial branches.

Upon request, the records administrator shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and shall, as required by them, provide program services similar to those available to the executive branch of state government pursuant to the provisions of this article.

WV Legislature

§5A-8-17. Disposal of records.

(a) Except as provided in §57-1-7a of this code, no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the Director of Archives and History within the Department of Arts, Culture, and History that the record has no further administrative, legal, fiscal, research, or historical value. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research, or historical value, the administrator shall approve, if appropriate, a request for disposal of the records and notify both the Director of Archives and History and the agency that is the custodian of the records that they may be destroyed.

(b) The provisions of this section are not applicable to the judicial branch, the West Virginia House of Delegates, the West Virginia Senate, or the Joint Committee on Government and Finance.

WV Legislature

§5A-8-18. Destruction of nonrecord materials.

Nonrecord materials or materials not included within the definition of records as contained in this article may, if not otherwise prohibited by law, be destroyed at any time by the agency in possession of such materials without the prior approval of the administrator. The administrator may formulate procedures and interpretations to guide in the disposal of nonrecord materials.

WV Legislature

§5A-8-19. Annual report.

The administrator shall make an annual written report to the Governor for transmission to the Legislature. The report shall describe the status and progress of programs established pursuant to this article and shall include the recommendations of the administrator for improvements in the management and preservation of records in state government.

WV Legislature

§5A-8-20. Alternate storage of state records.

(a) Findings and purpose. -- The Legislature finds that continuous advances in technology have resulted and will continue to result in the development of alternate formats for the nonerasable storage of state records, and that the use of such alternative storage formats, where deemed advisable, promote the efficient and economical administration of government and provide a means for the preservation of valuable records that are subject to decay or destruction. It is the purpose of the Legislature to authorize the storage of state records in those alternate formats, as may be determined by the various branches of the government of this state, that will reasonably ensure that the originals of those records are copied into alternative formats in a manner in which the image of the original records is not erased or altered, and from which true and accurate reproductions of the original state records may be retrieved.

(b) Approved format. -- (1) In addition to those formats, processes and systems described in section ten of this article, sections seven-a and seven-c, article one, chapter fifty-seven of this code, and section twelve, article five of that chapter which are otherwise authorized for the reproduction of state records, a preservation duplicate of a state record may be stored in any approved format where the image of the original state record is preserved in a form in which the image thereof is incapable of erasure or alteration, and from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record.

(2) As a substitute for using medium that is incapable of erasure or alteration, a preservation duplicate of a state record may be stored on other electronic storage medium or other medium capable of storing digitized documents if:

(A) The medium is stored to maximize its life by minimizing exposure to environmental contaminants;

(B) At least two copies of the preservation duplicate are made and one copy is stored in an off-site location; and

(C) A procedure is established and followed which ensures that:

(i) Modifications in the archiving process are made as technology changes so that the preservation duplicates are readily accessible, which may include migrating the preservation duplicates to different medium or different file formats; and

(ii) The medium is periodically examined to determine if the preservation duplicates remain readable and intact.

(c) Executive agency records. -- (1) The alternate formats for the storage of state records described in this section are authorized for the storage of the state records of any agency of this state. The state records administrator shall establish a procedure for executive agencies

WV Legislature

to follow implementing the provisions of subsection (b) of this section by July 1, 2013. The procedure shall include, at a minimum, the identification of examples of medium and accompanying procedures to be followed for executive agencies when making preservation duplicates of state records on medium readily available, other than microfilm or microfiche.

(2) Upon creation of a preservation duplicate from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the state records administrator may destroy or otherwise dispose of the original in accordance with the provisions of section seventeen of this article for the destruction of records.

(d) Judicial records. -- (1) Except for those formats, processes and systems used for the storage of state records on the effective date of this section, no alternate format for the storage of state records described in this section is authorized for the storage of the state records of any court of this state unless the particular format has been approved by the Supreme Court of Appeals by rule. This section does not prohibit the Supreme Court of Appeals from prohibiting the use of any format, process or system used for the storage of judicial state records upon its determination that the same is not reasonably adequate to preserve the state records from destruction, alteration or decay.

(2) Upon creation of a preservation duplicate which stores an original judicial state record in an approved format from which a reproduction of the stored state record may be retrieved which truly and accurately depicts the image of the original state record, the court or the clerk thereof creating the same may, consistent with rules of the Supreme Court of Appeals, destroy or otherwise dispose of the original in accordance with the provisions of section seven, article one, chapter fifty-seven of this code for the destruction of records.

(e) Legislative records. -- In accordance with all applicable provisions of the West Virginia Constitution, the procedures for the storage and destruction of legislative records shall be determined by each house, or by a joint rule.

(f) Upon request and payment of a reasonable cost, one copy of any state record archived or preserved pursuant to the provisions of this article shall be provided to any person or entity: Provided, That the person or entity that has produced the state record may receive one copy without charge. For the purpose of this subsection "state record" means electronic record created and maintained by state agencies.

WV Legislature

§5A-8-21. Limitation on release of certain personal information maintained by state agencies and entities regarding state employees.

(a) The following personal information maintained by executive, legislative, or judicial branch agencies of the State of West Virginia regarding persons in their capacity as state officers, employees, retirees, or the legal dependents thereof is hereby deemed to be confidential and exempt from disclosure, as an unreasonable invasion of privacy, to non-governmental entities in documents otherwise subject to disclosure under the provisions of §29B-1-1 *et seq.* of this code:

(1) An individual's home address;

(2) An individual's Social Security number;

(3) An individual's credit or debit card numbers;

(4) An individual's driver's license identification number; and

(5) An individual's marital status or former legal name.

(b) It is the policy of the State of West Virginia that the information enumerated in subsection (a) of this section is personal and confidential and should only be released to non-governmental entities for such purposes as are authorized by federal law or regulation, a provision of this code, or a legislative rule promulgated pursuant to the provisions of §29A-1-1 *et seq.* of this code.

WV Legislature

§5A-8-22. Personal information maintained by state entities.

(a) The following information maintained by state executive branch agencies with respect to individuals and their dependents is personal information exempted from disclosure as an unreasonable invasion of privacy under the provisions of §29B-1-1 *et seq*. of this code, and may not be released to non-governmental entities:

(1) An individual's Social Security number; or

(2) An individual's credit or debit card number.

(b) Notwithstanding the provisions of subsection (a) of this section, the information enumerated in said subsection may be released for such purposes as are authorized by federal law or regulation, a provision of this code, or a legislative rule promulgated pursuant to the provisions of §29A-1-1 *et seq*.

WV Legislature

§5A-8-23. Limitation of liability.

This article creates no liability upon any person acting in his or her capacity as a state officer, employee, or retiree or former employee of the State of West Virginia; or upon the legal dependents, heirs and assignees of any such person; nor, upon any agency of the executive, legislative, or judicial branch of government of the State of West Virginia, for any transaction which is compromised by any third party's illegal act or inappropriate use associated with information regulated by this article.

WV Legislature

§5A-8-24. Protection of personal information relating to judicial officers, prosecutors, and law-enforcement officers.

(a) This section shall be known as Daniel's Law.

(b) This act shall be liberally construed in order to accomplish its purpose and the public policy of this state, which is to enhance the safety and security of certain public officials in the justice system, including judicial officers, prosecutors, federal and state public defenders, federal and state assistant public defenders, and law-enforcement officers, who serve or have served the citizens of West Virginia, and the immediate family members of these individuals, to foster the ability of these public servants who perform critical roles in the justice system, and to carry out their official duties without fear of personal reprisal from affected individuals related to the performance of their public functions.

(c) *Definitions*. — As used in this section:

(1) "Disclose" means to publish, publicly display, distribute, deliver, circulate, post, lend, provide, advertise, or disseminate by any means including, but not limited to, electronic transmission and on any medium including, but not limited to, the Internet.

(2) "Immediate family member" means spouse, child, parent, or any other family member related by blood or by law to the judicial officer, prosecutor, or law-enforcement officer, and who resides in the same residence as the judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer.

