

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

FILED
2024 MAR 27 P 5: 34
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Committee Substitute

for

House Bill 5604

BY DELEGATES HOUSEHOLDER, RILEY, HANSHAW (MR.
SPEAKER), CANNON, LINVILLE, MAYNOR, PHILLIPS,
BURKHAMMER, AND HOTT

[Passed March 8, 2024; in effect ninety days from
passage.]

HB 5604 (veto)

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1 AN ACT to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section designated §5A-3-10f; to amend and
3 reenact §5A-6-2 of said code; to amend said code by adding thereto a new section,
4 designated §5A-6-4f; and to amend and reenact §11-8-26 of said code, all relating
5 generally to procurement by state spending units and local fiscal bodies of technology and
6 technical infrastructure products and services; modifying process for procurement of
7 technical infrastructure by state spending units; and permitting local fiscal bodies to enter
8 into multi-year technology license service agreements with justification.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops; continuing procurements over \$1 million.

1 (a) A purchase of and contract for commodities, printing, and services shall be based on
2 competitive bids, except when another method of procurement is determined to be in the best
3 interest of the State.

4 (b) The director shall solicit, on behalf of spending units, sealed bids for the purchase of
5 commodities and printing which is estimated to exceed \$25,000. The director may delegate the
6 procurement of commodities, services, or printing estimated to be \$25,000 or less to the spending
7 unit. The director may set a higher or lower delegated procurement limit for a particular spending
8 unit if the director determines that such action would be in the best interest of the spending unit
9 and the State. In no event may the director authorize more than \$100,000 of delegated
10 procurement authority to a spending unit.

11 (c) *Bids for the purchase of technical infrastructure.* Notwithstanding the provisions of
12 subsection (b) of this section to the contrary, the director shall solicit, on behalf of spending units,
13 sealed bids for the purchase of technical infrastructure as defined in §5A-6-2 of this code which
14 is estimated to exceed \$250,000. The director shall delegate the procurement of technical
15 infrastructure estimated to be \$250,000 or less to the spending unit. The director may set a higher
16 or lower delegated procurement limit for a particular spending unit for the purchase of technical
17 infrastructure if the director determines that such action would be in the best interest of the
18 spending unit and the State.

19 (d) Spending units shall not make an individual purchase in excess of the delegated
20 procurement limit established in subsections (b) or (c) of this section, issue a series of requisitions
21 for the same or similar commodity or service or divide or plan procurements with the intention to
22 circumvent the delegated procurement limit established in subsections (b) or (c) of this section,
23 or otherwise avoid the use of sealed bids. Any spending unit that discovers it has awarded multiple
24 contracts for the same or similar commodity or service to an individual vendor over any 12-month
25 period shall file copies of all contracts awarded or orders placed for the commodity, service, or
26 printing in question within the 12 preceding months with the director upon exceeding the
27 delegated limits, along with a statement explaining how either the multiple contract awards or
28 orders do not circumvent the delegated procurement limits, or how the contracts or orders were
29 not intended to circumvent the delegated limits. If the spending unit does not report to the director
30 within a reasonable period, the director shall contact the spending unit to request such statement
31 and may suspend the purchasing authority of the spending unit until the spending unit complies
32 with the reporting requirement of this subsection, as determined appropriate. The director may
33 conduct a review of any spending unit to ensure compliance with this subsection. Following a
34 review, in consultation with the relevant spending unit, the director shall complete a report
35 summarizing his or her findings and forward the report to the spending unit. In addition, the
36 director shall report to the Joint Committee on Government and Finance on January 1 and July 1

37 of each year the spending units which have reported under this subsection and the findings of the
38 director.

39 (e) The director may permit bids by electronic transmission to be accepted in lieu of sealed
40 bids.

41 (f) Bids shall be solicited by public notice. The notice may be published by any advertising
42 medium the director considers advisable. The director may also solicit sealed bids by sending
43 requests by mail or electronic transmission to prospective vendors.

