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ENROLLED
COMMITTEE SUBSTITUTE
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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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
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) “Commodities” means supplies, material, equipment and any other articles or things used by or furnished to a department, agency or institution of state government.

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

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

(4) “Director” means the director of the division referred to in the heading of the article in which the word appears.

(5) “Electronic” means electrical, digital, magnetic, optical, electromagnetic or any other similar technology.
(6) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

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

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

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

(10) "Printing" means printing, binding, ruling, lithographing, engraving and other similar services.

(11) "Procurement" means the buying, purchasing, renting, leasing or otherwise obtaining of commodities or services.
(12) "Public funds" means funds of any character, including federal moneys, belonging to or in the custody of any state spending unit.

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

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

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

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

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

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

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

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

(21) "Spending unit" means a department, bureau, department, division, office, board commission, authority, agency or institution of the state government for which an
§5A-1-10. General procurement provisions for state spending units.

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

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.
(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

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

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

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

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

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

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

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

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

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

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units in order for those spending units to better serve this state's businesses and residents.
(b) The Director of the Purchasing Division shall, at the
time of appointment:

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

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

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

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

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

§5A-3-3. Powers and duties of Director of Purchasing.

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

(1) Direct the activities and employees of the Purchasing
Division;
(2) Ensure that the purchase of or contract for commodities and services shall be based, whenever possible, on competitive bid;

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

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

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

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

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

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

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

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

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

§5A-3-4. Rules of director.

(a) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to:
(1) Authorize a spending unit to purchase specified commodities and services directly and prescribe the manner in which such purchases shall be made;

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

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

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

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

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

(7) Prescribe a system whereby the director shall be required, upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities and services of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee exceed the sum of $125 per fiscal year nor shall such fee be charged to persons seeking only reimbursement from a spending unit;
(8) Prescribe that each state contract entered into by the Purchasing Division shall contain provisions for liquidated damages, remedies or provisions for the determination of the amount or amounts which the vendor shall owe as damages, in the event of default under such contract by such vendor, as determined by the director;

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

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

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

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

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

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

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

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

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

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

§5A-3-5. Purchasing section standard specifications —
pronouncement and adoption by director; applicable to all purchases.

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

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

(c) No purchases by any spending unit may be exempt
from compliance with the standard specifications so
established, but the director may exempt the purchase of
particular items from the standard specifications if it is
considered necessary and advisable.
§5A-3-10d. Reverse auctions.

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

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

(1) Are subject to low price volatility;

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

(3) Vary little between suppliers;

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

(5) Require little collaboration from suppliers; and

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

(c) For purposes of this section, “reverse auction” means a process by which bidders compete to provide commodities in an open and interactive market, including but not limited to the Internet. Reverse auction bids are opened and made public upon receipt by the director, and then bidders are given the opportunity to submit revised bids until the bidding process is complete. The contract is awarded to the lowest responsible bidder.
(d) The director may contract with qualified, industry-recognized third-party vendors to conduct reverse auctions on behalf of the director.

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

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

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

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

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

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

(3) “Preapproved vendor” means a “vendor”, as that term is defined in section one, article one, chapter five-a of this code, that has entered into a master contract with the Purchasing Division and may participate in the direct ordering process subject to the terms and conditions of the master contract.
(4) "Direct ordering process" means the competitive bidding process whereby the preapproved vendors that are parties to a master contract may submit sealed bids directly to spending units to provide a commodity identified in the master contract subject to the limitations set forth in this section.

(c) Master contract procedures. –

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

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

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

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

(d) Direct ordering procedures. –

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

(2) The preapproved vendor that submits the lowest bid in response to the request shall be awarded the procurement in that particular instance.
(3) The direct ordering process may not be utilized for any request for commodities, other than information technology, anticipated to cost more than $50,000, unless approved in writing by the Director of Purchasing. The state may not issue a series of orders each anticipated to cost less than $50,000 to circumvent the monetary limitation in this subsection.

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

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

(a) The director may make a purchase of commodities, printing and services of $25,000 or less in amount in the open market, but the purchase shall, wherever possible, be based on at least three competitive bids, and shall include the cost
of maintenance and expected life of the commodities if the
director determines there are nationally accepted industry
standards for the commodities being purchased.

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

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

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

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

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

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

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

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

(2) If a grant awarded to the state requires the procurement of commodities or services that will directly
benefit a spending unit, the procurement is not exempt from
the competitive bidding requirements set forth in this chapter.

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

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

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

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

(a) Neither the secretary, nor the director nor any
employee of the Division of Purchasing, shall be financially
interested, or have any beneficial personal interest, directly or
indirectly, in the purchase of any commodities, services or
printing, nor in any firm, partnership, corporation or
association furnishing them. Neither the secretary, nor the
director nor any employee of the Division of Purchasing, shall accept or receive directly or indirectly from any person, firm or corporation, known by such secretary, director or employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward or compensation.

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

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

(b) It is unlawful for any person to obtain any services, money, goods or other property from the state under any contract made under the provisions of this article, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud. A person who violates this subsection is guilty of a felony and, upon conviction
thereof, shall be confined in a state correctional facility for not less than one year nor more than five years, and shall be fined not exceeding $10,000.

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

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

§SA-3-31. Corrupt actions, combinations, collusions or conspiracies prohibited; penalties.

(a) It shall be unlawful for any person to corruptly act alone or combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of services, commodities or printing to the state under the provisions of this article if the purpose or effect of such action, combination, collusion or conspiracy is either to: (1) Lessen competition among prospective vendors; or (2) cause the state to pay a higher price for such services, commodities or printing than would be or would have been paid in the
(a) Any person who violates any provision of this section
is guilty of a felony and, upon conviction thereof, shall be
imprisoned in a state correctional facility not less than one
nor more than five years, and be fined not exceeding $10,000.

§5A-3-60. Annual purchasing training.

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

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

(c) All individuals listed in subsection (a) of this section
shall certify, in writing and on a form developed by the
Director of the Purchasing Division, the date, time, location
and manner in which they took the training. Completed
forms shall be returned to the director and maintained in his
or her office.
CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

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

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

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

(c) Within three days of receiving rebate moneys resulting from state spending unit purchasing card purchases,
the Auditor shall transfer ten percent of such rebate moneys
to the Hatfield-McCoy Regional Recreation Authority and
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.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor