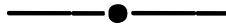


2010 APR -1 PM 4: 23

OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

House Bill No. 4582

(By Delegates Campbell, Guthrie, Hatfield,
Phillips, M. Poling, Kominar, White,
Craig, Marshall, Spencer and Mahan)



Passed March 13, 2010

In Effect From Passage

HB 4582

E N R O L L E D

2010 APR -1 PM 4: 23

H. B. 4582

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATES CAMPBELL, GUTHRIE, HATFIELD,
PHILLIPS, M. POLING, KOMINAR, WHITE,
CRAIG, MARSHALL, SPENCER AND MAHAN)

[Passed March 13, 2010; in effect from passage.]

AN ACT to repeal §5A-3-14, §5A-3-21, §5A-3-22, §5A-3-23, §5A-3-24, §5A-3-25, §5A-3-26, §5A-3-37a, §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-41, §5A-3-42, §5A-3-54, §5A-3-55 and §5A-3-55a of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-1, §5A-3-2, §5A-3-3, §5A-3-4, §5A-3-12, §5A-3-18, §5A-3-36 and §5A-3-37 of said code; and to amend said code by adding thereto a new section, designated §5A-3-59, relating to the functions of the purchasing director; procurement process; exempting certain entities from the Division of Purchasing; clarifying that the judicial branch is exempt from the Division of Purchasing; documentation of inventory; transportation of surplus property; providing resident vendor preference to certified small, women and minority-owned businesses; providing definitions; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §5A-3-14, §5A-3-21, §5A-3-22, §5A-3-23, §5A-3-24, §5A-3-25, §5A-3-26, §5A-3-37a, §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-41, §5A-3-42, §5A-3-54, §5A-3-55 and §5A-3-55a of the

Code of West Virginia, 1931, as amended, be repealed; that §5A-3-1, §5A-3-2, §5A-3-3, §5A-3-4, §5A-3-12, §5A-3-18, §5A-3-36 and §5A-3-37 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5A-3-59, 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 within 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.

5 (b) The director of the Purchasing Division shall, at the
6 time of appointment:

7 (1) Be a graduate of an accredited college or university;
8 and

9 (2) Have spent a minimum of ten of the fifteen years
10 immediately preceding his or her appointment employed in
11 an executive capacity in purchasing for any unit of
12 government or for any business, commercial or industrial
13 enterprise.

14 (c) The provisions of this article apply to all of the
15 spending units of state government, except as otherwise
16 provided by this article or by law.

17 (d) The provisions of this article do not apply to the
18 judicial branch, the legislative branch, to purchases of stock
19 made by the Alcohol Beverage Control Commissioner, and
20 to purchases of textbooks for the State Board of Education.

§5A-3-2. Books and records of director.

1 The director shall keep accurate books, accounts and
2 records of all transactions of his or her division, and such
3 books, accounts and records shall be public records and shall
4 at all proper times be available for inspection by any taxpayer
5 of the state.

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

1 The director, under the direction and supervision of the
2 secretary, shall be the executive officer of the Purchasing
3 Division and shall have the power and duty to:

4 (1) Direct the activities and employees of the Purchasing
5 Division;

6 (2) Ensure that the purchase of or contract for commodities
7 shall be based, whenever possible, on competitive bid;

8 (3) Purchase or contract for, in the name of the state, the
9 commodities and printing required by the spending units of
10 the state government;

11 (4) Apply and enforce standard specifications established
12 in accordance with section five of this article as hereinafter
13 provided;

14 (5) Transfer to or between spending units or sell
15 commodities that are surplus, obsolete or unused as
16 hereinafter provided;

17 (6) Have charge of central storerooms for the supply of
18 spending units, as the director deems advisable;

19 (7) Establish and maintain a laboratory for the testing of
20 commodities and make use of existing facilities in state

21 institutions for that purpose as hereinafter provided, as the
22 director deems advisable;

23 (8) Suspend the right and privilege of a vendor to bid on
24 state purchases when the director has evidence that such
25 vendor has violated any of the provisions of the purchasing
26 law or the rules and regulations of the director;

27 (9) Examine the provisions and terms of every contract
28 entered into for and on behalf of the State of West Virginia
29 that impose any obligation upon the state to pay any sums of
30 money for commodities or services and approve each such
31 contract as to such provisions and terms; and the duty of
32 examination and approval herein set forth does not supersede
33 the responsibility and duty of the Attorney General to
34 approve such contracts as to form: *Provided*, That the
35 provisions of this subdivision do not apply in any respect
36 whatever to construction or repair contracts entered into by
37 the Division of Highways of the Department of Transportation:
38 *Provided, however*, That the provisions of this subdivision do
39 not apply in any respect whatever to contracts entered into by
40 the University of West Virginia Board of Trustees or by the
41 Board of Directors of the State College System, except to the
42 extent that such boards request the facilities and services of
43 the director under the provisions of this subdivision; and

