

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 61

(By Mr. BROTHERTON)

PASSED FEBRUARY 25 1972

In Effect JULY 1, 1972 ~~Passage~~



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-6-72

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Senate Bill No. 61

(By MR. BROTHERTON)

[Passed February 25, 1972; in effect July 1, 1972.]

AN ACT to amend and reenact sections two and five, article one, and sections four, ten, twelve, thirteen, fourteen and fourteen-a, article three, all of chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article eleven, chapter forty-seven of said code, relating to the department of finance and administration and the commissioner thereof; abolishing the office of director of the purchasing division of such department and creating a new office of director of the purchasing division of such department; relating to the director of the purchasing division of such department and the qualifications for the office of such director and the salary of such director; relating to the bond of the commissioner; requiring the director of the purchasing division to be bonded; setting forth detailed provisions as to the bonds of the commissioner and the director of the purchasing division; relating to the cost of all such bonds; relating to rules and regulations which the director of the purchasing division must promulgate with respect to the giving of notice to vendors who pay an annual fee therefor and to the insertion of provisions in all state contracts as to damages in the event of vendor default and the qualifications of state buyers; specifying certain qualifications to be met for employment as a state buyer; requiring state buyers to be bonded separately or by a blanket bond; setting forth detailed provisions as to such bonds; relating to the cost of any such bond or bonds; expressly providing civil service coverage for the office of director of each division of said department and for state buyers; relating to the testing or evaluation of commodities and to the preparation, custody and maintenance of reports with respect to

deficiencies in vendor performance; relating to the purchase of commodities or printing without advertising for sealed bids or on the open market; specifying that bids shall not be altered or withdrawn after the appointed hour for the opening of such bids; relating to bids and duplicate bids submitted by vendors and the preservation thereof with notations thereon; relating to any deviation with respect to such duplicate bids; relating to the prequalification of a vendor to do business with the state; specifying additional information to be furnished incident to the prequalification of a vendor to do business with the state; providing exceptions to the prequalification requirements; providing criminal penalties; and providing certain exemptions under the fair trade act.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article one, and sections four, ten, twelve, thirteen, fourteen and fourteen-a, article three, all of chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article eleven, chapter forty-seven of said code be amended and reenacted, all to read as follows:

CHAPTER 5A.

DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-2. Department of finance and administration and office of commissioner continued; commissioner; divisions; directors.

1 The department of finance and administration and the
2 office of commissioner of finance and administration are
3 hereby continued in the executive branch of state govern-
4 ment. The commissioner shall be the chief executive
5 officer of the department and director of the budget and
6 shall be appointed by the governor, by and with the ad-
7 vice and consent of the Senate, for a term not exceeding
8 the term of the governor. The commissioner shall serve
9 at the will and pleasure of the governor. The annual
10 compensation of the commissioner shall be twenty
11 thousand dollars. There shall be in the department of

12 finance and administration a budget division, a purchas-
13 ing division and a general services division. Each divi-
14 sion shall be headed by a director who shall be appointed
15 by the commissioner. The office of director of the pur-
16 chasing division is hereby abolished, and a new office of
17 director of the purchasing division is hereby created. No
18 person shall be appointed director of the purchasing di-
19 vision unless such person is at the time of appointment
20 a graduate of an accredited college or university
21 and shall have spent a minimum of ten of the fifteen
22 years immediately preceding his appointment employed
23 in an executive capacity in purchasing for any unit of
24 government or for any business, commercial or industrial
25 enterprise. The director of the purchasing division shall
26 receive an annual salary of eighteen thousand dollars.
27 Any person appointed as director of any division shall
28 after such appointment be subject to the provisions of
29 article six, chapter twenty-nine of this code.

**§5A-1-5. Oath and bond of commissioner; bond required for
director of the purchasing division; bonds for
other directors and employees; cost of bonds.**

1 The commissioner, before entering upon the duties of
2 his office, shall take and subscribe to the oath prescribed
3 by section five, article four of the constitution of West
4 Virginia. He shall execute a bond in the penalty of one
5 hundred thousand dollars, payable to the state of West
6 Virginia, with a corporate bonding or surety company
7 authorized to do business in this state as surety thereon,
8 approved by the governor, in form prescribed by the at-
9 torney general and conditioned upon the faithful per-
10 formance of his duties and the accounting for all money
11 and property coming into his hands by virtue of his
12 office. The oath and bond shall be filed with the secretary
13 of state.