(3) "Judicial officer" means the chief justice or an associate justice of the United States Supreme Court, a judge of the United States Court of Appeals, a judge of a federal district court, a magistrate judge of a federal district court, any other judge for a court established by federal law, the chief justice or a justice of the Supreme Court of Appeals of West Virginia, a circuit judge, a family law judge, a magistrate, an administrative law judge, a municipal court judge, or any other judge established by state law.

(4) "Law-enforcement officer" shall have the same definition as that term is defined in §29B-1-2 of this code.

(5) "Prosecutor" means United States Attorney or his or her assistant United States attorneys, any other prosecutor established by federal law, the Attorney General of the State of West Virginia or his or her assistant attorneys general, a county prosecuting attorney or his or her assistant prosecuting attorneys, or any other prosecutor established by state law.

(d) Unless written permission is first obtained from the individual, a state or local government agency shall not knowingly disclose, redisclose, or otherwise make available the home address or unpublished home or personal telephone number of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer.

WV Legislature

(e) Unless written permission is first obtained from the individual, a person, business, or association shall not disclose, redisclose, or otherwise make available the home address or unpublished home or personal telephone number of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer under circumstances in which a reasonable person would believe that providing such information would expose another to harassment or risk of harm to life or property.

(1) A civil action may be maintained by the active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, or any other person residing at the home address of the active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, for any violation of subsection (e) of this section.

(2) The court may award:

(A) Actual damages, but not less than $1,000, for each violation of this act;

(B) Punitive damages, if applicable, in accordance with §55-7-29 of this code;

(C) Reasonable attorney's fees and other litigation costs reasonably incurred; and

(D) Any other preliminary or equitable relief as the court deems appropriate.

(f) Any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer whose home address or unpublished home or personal telephone number is disclosed, redisclosed, or otherwise made available by any person, business, or association may request that the person, business, or association in violation of subsection (e) of this section that disclosed, redisclosed, or otherwise made available the information to refrain from that action and remove the information.

(g) Any immediate family member of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer whose name, home address, or unpublished home or personal telephone number, which may be used alone or in conjunction with any other information to identify the person as the family member of an active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law-enforcement officer, is disclosed, redisclosed, or otherwise made available by any person, business, or association in violation of subsection (e) of this section may request that the person, business, or association that disclosed, redisclosed, or otherwise made available the information to refrain from that action and remove the information.

(h) A request to refrain and remove information pursuant to subsection (f) or (g) of this

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section shall be made in writing to the person, business, or association that disclosed, redisclosed, or otherwise made available the information.

(1) Upon receipt of a written request to refrain and remove information, the person, business, or association that disclosed, redisclosed, or otherwise made available the information shall immediately remove the information from any location where the information has been disclosed which is within the control of the person, business, or association.

(2) A civil action may be maintained by the individual whose information is disclosed, redisclosed, or otherwise made available for failure to comply with a request to refrain and remove the information made pursuant to subdivision (1) of this subsection, and the court may award injunctive or declaratory relief. If the court grants injunctive or declaratory relief, the person, business, or association responsible for the violation shall be required to pay reasonable attorney's fees and other litigation costs reasonably incurred by the judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, law-enforcement officer, or immediate family member thereof, as applicable and appropriate.

(3) A person who willfully refuses to remove information within 24 hours of receipt of the written request pursuant to subdivision (1), subsection (h) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined for up to six months, or both fined and confined.

(i) This section does not prohibit disclosures required by state or federal law.

WV Legislature

§5A-8-24a. Protection of Personal Residential Information of Certain Public Officials.

(a) For purposes of this section:

"Covered individual" means any person who is or was previously elected, appointed, served, or employed as a judicial officer, prosecutor, public defender, law-enforcement officer, elected official, or campaign treasurer and includes any immediate family member residing in the same household as that individual.

“Controlling agency” means the state agency, county, municipality, or political subdivision that is in possession or control of a publicly accessible website, database, or record, containing personal residential information.

“Immediate family member” means spouse, child, parent, or any other family member related by blood or by law to the covered individual, and who resides in the same residence as the covered individual.

“Judicial officer” means a justice of the United States Supreme Court, any federal judge, a justice of the Supreme Court of Appeals of West Virginia, a state circuit judge, a family court judge, a magistrate, a state or federal administrative law judge, a municipal court judge, or any other judge established by state law.

“Law-enforcement officer” has the same meaning as that term is defined in §30-29-1 of this code and includes those individuals defined as “chief executive” in §30-29-1 of this code.

"Personal residential information" means a covered individual’s home street address, personal residential telephone number, personal cellular telephone number that is not issued by an employing agency, or name when the name is associated with the home street address.

“Prosecutor” means the United States Attorney or his or her assistant United States attorneys, any other prosecutor established by federal law, the Attorney General or his or her assistant attorneys general, a county prosecuting attorney or his or her assistant prosecuting attorneys, or any other prosecutor established by state law.

“Record” means a publicly and remotely accessible website or database.

(b) If a covered individual provides a written request to the controlling agency and the covered individual identifies a specific record with personal residential information, the controlling agency shall remove or redact the covered individual’s personal residential information from the specified record and shall make reasonable efforts to remove the information from all other records within the controlling state agency.

(c) If a covered individual provides a written request to the controlling state agency to have personal residential information removed or redacted and the controlling agency fails to

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remove or redact the information on the specified record, the covered individual may bring a civil action for injunctive or declaratory relief. If the court grants injunctive or declaratory relief, the controlling agency responsible for the violation may be required to pay reasonable attorneys' fees and other litigation costs reasonably incurred by the covered individual, as applicable and appropriate.

(d) This section does not prohibit disclosure of personal residential information for the following:

(1) Internal government use;

(2) Disclosures required by federal law;

(3) Disclosures to a consumer reporting agency, as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*;

(4) Disclosures required pursuant to §15-12-1 of this code *et seq.*;

(5) Disclosures to local, state, or federal law-enforcement agencies;

(6) Disclosures subject to a valid subpoena or lawful discovery request;

(7) Disclosures required pursuant to §17A-2A-7 of this code;

(8) Physical documents affecting the title of real property recorded and indexed by a county;

(9) Disclosures to a title insurance company, title insurance agent, attorney, mortgage guarantee insurance company, mortgage loan originator, real estate broker, or realtor;

(10) Records associated with Uniform Commercial Code filings and financing statements;

(11) Information provided to the Secretary of State, or his or her designee, or the chief local election officers, or their designees, for the purposes of enforcing election law; and

(12) Disclosures to electoral opponents, or the local chairperson of a political party, of covered individuals for the purpose of challenging a candidate's eligibility.

(e) At the time of the written request, the covered individuals shall affirm in writing that he or she understands the redaction may cause the individual to forfeit certain legal, promotional, or official notices that otherwise would be provided but for the redaction or nondisclosure.

WV Legislature

§5A-8-25. Health care worker personal information.

(a) For purposes of this section:

"Health care worker" means a person who is an employee of a health care entity, a subcontractor, or independent contractor for a health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, any other person who provides direct patient care, first responder, or any person serving in a governance capacity of a health care entity;

"Immediate family" means a health care worker's spouse, child, or parent or any other relative who lives in the same residence as the health care worker;

"Personal information" means the home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, or a personal photograph or video of a health care worker; directions to the home of a health care worker; or photographs or videos of the home or personal vehicle of a health care worker or the immediate family of a health care worker.

(b) A health care worker may submit a written request to a state or local government official to remove personal information from records maintained by that official that are available on the internet. If a state or local government official receives such a written request, then he or she shall not knowingly make available on the internet personal information about the health care worker or the health care worker's immediate family.

(c) A health care worker's written request to a state or local government official to remove personal information from records made available on the internet shall include:

(1) Evidence that the person submitting the request is a health care worker, as defined in this section; and

(2) A statement, notarized by a notary public duly licensed under §39-4-1 *et seq*. of this code, that the person submitting the request has reason to believe that the dissemination of the personal information contained in the records that the official makes available on the internet poses an imminent and serious threat to the person's safety or the safety of the person's immediate family.

(d) Falsification of the evidence proffered to satisfy the requirements of §5A-8-25(b)(1) or §5A-8-25(b)(2) constitutes false swearing and is punishable under §61-5-2 of this code.

