WEST VIRGINIA CODE: §60-3A-10B

§60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2010; purchase options for bids beginning July 1, 2010; and licenses issued for each ten-year period thereafter.

(a) The issuance of retail licenses for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter, shall be based upon sealed competitive bid in accordance with the provisions of section ten of this article except as provided in this section.

(b) Prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, the board shall determine the minimum bid for each license based upon a review of inflation data, demographic data, the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the Governor's official revenue estimates for fiscal year 2009-2010 as presented to the regular session of the Legislature in 2009.

(c) Prior to accepting bids for retail licenses to be issued for the ten-year periods beginning July 1, 2010, and July 1 every ten years thereafter, the board shall determine the minimum bid for each retail license based upon a review of the sales at each retail outlet permitted to operate under the retail license and such other factors as the board may determine to generate the revenues from retail license renewal projected by the Governor's official revenue estimates for the fiscal year preceding the expiration of the retail licenses.

(d)(1) Notwithstanding any provision of this article to the contrary, prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and every ten-year period thereafter, each active retail licensee operating or seeking to operate a freestanding liquor retail outlet shall be eligible to purchase a Class A retail license or licenses as provided in this subsection.

(2) At least sixty days prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, the board shall provide notice to each eligible retail licensee of his or her option to purchase a Class A retail license or licenses as provided in this subsection. The board shall include with this notice an explanation of the financing option provided in section ten-d of this article and a financing application form prepared by the commissioner.

(3) An eligible retail licensee may elect to pay a purchase option or options for each retail outlet operating under an active retail license currently held by the licensee. A retail licensee may only exercise a purchase option for the lesser of four Class A retail licenses or the number of active retail licenses currently held by the licensee.

(4) Each eligible retail licensee who elects to pay a purchase option shall, within thirty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1

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every ten years thereafter, pay to the commissioner an amount equal to ten percent over and above the minimum bid as determined by the board for each Class A retail license the retail licensee wishes to purchase or, if the retail licensee elects to take the financing option provided in section ten-d of this article, a down payment, the amount of which shall be calculated in accordance with the provisions of that section. A retail licensee shall be awarded a Class A retail license or licenses upon the commissioner's receipt of his or her payment or down payment: Provided, That the commissioner determines that the retail licensee is in good standing with the state and meets all other requirements imposed by the provisions of this article for the issuance of a Class A retail license.

(5) A Class A retail license purchased in accordance with this subsection shall be issued for the ten-year period beginning July 1, 2010, or July 1 every ten years thereafter, and shall expire on June 30, 2020, or on June 30 every ten years thereafter.

(6) Nothing in this subsection may be interpreted as affecting the ability of a retail licensee to bid for a retail license or licenses as otherwise provided in this article: Provided, That the retail licensee meets all other requirements imposed by the provisions of this article for the submission of bids.

(e) All bids for a retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter may be rejected by the board if the board determines that the highest bid fails to meet the minimum bid. The board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone. Where the board determines the highest bid meets or exceeds the minimum bid, the board shall determine whether, at the time of the bid, the same retail license was held for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the license. If the current retail licensee holding the same retail license at the time of submission of the bid for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the retail license, submitted a bid that was not less than the minimum bid and is, after considering any preference applicable under the provisions of section ten-a of this article, an unsuccessful bidder for the retail license for the period beginning July 1, 2010, or for any ten-year period thereafter, on July 1 when the retail license expires, the commissioner shall notify the person that upon paying the amount of the highest bid, subject to the provisions of subsection (f) of this section, and upon compliance with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee. If, within the time determined by the commissioner, the current retail licensee pays the amount to the commissioner and complies with all other requirements imposed by the provisions of this article for the issuance of the retail license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee.

(f) The board shall, in determining the amount a current retail licensee who is an unsuccessful bidder shall pay as described in subsection (e) of this section, afford the

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unsuccessful bidder a preference. If the unsuccessful bidder is a West Virginia resident as defined in section ten-a of this article, the board shall afford the unsuccessful bidder a five percent preference in addition to the five percent preference afforded under section ten-a of this article. If the unsuccessful bidder is not a West Virginia resident, the board shall afford the unsuccessful bidder a five percent preference. The preference shall be computed by subtracting the preference percentage of the highest bid price from the highest bid price: Provided, That under no circumstances may the preference bring the price of the bid below the minimum bid established by the board: Provided, however, That a current retail licensee who is not operating any of the retail outlets for which he or she is authorized under the license is not eligible for the preference provided for under this section.

(g) In the event all bids submitted for a retail license fail to meet the minimum bid amount for the license as determined by the board, the board may offer the license for bid again after it determines a new minimum bid amount for the retail license.

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