WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
SENATE BILL NO. 61
(By Mr. BROTHERTON)

PASSED FEBRUARY 25, 1972

In Effect JULY 1, 1972

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

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or printing without advertising for sealed bids or on the open market; specifying that bids shall not be altered or withdrawn after the appointed hour for the opening of such bids; relating to bids and duplicate bids submitted by vendors and the preservation thereof with notations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 office of commissioner of finance and administration are hereby continued in the executive branch of state government. The commissioner shall be the chief executive officer of the department and director of the budget and shall be appointed by the governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the governor. The commissioner shall serve at the will and pleasure of the governor. The annual compensation of the commissioner shall be twenty thousand dollars. There shall be in the department of
finance and administration a budget division, a purchasing division and a general services division. Each division shall be headed by a director who shall be appointed by the commissioner. The office of director of the purchasing division is hereby abolished, and a new office of director of the purchasing division is hereby created. No person shall be appointed director of the purchasing division unless such person is at the time of appointment a graduate of an accredited college or university and shall have spent a minimum of ten of the fifteen years immediately preceding his appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise. The director of the purchasing division shall receive an annual salary of eighteen thousand dollars. Any person appointed as director of any division after such appointment be subject to the provisions of 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.

The commissioner, before entering upon the duties of his office, shall take and subscribe to the oath prescribed by section five, article four of the constitution of West Virginia. He shall execute a bond in the penalty of one hundred thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, 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 hands by virtue of his office. The oath and bond shall be filed with the secretary of state.

The director of the purchasing division shall also execute a bond in the penalty of one hundred thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, approved by the governor, in form prescribed by the attorney general.
and conditioned upon the faithful performance of his duties under the provisions of this chapter and all rules and regulations promulgated pursuant to such chapter and the accounting for all money and property coming into his hands by virtue of his office. The bond shall be filed with the secretary of state. The other division directors and all other employees shall be covered by bonds in cases where the commissioner thinks it necessary, which bonds shall be in the penalty prescribed by the commissioner and shall be filed with the secretary of state. The cost of all such surety bonds shall be paid from funds appropriated to the department of finance and administration.

ARTICLE 3. PURCHASING DIVISION.

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

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

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

2. (2) Authorize, in writing, a department to purchase commodities 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 subdivision (1) and this subdivision (2), the head of any department, or the financial governing board of any institution, may, with the approval 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 percent of the total of the appropriations for any such department, and the auditor shall draw his warrant upon the treasurer for such accounts; and 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 auditor 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 submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;
(7) Prescribe a system whereby the director shall be required upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor;
(8) Prescribe that each state contract entered into by the purchasing division shall contain provisions for liquidated damages, or provisions for the determination of the amount or amounts which the vendor shall owe as damages, in the event of default under such contract by such vendor; and
(9) Provide for such other matters as may be necessary to give effect to the foregoing rules and regulations and the provisions of this article.

(b) The director shall also adopt and amend rules and regulations to prescribe qualifications to be met by any person who, on and after the effective date of this section, is to be employed in the purchasing division as a state buyer. Such rules and regulations shall provide that no person shall be so employed as a state buyer unless such person at the time of employment either is (1) a graduate of an accredited college or uni-
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versity or (2) has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise. Any person employed as a state buyer on the effective date of this section and any person employed on and after the effective date of this section as a state buyer shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of his duties under the provisions of this chapter and the rules and regulations of the director. In lieu of separate bonds for such state buyers, a blanket surety bond may be obtained. Any such bond or bonds shall be filed with the secretary of state. The cost of any such bond or bonds shall be paid from funds appropriated to the department of finance and administration. Those persons now serving as state buyers shall remain subject to the provisions of article six, chapter twenty-nine of this code, and those persons employed as state buyers on and after the effective date of this section shall be subject to the provisions of said article six.

§5A-3-10. Examination and testing of purchases; report required.

