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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4442

(By Delegates Linch, Pino, Varner,
Leach, Staton, Douglas and Laird)



Passed March 11, 2000

In Effect Ninety Days from Passage

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H. B. 4442

(BY DELEGATES LINCH, PINO, VARNER,
LEACH, STATON, DOUGLAS AND LAIRD)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article three, chapter five-a of said code; and to further amend said article by adding six new sections designated sections thirty-three-a, thirty-three-b, thirty-three-c, thirty-three-d, thirty-three-e and thirty-three-f; to amend and reenact section eleven, article one, chapter seven of said code; to amend and reenact section nineteen, article four, chapter seventeen of said code; to amend and reenact section fifteen, article nine-d, chapter eighteen of said code; and to amend and reenact section five, article five, chapter eighteen-b of said code, all relating to debarment of vendors from bidding on certain government contracts; debarment procedure; duties of the director of purchasing in regard to debarment; scope of the applicability of the debarment process;

providing for an administrative procedure for contesting debarment decisions; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

- 1 (a) As used in this section, "the state and its subdivisions"
- 2 means the state of West Virginia, every political subdivision
- 3 thereof, every administrative entity that includes such a
- 4 subdivision, all municipalities and all county boards of educa-
- 5 tion.

6 (b) The state and its subdivisions shall, except as provided
7 in this section, solicit competitive bids for every construction
8 project exceeding twenty-five thousand dollars in total cost:
9 *Provided*, That a vendor who has been debarred pursuant to the
10 provisions of sections thirty-three-a through thirty-three-f,
11 article three, chapter five-a of this code, may not bid on or be
12 awarded a contract under this section.

13 (c) Following the solicitation of such bids, the construction
14 contract shall be awarded to the lowest qualified responsible
15 bidder, who shall furnish a sufficient performance and payment
16 bond: *Provided*, That the state and its subdivisions may reject
17 all bids and solicit new bids on said project.

18 (d) Nothing in this section shall apply to:

19 (1) Work performed on construction or repair projects by
20 regular full-time employees of the state or its subdivisions;

21 (2) Prevent students enrolled in vocational educational
22 schools from being utilized in construction or repair projects
23 when such use is a part of the students training program;

24 (3) Emergency repairs to building components and systems.
25 For the purpose of this subdivision, emergency repairs means
26 repairs that if not made immediately will seriously impair the
27 use of such building components and systems, or cause danger
28 to those persons using such building components and systems;
29 and

30 (4) Any situation where the state or a subdivision thereof
31 shall come to an agreement with volunteers, or a volunteer
32 group, whereby the governmental body will provide construc-
33 tion or repair materials, architectural, engineering, technical or
34 any other professional services and the volunteers will provide
35 the necessary labor without charge to, or liability upon, the
36 governmental body.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on standard specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; and exception.

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

5 (b) The director may authorize spending units to purchase
6 commodities, printing and services in the amount of one
7 thousand dollars in the open market without competitive bids.

8 (c) Bids shall be based on the standard specifications
9 promulgated and adopted in accordance with the provisions of
10 section five of this article, and may not be altered or withdrawn
11 after the appointed hour for the opening of the bids.

12 (d) A vendor who has been debarred pursuant to the
13 provisions of sections thirty-three-a through thirty-three-f,
14 article three, chapter five-a of this code, may not bid on or be
15 awarded a contract under this section.

16 (e) All open market orders, purchases based on advertised
17 bid requests or contracts made by the director or by a state
18 department shall be awarded to the lowest responsible bidder,
19 taking into consideration the qualities of the articles to be
20 supplied, their conformity with specifications, their suitability
21 to the requirements of the government and the delivery terms:
22 *Provided*, That state bids on school buses shall be accepted
23 from all bidders who shall then be awarded contracts if they

24 meet the state board's "Minimum Standards for Design and
25 Equipment of School Buses". County boards of education may
26 select from those bidders who have been awarded contracts and
27 shall pay the difference between the state aid formula amount
28 and the actual cost of bus replacement. Any or all bids may be
29 rejected.

30 (f) If all bids received on a pending contract are for the
31 same unit price or total amount, the director has the authority to
32 reject all bids, and to purchase the required commodities,
33 printing and services in the open market, if the price paid in the
34 open market does not exceed the bid prices.

