

SB356

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FOR
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FOR

Senate Bill No. 356

(BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,
BY REQUEST OF THE EXECUTIVE)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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**(BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,
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[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §5A-1-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-1-10; to amend and reenact §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code; to amend said code by adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60; and to amend and reenact §12-3-10d of said code, all relating generally to purchasing; revising definitions; eliminating definitions; defining terms; requiring state spending units purchase commodities and services on a competitive basis where possible; authorizing the Secretary of the Department of Administration to issue a notice to cease and desist when purchases are not made on a competitive basis; clarifying the purposes and policies of the Purchasing Division; clarifying the applicability of the article; clarifying that procurements must

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include adequate specifications and descriptions; clarifying the powers and duties of the Director of Purchasing; authorizing the Director of Purchasing to issue a notice to cease and desist when purchases are not made on a competitive basis; ensuring the purchasing requirements apply to services and commodities; authorizing reverse auctions for purchasing commodities; permitting third-party vendors to administer reverse auctions; affording the Director of the Purchasing Division rule-making authority to implement reverse auctions; authorizing master contracts and the direct order process for the direct procurement of certain commodities; defining additional terms; requiring approval of the Director of the Purchasing Division for master contracts; setting forth direct order requirements and procedures; authorizing direct order of commodities in certain amounts; permitting direct order of certain commodities in excess of statutory amount with the written approval of the Director of Purchasing; affording the Director of the Purchasing Division rule-making authority to establish procedures regarding master contracts, preapproval, the direct ordering process and related matters; clarifying circumstances in which grants are exempt from competitive bidding requirements; imposing personal liability upon spending officers and other responsible individuals who have knowingly and willfully violated competitive bidding requirements; creating felony offense for acting alone to undermine competition; requiring certain executive department officials to attend annual training on purchasing procedures; adjusting the percentage rebate moneys transferred to the Purchasing Improvement Fund; adjusting the percentage of rebate moneys transferred to the Hatfield-McCoy Regional Recreation Authority; transferring ten percent of rebate moneys to the State Park Operating Fund; and making technical corrections.

Be enacted by the Legislature of West Virginia:

That §5A-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §5A-1-10; that §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60; and that §12-3-10d of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.

1 For the purpose of this chapter:

2 (1) "Commodities" means supplies, material, equipment
3 and any other articles or things used by or furnished to a
4 department, agency or institution of state government.

5 (2) "Contract" means an agreement between a state
6 spending unit and a vendor relating to the procurement of
7 commodities or services, or both.

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

11 (4) "Director" means the director of the division referred
12 to in the heading of the article in which the word appears.

13 (5) "Electronic" means electrical, digital, magnetic,
14 optical, electromagnetic or any other similar technology.

15 (6) “Electronic transmission” or “electronically
16 transmitted” means any process of communication not
17 directly involving the physical transfer of paper that is
18 suitable for the retention, retrieval and reproduction of
19 information by the recipient.

20 (7) “Expendable commodities” means those commodities
21 which, when used in the ordinary course of business, will
22 become consumed or of no market value within the period of
23 one year or less.

24 (8) “Grant” means the furnishing of assistance, financial
25 or otherwise, to any person or entity to support a program
26 authorized by law.

27 (9) “Nonprofit workshops” means an establishment: (A)
28 Where any manufacture or handiwork is carried on; (B)
29 which is operated either by a public agency or by a
30 cooperative or by a nonprofit private corporation or nonprofit
31 association in which no part of the net earnings thereof
32 inures, or may lawfully inure, to the benefit of any private
33 shareholder or individual; (C) which is operated for the
34 primary purpose of providing remunerative employment to
35 blind or severely disabled persons who cannot be absorbed
36 into the competitive labor market; and (D) which shall be
37 approved, as evidenced by a certificate of approval, by the
38 State Board of Vocational Education, Division of Vocational
39 Rehabilitation.

40 (10) “Printing” means printing, binding, ruling,
41 lithographing, engraving and other similar services.

42 (11) “Procurement” means the buying, purchasing,
43 renting, leasing or otherwise obtaining of commodities or
44 services.

45 (12) "Public funds" means funds of any character,
46 including federal moneys, belonging to or in the custody of
47 any state spending unit.

48 (13) "Record" means information that is inscribed on a
49 read-only tangible medium or that is stored in an electronic
50 or other medium and is retrievable in perceivable form.

51 (14) "Removable property" means any personal property
52 not permanently affixed to or forming a part of real estate.

53 (15) "Request for quotations" means a solicitation for a
54 bid where cost is the primary factor in determining the award.

55 (16) "Responsible bidder" means a vendor who has the
56 capability to fully perform the contract requirements, and the
57 integrity and reliability which will assure good-faith
58 performance.

59 (17) "Responsive bidder" means a vendor who has
60 submitted a bid which conforms in all material respects to the
61 bid solicitation.

62 (18) "Secretary" means the Secretary of Administration.

63 (19) "Services" means the furnishing of labor, time,
64 expertise or effort, not involving the delivery of a specific
65 end commodity or product other than one that may be
66 incidental to the required performance.

67 (20) "Spending officer" means the executive head of a
68 spending unit, or a person designated by him or her.

69 (21) "Spending unit" means a department, bureau,
70 department, division, office, board commission, authority,
71 agency or institution of the state government for which an

72 appropriation is requested of the Governor, or to which an
73 appropriation is made by the Legislature, unless a specific
74 exemption from this chapter is provided in this code.

75 (22) "The state and its subdivisions" means the State of
76 West Virginia, every political subdivision thereof, every
77 administrative entity that includes such a subdivision, all
78 municipalities and all county boards of education.

79 (23) "Vendor" means any person or entity that may,
80 through contract or other means, supply the state or its
81 subdivisions with commodities or services, and lessors of real
82 property.

**§5A-1-10. General procurement provisions for state spending
units.**

1 (a) Unless this code specifically provides to the contrary,
2 all spending units, whenever possible, shall base purchases
3 for commodities and services on a competitive process and
4 utilize available statewide contracts.

5 (b) The secretary shall issue a notice to cease and desist
6 to any spending unit when the secretary has credible evidence
7 that a spending unit has failed, whenever possible, to
8 purchase commodities and services on a competitive basis or
9 to use available statewide contracts. Failure to abide by such
10 notice may result in penalties set forth in section seventeen,
11 article three of this chapter.

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. The underlying purposes and**
3 **policies of the Purchasing Division are:**

4 **(1) To establish centralized offices to provide purchasing**
5 **and travel services to the various state agencies;**

6 **(2) To simplify, clarify and modernize the law governing**
7 **procurement by this state;**

8 **(3) To permit the continued development of procurement**
9 **policies and practices;**

10 **(4) To make as consistent as possible the procurement**
11 **rules and practices among the various spending units;**

12 **(5) To provide for increased public confidence in the**
13 **procedures followed in public procurement;**

14 **(6) To ensure the fair and equitable treatment of all**
15 **persons who deal with the procurement system of this state;**

16 **(7) To provide increased economy in procurement**
17 **activities and to maximize to the fullest extent practicable the**
18 **purchasing value of public funds;**

19 **(8) To foster effective broad-based competition within the**
20 **free enterprise system;**

21 **(9) To provide safeguards for the maintenance of a**
22 **procurement system of quality and integrity; and**

23 **(10) To obtain in a cost-effective and responsive manner**
24 **the commodities and services required by spending units in**
25 **order for those spending units to better serve this state's**
26 **businesses and residents.**

27 (b) The Director of the Purchasing Division shall, at the
28 time of appointment:

29 (1) Be a graduate of an accredited college or university;
30 and

31 (2) Have spent a minimum of ten of the fifteen years
32 immediately preceding his or her appointment employed in
33 an executive capacity in purchasing for any unit of
34 government or for any business, commercial or industrial
35 enterprise.

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

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

43 (e) The provisions of this article apply to every
44 expenditure of public funds by a spending unit for
45 commodities and services irrespective of the source of the
46 funds.