14 The director of the purchasing division shall also
15 execute a bond in the penalty of one hundred thousand
16 dollars, payable to the state of West Virginia, with a
17 corporate bonding or surety company authorized to do
18 business in this state as surety thereon, approved by the
19 governor, in form prescribed by the attorney general

20 and conditioned upon the faithful performance of his
21 duties under the provisions of this chapter and all rules
22 and regulations promulgated pursuant to such chapter
23 and the accounting for all money and property coming
24 into his hands by virtue of his office. The bond shall be
25 filed with the secretary of state. The other division di-
26 rectors and all other employees shall be covered by
27 bonds in cases where the commissioner thinks it neces-
28 sary, which bonds shall be in the penalty prescribed by
29 the commissioner and shall be filed with the secretary of
30 state.

31 The cost of all such surety bonds shall be paid from
32 funds appropriated to the department of finance and ad-
33 ministration.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-4. Rules and regulations of director.

1 (a) The director shall adopt and amend rules and
2 regulations to:

3 (1) Authorize a department to purchase specified com-
4 modities directly and prescribe the manner in which such
5 purchases shall be made;

6 (2) Authorize, in writing, a department to purchase
7 commodities in the open market for immediate delivery
8 in emergencies, define such emergencies and prescribe
9 the manner in which such purchases shall be made and
10 reported to the director; and for the purposes mentioned
11 in subdivision (1) and this subdivision (2), the head of
12 any department, or the financial governing board of any
13 institution, may, with the approval of the director, make
14 requisitions upon the auditor for a sum to be known as
15 an advance allowance account, in no case to exceed five
16 percent of the total of the appropriations for any such
17 department, and the auditor shall draw his warrant upon
18 the treasurer for such accounts; and all such advance
19 allowance accounts shall be accounted for by the head
20 of the department or institution once every thirty
21 days or oftener if required by the state auditor or
22 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
34 submitted with a bid or contract and the amount of
35 deposit or bond to be given for the faithful performance
36 of a contract;

37 (7) Prescribe a system whereby the director shall be
38 required upon the payment by a vendor of an annual fee
39 established by the director, to give notice to such vendor
40 of all bid solicitations for commodities of the type with
41 respect to which such vendor specified notice was to be
42 given, but no such fee shall exceed the cost of giving the
43 notice to such vendor;

44 (8) Prescribe that each state contract entered into by
45 the purchasing division shall contain provisions for
46 liquidated damages, or provisions for the determination
47 of the amount or amounts which the vendor shall owe
48 as damages, in the event of default under such contract
49 by such vendor; and

50 (9) Provide for such other matters as may be neces-
51 sary to give effect to the foregoing rules and regulations
52 and the provisions of this article.

53 (b) The director shall also adopt and amend rules and
54 regulations to prescribe qualifications to be met by any
55 person who, on and after the effective date of this sec-
56 tion, is to be employed in the purchasing division as a
57 state buyer. Such rules and regulations shall provide
58 that no person shall be so employed as a state buyer
59 unless such person at the time of employment either
60 is (1) a graduate of an accredited college or uni-

61 versity or (2) has at least four years' experience in
62 purchasing for any unit of government or for any busi-
63 ness, commercial or industrial enterprise. Any person
64 employed as a state buyer on the effective date of this
65 section and any person employed on and after the effec-
66 tive date of this section as a state buyer shall execute
67 a bond in the penalty of fifty thousand dollars, payable
68 to the state of West Virginia, with a corporate bonding
69 or surety company authorized to do business in this
70 state as surety thereon, in form prescribed by the attorney
71 general and conditioned upon the faithful performance
72 of his duties under the provisions of this chapter and
73 the rules and regulations of the director. In lieu of
74 separate bonds for such state buyers, a blanket surety
75 bond may be obtained. Any such bond or bonds shall
76 be filed with the secretary of state. The cost of any
77 such bond or bonds shall be paid from funds appropriated
78 to the department of finance and administration. Those
79 persons now serving as state buyers shall remain subject
80 to the provisions of article six, chapter twenty-nine of
81 this code, and those persons employed as state buyers on
82 and after the effective date of this section shall be sub-
83 ject to the provisions of said article six.

