WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

HB 2412 Vetoed

FILED

2019 MAR 27 P 5:15

OFFICE WEST VIRGINIA SECRETARY OF STATE

ENROLLED

House Bill 2412

BY MR. SPEAKER (MR. HANSHAW) AND DELEGATES

BATES, MILEY, NELSON, SHOTT AND WILSON

[Passed March 8, 2019; in effect ninety days from passage.]

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AN ACT to repeal §5A-3-28, §5A-3-30, and §5A-3-31 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §61-5B-1, §61-5B-2, and §61-5B-3, all relating to state purchasing; moving and modifying certain criminal provisions relating to government procurement from chapter 5A of the code to chapter 61; defining terms; prohibiting persons purchasing commodities and services for a governmental entity from having an interest in entities selling or contracting to sell commodities or services to a governmental entity; prohibiting persons purchasing commodities or services for a governmental entity from accepting things of value from persons selling, attempting to sell, or contracting to sell commodities or services to a governmental entity; prohibiting persons or entities attempting to sell or selling commodities to a governmental entity from offering anything of value to the person acting as a governmental entity's agent; prohibiting delivery and acceptance of inferior commodities or services, authorizing change orders made in good faith from prohibited conduct; creating exceptions to prohibited conduct consistent with state ethics law; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

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

[Repealed.]

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

[Repealed.]

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

[Repealed.]

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5B. PROHIBITED ACTS IN GOVERNMENT PROCUREMENT.

§61-5B-1 Definitions.

As used in this article, the terms listed in this section have the meaning assigned to them below.

(a) “Business entity” means any individual, legal person, firm, partnership, association, or similar organization with the capacity to contract under West Virginia law;

(b) “Commodities” means supplies, material, equipment, and any other articles or things used by, or furnished to, a governmental entity, including the use, extension, loan or grant of money, credit, or waivers of debt or liability;

(c) “Governmental entity” means any department, agency, commission, institution, board, or similar entity within any branch of government of the State of West Virginia;

(d) “Inferior commodities or services” means:

(1) Any commodity or service that materially fails to meet the specification or standard issued by the governmental entity;

(2) any commodity or service that does not meet a specification or standard required by state or federal law; or (3) any commodity or service which is of a materially lesser quality, quantity, or measure of any kind set forth within the specification or standard issued by the procuring governmental entity.

(e) “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.

§61-5B-2. Financial Interests of state purchasing agents; prohibitions; offenses; penalties.

(a) Except as authorized by the provisions of §6B-1-1 *et seq*. of this code:

(1) No person purchasing or contracting for the purchase of commodities or services for a governmental entity may have any interest, direct or indirect, in any business entity bidding, contracting with or selling commodities or services to the governmental entity for which the person is acting as an agent.

(2) No person purchasing or contracting for the purchase of commodities or services on behalf of a governmental entity may accept anything of value from a business entity offering to sell, providing, or contracting to sell or provide commodities or services to the governmental entity for which the person is acting as an agent.

(3) No business entity selling, offering to sell, or bidding on a contract to provide commodities or services to a governmental entity may offer to any person acting as an agent for a governmental entity in said purchase or contract anything of value without receiving fair value therefor.

(b) Any person or entity violating the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail for not more than one year, or both fined and confined.

§61-5B-3. Obtaining money and property under false pretenses or by fraud from the state; penalties; definition; application of change orders.

(a) It is unlawful for any business entity to obtain any money or other thing of value from a governmental entity by knowing delivery of inferior commodities or services to a governmental entity, with the intent to defraud the governmental entity.

(b) It is unlawful for any person to knowingly accept delivery of inferior commodities or services on behalf of a governmental entity with intent to defraud that governmental entity.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(d) It shall not be a defense to a charge under this section that: (1) The commodities or services were accepted and used, or are being used, by the relevant governmental entity; or (2) the commodities or services are functional or suitable for the purpose for which the commodities or services were purchased by the governmental entity notwithstanding a deviation from the standard or specification issued by the governmental entity that makes the commodities inferior.

(e) Nothing in this section prohibits the negotiation, issuance, or approval of a change order to modify the initial specification or standard issued, provided that the intent of the modification is to serve the best interests of the governmental entity and not to defraud the governmental entity, circumvent competitive bidding requirements, or provide a beneficial personal interest to a procurement authority.

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

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Chairman, House Committee

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Chairman, Senate Committee

FILED
2019 MAR 27 P 5:15
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within ...is disapproved... this the...27th...

day of ...March... 2019.

.....
Governor

PRESENTED TO THE GOVERNOR

MAR 2 1 2019

Time 12:40 pm