35 (g) All bidders submitting bid proposals to the purchasing
36 division are required to submit an extra or duplicate copy to the
37 state auditor.

38 (h) Both copies must be received at the respective offices
39 prior to the specified date and time of the bid openings. The
40 failure to deliver or the nonreceipt of these bid forms at either
41 of these offices prior to the appointed date and hour are grounds
42 for rejection of the bids. In the event of any deviation between
43 the copies submitted to the purchasing division and the state
44 auditor, the bids as to which there is a deviation shall be
45 rejected, if the deviation relates to the quantity, quality or
46 specifications of the commodities, printing or services to be
47 furnished or to the price therefor or to the date of delivery or
48 performance.

49 (i) After the award of the order or contract, the director, or
50 someone appointed by him or her for that purpose, shall
51 indicate upon the successful bid and its copy in the office of the
52 state auditor that it was the successful bid. Thereafter, the copy
53 of each bid in the possession of the director and the state auditor
54 shall be maintained as a public record by both of them, shall be
55 open to public inspection in the offices of both the director and

56 the state auditor and may not be destroyed by either of them
57 without the written consent of the legislative auditor: *Provided,*
58 That the governing board as defined in section two, article one,
59 chapter eighteen-b of this code, may certify in writing to the
60 director the need for a specific item essential to a particular
61 usage either for instructional or research purposes at an
62 institution of higher education and the director upon review of
63 such certification may provide for the purchase of said specific
64 items in the open market without competitive bids.

65 (j) If the director permits bids by facsimile transmission
66 machine to be accepted in lieu of sealed bids pursuant to the
67 provisions of section ten of this article, a duplicate facsimile
68 transmission machine bid shall be transmitted to the state
69 auditor pursuant to this section: *Provided,* That an original bid
70 is received by the state auditor within two working days
71 following the date specified for bid opening.

§5A-3-33a. Definitions.

1 For purposes of the provisions of sections thirty-three-a
2 through thirty-three-f of this article:

3 (a) "Debarment" means the exclusion of a vendor from the
4 right to bid on contracts to sell goods or supply services to the
5 state or its subdivisions for a specified period of time.

6 (b) "The state and its subdivisions" means the state of West
7 Virginia, every political subdivision thereof, every administra-
8 tive entity that includes such a subdivision, all municipalities
9 and all county boards of education.

10 (c) "Vendor" means any person or entity that is eligible to
11 bid on contracts to supply the state or its subdivisions with
12 commodities or services, including contracting services for the
13 construction and improvement of roads and buildings.

§5A-3-33b. Scope.

1 The provisions of sections thirty-three-a through thirty-
2 three-f of this article govern the debarment of vendors with
3 regard to bids under the following provisions of this code:

4 (a) Section one, article twenty-two, chapter five, relating to
5 bids for construction contracts by the state and its subdivisions;

6 (b) Section eleven, article three, chapter five-a, relating to
7 the purchase of supplies and printing by the state;

8 (c) Section eleven, article one, chapter seven, relating to
9 bids for the purchase of commodities and printing by county
10 commissions;

11 (d) Sections nineteen and twenty, article four, chapter
12 seventeen, relating to bids for construction and reconstruction
13 of state roads and bridges and the furnishing of materials and
14 supplies therefor;

15 (e) Article nine-d, chapter eighteen, relating to the awarding
16 of contracts by the school building authority; and

17 (f) Sections four and five, article five, chapter eighteen-b,
18 relating to expenditures by the governing boards for higher
19 education.

§5A-3-33c. Duties.

1 The director has primary responsibility for administering
2 the debarment process. The director's duties include:

3 (a) Obtaining lists of vendors declared ineligible under
4 federal laws and regulations;

5 (b) Notification of all contracting officials for the state and
6 its subdivisions regarding debarred vendors;

7 (c) Compiling and maintaining a current, consolidated list
8 of all vendors that have been debarred or declared ineligible,
9 the period of such debarment, and the reasons therefor;

10 (d) Investigating complaints about vendors from the
11 officials of the state and its subdivisions responsible for
12 contracting with vendors for supplies and services;

13 (e) Initiating and conducting debarment procedures;

14 (f) Proposing rules for legislative approval, pursuant to the
15 provisions of article three, chapter twenty-nine-a of this code,
16 for the operation of the debarment process described in the
17 provisions of sections thirty-three-a through thirty-three-f of
18 this article.