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§5A-9-1. Legislative intent.

[Repealed].

WV Legislature

§5A-9-2. Voluntary check-off designation.

[Repealed].

WV Legislature

§5A-9-3. Contributions credited to special fund.

[Repealed].

WV Legislature

§5A-9-4. Use of funds.

[Repealed].

WV Legislature

§5A-9-5. Effective date.

[Repealed].

WV Legislature

§5A-10-1. Division created; purpose; director.

(a) There is hereby created the Real Estate Division within the Department of Administration for the purpose of establishing a centralized office to provide leasing, appraisal and other real estate services to the Secretary of the Department of Administration.

(b) The division shall be under the supervision and control of an executive director, who shall be appointed by the Governor, by and with the advice and consent of the Senate.

(c) Candidates for the position of executive director shall:

(1) Have at least a bachelor of arts or science degree from an accredited four-year college or university; and

(2)(A) Be a licensed real estate broker, pursuant to the provisions of article forty, chapter thirty of this code; or

(B) Be a licensed or certified real estate appraiser pursuant to the provisions of article thirty-eight, chapter thirty of this code; or

(3)(A) Be considered based on their demonstrated education, knowledge and a minimum of ten years' experience in the areas of commercial real estate leasing, commercial real estate appraisal; or

(B) Any relevant experience of a minimum of ten years which demonstrates an ability to effectively accomplish the purposes of this article.

(d) The Real Estate Division is authorized to employ such employees, including, but not limited to, real estate appraisers licensed in accordance with the provisions of article thirty-eight, chapter thirty of this code, as may be necessary to discharge the duties of the division.

WV Legislature

§5A-10-2. Leases for space to be made in accordance with article; exceptions.

(a) Notwithstanding any other provision of this code, no department, agency or institution of state government may lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with the provisions of this article and article three of this chapter.

(b) The provisions of the article, except as to office space, do not apply to the Division of Highways of the Department of Transportation.

(c) The provisions of this article do not apply to:

(1) Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;

(2) The Higher Education Policy Commission;

(3) The West Virginia Council for Community and Technical College Education;

(4) The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code;

(5) The real property held by the Department of Agriculture, including all institutional farms, easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories, farm facilities and operating revenue funds for those operations;

(6) The real property held by the West Virginia State Conservation Committee, including all easements, mineral rights, appurtenances and operating revenue funds for those operations; or

(7) The Adjutant General's Department and the West Virginia National Guard, including all real property, acquisitions, leases, easements, armories, armory projects, appurtenances and operating revenue funds for those operations.

WV Legislature

§5A-10-3. Powers and duties of Real Estate Division.

The Real Estate Division has the following powers and duties:

(1) To provide leasing, appraisal and other real estate services to state spending units;

(2) To ensure that the purchase of real estate and all contracts for lease are based on established real estate standards and fair market price;

(3) To develop and implement minimum lease space standards for the lease of any grounds, buildings, office or other space required by any spending unit of state government;

(4) To develop and implement minimum standards for the selection and acquisition, by contract or lease, of all grounds, buildings, office space or other space by a spending unit of state government except as otherwise provided in this article;

(5) To establish and maintain a comprehensive database of all state real estate contracts and leases;

(6) To develop policies and procedures for statewide real property management;

(7) To maintain a statewide real property management system that has consolidated real property, building and lease information for all departments, agencies and institutions of state government;

(8) To develop and maintain a centralized repository of comprehensive space needs for all state departments, agencies and institutions of state government, including up-to-date space and resource utilization, anticipated needs and recommended options;

(9) To provide statewide policy leadership and coordinate master planning to guide and organize capital asset management; and

(10) To provide assistance to all state departments, agencies or institutions in acquiring, leasing and disposing of real property.

WV Legislature

§5A-10-3a. Regulation of parking on state-owned or leased property in Charleston; creation of fund.

(a) The Real Estate Division may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East;

(2) The west side of California Avenue between Kanawha Boulevard and Washington Street, East;

(3) The state-owned or leased grounds upon which state office buildings number one through twenty and the Laidley Field Complex are located; and

(4) Any other property now or hereafter owned or leased by the state or any of its agencies and used for parking purposes in conjunction with the State Capitol or any state office buildings.

(b) The Real Estate Division is authorized to collect fees for parking pursuant to subsection (a) of this section. The fees shall be deposited into a special revenue fund to be known as the Parking Lots Operating Fund within the State Treasury. Expenditures from the fund are authorized from collections. The fund may only be used in a manner consistent with this article and in accordance with the provisions of article three, chapter twelve and article two, chapter eleven-b of this code. Any balance remaining in the Special Revenue Fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the Special Revenue Fund. All costs and expenses incurred pursuant to this section, including administrative, shall be paid from those funds.

(c) The secretary shall propose legislative rules pursuant to article three, chapter twenty-nine-a of this code relating to parking and to allocate parking spaces to public officers and employees of the state upon all of the property set forth in subsection (a) of this section: Provided, That notwithstanding this or any other provision of law to the contrary, during sessions of the Legislature, including regular, extended, extraordinary and interim sessions, and any other times designated by the Speaker of the House of Delegates and the President of the Senate, parking on the east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East, in the Culture Center parking lot, on the north side of Kanawha Boulevard between Greenbrier Street and California Avenue, on the west side of California Avenue between Kanawha Boulevard and Washington Street, East, in the parking lot on the east side of California Avenue across from the loading dock entrance and any other areas designated by a joint policy of the Speaker of the House of Delegates and the President of the Senate shall be managed and controlled by the Legislature. Any person parking any vehicle contrary to this section or the rules promulgated under authority of this subsection is subject to a fine as established by rule of the secretary. In addition, a designee

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of the secretary or the Legislature, as the case may be, may cause the removal, immobilization or other remedy considered necessary, at owner expense, of any vehicle that is parked in violation of the rules or the joint policy between the Speaker of the House of Delegates and the President of the Senate. Magistrates in Kanawha County have jurisdiction over all the offenses under this section.

(d) The secretary, the Speaker of the House of Delegates and the President of the Senate may employ persons as may be necessary to enforce the parking rules as provided for under the provisions of this section.

(e) The Parking Garage Fund, created in the former section five, article four of this chapter, is continued in the Department of Administration as a special fund consisting of funds that are appropriated and funds from other sources to be used for the construction and maintenance of a parking garage on the State Capitol Complex.

WV Legislature

§5A-10-4. Leasing of space by executive director; delegation of authority.

(a) The executive director is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency, or institution of state government: Provided, That the executive director may expressly delegate, in writing, the authority granted to him or her by this article to the appropriate department, agency or institution of state government when the rental and other costs to the state do not exceed the sum specified by regulation in any one fiscal year or when necessary to meet bona fide emergencies arising from unforeseen causes.

(b) Any state agency that is authorized to enter into lease agreements must seek the advice and approval of the executive director before entering into any lease of grounds, buildings, office and other space. The executive director shall submit approval of any lease by signing the lease in conjunction with the state agency. The state agencies referenced in §5A-10-2 of this code are exempt from this requirement.

WV Legislature

§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

(a) The executive director has sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer or his or her designee of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the contract or lease and that satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state: Provided, That any such contract or lease of office space which provides that the landlord or owner of the office space be responsible for providing for, or the contracting for, cleaning or janitorial services shall not also require the owner or landlord of the premises to use any particular person, firm or company to provide the cleaning or janitorial services.

(b) The executive director shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.

(c) The executive director may enter into long-term agreements for buildings, land and space for periods longer than one fiscal year: Provided, That such long-term lease agreements are not for periods in excess of forty years, except that the secretary may, in the case of the Adjutant General's department, enter into lease agreements for a term of fifty years or a specific term of more than fifty years so as to comply with federal regulatory requirements and shall contain, in substance, all the following provisions:

(1) That the Department of Administration, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor, such notice being given at least thirty days prior to the last day of the succeeding month;

(2) That the lease shall be considered canceled without further obligation on the part of the lessee if the State Legislature or the federal government should fail to appropriate sufficient funds therefor or should otherwise act to impair the lease or cause it to be canceled; and

(3) That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Department of Administration before the end of the then current fiscal year.

