Committee Substitute for Committee Substitute for Senate Bill 461

SENATORS HALL, TAKUBO AND STOLLINGS, original sponsors

[Passed April 6, 2017; in effect 90 days from passage]
WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

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[Passed April 6, 2017; in effect 90 days from passage]
AN ACT to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, all relating to exempting the West Virginia State Police from state purchasing requirements; requiring the Legislative Auditor to audit purchasing made by the West Virginia State Police and report the findings to the Joint Committee on Government and Finance; and requiring the West Virginia State Police report to the Joint Committee on Government and Finance on the effects of exempting said agency from state purchasing requirements.

Be it enacted by the Legislature of West Virginia:

That §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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 West Virginia State Police, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by the State Board of Education for use in and in support of the public schools.

(e) During the 2018 calendar year, the Legislative Auditor shall audit purchasing procedures of the West Virginia State Police pursuant to the exemption provided in subsection (d) of this section and report the results to the Joint Committee on Government and Finance.

(f) During the 2019 calendar year, the Legislative Auditor shall audit purchasing procedures of the West Virginia State Police pursuant to the exemption provided in subsection (d) of this section and report the results to the Joint Committee on Government and Finance.
(g) On or before December 31, 2020, the West Virginia State Police shall report to the Joint Committee on Government and Finance on the effects of exempting said agency from the provisions of this article, including but not limited to, any realized cost savings and changes in purchasing policies resulting from such exemption.

(h) 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, is the executive officer of the Purchasing Division and has 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 are 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 considers 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 considers advisable;
8. Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that the 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 the 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 the 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 or to construction or reclamation contracts entered into by the Department of Environmental Protection: Provided, however, That the provisions of this subdivision do not apply in any respect whatsoever 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: Provided further, That the provisions of this subdivision do not apply to the West Virginia State Police and the West Virginia Office of Laboratory Services;

(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 the notice may result in penalties set forth in section seventeen of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ... approved ... this the ... Day of April ... 2017.

Governor
PRESENTED TO THE GOVERNOR

APR 13 2017

Time 9:09 a.m.