§5A-3-33d. Grounds for debarment.

1 Grounds for debarment are:

2 (a) Conviction of an offense involving fraud or a felony
3 offense in connection with obtaining or attempting to obtain a
4 public contract or subcontract.

5 (b) Conviction of any federal or state antitrust statute
6 relating to the submission of offers.

7 (c) Conviction of an offense involving embezzlement, theft,
8 forgery, bribery, falsification or destruction of records, making
9 false statements or receiving stolen property in connection with
10 the performance of a contract.

11 (d) Conviction of a felony offense demonstrating a lack of
12 business integrity or business honesty that affects the present
13 responsibility of the vendor or subcontractor.

14 (e) Default on obligations owed to the state, including but
15 not limited to, obligations under the West Virginia workers'

16 compensation act, the West Virginia unemployment compensa-
17 tion act, and West Virginia state tax and revenue laws. For
18 purposes of this subsection, a vendor is in default when, after
19 due notice, the vendor fails to submit a required payment,
20 interest thereon, or penalty, and has not entered into a repay-
21 ment agreement with the appropriate agency of the state, or has
22 entered into a repayment agreement but does not remain in
23 compliance with its obligations under the repayment agreement.
24 In the case of a vendor granted protection by order of a federal
25 bankruptcy court or a vendor granted an exemption under any
26 rule of the bureau of employment programs, the director may
27 waive debarment under section thirty-three-f of this article:
28 *Provided*, That in no event may debarment be waived with
29 respect to any vendor who has not paid all current state obliga-
30 tions for at least the four most recent calendar quarters, exclud-
31 ing the current calendar quarter, or with respect to any vendor
32 who is in default on a repayment agreement with an agency of
33 the state.

34 (f) The vendor is not in good standing with a licensing
35 board, in that the vendor is not licensed when licensure is
36 required by the law of this state, or the vendor has been found
37 to be in violation of an applicable licensing law after notice,
38 opportunity to be heard and other due process required by law.

39 (g) Violation of the terms of a public contract or subcon-
40 tract for:

41 (1) Willful failure to substantially perform in accordance
42 with the terms of one or more public contracts;

43 (2) Performance in violation of standards established by
44 law or generally accepted standards of the trade or profession
45 amounting to intentionally deficient or grossly negligent
46 performance on one or more public contracts;

47 (3) Use of substandard materials on one or more public
48 contracts, or defects in construction in one or more public
49 construction projects amounting to intentionally deficient or
50 grossly negligent performance, even if discovery of the defect
51 is subsequent to acceptance of a construction project and
52 expiration of any warranty thereunder;

53 (4) A repeated pattern or practice of failure to perform so
54 serious and compelling as to justify debarment; or

55 (5) Any other cause of a serious and compelling nature
56 amounting to knowing and willful misconduct of the vendor
57 that demonstrates a wanton indifference to the interests of the
58 public and that caused, or that had a substantial likelihood of
59 causing, serious harm to the public.

§5A-3-33e. Debarment procedure.

1 (a) The director shall obtain lists of vendors declared
2 ineligible under federal laws and regulation and lists of vendors
3 who are in default on state obligations, and shall initiate
4 debarment proceedings with respect to such vendors, except
5 when good cause is shown which includes evidence that the
6 vendor has become responsible.

7 (1) In the case of federal ineligibility restrictions applicable
8 to state agencies, the director shall also notify the appropriate
9 agencies of any ineligibility determined under federal authority.

10 (2) The director may also initiate debarment proceedings if
11 he or she finds probable cause for debarment for any ground set
12 forth in section thirty-three-d of this article.

13 (3) The director shall initiate debarment proceedings when
14 any state agency requests debarment of a vendor and the
15 director finds that probable cause for debarment exists.

16 (b) The director shall notify the vendor by certified mail,
17 return receipt requested, of the following:

18 (1) The reasons for the proposed debarment in sufficient
19 detail to put the vendor on notice of the conduct or transactions
20 upon which the proposed debarment is based;

21 (2) The causes relied upon for the proposed debarment;

22 (3) That within thirty working days after receipt of the
23 notice, the vendor may submit in writing information and
24 argument in opposition to the proposed debarment;

25 (4) The procedures governing debarment decision-making;
26 and

27 (5) The potential effect of the proposed debarment.

28 (c) In the event a vendor wishes to contest the debarment
29 decision, the director shall decide the matter in accordance with
30 the provisions of article five, chapter twenty-nine-a of this code.

31 (d) In any debarment decision, the director shall make a
32 specific finding, based on the substantial record, whether the
33 public interest requires that the debarment decision extend to all
34 commodities and services of the vendor, or whether the public
35 interest allows the debarment decision to be limited to specific
36 commodities or services.

37 (e) In any debarment decision, the director shall specify the
38 length of the debarment period. The debarment period must be
39 for the period of time that the director finds necessary and
40 proper to protect the public from an irresponsible vendor.

41 (f) Proof of grounds for debarment must be clear and
42 convincing.

§5A-3-33f. Effects of debarment.

1 (a) Unless the director determines in writing that there is a
2 compelling reason to do otherwise, the state and its subdivisions
3 may not solicit offers from, award contracts to, or consent to
4 subcontract with a debarred vendor during the debarment
5 period.

6 (b) The contracting officer may not exercise an option to
7 renew or otherwise extend a current contract with a debarred
8 vendor, or a contract which is being performed in any part by
9 a debarred subcontractor, unless the director approves the
10 action in writing, based on compelling reasons for exercise of
11 the option or extension.

12 (c) The debarment decision may extend to all commodities
13 and services of the vendor, or may be limited to specific
14 commodities or services, as the director specifically finds, in
15 the debarment procedure under section thirty-three-e of this
16 article, to be in the public interest based on the substantial
17 record.

18 (d) The director may extend the debarment to include an
19 affiliate of the vendor upon proof necessary to pierce the
20 corporate veil at common law. The director shall follow the
21 same procedure, and afford the affiliate like notice, hearing and
22 other rights, for extending the debarment to the affiliate as
23 provided for under section thirty-three-e for the debarment of
24 the vendor.

25 (e) The director may reduce the period or extent of debar-
26 ment, upon the vendor's request supported by documentation,
27 for the following reasons:

28 (1) Newly discovered material evidence;

29 (2) Reversal of the conviction or judgment upon which
30 debarment was based;

31 (3) Elimination of the causes for which the debarment was
32 imposed; or

33 (4) Other good cause shown, including evidence that the
34 vendor has become responsible.

35 (f) The director may extend the debarment period for an
36 additional period if the director determines that the extension is
37 necessary to protect the interests of the state. Upon the expira-
38 tion of a debarment period, the director shall extend the
39 debarment period for any vendor who has not paid all current
40 state obligations for at least the four most recent calendar
41 quarters, exempting the current calendar quarter, and for any
42 vendor who is in default on a repayment agreement with an
43 agency of the state, until such time as the cause for the extended
44 debarment is removed. If the director extends the debarment
45 period, the director shall follow the same procedures, and afford
46 the vendor like notice, hearing and other rights for extending
47 the debarment, as provided for debarment under section thirty-
48 three-e of this article.

49 (g) A debarment under this article may be waived by the
50 director with respect to a particular contract if the director
51 determines the debarment of the vendor would severely disrupt
52 the operation of a governmental entity to the detriment of the
53 general public or would not be in the public interest.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-11. Purchasing in open market or competitive bids; debarment.

1 (a) County commissions may make a purchase of commod-
2 ities and printing of fifteen thousand dollars or less in amount
3 in the open market, but a purchase of and contract for commod-
4 ities and printing over fifteen thousand dollars shall be based on
5 competitive bids, except in case of emergency.

6 (b) The county commission of any county is authorized and
7 empowered to promulgate rules governing the procedure of
8 competitive bids: *Provided*, That a vendor who has been
9 debarred pursuant to the provisions of sections thirty-three-a
10 through thirty-three-f, article three, chapter five-a of this code,
11 may not bid on or be awarded a contract under this section.

12 (c) As used in this section, the terms "commodities" and
13 "printing" shall have the same meaning as those terms are
14 defined in section one, article one, chapter five-a of this code.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-19. Contracts for construction, materials, etc.; work by prison labor, etc.; bidding procedure.

1 (a) All work of construction and reconstruction of state
2 roads and bridges, and the furnishing of all materials and
3 supplies therefor, and for the repair thereof shall be done and
4 furnished pursuant to contract, except that the commissioner
5 may not be required to award any contract for work which can
6 be done advantageously, economically and practicably by
7 commission forces or prison labor and by use of state road
8 equipment, or for materials and supplies, which are manufac-
9 tured, processed or assembled by the commissioner: *Provided*,
10 That the commissioner may not be required to award any
11 contract for work, materials or supplies for an amount less than
12 three thousand dollars. In all the work, the commissioner shall
13 utilize state road forces or prison labor and state road equip-

14 ment and shall manufacture, process and assemble all the
15 materials and supplies for the work whenever and wherever the
16 commissioner, in his or her discretion, finds work and services
17 advantageous, economical and practicable in the state road
18 program.

19 (b) If the work is to be done, or the materials therefor are
20 to be furnished by contract, the commissioner shall thereupon
21 publish the following described advertisement as a Class II
22 legal advertisement, in compliance with the provisions of article
23 three, chapter fifty-nine of this code, and the publication area
24 for the publication shall be the county or municipality in which
25 the road lies.

26 (c) The advertisement shall also be published at least once
27 in at least one daily newspaper published in the city of
28 Charleston and in other journals or magazines as may to the
29 commissioner seem advisable. The advertisement shall solicit
30 sealed proposals for the construction or other improvement of
31 the road, and for the furnishing of materials therefor, accurately
32 describing the same, and stating the time and place for opening
33 the proposals and reserving the right to reject any and all
34 proposals: *Provided*, That whenever the estimated amount of
35 any contract for work or for materials or supplies is less than
36 three thousand dollars, the commissioner may not be required
37 to advertise the letting of the contract in newspapers as above
38 required, but may award the contract to the lowest responsible
39 bidder, when two or more sealed proposals or bids have been
40 received by him or her without the advertisement, but the
41 contract may not be so awarded unless the bid of the successful
42 bidder is three thousand dollars or less.

43 (d) The commissioner shall have the power to prescribe
44 proper prequalifications of contractors bidding on state road
45 construction work: *Provided*, That a vendor who has been
46 debarred pursuant to the provisions of sections thirty-three-a

47 through thirty-three-f, article three, chapter five-a of this code,
48 may not bid on or be awarded a contract under this section.

49 (e) To all sealed proposals there shall be attached the
50 certified check of the bidder or bidder's bond acceptable to the
51 commissioner, in the amount as the commissioner shall specify
52 in the advertisement, but not to exceed five percent of the
53 aggregate amount of the bid; but the amount shall never be less
54 than five hundred dollars. The proposals shall be publicly
55 opened and read at the time and place specified in the advertise-
56 ment, and the contract for the work, or for the supplies or
57 materials required therefor shall, if let, be awarded by the
58 commissioner to the lowest responsible bidder for the type of
59 construction selected.

60 (f) In case all bids be rejected, the commissioner may
61 thereafter do the work with commission forces or with prison
62 labor, or may readvertise in the same manner as before and let
63 a contract for the work pursuant thereto.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the school
2 building authority to facilitate and provide state funds and to
3 administer all federal funds provided for the construction and
4 major improvement of school facilities so as to meet the
5 educational needs of the people of this state in an efficient and
6 economical manner. The authority shall make funding determi-
7 nations in accordance with the provisions of this article and
8 shall assess existing school facilities and each facility's school
9 major improvement plan in relation to the needs of the individ-
10 ual student, the general school population, the communities
11 served by the facilities and facility needs statewide.

