ENROLLED

House Bill No. 431
(By Mr. Maxwell)

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

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:


Section 1. Definitions.—For the purpose of this chapter:
(1) "Director" shall mean the state director of purchases.

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

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

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

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

(6) "Expended commodities" shall include 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.

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

Sec. 11. Powers and Duties of Director.—The director shall be the executive officer of the department of purchases and shall have the power and duty to:
(1) Purchase or contract for, in the name of the state, the commodities, printing and contractual services required by the departments of the state government.

(2) Apply and enforce standard specifications established in accordance with section thirteen of this article, as hereinafter provided.

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

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

(5) Transfer to or between departments or sell commodities that are surplus, obsolete, or unused, as hereinafter provided.

(6) Make and keep current an inventory of all removable equipment belonging to the state, as hereinafter provided.

(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.

(8) Provide for the maintenance and repair of all office furniture, machinery and equipment belonging to
the state, either by employing personnel and facilities under his direction or by contracting with private parties.

(9) Suspend the right and privilege of any person to bid on state commodities who has violated any provisions of the purchasing law or rules and regulations of the director: Provided, however, That every person so suspended shall receive notice of and reason for such suspension by letter posted by registered mail: And provided further, That such suspension shall not exceed one year.

Sec. 12. Rules and Regulations of Director.—The director shall adopt and amend rules and regulations to:

(1) Authorize a department to purchase directly, specified commodities and contractual service and prescribe the manner in which such purchases shall be made;

(2) Authorize, in writing, a department to purchase commodities or contractual services in the open market for immediate delivery in emergencies, define such emergencies, and prescribe the manner in which such purchases shall be made and reported to the director; and for the purposes mentioned in paragraphs (1) and (2) of this section, the head of any department, or the financial
governing board of any institution, may, with the ap-
proval of the director, make requisitions upon the auditor
for a sum to be known as an advance allowance account,
in no case to exceed five per cent of the total of the appro-
priations for any such department; and the auditor shall
draw his warrant upon the treasurer for such accounts.
All such advance allowance accounts shall be accounted
for by the head of the department or institution once
every thirty days or oftener if required by the state audi-
tor or director;
(3) Prescribe the manner in which commodities shall
be purchased, delivered, stored and distributed;
(4) Prescribe the time for making requisitions and
estimates of commodities, 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 of deposit or bond to be sub-
mitted with a bid or contract and the amount of deposit
or bond to be given for the faithful performance of a
contract;

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

Sec. 13. Standard Specifications; Promulgation and
Adoption by Director; to Apply to All Purchases.—The
director shall classify all commodities and shall promul-
gate and adopt a schedule of standard specifications based
on scientific and technical data, which schedule shall
establish the quality within each particular classification
or subclassification to which all commodities to be pur-
chased and services to be contracted for by the state must
conform. After adoption the standard specifications shall
apply to every future purchase of or contract for the com-
modities or contractual services described in the specifica-
tions. The purchases of no department may be exempt
from compliance with the standard specifications so es-
tablished, but the director, whenever he deems it neces-
sary and advisable, may exempt therefrom the purchase
of particular items.
It shall be the duty of the director to keep such standard specifications up to date and in conformity with all technical and scientific advancements pertaining to commodities and services covered in such schedule and to that end he may, from time to time, revise and amend the standard specifications therein included.

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

Sec. 19. Examination and Testing of Purchases.—Within the limits of funds available for the purpose, the director, or some person appointed by him for that purpose, shall examine and test upon delivery all commodities purchased
by the state to determine whether such commodities con-
form to the standard specifications promulgated pursuant
to section thirteen of this article, and whether the quan-
ty delivered conforms with the purchase contracts there-
for.

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

Property.

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

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

Sec. 3. Purchase in Open Market on Competitive Bids.—
The director may make a purchase of less than two thou-
sand dollars in amount in the open market, but such pur-
chase shall, wherever possible, be based on at least three
competitive bids.

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

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

Sec. 8. *Special Fund; Purposes; How Composed.*—There is hereby created a special revenue fund to be administered by the director to finance and facilitate the following functions of the director:

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

2. Performance for state departments of all mimeographing, photostating, microfilming, multilithing, multigraphing, and other work as provided by article three, section eleven of this chapter.

3. Repair and maintenance of office furniture, equipment and machinery.

The amount of the fund shall be fixed and changed by the governor upon the recommendation of the director. 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 state auditor 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 herefore established by this section.

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

(3) Such additional money for volume purchase as the director may at his discretion require the state auditor to transfer from effective current expense appropriations of state departments to the fund. For this purpose the director shall have authority to require the auditor to make such transfers and shall credit such transfers to the account of each department. The total cost of commodities delivered shall be charged to the accounts of the respective departments. At the end of each fiscal year the balance of the accounts shall be returned to the appropriations from which they were transferred.
Sec. 10. Purchase or Substitution of Particular Trade Name or Brand.—If a department requests the purchase of a commodity bearing a particular trade name or brand, and if the commodity is covered by standard specifications adopted as provided by section thirteen, article one of this chapter, the director may substitute 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 a lower price.

Sec. 12. Department Heads to Submit Inventory of Removable Property and List of Expendable Commodities.—The head of every department shall on or before July fifteenth of each year submit to the director an inventory of all removable property with which such department is chargeable as of the close of the preceding fiscal year, and whenever requested to do so by the director shall submit a list of all expendable commodities such department has on hand.

Sec. 13. Inventory of All Removable Property to Be Kept by Director.—The director shall make and keep current an accurate inventory of all removable property be-
longing to or hereafter acquired by the state. Such inventory shall be kept on file as a public record in the office of the director and the entry thereon of any property purchased after the effective date of this act, shall be equivalent to a certification by the director that the same fully complies with the standard specifications promulgated pursuant to section thirteen, article one of this chapter and to terms of purchase contract. The inventory shall disclose the name and address of the vendor, the date of the purchase, the price paid for the property therein described and the disposition thereof.

Sec. 14. Disposition by Director of Unused, Obsolete or Unusable Commodities; Application of Proceeds From Sale.—The director shall have the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the state which are or shall have become obsolete, unusable or are not being used.

It shall be the duty of the director to determine what commodities or expendable commodities should be disposed of and he shall make such disposition either by
transferring the particular commodities or expendable
commodities between departments without monetary ex-
change or by public sale thereof to the highest bidder
after having first advertised the time, terms and place of
such sale once a week for two successive weeks in some
newspaper published or having a general circulation in
the county wherein the sale is to be conducted. The pro-
ceeds of such sale shall be deposited in the state fund “gen-
eral revenue” without regard to the fund from which the
particular commodity or expendable commodity was pur-
chased.

Article 3. Public Printing and Stationery; State Publications.

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

Sec. 11. Director to Establish a Central Duplicating De-
partment; Exclusive by Director of Certain Departments
From Provisions.—All mimeographing, photostating, microfilming, multilithing, multigraphing, and other duplicating work required to be done by or for any department shall be done by a central duplicating department which department shall be established by and under the supervision of the director.

All mimeographing, photostating, microfilming, multilithing, multigraphing and other duplicating equipment and supplies shall be transferred to the central duplicating department.

If the director be of the opinion that any department is capable of doing such duplicating work as may be required by such particular department more efficiently and economically than can the central duplicating department, he may, in his discretion, exempt such particular department from the provisions of this section, or if the director believes economy or efficiency can be effected by letting such work or any part thereof to contract then he may do so in the manner provided for contracts under article two 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 exceeding one thousand dollars.

Sec. 3-b. Conspiracy to Affect Market and Prices; Penalties.—It shall be unlawful for any person to jointly combine or collude or conspire in any way to affect the market, or price, or supply of commodities or contractual services 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 exceeding one thousand dollars.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 26th

day of March, 1953.

Governor

MAR 20, 1953

D. Pitt O'Brien,
Secretary of State