WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

House Bill No. 1750

Comm. Sub. for
HOUSE BILL No. 1750

(By Mr. Schifano and Mr. Martin)

Passed March 12, 1983

In Effect Ninety Days From Passage

Date 3-29-83
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1750
(By Mr. Schifano and Mr. Martin, 32nd Dist.)

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

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 commissioner, shall be the executive officer of the purchasing division and shall have the power and duty to:

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

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

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

5. (4) Have charge of central storerooms for the supply of departments;

6. (5) 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;

7. (6) Direct the state agency for surplus property as provided in sections forty-four and forty-five of this article;

8. (7) Recommend to the commissioner that the right and privilege of a person to bid on state purchases be suspended
when the director has evidence that such person has violated
any of the provisions of the purchasing law or the rules and
regulations of the director;

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

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

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

All materials, supplies, equipment and printing required for
the board, the state universities and the state colleges shall be purchased or acquired by the board. The board shall adopt rules and regulations governing and controlling acquisitions and purchases in accordance with the provisions of this section. Such rules and regulations shall assure that the board:

shall not preclude any person from participating and making sales thereof to the board except as otherwise provided in section ten-f of this article; shall establish and prescribe specifications, in all proper cases, for materials, supplies, equipment and printing to be purchased; shall adopt and prescribe such purchase order, requisition or other forms as may be required; shall negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law; shall advertise for bids on all purchases exceeding five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices; and shall post in a public place in the central office of the board, in the purchasing office of the specific institution involved in the purchase and in the office of the department of purchases, available to the public during all business hours, notices of all acquisitions and purchases for which competitive bids are being solicited, at least two weeks prior to making such purchases.

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

Any or all bids may be rejected. However, all purchases based on advertised bid requests 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 board and delivery terms: Provided, That the preference for resident vendors as provided in section forty-four, article three of said chapter five-a shall apply to the competitive bids made pursuant to this section.
The board of regents shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the board of regents shall indicate upon the successful bid that it was the successful bid, and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. No records in the purchase file shall be destroyed without the written consent of the legislative auditor.

The board shall also adopt 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 as a buyer pursuant to this section. Such rules and regulations shall provide that no person shall be employed as a buyer unless such person, at the time of employment, either is (1) a graduate of an accredited college or university 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 making purchases and acquisitions pursuant to this section 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 all duties in accordance with sections ten-c through ten-f of this article and the rules and regulations of the board of regents. In lieu of separate bonds for such 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 board.

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

The board may 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
the board, 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 board once every
thirty days or oftener if required by the state auditor. Such
authority shall not be delegated to any state institution under
the control and supervision of the board.

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

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

§18-26-10d. Disposition of obsolete and unusable equipment, sur-
plus supplies and other unneeded materials; inven-
tories.

The board shall dispose of obsolete and unusable equipment,
surplus supplies and other unneeded materials, either by trans-
fer to other governmental agencies or institutions, by ex-
change or trade, or by sale as junk or otherwise. The board
shall adopt rules and regulations governing and controlling the
disposition of all such equipment, supplies and materials. The
board shall advertise, by newspaper publication as a Class II
legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code in the county in which
the equipment, supplies and materials are located at least ten
days prior to the disposition, the availability or sales of such
Disposable equipment, supplies and materials and may sell
same, in whole or in part, at public auction, or may transfer,
exchange or trade same to other governmental agencies or in-
stitutions (if by exchange or trade, then without advertising),
in whole or in part, as sound business practices may warrant
under existing circumstances and conditions. The board shall
inventory all such disposable equipment, supplies and materials
from time to time as quantity and stocks may warrant but
shall make a complete annual inventory thereof as of the
thirty-first day of March of each year. The board may report
such inventories to the director of purchases whose services and
facilities shall be available to the board in making advanta-
geous disposition of any part or all of such disposable equip-
ment, supplies and materials. Such inventories shall briefly
describe the disposable items, the date of purchase thereof,
the vendor to the board, the purchase price paid therefor and
the board's order number authorizing disposition thereof and
shall indicate briefly the reason said items are no longer
needed or can no longer be used by the board. All such in-
vентories shall be kept as public records open to public inspec-
tion at one or more of the institutions under the jurisdiction of
the board for a period of five years and may thereafter be de-
stroyed: Provided, That under no circumstances shall any of
the property described in this section be sold, transferred or
conveyed to any private person, firm or corporation other
than by public auction or as provided in article eight, chapter
five-a of this code.

§18-26-10e. Other code provisions relating to purchasing not con-
trolling; exceptions; criminal provisions and penal-
ties; financial interest of board, etc.; receiving any-
thing of value from interested party and penalties therefor; application of bribery statute.

The provisions of article three, chapter five-a of this code
shall not control or govern the purchase, acquisition or other
disposition of any equipment, materials, supplies or printing
by the board, except as provided in sections ten-c through ten-
f of this article: Provided, That sections thirty-six, thirty-seven
and thirty-eight, article three of said chapter five-a shall apply to all purchasing activities of the board.

Neither the board, nor any employee of the board, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the board nor any employee of said board shall accept or receive directly or indirectly from any person, firm or corporation, known by the board or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward, or compensation.

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

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

Every person, firm or corporation selling or offering to sell to the board, upon competitive bids or otherwise, any materials, equipment, supplies or printing shall comply with all of the provisions of section fourteen-a, article three, chapter five-a of this code and shall file with the director of the purchasing division of the state of West Virginia the affidavit required herein: Provided, That every such person, firm or corporation who is presently in compliance with said section shall not be required to requalify thereunder to be able to transact business with the board.

Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to
sell or offer to sell commodities or printing to the board as hereinafter set forth: Provided, That any person suspended under the provisions of section thirty-nine of said article three shall not be eligible to sell or offer to sell commodities or printing to the board: Provided, however, That the board shall have the power and authority to suspend, for a period not to exceed one year, the right and privilege of a person to bid on purchases of the board when there is reason to believe that such person has violated any of the provisions in section ten-c through ten-f of this article or the rules and regulations of the board pursuant thereto. Every person whose right to bid has been so suspended shall be notified thereof by a letter posted by registered mail containing the reason for such suspension and shall have the right to have the board’s action reviewed in accordance with section forty, article three of chapter five-a 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 approved this the 29 day of March, 1983.

Governor