

No: 1750

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1750

(By Mr. Schifano + Mr. Martin)

— ● —

Passed March 12, 1983

In Effect Ninety Days From Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 1750**

(By MR. SCHIFANO and MR. MARTIN, 32nd Dist.)

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[Passed March 12, 1983; in effect ninety days from passage.]

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AN ACT to amend and reenact section three, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-six, chapter eighteen of said code by adding thereto four new sections, designated sections ten-c, ten-d, ten-e and ten-f, relating to excluding certain contracts entered into by the West Virginia board of regents from review and approval of director of purchasing unless the board requests otherwise; authorizing the West Virginia board of regents to purchase or acquire materials, supplies, equipment and printing required by the state colleges and universities; adopting rules and regulations; rejecting and awarding bids; preferring resident vendors; maintaining purchase file; requiring qualified buyers by rules and regulations and bond; limiting purchases; providing advance allowance account; providing for contracts and requiring performance bond; making director of purchases available; providing for disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; making other code provisions relating to purchasing not controlling as to purchase, acquisition or disposition of equipment, materials, supplies and printing by the West Virginia board of regents; exceptions; providing for application of criminal provisions and penalties for certain violations; requiring prequalification disclosure by vendors and registration of vendors and exceptions; making certain persons ineligible to

sell or offer to sell commodities or printing; and providing for suspension and review of suspension.

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

That section three, article three, chapter five-a, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article twenty-six, chapter eighteen of said code be amended by adding thereto four new sections, designated sections ten-c, ten-d, ten-e and ten-f, all to read as follows:

**CHAPTER 5A. DEPARTMENT OF FINANCE AND  
ADMINISTRATION.**

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-3. Powers and duties of director of purchasing.**

1 The director, under the direction and supervision of the  
2 commissioner, shall be the executive officer of the purchasing  
3 division and shall have the power and duty to:

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

7 (2) Apply and enforce standard specifications established  
8 in accordance with section five of this article as hereinafter  
9 provided;

10 (3) Transfer to or between departments or sell commodities  
11 that are surplus, obsolete or unused as hereinafter provided;

12 (4) Have charge of central storerooms for the supply of  
13 departments;

14 (5) Establish and maintain a laboratory for the testing  
15 of commodities and make use of existing facilities in state  
16 institutions for that purpose as hereinafter provided;

17 (6) Direct the state agency for surplus property as pro-  
18 vided in sections forty-four and forty-five of this article;

19 (7) Recommend to the commissioner that the right and  
20 privilege of a person to bid on state purchases be suspended

21 when the director has evidence that such person has violated  
22 any of the provisions of the purchasing law or the rules and  
23 regulations of the director;

24 (8) Examine the provisions and terms of every contract  
25 entered into for and on behalf of the state of West Virginia  
26 that impose any obligation upon the state to pay any sums of  
27 money or perform any particular service or do any act or deed  
28 and approve each such contract as to such provisions and terms;  
29 and the duty of examination and approval herein set forth does  
30 not supersede the responsibility and duty of the attorney gen-  
31 eral to approve such contracts as to form: *Provided*, That the  
32 provisions of this subdivision do not apply in any respect  
33 whatever to construction or repair contracts entered into by  
34 the state commissioner of highways: *Provided, however*, That  
35 the provisions of this subdivision do not apply in any respect  
36 whatever to contracts entered into by the West Virginia  
37 board of regents for the purchase or acquisition of materials,  
38 supplies, equipment and printing except to the extent that the  
39 board of regents requests the facilities and services of the  
40 director under the provisions of this subdivision.

41 (9) Assure that the specifications and product descriptions  
42 in all "requests for quotations" are prepared so as to permit  
43 all potential suppliers-vendors who can meet the requirements  
44 of the state an opportunity to bid. If a state department or  
45 agency other than the purchasing division prepared the speci-  
46 fications or descriptions, the director of the purchasing division  
47 shall review such specifications and descriptions before solicit-  
48 ing bids to assure that the specifications and descriptions do  
49 not favor a particular brand of product or vendor. If he de-  
50 termines that any such specifications or descriptions as written  
51 favor a particular brand of product or vendor or if it is de-  
52 cided, either before or after the bids are opened, that a product  
53 having different specifications or quality or in different quan-  
54 tity will be bought, the director shall rewrite the "requests  
55 for quotations" and the matter shall be rebid.

**§18-26-10c. Purchase or acquisition of materials, supplies, equip-  
ment and printing.**

1 All materials, supplies, equipment and printing required for

2 the board, the state universities and the state colleges shall  
3 be purchased or acquired by the board. The board shall adopt  
4 rules and regulations governing and controlling acquisitions  
5 and purchases in accordance with the provisions of this sec-  
6 tion. Such rules and regulations shall assure that the board:  
7 shall not preclude any person from participating and making  
8 sales thereof to the board except as otherwise provided in  
9 section ten-f of this article; shall establish and prescribe speci-  
10 fications, in all proper cases, for materials, supplies, equip-  
11 ment and printing to be purchased; shall adopt and prescribe  
12 such purchase order, requisition or other forms as may be re-  
13 quired; shall negotiate for and make purchases and acquisi-  
14 tions in such quantities, at such times and under contract, in  
15 the open market or through other accepted methods of  
16 governmental purchasing as may be practicable in accordance  
17 with general law; shall advertise for bids on all purchases ex-  
18 ceeding five thousand dollars, to purchase by means of sealed  
19 bids and competitive bidding or to effect advantageous pur-  
20 chases through other accepted governmental methods and  
21 practices; and shall post in a public place in the central office  
22 of the board, in the purchasing office of the specific institu-  
23 tion involved in the purchase and in the office of the depart-  
24 ment of purchases, available to the public during all business  
25 hours, notices of all acquisitions and purchases for which com-  
26 petitive bids are being solicited, at least two weeks prior to  
27 making such purchases.

28 The board shall further adopt rules and regulations relating  
29 to purchasing in the open market pursuant to section thirteen,  
30 article three, chapter five-a of this code, and shall further  
31 make provision for vendor notification of bid solicitation and  
32 emergency purchasing.

33 Any or all bids may be rejected. However, all purchases  
34 based on advertised bid requests shall be awarded to the  
35 lowest responsible bidder taking into consideration the quali-  
36 ties of the articles to be supplied, their conformity with speci-  
37 fications, their suitability to the requirements of the board  
38 and delivery terms: *Provided*, That the preference for resi-  
39 dent vendors as provided in section forty-four, article three of  
40 said chapter five-a shall apply to the competitive bids made  
41 pursuant to this section.

42 The board of regents shall maintain a purchase file, which  
43 shall be a public record and open for public inspection. After  
44 the award of the order or contract, the board of regents shall  
45 indicate upon the successful bid that it was the successful bid,  
46 and shall further indicate why bids are rejected and, if the  
47 mathematical low vendor is not awarded the order or contract,  
48 the reason therefor. No records in the purchase file shall be  
49 destroyed without the written consent of the legislative auditor.

50 The board shall also adopt rules and regulations to prescribe  
51 qualifications to be met by any person who, on and after the  
52 effective date of this section, is to be employed as a buyer  
53 pursuant to this section. Such rules and regulations shall pro-  
54 vide that no person shall be employed as a buyer unless such  
55 person, at the time of employment, either is (1) a graduate of  
56 an accredited college or university or (2) has at least four  
57 years' experience in purchasing for any unit of government or  
58 for any business, commercial or industrial enterprise. Any per-  
59 son making purchases and acquisitions pursuant to this section  
60 shall execute a bond in the penalty of fifty thousand dollars,  
61 payable to the state of West Virginia, with a corporate bond-  
62 ing or surety company authorized to do business in this state  
63 as surety thereon, in form prescribed by the attorney general  
64 and conditioned upon the faithful performance of all duties  
65 in accordance with sections ten-c through ten-f of this article  
66 and the rules and regulations of the board of regents. In  
67 lieu of separate bonds for such buyers, a blanket surety bond  
68 may be obtained. Any such bond or bonds shall be filed with  
69 the secretary of state. The cost of any such bond or bonds shall  
70 be paid from funds appropriated to the board.

71 All purchases and acquisitions shall be made in consider-  
72 ation and within limits of available appropriations and funds  
73 and in accordance with applicable provisions of article two,  
74 chapter five-a of this code, relating to expenditure schedules  
75 and quarterly allotments of funds and in accordance with  
76 section sixteen, article three of said chapter.

77 The board may make requisitions upon the auditor for a  
78 sum to be known as an advance allowance account, in no case  
79 to exceed five percent of the total of the appropriations for

80 the board, and the auditor shall draw his warrant upon the  
81 treasurer for such accounts; and all such advance allowance  
82 accounts shall be accounted for by the board once every  
83 thirty days or oftener if required by the state auditor. Such  
84 authority shall not be delegated to any state institution under  
85 the control and supervision of the board.