44 (10) Assure that the specifications and commodity
45 descriptions in all "requests for quotations" are prepared so
46 as to permit all potential suppliers-vendors who can meet the
47 requirements of the state an opportunity to bid and to assure
48 that the specifications and descriptions do not favor a
49 particular brand or vendor. If the director determines that
50 any such specifications or descriptions as written favor a
51 particular brand or vendor or if it is decided, either before or
52 after the bids are opened, that a commodity having different
53 specifications or quality or in different quantity can be

54 bought, the director may rewrite the “requests for quotations”
55 and the matter shall be rebid.

§5A-3-4. Rules of director.

1 (a) The director shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to:

4 (1) Authorize a spending unit to purchase specified
5 commodities directly and prescribe the manner in which such
6 purchases shall be made;

7 (2) Authorize, in writing, a spending unit to purchase
8 commodities in the open market for immediate delivery in
9 emergencies, define emergencies and prescribe the manner in
10 which such purchases shall be made and reported to the
11 director;

12 (3) Prescribe the manner in which commodities shall be
13 purchased, delivered, stored and distributed;

14 (4) Prescribe the time for making requisitions and
15 estimates of commodities, the future period which they are to
16 cover, the form in which they shall be submitted and the
17 manner of their authentication;

18 (5) Prescribe the manner of inspecting all deliveries of
19 commodities, and making chemical and physical tests of
20 samples submitted with bids and samples of deliveries to
21 determine compliance with specifications;

22 (6) Prescribe the amount and type of deposit or bond to
23 be submitted with a bid or contract and the amount of deposit
24 or bond to be given for the faithful performance of a contract;

25 (7) Prescribe a system whereby the director shall be
26 required, upon the payment by a vendor of an annual fee
27 established by the director, to give notice to such vendor of
28 all bid solicitations for commodities of the type with respect
29 to which such vendor specified notice was to be given, but no
30 such fee shall exceed the cost of giving the notice to such
31 vendor, nor shall such fee exceed the sum of \$125 per fiscal
32 year nor shall such fee be charged to persons seeking only
33 reimbursement from a spending unit;

34 (8) Prescribe that each state contract entered into by the
35 Purchasing Division shall contain provisions for liquidated
36 damages, remedies or provisions for the determination of the
37 amount or amounts which the vendor shall owe as damages,
38 in the event of default under such contract by such vendor, as
39 determined by the director;

40 (9) Prescribe contract management procedures for all
41 state contracts except government construction contracts
42 including, but not limited to, those set forth in article twenty-
43 two, chapter five of this code;

44 (10) Prescribe procedures by which oversight is provided
45 to actively monitor spending unit purchases, including, but
46 not limited to, all technology and software commodities and
47 contractual services exceeding \$1 million, approval of change
48 orders and final acceptance by the spending units;

49 (11) Prescribe that each state contract entered into by the
50 Purchasing Division contain provisions for the cancellation
51 of the contract upon thirty days' notice to the vendor;

52 (12) Prescribe procedures for selling surplus commodities
53 to the highest bidder by means of an Internet auction site;

54 (13) Provide such other matters as may be necessary to
55 give effect to the foregoing rules and the provisions of this
56 article; and

57 (14) Prescribe procedures for encumbering purchase
58 orders to ensure that the proper account may be encumbered
59 before sending purchase orders to vendors.

60 (b) The director shall propose rules for legislative
61 approval in accordance with the provisions of article three,
62 chapter twenty-nine-a of this code to prescribe qualifications
63 to be met by any person who is to be employed in the
64 Purchasing Division as a state buyer. The rules must provide
65 that a person may not be employed as a state buyer unless he
66 or she at the time of employment either is:

67 (1) A graduate of an accredited college or university; or

68 (2) Has at least four years' experience in purchasing for
69 any unit of government or for any business, commercial or
70 industrial enterprise.

71 Persons serving as state buyers are subject to the
72 provisions of article six, chapter twenty-nine of this code.

**§5A-3-12. Prequalification disclosure and payment of annual
fee by vendors required; form and contents;
register of vendors; false certificates; 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 a certificate of the vendor or the certificate of a
5 member of the vendor's firm or, if the vendor is a
6 corporation, the certificate 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 certificate or whether the vendor is doing
29 business as another entity;

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

32 (6) A list of one or more banking institution, if such
33 institution is available, to serve as references for the vendor;
34 and

35 (7) The vendor's tax identification number.