WV Legislature

§5A-10-6. Long-term leases of public lands for wireless communication towers.

(a) Notwithstanding any provision of law to the contrary, the executive director has sole authority to negotiate and enter into long-term lease agreements for lease of public lands to be used for placement of wireless communication towers: Provided, That such long-term lease agreements may not be for periods in excess of thirty years: Provided, however, That for the governmental units named in subsection (d) of this section, any lease proposed by the executive director may only be entered into upon approval in writing of the ranking administrator of the respective governmental unit described in said subsection.

(b) All revenues derived from leases established upon the enactment of this section shall be deposited into the General Revenue Fund except as provided in subsections (c) and (d) of this section.

(c) Revenues from leases initiated prior to the enactment of this section or subsequently renewed shall continue to be treated as they were prior to the enactment of this section.

(d) Revenues derived from the lease of property under the control of the Department of Transportation shall be deposited into the State Road Fund. Revenues derived from the lease of property under the control of the Division of Natural Resources shall be retained by the Division of Natural Resources and deposited into the appropriate fund. Revenues derived from the lease of property under the control of the Department of Agriculture shall be deposited into the Agriculture Fees Fund. Revenues derived from the lease of property under the control of the Division of Forestry shall be deposited into the Division of Forestry Fund. Revenues derived from the lease of property under the control of institutions of higher education shall be deposited into the institution's education and general capital fees fund. Revenues derived from the lease of property under the control of the Higher Education Policy Commission shall be deposited into the commission's State Gifts Grants and Contracts Fund. Revenues derived from the lease of property under the control of the West Virginia Council for Community and Technical College Education shall be deposited into the council's Tuition and Required Educational and General Fees Fund. Revenues derived from the lease of property, towers or tower space owned, operated or controlled by the West Virginia Division of Homeland Security and Emergency Management or any other state agency managed as part of the West Virginia Statewide Interoperable Radio Network shall be deposited in the Statewide Interoperable Radio Network Account created in section nine, article fourteen, chapter fifteen of this code.

(e) Any long-term lease agreement entered into pursuant to this section shall contain provisions allowing for the nonexclusive use of the public lands and allowance for use of the same public space for additional towers by competing persons or corporations.

(f) The executive director is further authorized to enter into long-term lease agreements for additional wireless communication towers by other persons or corporations upon the same public lands in which there already exists a lease and tower provided for under this section.

WV Legislature

(g) Any long-term lease agreement entered into pursuant to this section shall be recorded in the office of the county clerk where public land which is the subject of the lease agreement is located.

WV Legislature

§5A-10-7. Leases and other instruments for space signed by executive director; approval as to form; filing.

Leases and other instruments for grounds, buildings, office or other space shall be signed by the Executive Director of the Real Estate Division in the name of the state. They shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

WV Legislature

§5A-10-8. Inspection of leased property; requiring approval of executive director for permanent changes.

(a) The Executive Director of the Real Estate Division shall inspect as necessary any property which may be under a lease or rental agreement in order to determine whether the property is being kept, preserved, cared for, repaired, maintained, used and operated in accordance with the terms and conditions of the lease or rental agreement. The executive director is authorized to take such action necessary to correct any violation of the terms and conditions of the lease or rental agreement.

(b) A spending unit which is granted any grounds, buildings, office space or other space leased in accordance with the provisions of this article may not order or make permanent changes of any type thereto, unless the Executive Director of the Real Estate Division has first determined that the change is necessary for the proper, efficient and economically sound operation of the spending unit.

(c) For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible effect which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the spending unit.

WV Legislature

§5A-10-9. Real property accounting and records.

(a) All real property owned or leased by the state shall be accounted for by the state spending unit that owns, leases or is in the possession of the real property.

(b) Each state spending unit shall establish and maintain a record of each item of real property it owns and/or leases and annually furnish its records to the Real Estate Division.

(c) Beginning July 1, 2019, and every year thereafter, the Real Estate Division shall report to the Governor and Joint Committee on Government and Finance those agencies that have not provided a complete annual record pursuant to subsection (b).

(d) With regard to public lands, rivers or streams, that may be by law specifically allocated to and used by any state agency, institution, division or department, such agency, institution, division or department shall provide an inventory of such public land(s), rivers or streams, to the Public Land Corporation in accordance with the provisions of §5A-11-1, et seq. of this code.

(e) The records furnished to the Real Estate Division shall include a description of each item of real property including address, lot number, and if available, the following identifying information:

(1) The date of purchase and the purchase price of the real property;

(2) If the state is leasing real property, the date of lease and the rental costs of the real property;

(3) The name of the state spending unit holding title to the real property for the state;

(4) A description of the current uses of the real property and the projected future use of the real property; and

(5) A description of each building or other improvement located on the real property.

(f) The records furnished to the Real Estate Division regarding rivers and streams shall include a description of each river or stream, including the applicable county, tax district, and if the interest or property is under the Ohio River, the applicable mile post.

WV Legislature

§5A-10-10. Real property review.

(a) At least once every four years, the Real Estate Division shall review the inventory of real property for each state spending unit submitted pursuant to this article to verify the accuracy of the inventory records.

(b) Based on the review of the inventory of real property, the Real Estate Division shall:

(1) Identify any real property owned or leased by the state that is not being used or that is being substantially underused as designated by the department, agency, or institution of state government that reports the property as required by §5A-10-9 of this code;

(2) Make recommendations to the Governor and the Secretary of the Department of Administration regarding the use of real property, which shall include:

(A) An analysis of the highest and best use to which the real property may legally be placed; and

(B) An analysis of alternative uses of the real property addressing the potential for any other transaction or use that the Real Estate Division determines to be in the best interest of the state; and

(3) Submit to the Governor and the Secretary of the Department of Administration any information pertinent to the evaluation of a potential transaction involving the real property, including an evaluation of any proposals received from private parties that would be of significant benefit to the state.

WV Legislature

§5A-10-11. Rulemaking.

The executive director shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and enforce the provisions of this article.

WV Legislature

§5A-10-12. Lease of state properties to nongovernmental entities.

(a) All state agencies, except for those listed in §5A-10-2 of this code, intending to lease grounds, buildings, office and other space to nongovernmental entities shall seek the advice and approval of the Real Estate Division to review any lease and ensure the provisions are in the best interest of the state.

(b) The Real Estate Division will review the lease and will submit to the state agency:

(1) Written approval of the lease; or,

(2) Written objections to proposed terms of the lease and suggestions to ensure the lease is in the best interest of the state.

The state agency may rebut any objections as circumstances may require, however, the Real Estate Division must approve any objections before the lease can be signed.

WV Legislature

§5A-11-1. Public Land Corporation.

(a) The Public Land Corporation, heretofore created and established as a unit of the Division of Natural Resources, and previously continued and established as a unit of the Real Estate Division of the Department of Administration, is hereby eliminated. The property belonging to the Public Land Corporation upon the effective date of its elimination shall be transferred to the Division of Natural Resources of the Department of Commerce.

(b) The Division of Natural Resources of the Department of Commerce shall be forthwith vested with:

(1) The title of the State of West Virginia in public lands, the title to which now is or may hereafter become vested in the State of West Virginia by reason of any law governing the title of lands of the state: *Provided*, That lands for which title is specifically vested by law in other state agencies, institutions, and departments shall continue to be vested in such state agencies, institutions, and departments;

(2) The State of West Virginia's interest in the rivers, streams, creeks, or beds thereof; or

(3) All other public lands managed or acquired by the Division of Natural Resources pursuant to §20-1-1 *et seq*. of this code.

(c) All property vested with the Division of Natural Resources shall be for the use and enjoyment of the citizens of the state. When appropriate, the Division of Natural Resources should collaborate with the Secretary of Tourism to determine the best use for the public property.

(d) The powers and duties of the Director of the Division of Natural Resources, as set forth in §20-1-7 of this code, shall apply to all public property vested with the Division of Natural Resources, without distinction.

WV Legislature

§5A-11-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.

[Repealed.]

