

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953



# ENROLLED

HOUSE BILL No. 431

(By Mr. Maywell)



PASSED March 14 1953

In Effect immediately upon Passage



431

## ENROLLED

# House Bill No. 431

(By MR. MAXWELL)

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[Passed March 14, 1953; in effect ninety days from passage.]

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AN ACT to amend article one, chapter twenty-five-a of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, by amending and reenacting sections one, eleven, twelve, thirteen and fourteen thereof, and by adding thereto a new section, designated section nineteen, to amend article two of said chapter by amending and reenacting sections one, two, three, four, eight and ten thereof, and by adding thereto three new sections, designated sections twelve, thirteen and fourteen, and to amend article three of said chapter, by amending and reenacting section one thereof and by adding thereto a new section, designated section eleven, and to amend article four of said chapter, by adding thereto two new sections, desig-

nated sections three-a and three-b, all relating to the rights, powers and duties of the state department of purchases, its director and employees, and providing penalties for violations thereof.

*Be it enacted by the Legislature of West Virginia:*

That article one, chapter twenty-five-a of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended by amending and reenacting sections one, four, eleven, twelve, thirteen and fourteen thereof, and by adding thereto a new section, designated section nineteen, that article two of said chapter be amended by amending and reenacting section one, two three, eight and ten thereof, and by adding thereto three new sections, designated sections twelve, thirteen and fourteen, that article three of said chapter be amended, by amending and reenacting section one thereof and by adding thereto a new section, designated section eleven, and that article four of said chapter be amended, by adding thereto two new sections, to be designated sections three-a and three-b, to read as follows:

**Article 1. General Provisions.**

Section 1. *Definitions.*—For the purpose of this chapter:

2 (1) "Director" shall mean the state director of pur-  
3 chases.

4 (2) "Department" shall mean an office, department,  
5 institution or any other agency of the state government.

6 (3) "Commodities" shall include supplies, materials,  
7 equipment, contractual services, and any other articles or  
8 things used by or furnished to a department.

9 (4) "Contractual services" shall include telephone,  
10 telegraph, electric light and power, water and similar  
11 services.

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

14 (6) "Expended commodities" shall include those com-  
15 modities which, when used in the ordinary course of  
16 business, will become consumed or of no market value  
17 within the period of one year or less.

18 (7) "Removable property" shall include any personal  
19 property not permanently affixed to or forming a part of  
20 real estate.

Sec. 11. *Powers and Duties of Director.*—The director  
2 shall be the executive officer of the department of pur-  
3 chases and shall have the power and duty to:

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

7     (2) Apply and enforce standard specifications estab-  
8     lished in accordance with section thirteen of this article,  
9     as hereinafter provided.

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

12    (4) Have charge of central store rooms for the supply  
13    of departments.

14    (5) Transfer to or between departments or sell com-  
15    modities that are surplus, obsolete, or unused, as herein-  
16    after provided.

17    (6) Make and keep current an inventory of all remov-  
18    able equipment belonging to the state, as hereinafter pro-  
19    vided.

20    (7) Establish and maintain a laboratory for the testing  
21    of commodities and make use of existing facilities in state  
22    institutions for that purpose, as hereinafter provided.

23    (8) Provide for the maintenance and repair of all  
24    office furniture, machinery and equipment belonging to

25 the state, either by employing personnel and facilities un-  
26 der his direction or by contracting with private parties.

27 (9) Suspend the right and privilege of any person to  
28 bid on state commodities who has violated any provisions  
29 of the purchasing law or rules and regulations of the di-  
30 rector: *Provided, however,* That every person so sus-  
31 pended shall receive notice of and reason for such suspen-  
32 sion by letter posted by registered mail: *And provided*  
33 *further,* That such suspension shall not exceed one year.