1. Within the limit of funds available for the purpose, the director, or some person appointed by him for that purpose, shall examine and test upon delivery commodities purchased by the state to determine whether such commodities conform to the standard specifications promulgated and adopted pursuant to section five of this article, and whether the commodities delivered conform with the purchase orders and contracts therefor. If such test discloses or the spending unit determines that the commodities fail to so conform, the director, or the person appointed by him to perform such test as aforesaid, or the spending unit, as the case may be, shall prepare a report, which shall name the commodities and the vendor who or which supplied them and shall enumerate the reasons
why such commodities failed to conform to the standard
specifications or with the purchase contracts. One copy of
such report shall be delivered to the chief officer of the
spending unit for which the commodities were purchased,
one copy shall be furnished to the vendor and one copy
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.

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

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

The director may make a purchase of commodities and
printing of two thousand dollars or less in amount in the
open market, but such purchase shall, wherever possible,
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 promulgated and adopted in accordance with the provisions of section five of this article, and shall not be altered or withdrawn after the appointed hour for the opening of such bids. All open market orders, purchases based on advertised bid requests, or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, 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 required commodities and printing in the open market, if the price paid in the open market does not exceed the bid prices.

2. All bidders submitting bid proposals to the purchasing division are required to submit an exact or duplicate copy to the state auditor. Both copies must be received at the respective offices prior to the specified date and time of the bid openings. The failure to deliver or the nonreceipt of these bid forms at either of these offices prior to the appointed date and hour are grounds for rejection of the bids. In the event of any deviation between the copies submitted to the purchasing division and the state auditor, such bids as to which there is such deviation shall be rejected, if the deviation relates to the quantity, quality or specifications of the commodities or printing to be furnished or to the price therefor or to the date of delivery or performance. After the award of the order or contract, the director, or someone appointed by him for that purpose, shall indicate upon the successful bid and its copy in the office of the state auditor that it was the successful bid. Thereafter, the copy of each bid in the possession of the director and the state auditor shall be
maintained as a public record by both of them, shall be open to public inspection in the offices of both the director and the state auditor and shall not be destroyed by either of them without the written consent of the legislative auditor.

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

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

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

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

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

(4) If the vendor be a foreign corporation, the name and business address of the corporation; the names and residence addresses of the president, vice president, secretary, treasurer and general manager, if any, of the corporation; and the names and residence addresses of each stockholder of the corporation owning or holding at least ten percent of the capital stock thereof;

(5) A list of other states with which the vendor is qualified to do business and a statement of whether any state has disqualified the vendor to do business with it, and if so, a statement of the particulars pertaining to the disqualification;
(6) A statement of whether the vendor in submitting a bid is acting as agent for some other individual, firm or corporation, and if so, a statement of the principal authorizing such representation shall be attached to the affidavit;

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

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

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

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

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

Whenever a change occurs in the information heretofore submitted as required, such change shall be reported immediately in the same manner as required in the original disclosure affidavit.

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

The director may waive the above requirements in the case of any corporation listed on any nationally recognized stock exchange and in the case of any vendor who or which is the sole source for the commodity in question.

Any person who makes such affidavit falsely or who
shall knowingly file or cause to be filed with the director, an affidavit containing a false statement of a material fact or omitting any material fact, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and, in the discretion of the court, confined in jail not more than one year. In any such case, an individual so convicted shall be adjudged forever incapable of holding any office of honor, 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 agreement between or among producers, except as provided in subdivision (c) of section two of this article, or between or among wholesalers or between or among retailers as to sale or resale prices. This article shall not apply to any sale to or any contract or purchase made by the state of West Virginia or any of its departments or agencies or any political subdivision of or municipality within said state or any of their departments or agencies.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1972.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within [Approved] this the 6th day of March, 1972.

[Signature]
Governor
PRESENTED TO THE GOVERNOR

Date  3/1/72
Time   4:00 p.m.

MAR 6 4 '72
OFFICE OF SECRETARY OF STATE
STATE OF WEST VIRGINIA