WV Legislature

§5A-11-3. Public Land Corporation Fund.

(a) There is hereby continued in the State Treasury a special Public Land Corporation Fund into which shall be paid all proceeds from public land sales, exchanges, rents, royalties, and other payments from mineral leases. The Division of Natural Resources may acquire public lands from use of the payments made to the fund, along with any interest accruing to the fund. The Public Land Corporation Fund may be used for the benefit, administration, maintenance, or use of any property owned or managed by the Public Land Corporation as of January 1, 2026. The Public Land Corporation Fund shall be administered by the Director of the Division of Natural Resources.

(1) All royalties and payments derived from rivers, streams, or public lands acquired or managed by the Division of Natural Resources pursuant to §20-1-7 and §20-5-2 of this code shall be retained by the Division of Natural Resources.

(2) All proceeds, rents, royalties, and other payments from land sales, exchanges, and mineral rights leasing for public lands owned, managed, or controlled by the Adjutant General's Department will be retained in a fund managed by the Adjutant General in accordance with §15-6-1 *et seq*. of the code.

(3) All free gas, sand, gravel, or other natural resources derived from a lease or contract made pursuant to this article will be used to benefit the state agencies, institutions, or departments located on the affected public lands, or for which the corporation was acting or to benefit any state agencies, institutions, or departments having adjacent property.

(4) Notwithstanding any provision of this section to the contrary, royalties received from the leasing of state-owned gas, oil, and other mineral rights beneath the Ohio River and its tributaries are to be deposited into the West Virginia Parks and Recreation Endowment Fund and expended in accordance with the provisions of §20-5A-1 of this code.

(b) The Division of Natural Resources shall report annually, just prior to the beginning of the regular session of the Legislature, to the standing committees on Finance of both houses of the Legislature on the financial condition of the special fund. The Division of Natural Resources shall report annually to the Legislature on its public land holdings, all its leases, its financial condition, and its operations and shall make such recommendations to the Legislature concerning the acquisition, leasing, development, disposition, and use of public lands. The annual reports required by this subdivision do not have to be submitted as stand-alone reports and may be incorporated into any other report obligated by the Division of Natural Resources, which is due contemporaneously.

WV Legislature

§5A-11-4. Public Land Corporation to conduct sales of public lands by competitive bidding, modified competitive bidding, or direct sale.

[Repealed.]

WV Legislature

§5A-11-5. Public Land Corporation to hold public hearing before sale, lease, exchange, or transfer of land or minerals.

[Repealed.]

WV Legislature

§5A-11-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.

[Repealed.]

WV Legislature

§5A-11-7. Effectuation of transfer of Public Land Corporation and transition.

To effectuate the transfer of the public property formerly maintained by the Public Land Corporation to the Division of Natural Resources upon the effective date of this section in the year 2026:

(1) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations, and privileges which have been issued, made, granted, or allowed to become effective by the Governor, by any state department or agency, or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the Division of Natural Resources and were in effect on the date the transfer occurred continue in effect, for the benefit of the division, according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the Governor, the Director of the Division of Natural Resources, or other authorized official, a court of competent jurisdiction, or by operation of law.

(2) Any proceedings, including, but not limited to, notices of proposed rulemaking, in which the Public Land Corporation was an initiating or responding party are not affected by the elimination of the Public Land Corporation and the transfer of the public property to the Division of Natural Resources. Orders issued in any proceedings continue in effect until modified, terminated, superseded, or revoked by the Governor, the Director of the Division of Natural Resources, by a court of competent jurisdiction, or by operation of law. Nothing in this subdivision prohibits the discontinuance or modification of any proceeding under the same terms and conditions and to the same extent that a proceeding could have been discontinued or modified if the Public Land Corporation had not been eliminated. Transfer of the public property formerly vested with the Public Land Corporation does not affect suits commenced prior to the effective date of the transfer and all such suits and proceedings shall be had, appeals taken, and judgments rendered in the same manner and with like effect as if the transfer had not occurred, except that the Director of the Division of Natural Resources or other officer may, in an appropriate case, be substituted or added as a party.

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§5A-11-8.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5A-12-1. Definitions.

As used in this article:

"Central motor pool" means, under the direction and control of the Secretary of Administration, the group of state vehicles to be shared among spending units;

"Centralized accounting system" means the system of record for the maintenance of an accurate inventory of state vehicle fixed assets as maintained by the Enterprise Resource Planning Board pursuant to §12-6D-1 *et seq.* of this code;

"Director" means the Director of the Fleet Management Division;

"Division" means the Fleet Management Division, under the Department of Administration, as established pursuant to this article;

"Fleet Coordinator" means the head of a spending unit, or his or her designee, who is responsible for the duties of fleet coordinator as required by this article;

"Indirect costs" means the expenses of operating state vehicles that may or may not be attributable to a specific vehicle, including miscellaneous expenses for cleaning supplies, shop supplies, small parts, office and administrative expenses attributable to fleet coordinator activity, training costs for fleet coordinators and state vehicle driver training, facilities costs, administrative office overhead, parking costs, and shop equipment costs where applicable;

"Secretary" means the Secretary of the Department of Administration;

"Spending unit" means the State of West Virginia and all agencies, offices, departments, divisions, boards, commissions, councils, committees, or other entities of the state government for which an appropriation is requested or to which an appropriation is made by the Legislature. "Spending unit" does not mean any county, city, township, public service district, or other political subdivision of the state;

"State vehicle" means, for the purpose of this article, a vehicle with a rating of one ton or less that is owned, purchased, or leased by any state spending unit, on which a state vehicle license plate is required, where the use of such vehicle is paid for with public funds regardless of the source of such funding, but does not include all-terrain vehicles (ATVs) or vehicles requiring a commercial driver’s license to operate;

"State vehicle fleet" means all state vehicles;

"State vehicle license plate" means a license plate authorized to be issued by the Division of Motor Vehicles pursuant to §17A-3-23 and §17A-3-25 of this code, which identifies the vehicle as owned or leased by the state or a spending unit;

WV Legislature

"State Vehicle Title, Registration and Relicensing Project of 2018" means the requirement for all spending units owning or leasing state vehicles, to report to the Division of Motor Vehicles and obtain new titles, new registration cards and new state vehicle license plates by December 31, 2018, pursuant to §17A-3-23 and §17A-3-25 of this code, to standardize the naming conventions on titles and registration cards of state vehicles in order to facilitate the creation and maintenance of a centralized state vehicle inventory system;

"Telematic" means an electronic device or system used by Fleet Management Division to monitor the activity, locations, action, or performance of state vehicles; and

"Vehicle log" means the record of state vehicle use, to be updated by the vehicle operator and maintained by the fleet coordinators, used to track vehicle utilization data required to be compiled and maintained pursuant to this article.

WV Legislature

§5A-12-2. Scope of Article.

(a) This article applies to all spending units of state government relating to the purchase, lease, or use of any state vehicle with the expenditure of public funds, except as otherwise provided by this code.

(b) Notwithstanding any exemption given to a spending unit by this code from the provisions of §5A-3-1 et seq. of this code or any prior exemption granted administratively from the Fleet Management Division or the Fleet Management Office, each spending unit of the state that owns, leases, purchases, or reimburses for personal vehicle use, shall comply with the reporting provisions of this article.

WV Legislature

§5A-12-3. Fleet Management Division created; director; duties and responsibilities.

(a) The Fleet Management Office, as previously authorized pursuant to §5A-1-2 and §5A-3-52 of this code, is hereby continued in the Department of Administration as the Fleet Management Division for the purpose of maintaining a state vehicle fleet.