Sec. 12. *Rules and Regulations of Director.*—The direc-

2 tor shall adopt and amend rules and regulations to:

3 (1) Authorize a department to purchase directly, speci-  
4 fied commodities and contractual service and prescribe  
5 the manner in which such purchases shall be made;

6 (2) Authorize, in writing, a department to purchase  
7 commodities or contractual services in the open market  
8 for immediate delivery in emergencies, define such emer-  
9 gencies, and prescribe the manner in which such pur-  
10 chases shall be made and reported to the director; and  
11 for the purposes mentioned in paragraphs (1) and (2) of  
12 this section, the head of any department, or the financial

13 governing board of any institution, may, with the ap-  
14 proval of the director, make requisitions upon the auditor  
15 for a sum to be known as an advance allowance account,  
16 in no case to exceed five per cent of the total of the appro-  
17 priations for any such department; and the auditor shall  
18 draw his warrant upon the treasurer for such accounts.  
19 All such advance allowance accounts shall be accounted  
20 for by the head of the department or institution once  
21 every thirty days or oftener if required by the state audi-  
22 tor or director;

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

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

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

33 (6) Prescribe the amount of deposit or bond to be sub-

34 mitted with a bid or contract and the amount of deposit  
35 or bond to be given for the faithful performance of a  
36 contract;

37 (7) Provide for such other matters as may be neces-  
38 sary to give effect to the foregoing rules and regulations  
39 and the provisions of this chapter.

Sec. 13. *Standard Specifications; Promulgation and*  
2 *Adoption by Director; to Apply to All Purchases.*—The  
3 director shall classify all commodities and shall promul-  
4 gate and adopt a schedule of standard specifications based  
5 on scientific and technical data, which schedule shall  
6 establish the quality within each particular classification  
7 or subclassification to which all commodities to be pur-  
8 chased and services to be contracted for by the state must  
9 conform. After adoption the standard specifications shall  
10 apply to every future purchase of or contract for the com-  
11 modities or contractual services described in the specifica-  
12 tions. The purchases of no department may be exempt  
13 from compliance with the standard specifications so es-  
14 tablished, but the director, whenever he deems it neces-  
15 sary and advisable, may exempt therefrom the purchase  
16 of particular items.



17 It shall be the duty of the director to keep such standard  
18 specifications up to date and in conformity with all tech-  
19 nical and scientific advancements pertaining to commodi-  
20 ties and services covered in such schedule and to that end  
21 he may, from time to time, revise and amend the standard  
22 specifications therein included.

Sec. 14. *Director May Appoint Advisers on Standard*  
2 *Specifications to Act as Herein Provided.*—The director,  
3 acting at his discretion, may from time to time appoint  
4 any official or employee of any department to aid and  
5 advise the director in formulating, revising or amending  
6 the schedule of standard specifications provided for in  
7 section thirteen of this article. Such official or employee  
8 shall act at the request of the director and shall be entitled  
9 to receive his necessary expenses incurred in compliance  
10 therewith, but shall receive no additional compensation  
11 therefor.

Sec. 19. *Examination and Testing of Purchases.*—Within  
2 the limits of funds available for the purpose, the director,  
3 or some person appointed by him for that purpose, shall  
4 examine and test upon delivery all commodities purchased

5 by the state to determine whether such commodities con-  
6 form to the standard specifications promulgated pursuant  
7 to section thirteen of this article, and whether the quan-  
8 tity delivered conforms with the purchase contracts there-  
9 for.

**Article 2. Purchases; Contracts; Sales; Inventory of Removable  
Property.**

Section 1. *Competitive Bids.*—A purchase of and con-  
2 tract for commodities and contractual services shall be  
3 based, wherever possible, on competitive bids.

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

Sec. 3. *Purchase in Open Market on Competitive Bids.*—  
2 The director may make a purchase of less than two thou-

3 sand dollars in amount in the open market, but such pur-  
4 chase shall, wherever possible, be based on at least three  
5 competitive bids.

Sec. 4. *Bids Based on Standard Specifications; Awards*  
2 *to Lowest Responsible Bidder; Uniform Bids; Record of*  
3 *Bids.*—Bids shall be based on the standard specifications  
4 promulgated and adopted in accordance with the provi-  
5 sions of section thirteen, article one, of this chapter. All  
6 open market orders or contracts made by the director or  
7 by a state department shall be awarded to the lowest re-  
8 sponsible bidder, taking into consideration the qualities of  
9 the articles to be supplied, their conformity with specifi-  
10 cations, their suitability to the requirements of the state  
11 government, and the delivery terms. Any or all bids may  
12 be rejected. If all bids received on a pending contract are  
13 for the same unit price or total amount, the director shall  
14 have authority to reject all bids, and to purchase the re-  
15 quired commodities or contractual services in the open  
16 market, if the price paid in the open market does not  
17 exceed the bid prices.

18 Each bid, with the name of the bidder, shall be entered

19 on a record, and each record, with the successful bid in-  
20 dicated thereon, shall, after the award of the order or con-  
21 tract, be open to public inspection.

Sec. 8. *Special Fund; Purposes; How Composed.*—There

2 is hereby created a special revenue fund to be adminis-  
3 tered by the director to finance and facilitate the following  
4 functions of the director:

5 (1) Purchase in volume and maintenance of stocks of  
6 commodities to supply the needs of state departments.

✓ 7 (2) Performance for state departments of all mimeo-  
8 graphing, photostating, microfilming, multilithing, multi-  
9 graphing, and other work as provided by article three,  
10 section eleven of this chapter.

11 (3) Repair and maintenance of office furniture, equip-  
12 ment and machinery.

13 The amount of the fund shall be fixed and changed by the  
14 governor upon the recommendation of the director. If at  
15 the end of each fiscal year the cash balance plus value of  
16 commodity inventories on hand exceeds the amount so  
17 fixed, the excess in cash shall be transferred by the state  
18 auditor to the general revenue fund and become a part of

19 the general revenue of the state. The fund shall be com-  
20 posed of the following:

21 (1) The cash balance and inventories of the fund here-  
22 tofore established by this section.

23 (2) Charges made by the director for commodities sold  
24 and services rendered to the state departments as herein  
25 described: *Provided*, That charge shall not exceed total  
26 cost to the fund, which total cost shall include storage,  
27 supplies, equipment and salaries and wages of employees  
28 necessary to supplying commodities and services in addi-  
29 tion to purchase prices of commodities.

30 (3) Such additional money for volume purchase as the  
31 director may at his discretion require the state auditor  
32 to transfer from effective current expense appropriations  
33 of state departments to the fund. For this purpose the  
34 director shall have authority to require the auditor to  
35 make such transfers and shall credit such transfers to the  
36 account of each department. The total cost of commodities  
37 delivered shall be charged to the accuonts of the respec-  
38 tive departments. At the end of each fiscal year the bal-  
39 ance of the accounts shall be returned to the appropria-  
40 tions from which they were transferred.

Sec. 10. *Purchase or Substitution of Particular Trade*

2 *Name or Brand.*—If a department requests the purchase  
3 of a commodity bearing a particular trade name or brand,  
4 and if the commodity is covered by standard specifications  
5 adopted as provided by section thirteen, article one of  
6 this chapter, the director may substitute a commodity  
7 bearing a different trade name or brand, if the substituted  
8 commodity reasonably conforms to the adopted standard  
9 specifications and can be obtained at a lower price.

Sec. 12. *Department Heads to Submit Inventory of Re-*  
2 *movable Property and List of Expendable Commodities.*—  
3 The head of every department shall on or before July  
4 fifteenth of each year submit to the director an inventory  
5 of all removable property with which such department  
6 is chargeable as of the close of the preceding fiscal year,  
7 and whenever requested to do so by the director shall  
8 submit a list of all expendable commodities such depart-  
9 ment has on hand.

Sec. 13. *Inventory of All Removable Property to Be*  
2 *Kept by Director.*—The director shall make and keep cur-  
3 rent an accurate inventory of all removable property be-

4   longing to or hereafter acquired by the state. Such inven-  
5   tory shall be kept on file as a public record in the office  
6   of the director and the entry thereon of any property  
7   purchased after the effective date of this act, shall be  
8   equivalent to a certification by the director that the same  
9   fully complies with the standard specifications promul-  
10  gated pursuant to section thirteen, article one of this chap-  
11  ter and to terms of purchase contract. The inventory shall  
12  disclose the name and address of the vendor, the date of  
13  the purchase, the price paid for the property therein de-  
14  scribed and the disposition thereof.

