

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

Senate Committee Substitute For

SENATE BILL No. 270

(By Mr. _____)



PASSED March 9 1935

In Effect from Passage

270

ENROLLED

SENATE COMMITTEE SUBSTITUTE FOR

Senate Bill No. 270

(Originating in the Committee on the Judiciary.)

[Passed March 9, 1935; in effect from passage.]

AN ACT to repeal section fifteen, article one, and all of article two, chapter twenty-five, and to add a new chapter twenty-five-(a) to the code of West Virginia, one thousand nine hundred thirty-one, to create a department of purchases.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, and all of article two, chapter twenty-five, be repealed, and a new chapter twenty-five-(a) be added to the code of West Virginia, one thousand nine hundred thirty-one, to read as follows:

ARTICLE I

Section 1. For the purpose of this chapter :

2 (1) "Director" shall mean the state director of purchases.

3 (2) "Committee" shall mean the standardization committee.

4 (3) "Department" shall mean an office, department, in-
5 stitution or any other agency of the state government.

6 (4) "Commodities" shall include supplies, materials, equip-
7 ment and any other articles or things used by or furnished
8 to a department.

9 (5) "Contractual services" shall include telephone, tele-
10 graph, electric light and power, water, and similar services.

11 (6) "Printing" shall include printing, binding, ruling,
12 lithographing, engraving and any other similar process.

Sec. 2. In order that every possible economy in the pur-
2 chase of commodities, printing and contractual services may
3 be realized through a system of centralized purchasing, there is
4 hereby created the department of purchases.

Sec. 3. The provisions of this chapter for the purchase of
2 commodities, printing and contractual services shall apply to
3 all of the departments of the state government, except as is
4 otherwise provided by this chapter or by law.

Sec. 4. There is hereby created the office of director of purchases. The director shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve during the will and pleasure of the governor.

The director shall devote his entire time to the duties of his office.

Sec. 5. The director, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by section five, article four of the constitution. He shall execute a bond in the penalty of twenty-five thousand dollars, 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 custody by virtue of his office. The bond and oath shall be filed with the secretary of state.

Sec. 6. The governor shall select the director with special reference to his ability and fitness to perform the duties of his office.

Sec. 7. The offices of the director shall be located at the state capitol. The director shall keep his offices open at all reasonable times for the transaction of public business. He

4 shall keep, in his offices, accurate books, accounts and records
5 of all transactions of his department, and such books, accounts
6 and records shall be public records and shall at all proper times
7 be available for inspection by any taxpayer of the state except
8 as to private bids or quotations provided for in section four,
9 article two of this chapter.

Sec. 8. The director shall receive an annual salary of five
2 thousand dollars. He shall also receive necessary traveling
3 expenses incident to the performance of his duties. Requisitions
4 for traveling expenses shall be accompanied by a sworn and
5 itemized statement which shall be filed with the auditor and
6 preserved as a public record.

Sec. 9. The director shall appoint or employ such assistants
2 and employees as may be necessary to the efficient operation
3 of his department and fix their salaries. All assistants and
4 employees shall be appointed or employed to serve during the
5 will and pleasure of the director.

Sec. 10. All powers and duties vested in the director, except
2 the power to sign contracts, may be exercised by the appointees
3 or employees of the director under his direction, but the director
4 shall be responsible for their acts.

Sec. 11. The director shall be the executive officer of the
2 department of purchases and shall have the following powers
3 and duties:

4 (1) Purchase or contract for, in the name of the state, the
5 commodities, printing and contractual services required by the
6 departments of the state government.

7 (2) Apply and enforce standard specifications established in
8 accordance with section fourteen of this article.

9 (3) Negotiate for all grounds, buildings, office or other space
10 required by state departments.

11 (4) Have charge of central storerooms for the supply of
12 departments.

13 (5) Transfer to or between departments or sell commodities
14 that are surplus, obsolete or unused.

15 (6) Make and keep current an inventory of all removable
16 equipment belonging to the state.

17 (7) Establish and maintain a laboratory for the testing of
18 commodities, and make use of existing facilities in state in-
19 stitutions for that purpose.

Sec. 12. The director, with the approval of the governor,

2 shall adopt and amend rules and regulations for the following
3 purposes:

4 (1) Authorize a department to purchase directly, specified
5 commodities and contractual services and prescribe the manner
6 in which such purchases shall be made.