§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
7 commodities and services shall be based, whenever possible,
8 on competitive bid;

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

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

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

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

20 (7) Establish and maintain a laboratory for the testing of
21 commodities and make use of existing facilities in state
22 institutions for that purpose as hereinafter provided, as the
23 director deems advisable;

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

28 (9) Examine the provisions and terms of every contract
29 entered into for and on behalf of the State of West Virginia
30 that impose any obligation upon the state to pay any sums of
31 money for commodities or services and approve each such
32 contract as to such provisions and terms; and the duty of
33 examination and approval herein set forth does not supersede
34 the responsibility and duty of the Attorney General to

35 approve such contracts as to form: *Provided*, That the
36 provisions of this subdivision do not apply in any respect
37 whatever to construction or repair contracts entered into by
38 the Division of Highways of the Department of
39 Transportation: *Provided, however*, That the provisions of
40 this subdivision do not apply in any respect whatever to
41 contracts entered into by the University of West Virginia
42 Board of Trustees or by the Board of Directors of the State
43 College System, except to the extent that such boards request
44 the facilities and services of the director under the provisions
45 of this subdivision;

46 (10) Assure that the specifications and descriptions in all
47 solicitations are prepared so as to provide all potential
48 suppliers-vendors who can meet the requirements of the state
49 an opportunity to bid and to assure that the specifications and
50 descriptions do not favor a particular brand or vendor. If the
51 director determines that any such specifications or
52 descriptions as written favor a particular brand or vendor or
53 if it is decided, either before or after the bids are opened, that
54 a commodity or service having different specifications or
55 quality or in different quantity can be bought, the director
56 may rewrite the solicitation and the matter shall be rebid; and

57 (11) Issue a notice to cease and desist to a spending unit
58 when the director has credible evidence that a spending unit
59 has violated competitive bidding or other requirements
60 established by this article and the rules promulgated
61 hereunder. Failure to abide by such notice may result in
62 penalties set forth in section seventeen of this article.

§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 and services directly and prescribe the manner
6 in which such purchases shall be made;

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

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

14 (4) Prescribe the time for making requisitions and
15 estimates of commodities and services, the future period
16 which they are to cover, the form in which they shall be
17 submitted and the 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 and services of the type
29 with respect to which such vendor specified notice was to be
30 given, but no such fee shall exceed the cost of giving the
31 notice to such vendor, nor shall such fee exceed the sum of
32 \$125 per fiscal year nor shall such fee be charged to persons
33 seeking only 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
43 twenty-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 services exceeding \$1 million, approval of change orders and
48 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

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[Enr. Com. Sub. for Com. Sub. for S. B. No. 356

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-3-5. Purchasing section standard specifications –
promulgation and adoption by director;
applicable to all purchases.**

1 (a) The director shall promulgate and adopt standard
2 specifications based on scientific and technical data for
3 appropriate commodities and services, which shall establish
4 the quality to which commodities to be purchased and
5 services to be contracted for by the state must conform.

6 (b) Standard specifications shall apply to every future
7 purchase of or contract for the commodities or services
8 described in the specifications and shall include information
9 relating to the cost of maintenance and expected life of the
10 commodity if the director determines there are nationally
11 accepted industry standards for the commodity.

12 (c) No purchases by any spending unit may be exempt
13 from compliance with the standard specifications so
14 established, but the director may exempt the purchase of
15 particular items from the standard specifications if it is
16 considered necessary and advisable.

17 (d) The director shall update the standard specifications,
18 as necessary.

§5A-3-10d. Reverse auctions.

1 (a) Notwithstanding any other provision of this code, the
2 director is hereby authorized to initiate reverse auctions to
3 procure commodities. The director may not use reverse
4 auctions for the procurement of services under any
5 circumstances.

6 (b) Reverse auctions may be utilized if the director
7 determines their use would be fair, economical and in the best
8 interests of the state, and the commodities to be procured:

9 (1) Are subject to low price volatility;

10 (2) Have specifications that are common and not
11 complex;

12 (3) Vary little between suppliers;

13 (4) Are sourced primarily based on price, with limited
14 ancillary considerations;

15 (5) Require little collaboration from suppliers; and

16 (6) Are sold by a large, competitive supply base.

17 (c) For purposes of this section, "reverse auction" means
18 a process by which bidders compete to provide commodities
19 in an open and interactive market, including but not limited
20 to the Internet. Reverse auction bids are opened and made
21 public upon receipt by the director, and then bidders are
22 given the opportunity to submit revised bids until the bidding
23 process is complete. The contract is awarded to the lowest
24 responsible bidder.

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[Enr. Com. Sub. for Com. Sub. for S. B. No. 356

25 (d) The director may contract with qualified,
26 industry-recognized third-party vendors to conduct reverse
27 auctions on behalf of the director.