Sec. 14. *Disposition by Director of Unused, Obsolete or*  
2   *Unusable Commodities; Application of Proceeds From*  
3   *Sale.*—The director shall have the exclusive power and  
4   authority to make disposition of commodities or expend-  
5   able commodities now owned or in the future acquired  
6   by the state which are or shall have become obsolete, un-  
7   usable or are not being used.

8   It shall be the duty of the director to determine what  
9   commodities or expendable commodities should be dis-  
10  posed of and he shall make such disposition either by

11 transferring the particular commodities or expendable  
12 commodities between departments without monetary ex-  
13 change or by public sale thereof to the highest bidder  
14 after having first advertised the time, terms and place of  
15 such sale once a week for two successive weeks in some  
16 newspaper published or having a general circulation in  
17 the county wherein the sale is to be conducted. The pro-  
18 ceeds of such sale shall be deposited in the state fund "gen-  
19 eral revenue" without regard to the fund from which the  
20 particular commodity or expendable commodity was pur-  
21 chased.

**Article 3. Public Printing and Stationery; State Publications.**

Section 1. *Contracts for Public Printing and Paper for*  
2 *Departments.*—The director shall contract for public  
3 printing and for printing paper for the use of departments  
4 in the manner provided for contracts under article two  
5 of this chapter, and in accordance with the specifications  
6 adopted as provided by section thirteen of article one of  
7 this chapter.

Sec. 11. *Director to Establish a Central Duplicating De-*  
2 *partment; Exclusive by Director of Certain Departments*



3 *From Provisions.*—All mimeographing, photostating, mi-  
4 crofilming, multilithing, multigraphing, and other dupli-  
5 cating work required to be done by or for any department  
6 shall be done by a central duplicating department which  
7 department shall be established by and under the super-  
8 vision of the director.

9 All mimeographing, photostating, microfilming, multi-  
10 lithing, multigraphing and other duplicating equipment  
11 and supplies shall be transferred to the central duplicat-  
12 ing department.

13 If the director be of the opinion that any department is  
14 capable of doing such duplicating work as may be required  
15 by such particular department more efficiently and eco-  
16 nomically than can the central duplicating department,  
17 he may, in his discretion, exempt such particular depart-  
18 ment from the provisions of this section, or if the director  
19 believes economy or efficiency can be effected by letting  
20 such work or any part thereof to contract then he may do  
21 so in the manner provided for contracts under article two  
22 of this chapter.

**Article 4. Chapter Subject to Conditions; Financial Interest of  
Director, etc.; Penalties.**

Section 3-a. *Obtaining Money and Property Under  
False Pretenses; Defrauding State; Penalties.*—It shall be  
unlawful for any person to obtain from the state under  
any contract made under the provisions of this chapter,  
by false pretense, token or representation, or by delivery  
of inferior commodities, with intent to defraud, money,  
goods or other property, and upon violation thereof, such  
person shall be guilty of a felony and upon conviction  
therefor shall be confined in the penitentiary not less than  
one year nor more than five years, and be fined not exceed-  
ing one thousand dollars.

Sec. 3-b. *Conspiracy to Affect Market and Prices; Pen-  
alties.*—It shall be unlawful for any person to jointly com-  
bine or collude or conspire in any way to affect the mar-  
ket, or price, or supply of commodities or contractual serv-  
ices obtained or to be obtained by the state under the  
provisions of this chapter, and upon violation thereof  
such person shall be guilty of a felony and upon conviction  
therefor shall be confined in the penitentiary not less than  
one year nor more than five years, and be fined not ex-  
ceeding one thousand dollars.

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

*F. M. Kinley*  
Chairman Senate Committee

*C. H. Ambler*  
Chairman House Committee

Originated in the House of Delegates

Takes effect *ninety days from* passage.

*Howard Meyer*  
Clerk of the Senate

*Earl R. Rife*  
Clerk of the House of Delegates

*Ralph Rife*  
President of the Senate

*W. E. Hamner*  
Speaker House of Delegates

The within *approved* this the *20th*  
day of *March*, 1953.

*William C. Marland*  
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF VIRGINIA

MAR 20 1953

D. PITT O'BRIEN,  
SECRETARY OF STATE