**§5A-3-10. Examination and testing of purchases; report re-
quired.**

1 Within the limit of funds available for the purpose, the
2 director, or some person appointed by him for that pur-
3 pose, shall examine and test upon delivery commodities
4 purchased by the state to determine whether such com-
5 modities conform to the standard specifications promul-
6 gated and adopted pursuant to section five of this article,
7 and whether the commodities delivered conform with the
8 purchase orders and contracts therefor. If such test dis-
9 closes or the spending unit determines that the commod-
10 ities fail to so conform, the director, or the person ap-
11 pointed by him to perform such test as aforesaid, or the
12 spending unit, as the case may be, shall prepare a report,
13 which shall name the commodities and the vendor who or
14 which supplied them and shall enumerate the reasons

15 why such commodities failed to conform to the standard
16 specifications or with the purchase contracts. One copy of
17 such report shall be delivered to the chief officer of the
18 spending unit for which the commodities were purchased,
19 one copy shall be furnished to the vendor and one copy
20 shall be preserved by the director as a public record.

**§5A-3-12. Publication of solicitations for sealed bids; purchase
of products of nonprofit workshops.**

1 The director shall solicit sealed bids for the purchase of
2 commodities and printing which is estimated to exceed
3 two thousand dollars. No spending unit shall issue a
4 series of requisitions which would circumvent this two
5 thousand dollar maximum. Bids shall be obtained by
6 public notice published as a Class II legal advertisement
7 in compliance with the provisions of article three, chapter
8 fifty-nine of this code, and the publication area for such
9 publication shall be the county where the department or
10 agency making the requisition is located. Such notice
11 shall be so published within the fourteen days next pre-
12 ceding the final date of submitting bids. The notice may
13 also be published by any other advertising medium the
14 director may deem advisable. The director may also
15 solicit sealed bids by sending requests by mail to pros-
16 pective suppliers and by posting notice on a bulletin
17 board in his office: *Provided*, That the director shall, with-
18 out competitive bidding, purchase commodities and print-
19 ing produced and offered for sale by nonprofit workshops,
20 as defined in section one, article one of this chapter, which
21 are located in this state: *Provided, however*, That such
22 commodities and printing shall be of a price and quality
23 comparable to other commodities and printing otherwise
24 available.

§5A-3-13. Purchasing in open market on competitive bids.

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

§5A-3-14. Bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids.

1 Bids shall be based on the standard specifications
2 promulgated and adopted in accordance with the pro-
3 visions of section five of this article, and shall not be
4 altered or withdrawn after the appointed hour for the
5 opening of such bids. All open market orders, purchases
6 based on advertised bid requests, or contracts made by
7 the director or by a state department shall be awarded
8 to the lowest responsible bidder, taking into consideration
9 the qualities of the articles to be supplied, their con-
10 formity with specifications, their suitability to the re-
11 quirements of the state government and the delivery
12 terms. Any or all bids may be rejected. If all bids re-
13 ceived on a pending contract are for the same unit price
14 or total amount, the director shall have authority to reject
15 all bids, and to purchase the required commodities and
16 printing in the open market, if the price paid in the open
17 market does not exceed the bid prices.

18 All bidders submitting bid proposals to the purchasing
19 division are required to submit an exact or duplicate copy
20 to the state auditor. Both copies must be received at the
21 respective offices prior to the specified date and time of
22 the bid openings. The failure to deliver or the nonreceipt
23 of these bid forms at either of these offices prior to the
24 appointed date and hour are grounds for rejection of the
25 bids. In the event of any deviation between the copies
26 submitted to the purchasing division and the state auditor,
27 such bids as to which there is such deviation shall be
28 rejected, if the deviation relates to the quantity, quality
29 or specifications of the commodities or printing to be
30 furnished or to the price therefor or to the date of de-
31 livery or performance. After the award of the order or
32 contract, the director, or someone appointed by him for
33 that purpose, shall indicate upon the successful bid and its
34 copy in the office of the state auditor that it was the
35 successful bid. Thereafter, the copy of each bid in the
36 possession of the director and the state auditor shall be

37 maintained as a public record by both of them, shall be
38 open to public inspection in the offices of both the director
39 and the state auditor and shall not be destroyed by either
40 of them without the written consent of the legislative
41 auditor.