28 (e) The director shall propose rules for legislative
29 approval in accordance with the provisions of article three,
30 chapter twenty-nine-a of this code to establish the procedures
31 for conducting reverse auctions. The rules shall include
32 procedures for contracting with qualified,
33 industry-recognized third-party vendors.

§5A-3-10e. Master contracts; direct ordering process.

1 (a) Subject to the limitations of this section, the director
2 may permit spending units to procure commodities directly
3 from a preapproved vendor through a master contract direct
4 ordering process if the director determines the process is fair,
5 economical and in the best interests of the state.

6 (b) *Definitions.* – For purposes of this section:

7 (1) “Information technology” means hardware and
8 software related to electronic processing, and storage,
9 retrieval, transmittal and manipulation of data.

10 (2) “Master contract” means an agreement, having a term
11 of no more than one year, between the Purchasing Division
12 and at least two preapproved vendors authorizing a spending
13 unit to purchase a commodity directly and on a recurrent
14 basis through the direct ordering process.

15 (3) “Preapproved vendor” means a “vendor”, as that term
16 is defined in section one, article one, chapter five-a of this
17 code, that has entered into a master contract with the
18 Purchasing Division and may participate in the direct
19 ordering process subject to the terms and conditions of the
20 master contract.

21 (4) "Direct ordering process" means the competitive
22 bidding process whereby the preapproved vendors that are
23 parties to a master contract may submit sealed bids directly to
24 spending units to provide a commodity identified in the master
25 contract subject to the limitations set forth in this section.

26 (c) *Master contract procedures.* –

27 (1) For each master contract, the director shall set forth the
28 requirements, technical or otherwise, under which a vendor
29 may be qualified to supply a commodity through the direct
30 ordering process. For each master contract, the director shall
31 follow the notice and advertising requirements set forth in
32 section ten, article three, chapter five-a of this code.

33 (2) A master contract may authorize the direct ordering
34 process for only one type of commodity.

35 (3) A vendor may submit information to the director to
36 establish that it meets the requirements set forth in the master
37 contract.

38 (4) If the director determines that a vendor meets the
39 requirements set forth in the master contract, the vendor may
40 enter into the master contract as a preapproved vendor.

41 (d) *Direct ordering procedures.* –

42 (1) A spending unit may commence the direct ordering
43 process by issuing a request for a commodity identified in the
44 master contract, stating in the request the quantity of the
45 commodity to be procured in that particular instance.

46 (2) The preapproved vendor that submits the lowest bid
47 in response to the request shall be awarded the procurement
48 in that particular instance.

49 (3) The direct ordering process may not be utilized for
50 any request for commodities, other than information
51 technology, anticipated to cost more than \$50,000, unless
52 approved in writing by the Director of Purchasing. The state
53 may not issue a series of orders each anticipated to cost less
54 than \$50,000 to circumvent the monetary limitation in this
55 subsection.

56 (4) The direct ordering process may not be utilized for
57 any request for information technology anticipated to cost
58 more than \$1 million, unless approved in writing by the
59 Director of Purchasing. The state may not issue a series of
60 orders each anticipated to cost less than \$1 million to
61 circumvent the monetary limitation in this subsection.

62 (e) *Rule-making authority.* – The Director of the
63 Purchasing Division shall propose rules for legislative
64 approval in accordance with the provisions of article three,
65 chapter twenty-nine-a of this code to implement this section,
66 including but not limited to provisions to establish procedures
67 for the solicitation and authorization of master contracts,
68 preapproval of vendors and implementation of direct
69 ordering.

**§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; exception; grant exemption.**

1 (a) The director may make a purchase of commodities,
2 printing and services of \$25,000 or less in amount in the open
3 market, but the purchase shall, wherever possible, be based
4 on at least three competitive bids, and shall include the cost

5 of maintenance and expected life of the commodities if the
6 director determines there are nationally accepted industry
7 standards for the commodities being purchased.

8 (b) The director may authorize spending units to purchase
9 commodities, printing and services in the amount of \$2,500
10 or less in the open market without competitive bids:
11 *Provided*, That the cost of maintenance and expected life of
12 the commodities must be taken into consideration if the
13 director determines there are nationally accepted industry
14 standards for the commodities being purchased.

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

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

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

37 formula amount and the actual cost of bus replacement. Any
38 or all bids may be rejected.

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

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

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

63 (i)(1) A grant awarded by the state is exempt from the
64 competitive bidding requirements set forth in this chapter,
65 unless the grant is used to procure commodities or services
66 that directly benefit a spending unit.

67 (2) If a grant awarded to the state requires the
68 procurement of commodities or services that will directly

69 benefit a spending unit, the procurement is not exempt from
70 the competitive bidding requirements set forth in this chapter.

71 (3) If a grant awarded to the state requires the state to
72 transfer some or all of the grant to an individual, entity or
73 vendor as a subgrant to accomplish a public purpose, and no
74 contract for commodities or services directly benefitting a
75 spending unit will result, the subgrant is not subject to the
76 competitive bidding requirements set forth in this chapter.

**§5A-3-17. Purchases or contracts violating article void;
personal liability.**

1 If a spending unit purchases or contracts for commodities
2 or services contrary to the provisions of this article or the
3 rules and regulations made thereunder, such purchase or
4 contract shall be void and of no effect. The spending officer
5 of such spending unit, or any other individual charged with
6 responsibility for the purchase or contract, shall be personally
7 liable for the costs of such purchase or contract and, if
8 already paid out of state funds, the amount thereof may be
9 recovered in the name of the state in an appropriate action
10 instituted therefor: *Provided*, That the state establishes by a
11 preponderance of the evidence that the individual acted
12 knowingly and willfully.

**§5A-3-28. Financial interest of secretary, etc.; receiving reward
from interested party; penalty; application of
bribery statute.**

1 (a) Neither the secretary, nor the director nor any
2 employee of the Division of Purchasing, shall be financially
3 interested, or have any beneficial personal interest, directly or
4 indirectly, in the purchase of any commodities, services or
5 printing, nor in any firm, partnership, corporation or
6 association furnishing them. Neither the secretary, nor the

7 director nor any employee of the Division of Purchasing,
8 shall accept or receive directly or indirectly from any person,
9 firm or corporation, known by such secretary, director or
10 employee to be interested in any bid, contract or purchase, by
11 rebate, gift or otherwise, any money or other thing of value
12 whatsoever, or any promise, obligation or contract for future
13 reward or compensation.

14 (b) A person who violates this section shall be guilty of
15 a misdemeanor, and, upon conviction thereof, shall be
16 confined in jail not less than three months nor more than one
17 year, or fined not less than \$50 nor more than \$1,000, or
18 both, in the discretion of the court: *Provided*, That any person
19 who violates any of the provisions of the last sentence of the
20 first paragraph of this section under circumstances
21 constituting the crime of bribery under the provisions of
22 section three, article five-a, chapter sixty-one of this code,
23 shall, upon conviction of bribery, be punished as provided in
24 said article five-a.

**§5A-3-30. Statement of purpose; obtaining money and property
under false pretenses or by fraud from the state;
penalties; definition.**

1 (a) The Legislature of the State of West Virginia hereby
2 declares that the purpose of this statute is to promote equal
3 and fair bidding for the purchase of commodities and services
4 by the state, to eliminate fraud in the procurement of
5 commodities and services by the state.

6 (b) It is unlawful for any person to obtain any services,
7 money, goods or other property from the state under any
8 contract made under the provisions of this article, by false
9 pretense, token or representation, or by delivery of inferior
10 commodities, with intent to defraud. A person who violates
11 this subsection is guilty of a felony and, upon conviction

12 thereof, shall be confined in a state correctional facility for
13 not less than one year nor more than five years, and shall be
14 fined not exceeding \$10,000.

15 (c) It shall not be a defense to a charge under this section
16 that: (1) The commodities or services purchased were
17 accepted and used, or are being used, by the state; or (2) the
18 commodities or services are functional or suitable for the
19 purpose for which the commodities or services were
20 purchased by the state notwithstanding the standard or
21 specification issued by the purchasing agency or the division
22 of purchasing.