12 (b) An amount that is no more than three percent of the sum
13 of moneys that are determined by the authority to be available
14 for distribution during the then current fiscal year from: (1)
15 Moneys paid into the school building capital improvements
16 fund pursuant to section ten, article nine-a of this chapter; (2)
17 the issuance of revenue bonds for which moneys in the school
18 building debt service fund are pledged as security; (3) moneys
19 paid into the school construction fund pursuant to section six of
20 this article; and (4) any other moneys received by the authority,
21 except moneys paid into the school major improvement fund
22 pursuant to section six of this article, may be allocated and may
23 be expended by the authority for projects that service the
24 educational community statewide or, upon application by the
25 state board, for educational programs that are under the
26 jurisdiction of the state board. In addition, upon application by
27 the state board or the administrative council of an area voca-
28 tional educational center established pursuant to article two-b
29 of this chapter, the authority may allocate and expend under this
30 section moneys for school major improvement projects pro-
31 posed by the state board or an administrative council for school
32 facilities under the direct supervision of the state board or an
33 administrative council, respectively: *Provided*, That the
34 authority may not expend any moneys for a school major
35 improvement project proposed by the state board or the
36 administrative council of an area vocational educational center
37 unless the state board or an administrative council has submit-
38 ted a ten-year school major improvement plan, to be updated
39 annually, pursuant to section sixteen of this article: *Provided*,
40 *however*, That the authority shall, before allocating any moneys
41 to the state board or the administrative council of an area
42 vocational educational center for a school improvement project,
43 consider all other funding sources available for the project.

44 (c) An amount that is no more than two percent of the
45 moneys that are determined by the authority to be available for
46 distribution during the current fiscal year from: (1) Moneys

47 paid into the school building capital improvements fund
48 pursuant to section ten, article nine-a of this chapter; (2) the
49 issuance of revenue bonds for which moneys in the school
50 building debt service fund are pledged as security; (3) moneys
51 paid into the school construction fund pursuant to section six of
52 this article; and (4) any other moneys received by the authority,
53 except moneys deposited into the school major improvement
54 fund, shall be set aside by the authority as an emergency fund
55 to be distributed in accordance with the guidelines adopted by
56 the authority.

57 (d) The remaining moneys determined by the authority to
58 be available for distribution during the then current fiscal year
59 from: (1) Moneys paid into the school building capital improve-
60 ments fund pursuant to section ten, article nine-a of this
61 chapter; (2) the issuance of revenue bonds for which moneys in
62 the school building debt service fund are pledged as security;
63 (3) moneys paid into the school construction fund pursuant to
64 section six of this article; and (4) any other moneys received by
65 the authority, except moneys deposited into the school major
66 improvement fund, shall be allocated and expended on the basis
67 of need and efficient use of resources, the basis to be deter-
68 mined by the authority in accordance with the provisions of
69 section sixteen of this article.

70 (e) If a county board of education proposes to finance a
71 project that is approved pursuant to section sixteen of this
72 article through a lease with an option to purchase leased
73 premises upon the expiration of the total lease period pursuant
74 to an investment contract, the authority may allocate no moneys
75 to the county board in connection with the project: *Provided*,
76 That the authority may transfer moneys to the state board of
77 education, which, with the authority, shall lend the amount
78 transferred to the county board to be used only for a one-time
79 payment due at the beginning of the lease term, made for the

80 purpose of reducing annual lease payments under the invest-
81 ment contract, subject to the following conditions:

82 (1) The loan shall be secured in the manner required by the
83 authority, in consultation with the state board, and shall be
84 repaid in a period and bear interest at a rate as determined by
85 the state board and the authority and shall have such terms and
86 conditions as are required by the authority, all of which shall be
87 set forth in a loan agreement among the authority, the state
88 board and the county board;

89 (2) The loan agreement shall provide for the state board and
90 the authority to defer the payment of principal and interest upon
91 any loan made to the county board during the term of the
92 investment contract, and annual renewals of the investment
93 contract, among the state board, the authority, the county board
94 and a lessor: *Provided*, That in the event a county board, which
95 has received a loan from the authority for a one-time payment
96 at the beginning of the lease term, does not renew the subject
97 lease annually until performance of the investment contract in
98 its entirety is completed, the county board is in default and the
99 principal of the loan, together with all unpaid interest accrued
100 to the date of the default, shall at the option of the authority, in
101 consultation with the state board, become due and payable
102 immediately or subject to renegotiation among the state board,
103 the authority and the county board: *Provided, however*, That if
104 a county board renews the lease annually through the perfor-
105 mance of the investment contract in its entirety, the county
106 board shall exercise its option to purchase the leased premises:
107 *Provided further*, That the failure of the county board to make
108 a scheduled payment pursuant to the investment contract
109 constitutes an event of default under the loan agreement: *And*
110 *provided further*, That upon a default by a county board, the
111 principal of the loan, together with all unpaid interest accrued
112 to the date of the default, shall at the option of the authority, in
113 consultation with the state board, become due and payable

114 immediately or subject to renegotiation among the state board,
115 the authority and the county board: *And provided further*, That
116 if the loan becomes due and payable immediately, the authority,
117 in consultation with the state board, shall use all means avail-
118 able under the loan agreement and law to collect the outstand-
119 ing principal balance of the loan, together with all unpaid
120 interest accrued to the date of payment of the outstanding
121 principal balance; and

122 (3) The loan agreement shall provide for the state board and
123 the authority to forgive all principal and interest of the loan
124 upon the county board purchasing the leased premises pursuant
125 to the investment contract and performance of the investment
126 contract in its entirety.

127 (f) To encourage county boards to proceed promptly with
128 facilities planning and to prepare for the expenditure of any
129 state moneys derived from the sources described in this
130 subsection, any county board failing to expend money within
131 three years of the allocation to the county board shall forfeit the
132 allocation and thereafter is ineligible for further allocations
133 pursuant to this subsection until the county board is ready to
134 expend funds in accordance with an approved facilities plan:
135 *Provided*, That the authority may authorize an extension beyond
136 the three-year forfeiture period not to exceed an additional two
137 years. Any amount forfeited shall be added to the total funds
138 available in the school construction fund of the authority for
139 future allocation and distribution.

140 (g) The remaining moneys that are determined by the
141 authority to be available for distribution during the then current
142 fiscal year from moneys paid into the school major improve-
143 ment fund pursuant to section six of this article shall be
144 allocated and distributed on the basis of need and efficient use
145 of resources, the basis to be determined by the authority in
146 accordance with the provisions of section sixteen of this article:

147 *Provided*, That the moneys may not be distributed to any county
148 board that does not have an approved school major improve-
149 ment plan or to any county board that is not prepared to
150 commence expenditures of the funds during the fiscal year in
151 which the moneys are distributed: *Provided, however*, That any
152 moneys allocated to a county board and not distributed to that
153 county board shall be deposited in an account to the credit of
154 that county board, the principal amount to remain to the credit
155 of and available to the county board for a period of two years.
156 Any moneys which are unexpended after a two-year period
157 shall be redistributed on the basis of need from the school major
158 improvement fund in that fiscal year.

159 (h) No local matching funds may be required under the
160 provisions of this section. However, the responsibilities of the
161 county boards of education to maintain school facilities are not
162 negated by the provisions of this article. To be eligible to
163 receive an allocation of school major improvement funds from
164 the authority, a county board must have expended in the
165 previous fiscal year an amount of county moneys equal to or
166 exceeding the lowest average amount of money included in the
167 county board's maintenance budget over any three of the
168 previous five years and must have budgeted an amount equal to
169 or greater than the average in the current fiscal year: *Provided*,
170 That the state board of education shall promulgate rules relating
171 to county boards' maintenance budgets, including items which
172 shall be included in the budgets.

173 (i) Any county board may use moneys provided by the
174 authority under this article in conjunction with local funds
175 derived from bonding, special levy or other sources. Distribu-
176 tion to a county board, or to the state board or the administra-
177 tive council of an area vocational educational center pursuant
178 to subsection (b) of this section, may be in a lump sum or in
179 accordance with a schedule of payments adopted by the
180 authority pursuant to guidelines adopted by the authority.

181 (j) Funds in the school construction fund shall first be
182 transferred and expended as follows:

183 Any funds deposited in the school construction fund shall
184 be expended first in accordance with an appropriation by the
185 Legislature. To the extent that funds are available in the school
186 construction fund in excess of that amount appropriated in any
187 fiscal year, the excess funds may be expended in accordance
188 with the provisions of this article. Any projects which the
189 authority identified and announced for funding on or before the
190 first day of August, one thousand nine hundred ninety-five, or
191 identified and announced for funding on or before the
192 thirty-first day of December, one thousand nine hundred
193 ninety-five, shall be funded by the authority in an amount
194 which is not less than the amount specified when the project
195 was identified and announced.

196 (k) It is the intent of the Legislature to encourage county
197 boards to explore and consider arrangements with other
198 counties that may facilitate the highest and best use of all
199 available funds, which may result in improved transportation
200 arrangements for students, or which otherwise may create
201 efficiencies for county boards and the students. In order to
202 address the intent of the Legislature contained in this subsec-
203 tion, the authority shall grant preference to those projects which
204 involve multicounty arrangements as the authority shall
205 determine reasonable and proper.

206 (l) County boards shall submit all designs for construction
207 of new school buildings to the school building authority for
208 review and approval prior to preparation of final bid docu-
209 ments: *Provided*, That a vendor who has been debarred pursu-
210 ant to the provisions of sections thirty-three-a through thirty-
211 three-f, article three, chapter five-a of this code, may not bid on
212 or be awarded a contract under this section.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

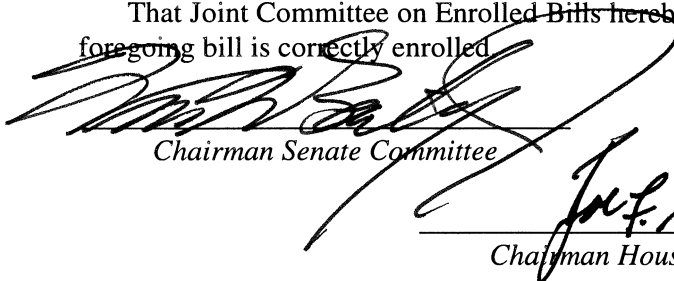
1 (a) Every person, firm or corporation selling or offering to
2 sell to the governing boards, upon competitive bids or other-
3 wise, any materials, equipment or supplies in excess of fifteen
4 thousand dollars shall comply with all of the provisions of
5 section twelve, article three, chapter five-a of this code and
6 shall file with the director of the purchasing division of the state
7 of West Virginia the affidavit required herein: *Provided*, That
8 every such person, firm or corporation who is presently in
9 compliance with said section shall not be required to requalify
10 thereunder to be able to transact business with the governing
11 boards.

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

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30 chapter five-a of this code: *Provided further*, That a vendor who
31 has been debarred pursuant to the provisions of sections thirty-
32 three-a through thirty-three-f, article three, chapter five-a of this
33 code, may not bid on or be awarded a contract under this
34 section.

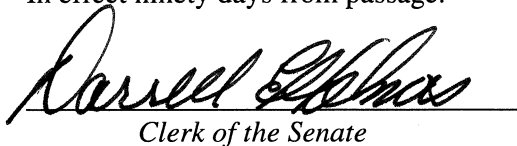
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

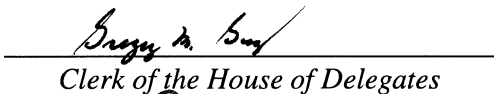

Chairman Senate Committee

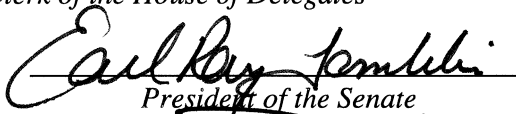

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

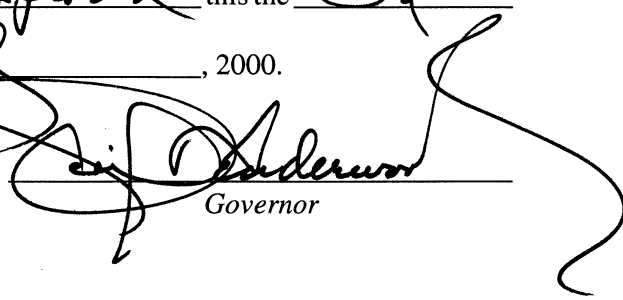

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 3rd
day of April, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/10

Time 3:12pm