7 (2) Authorize, in writing, a department to purchase com-
8 modities or contractual services in the open market for im-
9 mediate delivery in emergencies, define such emergencies, and
10 prescribe the manner in which such purchases shall be made
11 and reported to the director; and for the purposes mentioned
12 in paragraphs one and two of this section, the head of any
13 department, or the financial governing board of any institution,
14 may, with the approval of the director, make requisition upon
15 the auditor for a sum to be known as an advance allowance
16 account, in no case to exceed five per cent of the total of the
17 appropriations for any such department; and the auditor shall
18 draw his warrant upon the treasurer for such amounts. **All**
19 such advance allowance accounts shall be accounted for by the
20 head of the department or institution once every thirty days
21 or oftener if required by the state auditor or director or the
22 governing board or the head of the department, and requisitions

23 and warrants may likewise be drawn for reimbursing such
24 advance allowance accounts as the expenditures therefrom have
25 been accounted for.

26 (3) Prescribe the manner in which commodities shall be
27 purchased, delivered, stored and distributed.

28 (4) Prescribe the time for making requisitions and estimates,
29 the future period which they are to cover, the form in which
30 they shall be submitted, and the manner of their authentica-
31 tion.

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

36 (6) Require monthly reports by departments of stocks of
37 commodities on hand, and prescribe the form of such reports.

38 (7) Provide for the transfer to or between departments of
39 commodities which are surplus with one department but which
40 may be needed by another, and for the disposal by sale, after
41 receipt of competitive bids, of commodities which are obsolete
42 or unused.

43 (8) Prescribe the amount of deposit or bond to be sub-

44 mitted with a bid or contract, and the amount of deposit to
45 be given for the faithful performance of a contract.

46 (9) Prescribe the manner in which claims for commodities
47 and contractual services delivered to departments shall be
48 submitted, examined, approved and paid.

49 (10) Provide for such other matters as may be necessary
50 to give effect to the foregoing rules and regulations and the
51 provisions of this chapter.

Sec. 13. There is hereby created a standardization com-
2 mittee which shall be composed of not more than seven members
3 including the director, as chairman, and one representative of
4 each of the following: The state road commission, the depart-
5 ments of the state government other than institutions, the state
6 educational institutions, and the state charitable and correct-
7 ional institutions. The members of the committee, other than
8 the chairman, shall be designated by the governor from among
9 the officers and employees of the state, who are best informed
10 with regard to the requirements of their departments and of
11 the state government.

12 The members of the committee shall serve without additional
13 compensation.

Sec. 14. The duties of the committee shall be:

2 (1) Advise the director and the governor in the adoption
3 and amendment of the rules and regulations which shall pre-
4 scribe the purchasing policy of the state.

5 (2) Classify the requirements of the state government for
6 commodities and contractual services.

7 (3) Adopt as standards, the minimum number of qualities,
8 sizes and varieties of commodities and contractual services con-
9 sistent with the successful operation of state government.

10 (4) Prepare and adopt written specifications describing such
11 standards.

12 In the preparation and revision of standard specifications,
13 the committee shall seek the advice, assistance and cooperation
14 of the departments concerned, to ascertain their precise require-
15 ments. Each specification for commodities or contractual
16 services shall, so far as possible, satisfy the requirements of
17 the majority of the departments. After adoption, standard
18 specifications shall, until revised or rescinded, apply alike in
19 terms and effect to every future purchase or contract for the
20 commodities or contractual services described in the specifica-
21 tions; but the director, with the approval of the governor,

22 may, for good cause, exempt a department from the standard
23 specifications.

Sec. 15. The director shall annually report to the governor
2 concerning the conduct of his department, the purchases made
3 by him for state departments, and such other information as
4 the governor may request. He shall make such other reports
5 as the governor may require.

Sec. 16. The director shall, in the purchases of commodities
2 and printing, give preference, so far as may be practicable,
3 and not conflicting with the provisions of this chapter, to com-
4 modities and printing produced in this state.

Sec. 17. The director shall advise with the heads of the
2 various state institutions producing commodities, with the view
3 to making these articles suitable for the needs of state depart-
4 ments.