86 Contracts entered into pursuant to this section shall be  
87 signed by the board in the name of the state and shall be  
88 approved as to form by the attorney general. A contract that  
89 requires more than six months for its fulfillment shall be  
90 filed with the state auditor. The board shall prescribe the  
91 amount of deposit or bond to be submitted with a bid or con-  
92 tract, if any, and the amount of deposit or bond to be given for  
93 the faithful performance of a contract. If the board purchases  
94 or contracts for materials, supplies, equipment and printing  
95 contrary to the provisions of sections ten-c through ten-f of  
96 this article or the rules and regulations pursuant thereto, such  
97 purchase or contract shall be void and of no effect.

98 The board may request the director of purchases to make  
99 available, from time to time, the facilities and services of his  
100 department to the board in the purchase and acquisition of  
101 materials, supplies, equipment and printing, and the director  
102 of purchases shall cooperate with the board in all such pur-  
103 chases and acquisitions upon the request of the board.

**§18-26-10d. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.**

1 The board shall dispose of obsolete and unusable equipment,  
2 surplus supplies and other unneeded materials, either by trans-  
3 fer to other governmental agencies or institutions, by ex-  
4 change or trade, or by sale as junk or otherwise. The board  
5 shall adopt rules and regulations governing and controlling the  
6 disposition of all such equipment, supplies and materials. The  
7 board shall advertise, by newspaper publication as a Class II  
8 legal advertisement in compliance with the provisions of article  
9 three, chapter fifty-nine of this code in the county in which  
10 the equipment, supplies and materials are located at least ten

11 days prior to the disposition, the availability or sales of such  
12 disposable equipment, supplies and materials and may sell  
13 same, in whole or in part, at public auction, or may transfer,  
14 exchange or trade same to other governmental agencies or in-  
15 stitutions (if by exchange or trade, then without advertising),  
16 in whole or in part, as sound business practices may warrant  
17 under existing circumstances and conditions. The board shall  
18 inventory all such disposable equipment, supplies and materials  
19 from time to time as quantity and stocks may warrant but  
20 shall make a complete annual inventory thereof as of the  
21 thirty-first day of March of each year. The board may report  
22 such inventories to the director of purchases whose services and  
23 facilities shall be available to the board in making advanta-  
24 geous disposition of any part or all of such disposable equip-  
25 ment, supplies and materials. Such inventories shall briefly  
26 describe the disposable items, the date of purchase thereof,  
27 the vendor to the board, the purchase price paid therefor and  
28 the board's order number authorizing disposition thereof and  
29 shall indicate briefly the reason said items are no longer  
30 needed or can no longer be used by the board. All such in-  
31 ventores shall be kept as public records open to public inspec-  
32 tion at one or more of the institutions under the jurisdiction of  
33 the board for a period of five years and may thereafter be de-  
34 stroyed: *Provided*, That under no circumstances shall any of  
35 the property described in this section be sold, transferred or  
36 conveyed to any private person, firm or corporation other  
37 than by public auction or as provided in article eight, chapter  
38 five-a of this code.

**§18-26-10e. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of board, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.**

1 The provisions of article three, chapter five-a of this code  
2 shall not control or govern the purchase, acquisition or other  
3 disposition of any equipment, materials, supplies or printing  
4 by the board, except as provided in sections ten-c through ten-  
5 f of this article: *Provided*, That sections thirty-six, thirty-seven

6 and thirty-eight, article three of said chapter five-a shall apply  
7 to all purchasing activities of the board.

8 Neither the board, nor any employee of the board, shall be  
9 financially interested, or have any beneficial personal interest,  
10 directly or indirectly, in the purchase of any equipment, ma-  
11 terials, supplies or printing, nor in any firm, partnership, cor-  
12 poration or association furnishing them. Neither the board nor  
13 any employee of said board shall accept or receive directly or  
14 indirectly from any person, firm or corporation, known by the  
15 board or such employee to be interested in any bid, contract  
16 or purchase, by rebate, gift or otherwise, any money or other  
17 thing of value whatsoever, or any promise, obligation or con-  
18 tract for future reward, or compensation.

19 A person who violates any of the provisions of the preceding  
20 paragraph shall be guilty of a misdemeanor, and, upon con-  
21 viction thereof, shall be confined in jail not less than three  
22 months nor more than one year, or fined not less than fifty  
23 nor more than one thousand dollars, or both, in the discretion  
24 of the court: *Provided*, That any person who violates any of  
25 such provisions by receiving money or other thing of value  
26 under circumstances constituting the crime of bribery under the  
27 provisions of section three, article five-a, chapter sixty-one of  
28 this code, shall, upon conviction of bribery, be punished as  
29 provided in said article five-a of chapter sixty-one.

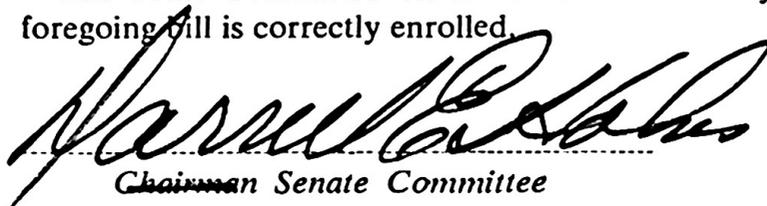
**§18-26-10f. Prequalification disclosure by vendors; register of ven-  
dors; exceptions; suspension of vendors.**

1 Every person, firm or corporation selling or offering to sell  
2 to the board, upon competitive bids or otherwise, any mater-  
3 ials, equipment, supplies or printing shall comply with all of  
4 the provisions of section fourteen-a, article three, chapter five-  
5 a of this code and shall file with the director of the purchas-  
6 ing division of the state of West Virginia the affidavit re-  
7 quired herein: *Provided*, That every such person, firm or  
8 corporation who is presently in compliance with said section  
9 shall not be required to requalify thereunder to be able to  
10 transact business with the board.

11 Any person, firm or corporation failing or refusing to com-  
12 ply with said statute as herein required shall be ineligible to

13 sell or offer to sell commodities or printing to the board as  
14 hereinafter set forth: *Provided*, That any person suspended  
15 under the provisions of section thirty-nine of said article three  
16 shall not be eligible to sell or offer to sell commodities or  
17 printing to the board: *Provided, however*, That the board shall  
18 have the power and authority to suspend, for a period not to  
19 exceed one year, the right and privilege of a person to bid on  
20 purchases of the board when there is reason to believe that  
21 such person has violated any of the provisions in section ten-c  
22 through ten-f of this article or the rules and regulations of the  
23 board pursuant thereto. Every person whose right to bid has  
24 been so suspended shall be notified thereof by a letter posted  
25 by registered mail containing the reason for such suspension  
26 and shall have the right to have the board's action reviewed in  
27 accordance with section forty, article three of chapter five-a  
28 of this code.

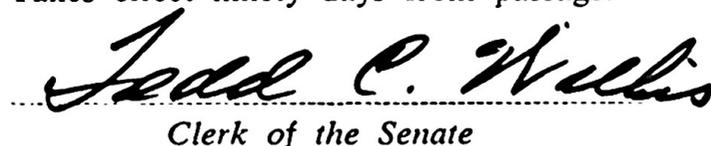
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

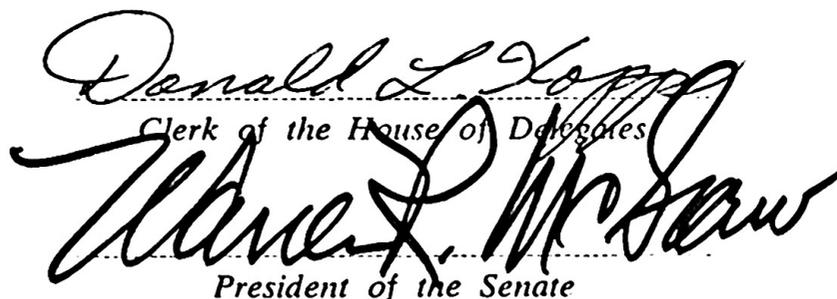
  
Chairman Senate Committee

  
Chairman House Committee

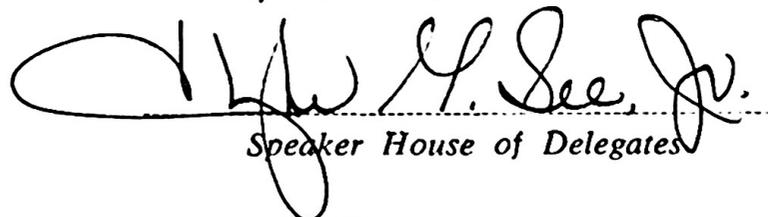
Originating in the House.

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 is appended this the 29  
day of March, 1983.

  
Governor

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SECY. OF STATE