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

40 (c) The certificate and information received by the
41 director shall be public record.

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

46 (e) Any person who submits a false certificate or who
47 knowingly files or causes to be filed with the director, a
48 certificate containing a false statement of a material fact or
49 omitting any material fact, is guilty of a misdemeanor and,
50 upon conviction, shall be fined not more than \$1,000, and, in
51 the discretion of the court, confined in jail not more than one
52 year. An individual convicted of a misdemeanor under this
53 subsection may never hold an office of honor, trust or profit
54 in this state, or serve as a juror.

**§5A-3-18. Substituting for commodity bearing particular trade
name or brand.**

1 If a spending unit requests the purchase of a commodity
2 bearing a particular trade name or brand, the director may
3 substitute a commodity bearing a different trade name or
4 brand, if the substituted commodity reasonably conforms to
5 the adopted standard specifications and can be obtained at an
6 equal or lower price.

§5A-3-36. Inventory of removable property.

1 The director has the power and duty to make and keep
2 current an inventory of all removable property belonging to
3 the state. Such inventory shall be kept on file in the office of
4 the director as a public record. The inventory shall disclose
5 the name and address of the vendor, the date of purchase, the
6 price paid for the property therein described and the
7 disposition thereof.

§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; exceptions.

1 (a) Effective beginning July 1, 1992, in any instance that
2 a purchase of commodities or printing by the director or by
3 a state department is required under the provisions of this
4 article to be made upon competitive bids, the successful bid
5 shall be determined as provided in this section. The
6 Secretary of the Department of Revenue shall promulgate any
7 rules necessary to: (i) Determine that vendors have met the
8 residence requirements described in this section; (ii) establish
9 the procedure for vendors to certify the residency
10 requirements at the time of submitting their bids; (iii)
11 establish a procedure to audit bids which make a claim for
12 preference permitted by this section and to reject noncomplying
13 bids; and (iv) otherwise accomplish the objectives of this
14 section. In prescribing the rules, the secretary shall use a
15 strict construction of the residence requirements set forth in
16 this section. For purposes of this section, a successful bid
17 shall be determined and accepted as follows:

18 (1) From an individual resident vendor who has resided
19 in West Virginia continuously for the four years immediately
20 preceding the date on which the bid is submitted or from a
21 partnership, association, corporation resident vendor, or from
22 a corporation nonresident vendor which has an affiliate or
23 subsidiary which employs a minimum of one hundred state
24 residents and which has maintained its headquarters or
25 principal place of business within West Virginia continuously
26 for four years immediately preceding the date on which the
27 bid is submitted, if the vendor's bid does not exceed the
28 lowest qualified bid from a nonresident vendor by more than
29 two and one-half percent of the latter bid, and if the vendor
30 has made written claim for the preference at the time the bid
31 was submitted: *Provided*, That for purposes of this

32 subdivision, any partnership, association or corporation
33 resident vendor of this state, which does not meet the
34 requirements of this subdivision solely because of the
35 continuous four-year residence requirement, shall be
36 considered to meet the requirement if at least eighty percent
37 of the ownership interest of the resident vendor is held by
38 another individual, partnership, association or corporation
39 resident vendor who otherwise meets the requirements of this
40 subdivision, including the continuous four-year residency
41 requirement: *Provided, however,* That the Secretary of the
42 Department of Revenue shall promulgate rules relating to
43 attribution of ownership among several resident vendors for
44 purposes of determining the eighty percent ownership
45 requirement; or

46 (2) From a resident vendor, if, for purposes of producing
47 or distributing the commodities or completing the project
48 which is the subject of the vendor's bid and continuously
49 over the entire term of the project, on average at least
50 seventy-five percent of the vendor's employees are residents
51 of West Virginia who have resided in the state continuously
52 for the two immediately preceding years, and the vendor's
53 bid does not exceed the lowest qualified bid from a
54 nonresident vendor by more than two and one-half percent of
55 the latter bid, and if the vendor has certified the residency
56 requirements of this subdivision and made written claim for
57 the preference, at the time the bid was submitted; or

58 (3) From a nonresident vendor, which employs a
59 minimum of one hundred state residents or a nonresident
60 vendor which has an affiliate or subsidiary which maintains
61 its headquarters or principal place of business within West
62 Virginia and which employs a minimum of one hundred state
63 residents, if, for purposes of producing or distributing the
64 commodities or completing the project which is the subject
65 of the vendor's bid and continuously over the entire term of

66 the project, on average at least seventy-five percent of the
67 vendor's employees or the vendor's affiliate's or subsidiary's
68 employees are residents of West Virginia who have resided
69 in the state continuously for the two immediately preceding
70 years and the vendor's bid does not exceed the lowest
71 qualified bid from a nonresident vendor by more than two
72 and one-half percent of the latter bid, and if the vendor has
73 certified the residency requirements of this subdivision and
74 made written claim for the preference, at the time the bid was
75 submitted; or

76 (4) From a vendor who meets either the requirements of
77 both subdivisions (1) and (2) of this subsection or
78 subdivisions (1) and (3) of this subsection, if the bid does not
79 exceed the lowest qualified bid from a nonresident vendor by
80 more than five percent of the latter bid, and if the vendor has
81 certified the residency requirements above and made written
82 claim for the preference at the time the bid was submitted; or

83 (5) From an individual resident vendor who is a veteran
84 of the United States Armed Forces, the Reserves or the
85 National Guard and has resided in West Virginia
86 continuously for the four years immediately preceding the
87 date on which the bid is submitted, if the vendor's bid does
88 not exceed the lowest qualified bid from a nonresident
89 vendor by more than three and one-half percent of the latter
90 bid, and if the vendor has made written claim for the
91 preference at the time the bid was submitted; or

92 (6) From a resident vendor who is a veteran of the United
93 States Armed Forces, the Reserves or the National Guard, if,
94 for purposes of producing or distributing the commodities or
95 completing the project which is the subject of the vendor's
96 bid and continuously over the entire term of the project, on
97 average at least seventy-five percent of the vendor's
98 employees are residents of West Virginia who have resided

99 in the state continuously for the two immediately preceding
100 years and the vendor's bid does not exceed the lowest
101 qualified bid from a nonresident vendor by more than three
102 and one-half percent of the latter bid, and if the vendor has
103 certified the residency requirements of this subdivision and
104 made written claim for the preference, at the time the bid was
105 submitted; or

106 (7) Notwithstanding any provisions of subdivisions (1),
107 (2), (3), (4), (5) or (6) of this subsection to the contrary, if
108 any nonresident vendor that is bidding on the purchase of
109 commodities or printing by the director or by a state
110 department is also certified as a small, women or minority-
111 owned business pursuant to section fifty-nine of this article,
112 the nonresident vendor shall be provided the same preference
113 made available to any resident vendor under the provisions
114 of this subsection.

115 (b) If the Secretary of the Department of Revenue
116 determines under any audit procedure that a vendor who
117 received a preference under this section fails to continue to
118 meet the requirements for the preference at any time during
119 the term of the project for which the preference was received
120 the secretary may: (1) Reject the vendor's bid; or (2) assess
121 a penalty against the vendor of not more than five percent of
122 the vendor's bid on the project.

123 (c) Political subdivisions of the state including county
124 boards of education may grant the same preferences to any
125 vendor of this state who has made a written claim for the
126 preference at the time a bid is submitted, but for the purposes
127 of this subsection, in determining the lowest bid, any political
128 subdivision shall exclude from the bid the amount of business
129 occupation taxes which must be paid by a resident vendor to
130 any municipality within the county comprising or located
131 within the political subdivision as a result of being awarded

132 the contract which is the object of the bid; in the case of a bid
133 received by a municipality, the municipality shall exclude
134 only the business and occupation taxes as will be paid to the
135 municipality: *Provided*, That prior to soliciting any
136 competitive bids, any political subdivision may, by majority
137 vote of all its members in a public meeting where all the
138 votes are recorded, elect not to exclude from the bid the
139 amount of business and occupation taxes as provided in this
140 subsection.

141 (d) If any of the requirements or provisions set forth in
142 this section jeopardize the receipt of federal funds, then the
143 requirement or provisions are void and of no force and effect
144 for that specific project.

145 (e) If any provision or clause of this section or application
146 thereof to any person or circumstance is held invalid, the
147 invalidity shall not affect other provisions or applications of
148 this section which can be given effect without the invalid
149 provision or application, and to this end the provisions of this
150 section are severable.

151 (f) This section may be cited as the “Jobs for West
152 Virginians Act of 1990.”

§5A-3-59. Small, women and minority-owned businesses.

1 (a) As used in this section:

2 (1) “Minority individual” means an individual who is a
3 citizen of the United States or a noncitizen who is in full
4 compliance with United States immigration law and who
5 satisfies one or more of the following definitions:

6 (A) “African American” means a person having origins
7 in any of the original peoples of Africa and who is regarded

8 as such by the community of which this person claims to be
9 a part.

10 (B) “Asian American” means a person having origins in
11 any of the original peoples of the Far East, Southeast Asia,
12 the Indian subcontinent or the Pacific Islands, including, but
13 not limited to, Japan, China, Vietnam, Samoa, Laos,
14 Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S.
15 territory of the Pacific, India, Pakistan, Bangladesh, or Sri
16 Lanka and who is regarded as such by the community of
17 which this person claims to be a part.

18 (C) “Hispanic American” means a person having origins
19 in any of the Spanish-speaking peoples of Mexico, South or
20 Central America, or the Caribbean Islands or other Spanish
21 or Portuguese cultures and who is regarded as such by the
22 community of which this person claims to be a part.

23 (D) “Native American” means a person having origins in
24 any of the original peoples of North America and who is
25 regarded as such by the community of which this person
26 claims to be a part or who is recognized by a tribal
27 organization.

28 (2) “Minority-owned business” means a business concern
29 that is at least fifty-one percent owned by one or more
30 minority individuals or in the case of a corporation,
31 partnership, or limited liability company or other entity, at
32 least fifty-one percent of the equity ownership interest in the
33 corporation, partnership, or limited liability company or other
34 entity is owned by one or more minority individuals and both
35 the management and daily business operations are controlled
36 by one or more minority individuals.

37 (3) “Small business” means a business, independently
38 owned or operated by one or more persons who are citizens

39 of the United States or noncitizens who are in full compliance
40 with United States immigration law, which, together with
41 affiliates, has two hundred fifty or fewer employees, or
42 average annual gross receipts of \$10 million or less averaged
43 over the previous three years.

44 (4) “State agency” means any authority, board,
45 department, instrumentality, institution, agency, or other unit
46 of state government. “State agency” does not include any
47 county, city or town.

48 (5) “Women-owned business” means a business concern
49 that is at least fifty-one percent owned by one or more
50 women who are citizens of the United States or noncitizens
51 who are in full compliance with United States immigration
52 law, or in the case of a corporation, partnership or limited
53 liability company or other entity, at least fifty-one percent of
54 the equity ownership interest is owned by one or more
55 women who are citizens of the United States or noncitizens
56 who are in full compliance with United States immigration
57 law, and both the management and daily business operations
58 are controlled by one or more women who are citizens of the
59 United States or noncitizens who are in full compliance with
60 United States immigration law.

61 (b) State agencies shall submit annual progress reports on
62 small, women and minority-owned business procurement to
63 the Department of Administration in a form specified by the
64 Department of Administration.

65 (c) The Department of Administration shall propose
66 rules, for legislative approval pursuant to article three,
67 chapter twenty-nine-a, to implement certification programs
68 for small, women and minority-owned businesses. These
69 certification programs shall deny certification to vendors
70 from states that deny like certifications to West Virginia-

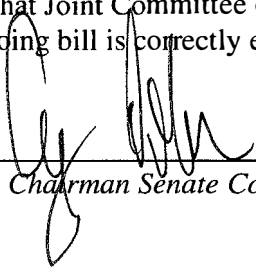
71 based small, women or minority-owned businesses or that
72 provide a preference for small, women or minority-owned
73 businesses based in that state that is not available to West
74 Virginia-based businesses. The rules shall:

75 (1) Establish minimum requirements for certification of
76 small, women and minority-owned businesses;

77 (2) Provide a process for evaluating existing local, state,
78 private sector and federal certification programs that meet the
79 minimum requirements; and

80 (3) Mandate certification, without any additional
81 paperwork or fee, of any prospective state vendor that has
82 obtained certification under any certification program that is
83 determined to meet the minimum requirements established in
84 the regulations.

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



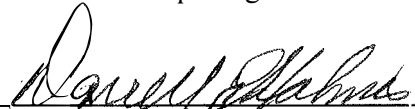
Chairman Senate Committee



Chairman House Committee

Originating in the House.

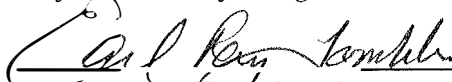
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



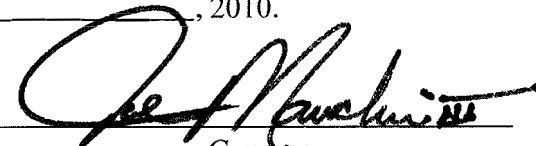
President of the Senate



Speaker of the House of Delegates

FILED
2010 APR -1 PM 4:23
CLERK OF STATE

The within is approved this the 18th
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 8 1 2010

Time 5:50 p