Sec. 18. The director shall make available the facilities and
2 services of his department to county, school, municipal and
3 other local government bodies within this state. The actual
4 expenses incurred thereby shall be paid by the local govern-
5 ment body.

ARTICLE II

Section 1. A purchase of, and contract for commodities and
2 contractual services, and a sale of personal property that has
3 become obsolete and unusable, shall be based, wherever possible,
4 on competitive bids.

Sec. 2. The director shall solicit sealed bids for an expendi-
2 ture or sale that is estimated to exceed two thousand dollars.
3 Bids shall be obtained by public notice inserted at least twice
4 in a newspaper of statewide circulation, at least two weeks
5 before the final date of submitting bids. The director may also
6 solicit sealed bids by sending requests by mail to prospective
7 suppliers and by posting notice on a bulletin board in his
8 office.

Sec. 3. The director may make a purchase or sale of less
2 than two thousand dollars in amount in the open market, but
3 such purchase or sale shall, wherever possible, be based on at
4 least three competitive bids.

Sec. 4. Bids shall be based on the standard specifications
2 adopted by the committee in accordance with the provisions
3 of section fourteen of article one of this chapter. All open
4 market orders or contracts made by the director or by a state
5 department shall be awarded to the lowest responsible bidder,

6 taking into consideration the qualities of the articles to be
7 supplied, their conformity with specifications, their suitability
8 to the requirements of the state government, and the delivery
9 terms. Any or all bids may be rejected. If all bids received
10 on a pending contract are for the same unit price or total
11 amount, the director shall have authority to reject all bids,
12 and to purchase the required commodities or contractual services
13 in the open market, if the price paid in the open market does
14 not exceed the bid prices.

15 Each bid, with the name of the bidder, shall be entered on
16 a record, and each record, with the successful bid indicated
17 thereon, shall, after the award of the order or contract, be
18 open to public inspection.

Sec. 5. Contracts shall be signed by the director in the
2 name of the state. They shall be approved as to form by the
3 attorney general. A contract that requires more than six
4 months for its fulfillment shall be filed with the state auditor.

Sec. 6. Except in emergency, an order for delivery on a
2 contract or open market order for commodities or contractual
3 services for a state department shall not be awarded until it
4 has been certified to the director that the unencumbered balance

5 in the appropriation concerned, in excess of all unpaid obliga-
6 tions, is sufficient to defray the cost of such order.

Sec. 7. The director may authorize, in writing, a state de-
2 partment to purchase in the open market, without filing
3 requisition or estimate, specific commodities for immediate
4 delivery to meet bona fide emergencies arising from unforeseen
5 causes, including delays by contractors, delays in transporta-
6 tion, and unanticipated volume of work. A report of any such
7 purchase, together with a record of the competitive bids upon
8 which it was based, shall be submitted at once to the director
9 by the head of the state department concerned, together with
10 a full account of the circumstances of the emergency. Such
11 report shall be entered on a record and shall be open to public
12 inspection.

Sec. 8. For the purpose of permitting volume purchases of
2 standard commodities there is hereby created a revolving fund
3 for the use of the department of purchases. The amount of
4 the fund shall be fixed by the governor upon the recommenda-
5 tion of the director, but shall not exceed thirty-five thousand
6 dollars. The fund shall be accumulated and administered as
7 follows:

8 (1) At the beginning of each fiscal year the director shall
9 allocate the amount of the revolving fund to the several depart-
10 ments purchasing through the department of purchases in sub-
11 stantial proportion to the relative volume of purchases of
12 standard commodities by each department during the previous
13 fiscal year.

14 (2) The allocation shall be submitted to the governor for
15 his approval and if approved by him, the auditor shall charge
16 against the current expense appropriation for each department,
17 the amount of the allocation for that department, and shall
18 transfer the amounts to the revolving fund.

19 (3) The revolving fund shall be used by the director of
20 purchases to maintain a stock of commodities in current use
21 in state departments.

22 (4) When a department requisitions commodities that have
23 been purchased from the revolving fund, the department shall
24 pay for such purchases by reimbursing the revolving fund in
25 the amount of the requisition.

26 (5) When the director determines that the purchases of a
27 department for the remainder of the fiscal year, of commodities
28 kept in stock will not exceed the amount that the department

29 has advanced to the revolving fund, he shall notify the auditor,
30 and requisitions from the department after that date shall be
31 credited against the department's pro rata share of the re-
32 volving fund, so that, at the close of the fiscal year, the fund
33 shall be exhausted and each department shall have had the
34 full use of the moneys advanced by it to the revolving fund.
35 But if, at the end of a fiscal year, a balance remains to the
36 credit of a department, the balance shall revert to the appro-
37 priation for that department.

Sec. 9. If a department purchases or contracts for com-
2 modities or contractual services contrary to the provisions of
3 this chapter or the rules and regulations made thereunder,
4 such purchase or contract shall be void and of no effect. The
5 head of such department shall be personally liable for the
6 costs of such purchase or contract, and, if already paid for
7 out of state funds, the amount thereof may be recovered in
8 the name of the state in an appropriate action instituted there-
9 for.

Sec. 10. If a department requests the purchase of a com-
2 modity bearing a particular trade name or brand, and if the
3 commodity is covered by standard specifications adopted as

4 provided by section fourteen of article one, the director may
5 substitute a commodity bearing a different trade name or brand,
6 if the substituted commodity conforms to the same specifica-
7 tions and can be obtained at a lower price.

ARTICLE III

Section 1. The director shall contract for public printing
2 and for printing paper for the use of departments in the
3 manner provided for contracts under article two of this chapter,
4 and in accordance with the specifications adopted as provided
5 by section fourteen of article one.

Sec. 2. The director shall supply the departments with
2 printing in the same manner as provided for commodities and
3 contractual services under article two. But the provisions of
4 this section shall not be construed to prohibit the state from
5 maintaining at educational, benevolent, penal or correctional
6 institutions printing plants for the purpose of instruction or
7 for printing for a state department.

Sec. 3. The provisions of section twelve of article one, re-
2 lating to the rules and regulations of the director, shall apply
3 so far as applicable, to this article.

Sec. 4. The director shall furnish such printing as may be

2 ordered by either house of the legislature.

3 The clerks of the house of delegates and of the senate shall
4 appoint a supervisor of printing who shall have general over-
5 sight and direction of the printing of the two houses, under
6 the direction and supervision of the clerks. One-half of his
7 compensation shall be paid by the senate and one-half by the
8 house of delegates at a rate of not more than fifteen dollars
9 per day.

Sec. 5. The director shall have charge and supervision of
2 the printing and binding of the reports of the decisions of the
3 supreme court of appeals of the state, and shall contract for
4 their publication in the manner provided for contracts under
5 article two. The contract shall provide for the publication of
6 fifteen hundred copies of each volume of the reports ordered
7 by the court to be printed on paper selected by the reporter of
8 the court and bound in the best quality of calf or standard
9 buckram. The size of type and page shall be prescribed by
10 the reporter. A volume shall be published according to the
11 terms of the contract whenever ordered by the court. The
12 reporter shall secure the copyright of each volume for the

13 benefit of the state. The reports shall be styled "West Vir-
14 ginia Reports".

15 The printing and binding of the reports shall be done under
16 the direction of and in the manner prescribed by the reporter,
17 subject to the control of the court. The reporter shall prefix
18 to the printed report of each case the dates when the same was
19 submitted and decided. Each volume shall, if practicable,
20 contain the reports of at least eighty cases decided by the
21 court, and shall contain not more than nine hundred pages,
22 exclusive of the index and table of cases reported and cited.
23 Proof sheets shall be furnished by the printer to the reporter
24 and to each judge of the court, and such corrections and
25 modifications shall be made by the printer as the reporter or
26 any of the judges shall direct. If the work is not done in the
27 manner required by law, the reporter shall not approve the
28 volume and the director shall not accept it.

Sec. 6. Subject to the approval of the governor, the director
2 shall have the authority to limit the number of copies of annual
3 or biennial reports, bulletins and other publications ordered to
4 be printed by each department.

Sec. 7. Beginning with the fiscal year one thousand nine

2 hundred thirty-six, printing, binding and stationery for all
3 departments shall be paid for from the current expense appro-
4 priations for such departments.

Sec. 8. All printing paper and stationery shall be delivered
2 to the director, who shall have charge of the same and issue
3 it as needed.