(b) The Division shall have the following duties and responsibilities:

(1) To provide or contract for management services, including fueling and vehicle maintenance, telematics, and any other services necessary to properly manage the operation and use of state vehicles;

(2) To preapprove and assist with purchase of new or replacement vehicles for agencies including facilitating financing arrangements;

(3) To maintain a state vehicle fleet for all state vehicles owned or leased by the State of West Virginia or any of its spending units;

(4) To charge a fee for division services by spending units utilizing state vehicles;

(5) To provide training and notice to fleet coordinators and spending units concerning the duties and responsibilities under this article, including any requirements related to the State Vehicle Title, Registration and Relicensing Project of 2018, established pursuant to §17A-3-25 of this code;

(6) To develop safe operation and other policies governing state vehicle use;

(7) To propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code;

(8) Report annually to the Governor and to the Joint Committee on Government and Finance, regarding the operations of the state fleet and the utilization of state vehicles;

(9) To develop and maintain, in cooperation with the Travel Management Office, state policies for the utilization of state vehicles, including establishing best practices for state vehicle use; and

(10) To provide assistance upon request to any spending unit related to financing, purchasing, leasing, operating, maintaining, transferring, and decommissioning state vehicles.

(c) The secretary shall appoint a director of the division, who shall:

(1) Employ such staff as needed to effectuate the provisions of this article;

(2) Maintain adequate office space for staff and equipment as needed to effectuate the provisions of this article; and

WV Legislature

(3) Under the direction of the secretary, establish a central motor pool, which shall be maintained and administered by the division, subject to such rules as the director may promulgate: *Provided*, That the division is responsible for the storage, maintenance, and repairs of all vehicles assigned to the central *motor* pool.

WV Legislature

§5A-12-4. Fleet Management Division Fund.

The special revenue account, known as the "Fleet Management Office Fund", previously created by §5A-3-52 of this code, shall terminate effective July 1, 2018. On and after July 1, 2018, all funds previously belonging to the Fleet Management Office Fund shall transfer to the special revenue account which shall be known as the "Fleet Management Division Fund" which shall be created in the State Treasury, and shall be administered by the director. Expenditures are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with §12-3-1 et seq. of this code and upon fulfillment of the requirements of §11B-2-1 et seq. of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and may be used solely in a manner consistent with this article.

WV Legislature

§5A-12-5. Rule-making authority; emergency rules.

(a) The director shall propose legislative rules as may be necessary to implement this article, in accordance with §29A-3-1 *et seq.* of this code. Those rules shall include, but not be limited to:

(1) Requirements governing the use of state vehicles;

(2) Reporting requirements and responsibilities for fleet coordinators;

(3) Requirements and responsibilities for each driver or operator of a state vehicle;

(4) Information to be collected and maintained on state vehicle log sheets, including information related to mileage, destinations, and purpose of use;

(5) The form and manner for each spending unit fleet coordinator to report to the division, including any electronic format as deemed necessary by the director;

(6) The information that each spending unit fleet coordinator shall collect and maintain regarding state vehicle use by the spending unit;

(7) The information for spending unit fleet coordinators to annually report to the division regarding state vehicle use;

(8) Requirements and policies governing commuting in and taking home state vehicles;

(9) Requirements and policies governing volunteer and non-public employee drivers; and

(10) Requirements and policies governing telematics, including, but not limited to, the following:

(A) Notifications to employees concerning the use of telematics;

(B) Immediate review of telematics-provided data for vehicles involved in collisions or accidents; and

(C) Notifications to spending unit fleet coordinators concerning telematics-identified violations of applicable statutes or rules and any other unsafe driving behavior.

(b) All rules of the Fleet Management Office in effect on the effective date of this article shall remain in effect until they are amended, replaced, or repealed: *Provided*, That these rules shall expire on July 1, 2021, if not sooner superseded.

WV Legislature

§5A-12-6. Vehicle operator regulations; training.

(a) Each operator of a state vehicle, shall maintain the vehicle logs to the level of detail required by the division through legislative rules, and as may be required by the spending unit.

(b) Each operator of a state vehicle shall comply with the laws, rules, and policies governing state vehicle use, including spending unit rules and policies.

(c) Prior to operating a state vehicle, each operator shall be required to take such training courses as may be required by the Board of Risk and Insurance Management, the Travel Management Office, the Fleet Management Division, and the spending unit.

(d) If any public employee or public official fails to comply with any rule or regulation for state vehicle use, the spending unit may require that the individual attend training, be restricted from using state vehicles, or be prohibited from using state vehicles: Provided, That nothing in this section authorizes the division to restrict the use of state vehicles except for those employees under its control.

WV Legislature

§5A-12-7. Spending unit duties and responsibilities.

(a) Every spending unit shall report all vehicles and equipment requiring a state license plate, including those vehicles with a rating of more than one ton, those requiring a commercial driver's license to operate, and all-terrain vehicles, as fixed assets in the centralized accounting system maintained by the Enterprise Resource Planning Board.

(b) Every spending unit that owns state vehicles shall annually affirm to the State Agency for Surplus Property on or before July 15 of each year, that the vehicles and assets reported to the centralized accounting system as required by §5A-12-7(a) of this code are accurate and current.

(c) Every spending unit shall prepare and maintain a list of all employees who are provided a state vehicle. The list shall set forth the specific bona fide noncompensatory business reasons for which the state vehicle is being provided to each employee. Spending units shall submit the list required by this section to the division, which shall act solely as a repository for the information, on or before July 1, 2018, and shall update the list on or before July 1 of each year thereafter.

(d) Every spending unit that has been exempted from utilizing telematics services provided by the division and that is using alternative telematics services shall report to the division, on a monthly basis, all violations of applicable statutes or rules and any other unsafe driving behavior that has been identified by telematics: *Provided*, That in the event of any accident, collision, or other reckless driving behavior, the spending unit shall notify the division immediately.

(e) Every spending unit utilizing telematics services provided by the division, as well as any spending unit that has been exempted from the division's telematics requirements and that is using alternative telematics services, shall report to the division, on a monthly basis, all corrective or disciplinary actions that have been taken by the spending unit in response to telematics-derived data.

WV Legislature

§5A-12-8. Fleet coordinators.

(a) Each spending unit shall name a fleet coordinator, who shall be responsible for the management and maintenance of state vehicle information, and for reporting state vehicle utilization reports to the division as required by this article and legislative rules promulgated pursuant thereto.

(b) Each spending unit shall provide to the division the name and contact information for the spending unit fleet coordinator.

(c) Each fleet coordinator is required to attend the Fleet Coordinator training provided by the Fleet Management Division.

(d) Each fleet coordinator shall be responsible for providing adequate training to each operator of a state vehicle within his or her spending unit.

WV Legislature

§5A-12-9. Utilization of Vehicle Management Services; exemption.

(a) Each spending unit that owns, uses, or maintains a state vehicle shall utilize the vehicle management services provided by the Fleet Management Division for all state vehicles.

(b) Spending units may request an exemption from part or all of the services provided by the Fleet Management Division. The division shall review each request and may recommend approval of the request by the secretary. The division shall submit a legislative rule identifying each spending unit for which an exemption has been approved, which rule shall further state the nature of the proposed exemption, and which services will be used, as well as the manner in which the spending unit will comply with all other requirements of this article, including the requirements to report certain information to the division: Provided, That no request for exemption pursuant to this section shall become effective without the enactment of a legislative rule pursuant to the provisions of §29A-3-1 et seq. of this code.

WV Legislature

§5A-12-10. Annual reports by spending units.

(a) Each spending unit that owns or operates a state vehicle, rents vehicles for a state purpose, or reimburses an employee for personal vehicle use, shall annually report the Fleet Management Division, beginning on or before October 31, 2018, and on or before October 31 each year thereafter, in the manner required by this article and by legislative rule.

(b) Each spending unit that owns or leases a state vehicle or rents or reimburses an employee for personal vehicle use, shall periodically compile and maintain the individual specific vehicle records of each state vehicle, and all records of vehicle rental and private vehicle use expenditures, for not less than three years, or as may be required by the division or the State Auditor pursuant to §5A-12-13 of this code.

WV Legislature

§5A-12-11. Complaint process.

(a) The director shall provide a complaint process for use by the general public to report to the division issues relevant to the operation and maintenance of a state vehicle fleet. Complaints may be received by the division in writing, by telephone, or electronically: Provided, That the division shall review all complaints weekly, and report to the appropriate spending unit the information regarding the state vehicle in use by the spending unit, and shall describe the nature of the complaint, including, but not limited to mechanical problems, equipment failures, misuse, or illegal operation of a state vehicle.

