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
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.

(a) As used in this section, "the state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.
(b) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total cost: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

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

(d) Nothing in this section shall apply to:

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

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

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

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

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

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

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

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

(e) 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 government and the delivery terms: Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they
meet the state board’s “Minimum Standards for Design and Equipment of School Buses”. County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected.

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

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

(h) 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, the bids as to which there is a deviation shall be rejected, if the deviation relates to the quantity, quality or specifications of the commodities, printing or services to be furnished or to the price therefor or to the date of delivery or performance.

(i) After the award of the order or contract, the director, or someone appointed by him or her 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 may not be destroyed by either of them
without the written consent of the legislative auditor: Provided,
That the governing board as defined in section two, article one,
chapter eighteen-b of this code, may certify in writing to the
director the need for a specific item essential to a particular
usage either for instructional or research purposes at an
institution of higher education and the director upon review of
such certification may provide for the purchase of said specific
items in the open market without competitive bids.

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

§5A-3-33a. Definitions.

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

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

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

(c) "Vendor" means any person or entity that is eligible to
bid on contracts to supply the state or its subdivisions with
commodities or services, including contracting services for the
construction and improvement of roads and buildings.
§5A-3-33b. Scope.

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

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

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

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

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

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

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

§5A-3-33c. Duties.

The director has primary responsibility for administering the debarment process. The director’s duties include:

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

(b) Notification of all contracting officials for the state and its subdivisions regarding debarred vendors;
(c) Compiling and maintaining a current, consolidated list of all vendors that have been debarred or declared ineligible, the period of such debarment, and the reasons therefor;

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

(e) Initiating and conducting debarment procedures;

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

§5A-3-33d. Grounds for debarment.

Grounds for debarment are:

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

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

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

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

(e) Default on obligations owed to the state, including but not limited to, obligations under the West Virginia workers'
compensation act, the West Virginia unemployment compensation act, and West Virginia state tax and revenue laws. For purposes of this subsection, a vendor is in default when, after due notice, the vendor fails to submit a required payment, interest thereon, or penalty, and has not entered into a repayment agreement with the appropriate agency of the state, or has entered into a repayment agreement but does not remain in compliance with its obligations under the repayment agreement. In the case of a vendor granted protection by order of a federal bankruptcy court or a vendor granted an exemption under any rule of the bureau of employment programs, the director may waive debarment under section thirty-three-f of this article: Provided, That in no event may debarment be waived with respect to any vendor who has not paid all current state obligations for at least the four most recent calendar quarters, excluding the current calendar quarter, or with respect to any vendor who is in default on a repayment agreement with an agency of the state.

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

(g) Violation of the terms of a public contract or subcontract for:

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

(2) Performance in violation of standards established by law or generally accepted standards of the trade or profession amounting to intentionally deficient or grossly negligent performance on one or more public contracts;
(3) Use of substandard materials on one or more public contracts, or defects in construction in one or more public construction projects amounting to intentionally deficient or grossly negligent performance, even if discovery of the defect is subsequent to acceptance of a construction project and expiration of any warranty thereunder;

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

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

§5A-3-33e. Debarment procedure.

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

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

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

(3) The director shall initiate debarment proceedings when any state agency requests debarment of a vendor and the director finds that probable cause for debarment exists.
(b) The director shall notify the vendor by certified mail, return receipt requested, of the following:

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

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

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

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

(5) The potential effect of the proposed debarment.

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

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

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

(f) Proof of grounds for debarment must be clear and convincing.
§5A-3-33f. Effects of debarment.

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

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

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

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

(e) The director may reduce the period or extent of debarment, upon the vendor’s request supported by documentation, for the following reasons:

(1) Newly discovered material evidence;
(2) Reversal of the conviction or judgment upon which debarment was based;

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

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

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

(g) A debarment under this article may be waived by the director with respect to a particular contract if the director determines the debarment of the vendor would severely disrupt the operation of a governmental entity to the detriment of the 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.

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

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

(c) As used in this section, the terms “commodities” and “printing” shall have the same meaning as those terms are 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.

(a) All work of construction and reconstruction of state roads and bridges, and the furnishing of all materials and supplies therefor, and for the repair thereof shall be done and furnished pursuant to contract, except that the commissioner may not be required to award any contract for work which can be done advantageously, economically and practicably by commission forces or prison labor and by use of state road equipment, or for materials and supplies, which are manufactured, processed or assembled by the commissioner: Provided, That the commissioner may not be required to award any contract for work, materials or supplies for an amount less than three thousand dollars. In all the work, the commissioner shall utilize state road forces or prison labor and state road equip-
ment and shall manufacture, process and assemble all the materials and supplies for the work whenever and wherever the commissioner, in his or her discretion, finds work and services advantageous, economical and practicable in the state road program.

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

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

(d) The commissioner shall have the power to prescribe proper prequalifications of contractors bidding on state road construction work: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a
through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

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

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

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

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

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility’s school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.
(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this section moneys for school major improvement projects proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively: Provided, That the authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year school major improvement plan, to be updated annually, pursuant to section sixteen of this article: Provided, however, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys
paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

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

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the
purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

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

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: Provided, That in the event a county board, which has received a loan from the authority for a one-time payment at the beginning of the lease term, does not renew the subject lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: Provided, however, That if a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: Provided further, That the failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: And provided further, That upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall at the option of the authority, in consultation with the state board, become due and payable
immediately or subject to renegotiation among the state board, the authority and the county board: And provided further, That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

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

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

(g) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the school major improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article:
Provided, That the moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of the funds during the fiscal year in which the moneys are distributed: Provided, however, That any moneys allocated to a county board and not distributed to that county board shall be deposited in an account to the credit of that county board, the principal amount to remain to the credit of and available to the county board for a period of two years. Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the school major improvement fund in that fiscal year.

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

(i) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.
(j) Funds in the school construction fund shall first be transferred and expended as follows:

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

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

(l) County boards shall submit all designs for construction of new school buildings to the school building authority for review and approval prior to preparation of final bid documents: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on 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.

(a) Every person, firm or corporation selling or offering to sell to the governing boards, upon competitive bids or otherwise, any materials, equipment or supplies in excess of fifteen thousand dollars shall comply with all of the provisions of section twelve, 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 governing boards.

(b) 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 governing boards as hereinafter set forth: Provided, That any person suspended under the provisions of section thirty-nine, article three, chapter five-a of this code shall not be eligible to sell or offer to sell commodities or printing to the governing boards: Provided, however, That the governing boards 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 governing boards when there is reason to believe that such person has violated any of the provisions in sections four through seven of this article or the rules of the governing boards 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 appropriate governing board’s action reviewed in accordance with section forty, article three,

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 31st day of ___________, 2000.

Governor