Sec. 9. The director shall be custodian of the West Virginia
2 reports after they are printed and bound and approved by the
3 reporter, and of the acts of the legislature after they are
4 printed and bound and approved by the clerk of the house
5 of delegates. As soon as practicable after any new volume of
6 such reports or acts has been delivered to the director, not
7 including reprints of former volumes, he shall deliver to the
8 state law librarian sufficient copies to enable him to make
9 distribution thereof in the manner prescribed by sections five
10 and six, article eight, chapter fifty-one of the code of one
11 thousand nine hundred thirty-one.

12 The director shall sell such copies of the reports and acts as
13 remain after the distribution provided by law has been made
14 at a price to be fixed by him with the approval of the governor ;
15 but in no case shall such price be less than the actual cost to

16 the state of the publication thereof. The proceeds of such
17 sales shall immediately be paid into the treasury.

Sec. 10. Paper stock, if furnished by the state to the con-
2 tractor, shall be billed at the current market price for the
3 grade furnished in the quantity furnished. It shall be un-
4 lawful and discriminatory for the director to furnish the con-
5 tractor with paper for any state work, unless all bidders are
6 notified in advance of placing their bids at the prices at which
7 the state will supply such stock. It shall also be unlawful for
8 the director to furnish the contractor any paper for other than
9 the state work under contract.

ARTICLE IV

Section 1. The application of this chapter shall be subject
2 to the following conditions:

3 (1) The purchases of stock for state liquor stores shall be
4 made by the West Virginia Liquor Control Commission;

5 (2) Whenever the authority to acquire property other than
6 commodities and printing, by lease, agreement, condemnation
7 or otherwise, is now specifically vested by law in a department,
8 that authority shall not be affected by the provisions of this
9 chapter.

10 Whenever this authority is not now specifically vested in a
11 department, such authority shall be exercised by the director
12 of purchases;

13 (3) In the purchase and contracting for textbooks by the
14 state board of education, the director shall perform only such
15 duties as may be required by law.

Sec. 2. The director, an assistant or employee shall not be
2 financially interested, or have any beneficial personal interest,
3 directly or indirectly, in the purchase of any commodities,
4 printing or contractual services, nor in any firm, partnership,
5 corporation or association furnishing them. The director, an
6 assistant or employee shall not accept or receive directly or
7 indirectly from any person, firm or corporation to whom a
8 contract may be awarded, by rebate, gift or otherwise, any
9 money or other thing of value whatsoever, or any promise,
10 obligation or contract for future reward, or compensation.

11 A person who violates this section shall be guilty of a mis-
12 demeanor, and upon conviction, shall be confined in jail not
13 less than three months nor more than one year, or fined not less
14 than fifty nor more than one thousand dollars, or both, in the
15 discretion of the court.

Sec. 3. A person who violates a provision of this chapter
2 shall be guilty of a misdemeanor and upon conviction shall be
3 confined in jail not less than ten days nor more than one year,
4 or fined not less than ten nor more than five hundred dollars,
5 or both, in the discretion of the court.

Sec. 4. Section fifteen, article one, chapter twenty-five of
2 the code of West Virginia, one thousand nine hundred thirty-
3 one, relating to the powers of the board of control, is hereby
4 repealed.

Sec. 5. Article two, chapter twenty-five of the code of West
2 Virginia, one thousand nine hundred thirty-one, is hereby re-
3 pealed.

Sec. 6. Except as is otherwise specifically provided by this
2 chapter, a provision of the code of West Virginia, one thousand
3 nine hundred thirty-one, or of a statute that vests in a depart-
4 ment the authority to purchase commodities, printing or con-
5 tractual services, is hereby repealed.

Sec. 7. If any part of this chapter is held to be unconstitu-
2 tional or for any other reason invalid, the remaining parts shall
3 not be affected thereby.

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

Clinton L. Howard

Chairman Senate Committee

Arnold M. Tickers

Chairman House Committee

Originated in the *Senate*
Takes effect *from* passage.

Charles M. ...

Clerk of the Senate

Geo L Hall

Clerk of the House of Delegates

Chas. E. Hoops

President of the Senate

Thos. Pelts

Speaker House of Delegates

The within *is approved* this the *15* " day of *March*, 1935.

H. S. Kemp

Governor

Filed in the office of the Secretary of State of West Virginia **MAR 15 1935**

Wm. S. O'BRIEN, Secretary of State