**§5A-3-14a. Prequalification disclosure by vendors required;
form and contents; register of vendors; false
affidavits, etc.; penalties.**

1 The director shall reject any bid received from any
2 vendor unless the vendor has filed with the director an
3 affidavit of the vendor or the affidavit of a member of
4 the vendor's firm, or, if the vendor be a corporation, the
5 affidavit of an officer, director or managing agent, of such
6 corporation, disclosing the following information:

7 (1) If the vendor be an individual, his name and resi-
8 dence address, and, if he has associates or partners sharing
9 in his business, their names and residence addresses;

10 (2) If the vendor be a firm, the name and residence
11 address of each member, partner or associate of the firm;

12 (3) If the vendor be a corporation created under the
13 laws of this state, the name and business address of the
14 corporation; the names and residence addresses of the
15 president, vice president, secretary, treasurer and general
16 manager, if any, of the corporation; and the names and
17 residence addresses of each stockholder of the corporation
18 owning or holding at least ten percent of the capital stock
19 thereof;

20 (4) If the vendor be a foreign corporation, the name
21 and business address of the corporation; the names and
22 residence addresses of the president, vice president, secre-
23 tary, treasurer and general manager, if any, of the cor-
24 poration; and the names and residence addresses of each
25 stockholder of the corporation owning or holding at least
26 ten percent of the capital stock thereof;

27 (5) A list of other states with which the vendor is
28 qualified to do business and a statement of whether any
29 state has disqualified the vendor to do business with it,
30 and if so, a statement of the particulars pertaining to the
31 disqualification;

32 (6) A statement of whether the vendor in submitting
33 a bid is acting as agent for some other individual, firm
34 or corporation, and if so, a statement of the principal
35 authorizing such representation shall be attached to the
36 affidavit;

37 (7) A statement of the vendor's net worth;

38 (8) The vendor's latest Dun & Bradstreet rating, if
39 there be any such rating as to such vendor;

40 (9) A list of one or more banking institutions to serve
41 as references for such vendor;

42 (10) A statement of whether or not those owning a
43 controlling interest of such vendor or serving as the
44 managers or officers of such vendor have done business
45 within the preceding ten years under a different name or
46 under a form of business organization (that is, as an
47 individual, firm or corporation) different from the form
48 of business organization of the vendor at the time of
49 the making of such affidavit, and if so, the names or forms
50 of business organization, or both such names and forms,
51 under which such business was conducted; and

52 (11) The name and state of incorporation of each cor-
53 poration in which at least ten percent of the capital stock
54 is cumulatively owned by those owning a controlling
55 interest of such vendor or those serving as the managers
56 or officers of such vendor.

57 Whenever a change occurs in the information hereto-
58 fore submitted as required, such change shall be reported
59 immediately in the same manner as required in the orig-
60 inal disclosure affidavit.

61 The affidavit and information so received by the direc-
62 tor shall be kept in a register of vendors which shall be
63 a public record and open to public inspection during
64 regular business hours in the director's office and made
65 readily available to the public at such time.

66 The director may waive the above requirements in the
67 case of any corporation listed on any nationally recog-
68 nized stock exchange and in the case of any vendor who
69 or which is the sole source for the commodity in question.

70 Any person who makes such affidavit falsely or who

71 shall knowingly file or cause to be filed with the director,
72 an affidavit containing a false statement of a material
73 fact or omitting any material fact, shall be guilty of a
74 misdemeanor, and, upon conviction thereof, shall be fined
75 not more than one thousand dollars, and, in the discretion
76 of the court, confined in jail not more than one year. In
77 any such case, an individual so convicted shall be ad-
78 judged forever incapable of holding any office of honor,
79 trust or profit in this state, or of serving as a juror.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 11. FAIR TRADE ACT.

§47-11-7. Exemptions.

1 This article shall not apply to any contract or agree-
2 ment between or among producers, except as provided in
3 subdivision (c) of section two of this article, or between
4 or among wholesalers or between or among retailers as
5 to sale or resale prices. This article shall not apply to
6 any sale to or any contract or purchase made by the state
7 of West Virginia or any of its departments or agencies or
8 any political subdivision of or municipality within said
9 state or any of their departments or agencies.

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

Russell L. Beane
Chairman Senate Committee

Phyllis Rutledge
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1972.

Howard W. Carson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Edmund C. Byrne
President of the Senate

Lewis D. McQueen
Speaker House of Delegates

The within approved this the 6th
day of March, 1972.

Rich A. Shaare Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/1/72

Time 4:00 p.m.

MAR 6 4 14 PM '72

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA