

HB 4664

FILED

2008 MAR 28 AM 10:18

OF THE STATE
SECRETARY OF STATE

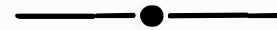
WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4664**

(By Delegates White, Kominar Boggs and Iaquina)



Passed March 7, 2008

In Effect Ninety Days from Passage

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OFFICE OF THE
SECRETARY OF STATE

(BY DELEGATES WHITE, KOMINAR, BOGGS AND IAQUINTA)

[Passed March 7, 2008; in effect ninety days from passage.]

AN ACT to repeal §5A-3-27 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-1, §5A-3-11, §5A-3-11a, §5A-3-12 and §5A-3-45 of said Code, all relating to the Purchasing Division of the Department of Administration; omitting antiquated language; revising specifications on which bids shall be based; removing requirement that Director determine in writing that no funds above budgeted amount exist to award bid; requiring city and state of residence and business addresses for vendors; and allowing the state agency for surplus property to sell commodities to the public.

Be it enacted by the Legislature of West Virginia:

That §5A-3-27 of the Code of West Virginia, 1931, as amended, be repealed; and that §5A-3-1, §5A-3-11, §5A-3-11a, §5A-3-12 and §5A-3-45 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

1 (a) The Purchasing Division of the Department of
2 Administration is continued for the purpose of establishing
3 centralized offices to provide purchasing, and travel services
4 to the various state agencies. No person may be appointed
5 director of the Purchasing Division unless that person is, at
6 the time of appointment, a graduate of an accredited college
7 or university and has spent a minimum of ten of the fifteen
8 years immediately preceding his or her appointment
9 employed in an executive capacity in purchasing for any unit
10 of government or for any business, commercial or industrial
11 enterprise. The provisions of this article apply to all of the
12 spending units of state government, except as otherwise
13 provided by this article or by law.

14 (b) The provisions of this article do not apply to the
15 legislative branch unless otherwise provided or the
16 Legislature or either house requests the director to render
17 specific services under the provisions of this chapter, nor to
18 purchases of stock made by the Alcohol Beverage Control
19 Commissioner, nor to purchases of textbooks for the state
20 Board of Education.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on written specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; and exception.

1 (a) The director may make a purchase of commodities,
2 printing, and services of twenty-five thousand dollars or less
3 in amount in the open market, but the purchase shall,

4 wherever possible, be based on at least three competitive
5 bids, and shall include the cost of maintenance and expected
6 life of the commodities if the director determines there are
7 nationally accepted industry standards for the commodities
8 being purchased.

9 (b) The director may authorize spending units to purchase
10 commodities, printing and services in the amount of two
11 thousand five hundred dollars or less in the open market
12 without competitive bids: *Provided*, That the cost of
13 maintenance and expected life of the commodities must be
14 taken into consideration if the director determines there are
15 nationally accepted industry standards for the commodities
16 being.

17 (c) Bids shall be based on the written specifications in the
18 advertised bid request and may not be altered or withdrawn
19 after the appointed hour for the opening of the bids.

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

24 (e) All open market orders, purchases based on advertised
25 bid requests or contracts made by the director or by a state
26 department shall be awarded to the lowest responsible bidder
27 or bidders, taking into consideration the qualities of the
28 commodities or services to be supplied, their conformity with
29 specifications, their suitability to the requirements of the
30 government, the delivery terms and, if the director determines
31 there are nationally accepted industry standards, cost of
32 maintenance and the expected life of the commodities:
33 *Provided*, That state bids on school buses shall be accepted
34 from all bidders who shall then be awarded contracts if they
35 meet the state board's "Minimum Standards for Design and

36 Equipment of School Buses." County boards of education
37 may select from those bidders who have been awarded
38 contracts and shall pay the difference between the state aid
39 formula amount and the actual cost of bus replacement. Any
40 or all bids may be rejected.

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

46 (g) The bid must be received by the Purchasing Division
47 prior to the specified date and time of the bid opening. The
48 failure to deliver or the nonreceipt of the bid by the
49 Purchasing Division prior to the appointed date and hour
50 shall result in the rejection of the bid. The vendor is solely
51 responsible for the receipt of bid by the Purchasing Division
52 prior to the appointed date and hour of the bid opening. All
53 bids will be opened publicly by two or more persons from the
54 Purchasing Division. Vendors will be given notice of the
55 day, time and place of the public bid opening. Bids may be
56 viewed immediately after being opened.

57 (h) After the award of the order or contract, the director,
58 or someone appointed by him or her for that purpose, shall
59 indicate upon the successful bid that it was the successful bid.
60 Thereafter, the copy of each bid in the possession of the
61 director shall be maintained as a public record, shall be open
62 to public inspection in the office of the director and may not
63 be destroyed without the written consent of the Legislative
64 Auditor.

**§5A-3-11a. Negotiation when all bids exceed budget in
requisition.**

1 (a) Spending units shall include the maximum budgeted
2 amount available for each purchase in a requisition submitted
3 to the Purchasing Division. No person may disclose this
4 maximum budgeted amount to any vendor prior to the award
5 of a contract. If all bids submitted pursuant to a solicitation
6 exceed the funds available for the purchase, then a negotiated
7 award may be made as set forth in this section.

8 (1) If the director determines in writing that there is only
9 one responsive and responsible bidder, he or she may
10 negotiate the price for a noncompetitive award or the
11 specifications for a noncompetitive award based solely on the
12 original purpose of the solicitation.

13 (2) If the Purchasing Division solicits bids with a request
14 for quotation and there is more than one bidder, the director
15 may negotiate with bidders determined in writing to be
16 responsive and responsible, based on criteria contained in the
17 bid invitation: *Provided*, That the director must negotiate
18 first with the lowest bidder. If the director does not award
19 the bid to the lowest bidder, he or she may close negotiations
20 with that bidder and enter into negotiations with the next
21 lowest bidder, and may continue to do so in like manner with
22 the remaining responsive and responsible bidders. The
23 director may not extend an offer to any bidder that is not first
24 extended to the prior bidders in order of rank.

25 (3) If the Purchasing Division solicits bids utilizing a best
26 value procurement, as set forth in section ten-b of this
27 section, and there is more than one bidder, the director may
28 negotiate with bidders determined in writing to be responsive
29 and responsible, based on criteria contained in the bid
30 invitation: *Provided*, That the director must negotiate first
31 with the highest scoring bidder. If the director does not
32 award the bid to the highest scoring bidder, he or she may
33 close negotiations with that bidder and enter into negotiations
34 with the next highest scoring bidder, and may continue to do
35 so in like manner with the remaining responsive and
36 responsible bidders. The director may not extend an offer to
37 any bidder that is not first extended to the prior bidders in
38 order of rank.

39 (b) After negotiations occur pursuant to subsection (a) of
40 this section, if the director determines that more than fifteen
41 percent of the value of the bid must be renegotiated by
42 revising the specifications of the original solicitation, only a
43 resolicitation may be initiated or the solicitation may be
44 withdrawn.

45 (c) The director may not renegotiate with any bidder after
46 closing negotiations with that bidder and entering into
47 negotiations with the next bidder.

**§5A-3-12. Prequalification disclosure and payment of annual
fee by vendors required; form and contents;
register of vendors; false affidavits; penalties.**

1 (a) The director may not accept any bid received from
2 any vendor unless the vendor has paid the annual fee
3 specified in section four of this article and has filed with the
4 director an affidavit of the vendor or the affidavit of a
5 member of the vendor's firm, or, if the vendor is a
6 corporation, the affidavit of an officer, director or managing
7 agent, of the corporation, disclosing the following
8 information:

9 (1) If the vendor is an individual, his or her name and city
10 and state of residence and business address, and, if he or she
11 has associates or partners sharing in his business, their names
12 and city and state of residence and business addresses;

13 (2) If the vendor is a firm, the name and city and state of
14 residence and business address of each member, partner or
15 associate of the firm;

16 (3) If the vendor is a corporation created under the laws
17 of this state or authorized to do business in this state, the
18 name and business address of the corporation; the names and
19 city and state of residence and business addresses of the

20 president, vice president, secretary, treasurer and general
21 manager, if any, of the corporation; and the names and city
22 and state of residence and business addresses of each
23 stockholder of the corporation owning or holding at least ten
24 percent of the capital stock thereof;

25 (4) A statement of whether the vendor is acting as agent
26 for some other individual, firm or corporation, and if so, a
27 statement of the principal authorizing the representation shall
28 be attached to the affidavit or whether the vendor is doing
29 business as another entity;

30 (5) The vendor's latest Dun & Bradstreet rating, if there
31 is any rating as to the vendor; and

32 (6) A list of one or more banking institutions to serve as
33 references for the vendor.