23 (d) For the purpose of this section, "inferior
24 commodities" includes, but shall not be limited to: (1) Any
25 commodity which does not meet the specification or standard
26 issued by the purchasing agency and the Division of
27 Purchasing, or any change order approved by both the
28 purchasing agency and Division of Purchasing; and (2) any
29 commodity which is of a lesser quality, quantity or measure
30 of any kind set forth within the specification or standard
31 issued by the purchasing agency and the Division of
32 Purchasing.

**§5A-3-31. Corrupt actions, combinations, collusions or
conspiracies prohibited; penalties.**

1 (a) It shall be unlawful for any person to corruptly act
2 alone or combine, collude or conspire with one or more other
3 persons with respect to the purchasing or supplying of
4 services, commodities or printing to the state under the
5 provisions of this article if the purpose or effect of such
6 action, combination, collusion or conspiracy is either to: (1)
7 Lessen competition among prospective vendors; or (2) cause
8 the state to pay a higher price for such services, commodities
9 or printing than would be or would have been paid in the

10 absence of such action, combination, collusion or conspiracy;
11 or (3) cause one prospective vendor or vendors to be
12 preferred over one or more other prospective vendor or
13 vendors.

14 (b) Any person who violates any provision of this section
15 is guilty of a felony and, upon conviction thereof, shall be
16 imprisoned in a state correctional facility not less than one
17 nor more than five years, and be fined not exceeding \$10,000.

§5A-3-60. Annual purchasing training.

1 (a) All executive department secretaries, commissioners,
2 deputy commissioners, assistant commissioners, directors,
3 deputy directors, assistant directors, department heads,
4 deputy department heads and assistant department heads are
5 hereby required to take two hours of training on purchasing
6 procedures and purchasing cards annually.

7 (b) The Director of the Purchasing Division and the
8 Auditor shall offer the two-hour training required by this
9 section at least two times per year and shall develop its
10 substance in accordance with the requirements of this article
11 and other relevant provisions of this code. The training shall
12 be recorded by audio and visual means and shall be made
13 available to the individuals listed in subsection (a) of this
14 section in the event they are unable to attend the training in
15 person.

16 (c) All individuals listed in subsection (a) of this section
17 shall certify, in writing and on a form developed by the
18 Director of the Purchasing Division, the date, time, location
19 and manner in which they took the training. Completed
20 forms shall be returned to the director and maintained in his
21 or her office.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10d. Purchasing Card Fund created; expenditures.

1 (a) All money received by the state pursuant to any
2 agreement with vendors providing purchasing charge cards,
3 and any interest or other return earned on the money, shall be
4 deposited in a special revenue revolving fund, designated the
5 Purchasing Card Administration Fund, in the State Treasury
6 to be administered by the Auditor. The fund shall be used to
7 pay all expenses incurred by the Auditor in the
8 implementation and operation of the Purchasing Card
9 Program and may be used to pay expenses related to the
10 general operation of the Auditor's office. The Auditor also
11 may use the fund to pay expenses incurred by spending units
12 associated with the use of the card, including system and
13 program enhancements, and inspection and monitoring of
14 compliance with all applicable rules and procedures.
15 Expenditures from the fund shall be made in accordance with
16 appropriations by the Legislature pursuant to the provisions
17 of article three, chapter twelve of this code and upon
18 fulfillment of the provisions of article two, chapter five-a of
19 this code.

20 (b) Within three days of receiving rebate moneys
21 resulting from state spending unit purchasing card purchases,
22 the Auditor shall transfer fifteen and one-half percent of such
23 rebate moneys to the Purchasing Improvement Fund created
24 pursuant to section fifty-eight, article three, chapter five-a of
25 this code.

26 (c) Within three days of receiving rebate moneys
27 resulting from state spending unit purchasing card purchases,

25

[Enr. Com. Sub. for Com. Sub. for S. B. No. 356

28 the Auditor shall transfer ten percent of such rebate moneys
29 to the Hatfield-McCoy Regional Recreation Authority and
30 ten percent of such moneys to the State Park Operating Fund.

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

Rocky Feliciano
.....
Member ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Winard
.....
Clerk of the Senate

Suzanne D. Snow
.....
Clerk of the House of Delegates

Jeffrey H. ...
.....
President of the Senate

Robert ...
.....
Speaker of the House of Delegates

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2014 MAR 24 P 4:03

FILED

The within *is approved* this
the *24th* Day of *March*, 2014.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 2:50 pm