(b) Each spending unit shall investigate each complaint it receives and provide an update to the division on a regular basis and at the conclusion of the investigation.

WV Legislature

§5A-12-12. State vehicle fleet annual report.

(a) The Fleet Management Division shall maintain sufficient records and fleet coordinator reports to produce a State Vehicle Fleet Annual Report, regarding the maintenance and operation of the state vehicle fleet.

(b) On or before December 31, 2019 and each December 31 thereafter, the division shall submit the State Vehicle Fleet Annual Report to the Governor, and to the Joint Committee on Government and Finance, containing, at a minimum:

(1) The total number of state vehicles;

(2) The total number of vehicles operated by each spending unit;

(3) The total number of state vehicle miles driven, both in the aggregate and by spending unit;

(4) The total amount of fuel purchased, and the total expenditures for annual maintenance, repair, fuel expenditures, both in the aggregate and by spending unit;

(5) The total number of miles reimbursed for personal vehicle use and the amount reimbursed annually, both in the aggregate and by spending unit;

(6) The total number of vehicles owned and operated by the division, including information on the total miles driven, and the annual expenditures for maintenance, repair, and fuel;

(7) The total annual indirect costs of operating the state vehicle fleet, both in the aggregate and by spending unit;

(8) A summary of complaints received concerning state vehicle usage;

(9) Telematics data that includes, but is not limited to, the following:

(A) The total number of division vehicles equipped with telematics;

(B) The total number of exemptions from telematics services that have been granted by the division;

(C) A summary of telematics-identified violations of applicable statutes or rules and any other unsafe driving behavior, both in the aggregate and by spending unit;

(D) A summary of corrective or disciplinary actions taken by spending units in response to telematics-derived data, both in the aggregate and by spending unit, that the division has received from spending units pursuant to §5-12-7 of this code; and

(E) A cost-benefit analysis of telematics usage, including total program costs, estimated savings and cost avoidance, and a conclusion as to whether the benefits of utilizing

WV Legislature

telematics exceed the costs and a recommendation as to whether the division should continue utilizing telematics.

(10) A summary of the State Auditor's spot compliance audit report authorized pursuant to §5A-12-13 of this code;

(11) The operating revenue and expenses of the division; and

(12) Recommendations for any policy or statutory changes the director determines may be necessary to maintain accurate records of the state vehicle fleet, utilization of state vehicles, and the expenses necessary to maintain such vehicle fleet.

(c) An annual report produced in an electronic format complies with the reporting requirements of this article and shall be made available on the division website: *Provided*, That the division shall redact any personally identifiable or confidential information.

WV Legislature

§5A-12-13. Spot compliance audits by the State Auditor.

(a) Beginning July 1, 2019, the State Auditor shall conduct spot compliance audits to monitor operator, spending unit, and fleet coordinator records and reports for accuracy and compliance with the record keeping provisions of this article. The State Auditor shall conduct a spot compliance audit on not less than 20 percent of the state vehicle fleet annually, in order to conduct spot compliance audits of all state vehicle records on a five-year cycle.

(b) A spending unit found to be noncompliant with the recordkeeping provisions of this article may be subject to further compliance monitoring as the State Auditor and director deem necessary.

(c) The State Auditor shall report to the division the findings of each spot compliance audit. Such reports shall list the spending units and fleet coordinators audited, and verify:

(1) That state vehicle drivers of the spending unit have complied with applicable training requirements and are keeping complete and accurate vehicle logs;

(2) That spending unit fleet coordinators have attended training, and are compiling and maintaining the state vehicle records required by this article; and

(3) The accuracy of fleet coordinator reporting in the manner consistent with the provisions of this article.

WV Legislature

§5A-12-14. Legislative compliance audit.

[Repealed.]

WV Legislature

§5A-13-1. Creation of the One-Stop-Shop Permitting Program.

(a) The Legislature finds and declares that it is in the public interest to create a One-Stop-Shop Permitting Program. This program is designed to enhance public awareness, collaboration, accountability, coordination, transparency, and predictability in the state's permitting, licensing, and authorization processes, including for critical infrastructure projects and projects delivering significant economic development to West Virginians.

WV Legislature

§5A-13-2. Definitions.

The words defined in this section have the meanings given them for purposes of this article unless the context clearly requires otherwise.

“Permit" means any permit, license, or approval that:

(1) Is a prerequisite for performing any construction, economic development, infrastructure, or natural resource project in this state; and

(2) Is issued, granted, modified, renewed, denied, or revoked by a permitting agency.

“Permitting agency” means any division, office, board, or other entity under the following departments or offices of this state that grants, issues, denies, or revokes a permit or business registration:

(1) The Department of Commerce;

(2) The Department of Environmental Protection;

(3) The Office of Environmental Health Services;

(4) The Department of Revenue, except the Lottery, Lottery Commission, and the Division of Financial Institutions shall be exempt;

(5) The Department of Tourism;

(6) The Department of Transportation, except the Division of Motor Vehicles shall be exempt; and

(7) The Secretary of State.

“Secretary” means the Secretary of the Department of Administration.

WV Legislature

§5A-13-3. Permitting Program and Dashboard.

(a) The secretary shall coordinate and lead the various permitting agencies in the implementation and execution of the One-Stop-Shop Permitting Program.

(b) The secretary shall issue program guidance and provide training on the One-Stop-Shop Permitting Program and Permitting Dashboard authorized by this article.

(c) On or before January 1, 2027, the secretary shall make available for public use an online dashboard, designated the Permitting Dashboard. The Permitting Dashboard shall serve as a "one-stop-shop" for obtaining and renewing all permits. The Permitting Dashboard shall:

(1) Be easily accessible, searchable, and informative;

(2) Allow the applicants to view, research, apply, and renew permits in this state; and

(3) Allow individuals and businesses to create private accounts, through which they can view, save, and submit applications; electronically pay all required fees; receive updates on the status of applications; send and receive communications directly to and from the regulatory agencies; and receive electronic copies of approved permits;

(4) Allow for coordination between offices, departments, divisions, and agencies of the state, particularly regarding the sequence of particular permits, licenses, and business registrations to enable more efficient processing;

(5) Be designed to make the process for applying for and receiving construction, economic development, infrastructure, or natural resource permits, licenses, and business registrations in West Virginia the simplest, most efficient, and most business friendly in the nation;

(6) Provide applicants a "fast-track" option wherein an applicant can pay an additional fee to expedite the processing of a permit application; and

(7) Protect financial and proprietary information of applicants that is exempt from public disclosure under the West Virginia Freedom of Information Act, being §29B-1-1 *et seq.* of this code.

WV Legislature

§5A-13-4. Refunds of Late Permits.

(a) Every permitting agency shall, on or before July 1, 2025, report to the secretary:

(1) a list of each type of permit issued under its authority;

(2) an explanation of each step involved in processing a properly completed permit;

(3) the average time from receipt of a permit application until the time it is determined to be complete;

(4) the average time from the completeness determination to approval or disapproval of a permit;

(5) the number of permit applications that have been received, approved, and rejected in the 2024 and 2025 fiscal years;

(6) any statutory or regulatory deadlines related to determining the completeness of an application for a permit or the granting or denial of permits; and

(7) data on processing times and statutory deadlines for comparable permits, licenses, or business registrations in West Virginia's neighboring states.

(b) For any permit that has no statutory or regulatory deadline for determining the completeness of an application, granting an application, or denying an application, the secretary, in consultation with the permitting agency, shall within 60 days of the effective date of this article, propose an emergency rule under §29A-3-15 of this code and a legislative rule under §29A-3-1 *et seq.* of this code for consideration by the Legislature during the 2026 regular session to implement such a deadline and to set expedited deadlines for processing of "fast track" permits.

(c) On and after January 1, 2027, any permitting agency that fails to grant or deny a permit available and applied for through the One-Stop-Shop Permitting Program within the deadline identified under subsection (a) of this section or established under subsection (b) of this section shall refund all fees paid by the applicant for that permit.

(d) The refund provided for under subsection (c) of this section shall be paid by the permitting agency that did not process the permit within the established deadline.