34 (b) Whenever a change occurs in the information
35 submitted as required, the change shall be reported
36 immediately in the same manner as required in the original
37 disclosure affidavit.

38 (c) The affidavit and information received by the director
39 shall be kept in a register of vendors which shall be a public
40 record and open to public inspection during regular business
41 hours in the director's office and made readily available to the
42 public.

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

47 (e) Any person who makes an affidavit falsely or who
48 knowingly files or causes to be filed with the director, an

49 affidavit containing a false statement of a material fact or
50 omitting any material fact, is guilty of a misdemeanor, and,
51 upon conviction , shall be fined not more than one thousand
52 dollars. and, in the discretion of the court, confined in jail not
53 more than one year. An individual convicted of a
54 misdemeanor under this subsection may never hold an office
55 of honor, trust or profit in this state, or serve as a juror.

**§5A-3-45. Disposition of surplus state property; semiannual
report; application of proceeds from sale.**

1 (a) The state agency for surplus property has the
2 exclusive power and authority to make disposition of
3 commodities or expendable commodities now owned or in
4 the future acquired by the state when the commodities are or
5 become obsolete or unusable or are not being used or should
6 be replaced.

7 (b) The agency shall determine what commodities or
8 expendable commodities should be disposed of and make
9 disposition in the manner which will be most advantageous
10 to the state. The disposition may include:

11 (1) Transferring the particular commodities or
12 expendable commodities between departments;

13 (2) Selling the commodities to county commissions,
14 county boards of education, municipalities, public service
15 districts, county building commissions, airport authorities,
16 parks and recreation commissions, nonprofit domestic
17 corporations qualified as tax exempt under Section 501(c)(3)
18 of the Internal Revenue Code of 1986, as amended, or
19 volunteer fire departments in this state when the volunteer
20 fire departments have been held exempt from taxation under
21 Section 501(c) of the Internal Revenue Code;

22 (3) Trading in the commodities as a part payment on the
23 purchase of new commodities;

24 (4) Cannibalizing the commodities pursuant to
25 procedures established under subsection (g) of this section;

26 (5) Properly disposing of the commodities as waste;

27 (6) Selling the commodities to the general public at the
28 posted price or to the highest bidder by means of public
29 auctions or sealed bids, after having first advertised the time,
30 terms and place of the sale as a Class II legal advertisement
31 in compliance with the provisions of article three, chapter
32 fifty-nine of this code. The publication area for the
33 publication is the county in which the sale is to be conducted.
34 The sale may also be advertised in other advertising media
35 that the agency considers advisable. The agency may sell to
36 the highest bidder or to any one or more of the highest
37 bidders, if there is more than one, or, if the best interest of the
38 state will be served, reject all bids; or

39 (7) Selling the commodities to the highest bidder by
40 means of an Internet auction site approved by the director, as
41 set forth in an emergency rule pursuant to the provisions of
42 chapter twenty-nine-a of this code.

43 (c) Upon the sale to the general public or transfer of
44 commodities or expendable commodities between
45 departments, or upon the sale of commodities or expendable
46 commodities to an eligible organization, the agency shall set
47 the price to be paid by the receiving eligible organization,
48 with due consideration given to current market prices.

49 (d) The agency may sell expendable, obsolete or unused
50 motor vehicles owned by the state to an eligible organization,
51 other than volunteer fire departments. In addition, the agency

52 may sell expendable, obsolete or unused motor vehicles
53 owned by the state with a gross weight in excess of four
54 thousand pounds to an eligible volunteer fire department.
55 The agency, with due consideration given to current market
56 prices, shall set the price to be paid by the receiving eligible
57 organization for motor vehicles sold pursuant to this
58 provision: *Provided*, That the sale price of any motor vehicle
59 sold to an eligible organization may not be less than the
60 "average loan" value, as published in the most recent
61 available eastern edition of the National Automobile Dealer's
62 Association (N.A.D.A.) Official Used Car Guide, if the value
63 is available, unless the fair market value of the vehicle is less
64 than the N.A.D.A. "average loan" value, in which case the
65 vehicle may be sold for less than the "average loan" value.
66 The fair market value shall be based on a thorough inspection
67 of the vehicle by an employee of the agency who shall
68 consider the mileage of the vehicle and the condition of the
69 body, engine and tires as indicators of its fair market value.
70 If no fair market value is available, the agency shall set the
71 price to be paid by the receiving eligible organization with
72 due consideration given to current market prices. The duly
73 authorized representative of the eligible organization, for
74 whom the motor vehicle or other similar surplus equipment
75 is purchased or otherwise obtained, shall cause ownership
76 and proper title to the motor vehicle to be vested only in the
77 official name of the authorized governing body for whom the
78 purchase or transfer was made. The ownership or title, or
79 both, shall remain in the possession of that governing body
80 and be nontransferable for a period of not less than one year
81 from the date of the purchase or transfer. Resale or transfer
82 of ownership of the motor vehicle or equipment prior to an
83 elapsed period of one year may be made only by reason of
84 certified unserviceability.

85 (c) The agency shall report to the Legislative Auditor,
86 semiannually, all sales of commodities or expendable

87 commodities made during the preceding six months to
88 eligible organizations. The report shall include a description
89 of the commodities sold, the price paid by the eligible
90 organization which received the commodities and to whom
91 each commodity was sold.

92 (f) The proceeds of the sales or transfers shall be
93 deposited in the State Treasury to the credit on a pro rata
94 basis of the fund or funds out of which the purchase of the
95 particular commodities or expendable commodities was
96 made: *Provided*, That the agency may charge and assess fees
97 reasonably related to the costs of care and handling with
98 respect to the transfer, warehousing, sale and distribution of
99 state property disposed of or sold pursuant to the provisions
100 of this section.

101 (g)(1) For purposes of this section, "cannibalization"
102 means the removal of parts from one commodity to use in the
103 creation or repair of another commodity.

104 (2) The director of the Purchasing Division shall propose
105 for promulgation legislative rules to establish procedures that
106 permit the cannibalization of a commodity when it is in the
107 best interests of the state. The procedures shall require the
108 approval of the director prior to the cannibalization of the
109 commodity under such circumstances as the procedures may
110 prescribe.

111 (3) (A) Under circumstances prescribed by the
112 procedures, state agencies shall be required to submit a form,
113 in writing or electronically, that, at a minimum, elicits the
114 following information for the commodity the agency is
115 requesting to cannibalize:

116 (i) The commodity identification number; (ii) The
117 commodity's acquisition date; (iii) The commodity's

118 acquisition cost; (iv) A description of the commodity; (v)
119 Whether the commodity is operable and, if so, how well it
120 operates; (vi) How the agency will dispose of the remaining
121 parts of the commodity; and (vii) Who will cannibalize the
122 commodity and how the person is qualified to remove and
123 reinstall the parts.

124 (B) If the agency has immediate plans to use the
125 cannibalized parts, the form shall elicit the following
126 information for the commodity or commodities that will
127 receive the cannibalized part or parts:(i) The commodity
128 identification number; (ii) The commodity's acquisition date;
129 (iii) The commodity's acquisition cost; (iv) A description of
130 the commodity; (v) Whether the commodity is operable; (vi)
131 Whether the part restores the commodity to an operable
132 condition; and (vii) The cost of the parts and labor to restore
133 the commodity to an operable condition without
134 cannibalization.

135 (C) If the agency intends to retain the cannibalized parts
136 for future use, it shall provide information justifying its
137 request.

138 (D) The procedures shall provide for the disposal of the
139 residual components of cannibalized property.

140 (h) (1) The director of the Purchasing Division shall
141 propose for promulgation legislative rules to establish
142 procedures that allow state agencies to dispose of
143 commodities in a landfill, or by other lawful means of waste
144 disposal, if the value of the commodity is less than the benefit
145 that may be realized by the state by disposing of the
146 commodity using another method authorized in this section.
147 The procedures shall specify circumstances where the state
148 agency for surplus property shall inspect the condition of the
149 commodity prior to authorizing the disposal and those

150 circumstances when the inspection is not necessary prior to
151 the authorization.

152 (2) Whenever a state agency requests permission to
153 dispose of a commodity in a landfill, or by other lawful
154 means of waste disposal, the state agency for surplus property
155 has the right to take possession of the commodity and to
156 dispose of the commodity using any other method authorized
157 in this section.

158 (3) If the state agency for surplus property determines,
159 within fifteen days of receiving a commodity, that disposing
160 of the commodity in a landfill or by other lawful means of
161 waste disposal would be more beneficial to the state than
162 disposing of the commodity using any other method
163 authorized in this section, the cost of the disposal is the
164 responsibility of the agency from which it received the
165 commodity.

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 as appended this the 27th
day of March, 2008.


Governor

PRESENTED TO THE
GOVERNOR

MAR 19 2008

Time 10:15 am