(e) The refund requirements of subsection (c) of this section shall not apply if:

(1) the application for a qualifying permit is incomplete; and

(2) within 10 business days of identifying the application as incomplete, the permitting agency:

WV Legislature

(A) notifies the applicant of the deficiency through the Permitting Dashboard;

(B) provides the applicant 30 days to cure the incomplete application; and

(3) the applicant fails to resubmit a complete application within that time.

WV Legislature

§5A-13-5. Options for Paper or Alternative Electronic Forms.

(a) Use of the Permitting Dashboard by a permit-holder or prospective permit-holder is not mandatory for any permit application submitted before July 1, 2027. There shall be no penalty or disadvantage applied to any permit-holder or prospective permit-holder who chooses to bypass the Permitting Dashboard before that date and work directly with the agency to obtain, complete, and return an application in paper form or through any pre-existing online application system operated by permitting agencies.

(b) On and after July 1, 2027, the Permitting Dashboard shall be the exclusive means of applying for a permit, as defined in §5A-13-2 of this code, except where an alternative means is required under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, or the West Virginia Human Rights Act, being §5-11-1 *et seq.* of this code.

(c) The refund requirement under §5A-13-4(c) through §5A-13-4(e) of this code shall only apply to applications submitted through the Permitting Dashboard.

WV Legislature

§5A-13-6. Legislative Rules.

(a) The secretary is authorized to promulgate legislative rules pursuant to §29A-3-1 *et seq.* of this code to implement the One-Stop-Shop Permitting Program including to:

(1) Establish, in consultation with the relevant agency:

(A) Deadlines for making completion determinations and for the processing of a permit application; and

(B) Expedited deadlines for the processing of a "fast-track" permit application;

(2) Establish, as needed, an applicant or user fee to fund the Permitting Program; and

(3) Establish a fee to be paid by an applicant to "fast-track" a permit application.

(b) Any fee implemented pursuant to subdivision (a)(3) of this section shall be:

(1) No greater than necessary to offset the permitting agency’s cost to expedite the permit application; and

(2) Subject to the refund requirement under §5A-13-4(c) through §5A-13-4(e) of this code.

WV Legislature

§5A-14-1. Short Title.

This Act shall be known and may be cited as the Firearm Industry Nondiscrimination Act.

WV Legislature

§5A-14-2. Definitions.

For purposes of the Firearm Industry Nondiscrimination Act:

(1) "Ammunition" means a loaded cartridge or shot shell, case, primer, projectile, wadding, or propellant powder.

(2) "Contract" means a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and the right to seek a remedy for the breach of those duties: *Provided*, That the term does not include an agreement related to investment services.

(3) "Discriminate against a firearm entity or firearm trade association" means, with respect to the entity or association, to:

(A) Refuse to provide or engage in services with the entity or association based on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations;

(B) Refrain from continuing an existing business relationship with the entity or association based on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations; or

(C) Terminate an existing business relationship with the entity or association based on its status as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations;

(D) The term does not include the policies of a vendor, merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories;

(E) The term also does not include a decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local laws, policies, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based on the status of an entity or association as a firearm entity or firearm trade association, which includes the lawful products and services provided by, and the lawful practices of, firearm entities and firearm trade associations.

(4) "Financial institution" means an entity that does business or have a contract with this state, and is one of the following:

(A) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act;

WV Legislature

(B) A commercial bank or trust company;

(C) A credit union; or

(D) An operator of a credit card system.

(5) "Firearm" means any weapon which will expel a projectile by action of an explosion. For purposes of this article, the term "firearm" includes antique firearms, as defined in §61-7-2 of this code.

(6) "Firearm accessories or components" means:

(A) Any device specifically adapted to enable the wearing or carrying about one’s person or the storage or mounting in or on any conveyance of a firearm and any attachment or device specifically adapted to be inserted into or affixed onto any firearm to enable, alter, or improve the functioning or capabilities of the firearm;

(B) Any item that is used in conjunction with or mounted upon a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, braces, ammunition carriers, and lights for target illumination;

(C) Any component for making ammunition, reloading materials and equipment, machinery, and tools for manufacturing ammunition; and

(D) Detachable firearm magazines.

(7) "Firearm entity" means:

(A) A firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; or

(B) A shooting range as defined in §61-6-23 of this code.

(8) "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

(A) Is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;

(B) Has two or more firearm entities as members; and

(C) Is exempt from federal income taxation under section 501(a) of the Internal Revenue Code of 1986, as an organization described by section 501(c) of such code.

(9) "Governmental entity" means:

WV Legislature

(A) Any state agency; or

(B) Any political subdivision of this state.

(10) "Sole-source provider" means a supplier who provides services of a unique nature or services that are solely available through the supplier and the supplier is the only practicable source to provide the services.

(11) "State agency" means any agency, board, or commission of this state other than the courts and the Legislature.

WV Legislature

§5A-14-3. Application of act to certain contracts.

(a) The Firearm Industry Nondiscrimination Act shall apply to a contract that:

(1) Is between a governmental entity and a financial institution; and

(2) Is entered into on or after the effective date of this act.

(b) Except as provided in §5A-13-4 of this code, a governmental entity may not enter into a contract with any financial institution that discriminates against any firearm entity or firearm trade association.

(c) Any contract to which subsection (a) of this section applies shall contain provisions providing for the termination of the contract within one year of the governmental entity's determination that a violation of the requirements of this section have occurred. The governmental entity shall terminate any business relationship with any financial institution in a commercially reasonable manner within one year of the governmental entity's determination that a violation of the requirements of this section have occurred.

WV Legislature

§5A-14-4. Exceptions.

The requirements of §5A-13-3 of this code do not apply if a governmental entity contracts with a sole-source provider.

WV Legislature

§5A-14-5. Unlawful discrimination against a firearm entity or firearm trade association; exception.

(a) A financial institution that does business or has a contract with this state may not discriminate against a firearm entity or firearm trade association because the firearm entity or firearm trade association supports or is engaged in the lawful commerce of firearms, firearm accessories, or ammunition products.

(b) This section shall not apply to a financial institution that chooses not to provide services to a firearm entity or firearm trade association for a business or financial reason or due to a directive by the state banking commissioner or a bank supervisory agency as defined by §31A-8D-2(c) of this code. This section shall also not apply to a financial institution that has a written policy prohibiting the institution from discriminating against firearm entities or firearm trade associations as those terms are defined in §5A-13-2 of this code. For the purposes of this subsection, "business or financial reason" does not include a policy of refusing to provide financial services or otherwise discriminating when providing financial services to a firearm entity.

WV Legislature

§5A-14-6. Remedies; attorney general notice; statute of limitations.

(a) A person who is injured by a violation of §5A-13-5 of this code may bring a civil action against the financial institution in his or her own name in the circuit court for the county where the alleged violation occurred. If the injured person prevails on his or her claim, then the court shall award the injured person reasonable attorney fees and costs. The court may further award the prevailing injured person any of the following:

(1) Actual and compensatory damages;

(2) Punitive or exemplary damages;

(3) Injunctive relief; and

(4) Any other appropriate civil relief.

(b) The Attorney General may file a civil action for a violation of §5A-13-5 of this code: *Provided*, That the authority granted to the Attorney General does not affect the right of a person who is injured by a violation of §5A-13-5 of this code to bring an action for a violation of the rights protected under this article. The Attorney General may request the court to do any of the following:

(1) Issue a declaratory judgment that an act or practice violates this article;

(2) Enjoin any act or practice that violates this article by issuing a temporary restraining order or preliminary or permanent injunction, without a bond, after providing appropriate notice; and

(c) The Attorney General shall submit the name of any financial institution that has violated this article to the Governor and request that the state terminate any business relationship with the financial institution in a commercially reasonable manner within one year.

(d) Any civil action brought pursuant to this section shall be commenced within not more than two years after the date that the violation is discovered or should reasonably have been discovered.

(e) The remedies and actions available or required under this section shall not be applicable if a financial institution has a written policy prohibiting the institution from discriminating against firearm entities as those terms are defined in §5A-13-2 of this code.

WV Legislature