44 (g) (1) The director may, without competitive bidding, purchase commodities and services
45 produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code, which
46 are located in this state: *Provided*, That the commodities and services shall be of a fair market
47 price and of like quality comparable to other commodities and services otherwise available as
48 determined by the director.

49 (2) To encourage contracts for commodities and services with nonprofit workshops, the
50 director shall employ a person whose responsibilities in addition to other duties are to identify all
51 commodities and services available for purchase from nonprofit workshops, to evaluate the need
52 of the state for commodities and services to coordinate the various nonprofit workshops in their
53 production efforts, and to make available to the workshops information about available
54 opportunities within state government for purchase of commodities or services which might be
55 produced and sold by such workshops. Funds to employ such a person shall be included annually
56 in the budget.

57 (h) For all commodities and services in an amount exceeding \$1 million, if the procurement
58 of the commodity or service is continuing in nature, 12 months prior to the expiration of the
59 contract or final renewal option, whichever is later, the spending unit shall coordinate with the
60 Purchasing Division on a new procurement for such commodity or service under the requirements
61 of this article. This procurement shall be awarded or terminated no later than 180 days after the
62 procurement specifications have been finally approved by the Purchasing Division.

§5A-3-10f. Use of cooperative contracts.

1 Any state spending unit may make a written request to the director to procure technical
2 infrastructure pursuant to a competitively procured agreement. The director shall respond to the
3 request within 30 days of receipt of the request. If the director does not respond within 30 days
4 of receipt of the request, the director is deemed to have approved the request and the spending
5 unit may procure technical infrastructure pursuant to the competitively procured agreement.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-2. Definitions.

1 As used in this article:

2 "Information systems" means a discrete set of information resources organized for the
3 collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

4 "Information technology" means any equipment or interconnected system or subsystem
5 of equipment that is used in the automatic acquisition, storage, manipulation, management,
6 movement, control, display, switching, interchange, transmission, or reception of data or
7 information.

8 "Information technology marketplace portal" or "IT marketplace portal" means a structured
9 digital catalog that customers can use to find, buy, deploy, and manage third-party information
10 technology products and services whose pricing and discount levels are set by the third-party
11 providers.

12 "Technology services" means professional services designed to provide functions,
13 maintenance, and support of information technology devices, or services including, but not limited
14 to, computer systems application development and maintenance; systems integration and
15 interoperability; operating systems maintenance and design; computer systems programming;
16 computer systems software support; planning and security relating to information technology
17 devices; data management consultation; information technology education and consulting;

18 information technology planning and standards; establishment of local area network and
19 workstation management standards; and cloud computing.

20 "Telecommunications" means the preparation, transmission, communication, or related
21 processing of information by electrical, electromagnetic, electromechanical, electro-optical, or
22 electronic means.

23 "Chief Information Officer" means the person holding the position created in §5A-6-3 of
24 this code and vested with authority to oversee state spending units in planning and coordinating
25 information systems that serve the effectiveness and efficiency of the state and individual state
26 spending units, and further the overall management goals and purposes of government: *Provided*,
27 That reference to "Chief Technology Officer" in other articles of this code shall mean "Chief
28 Information Officer".

29 "Technical infrastructure" means all information systems, information technology,
30 information technology equipment, telecommunications, and technology services as defined in
31 this section.

32 "Technology project" means a project where technology is a significant component and is
33 either valued at \$250,000 or more, or will involve sensitive or restricted data.

34 "Steering committee" means an internal agency oversight committee established jointly
35 by the Chief Information Officer and the agency proposing the project, which shall include
36 representatives from the Office of Technology and at least one representative from the agency
37 proposing the project.

38 "Technology portfolio" means a strategic management process documenting relationships
39 between agency missions and information technology and telecommunications investments.

§5A-6-4f. Information technology marketplace portal.

1 (a) On or before September 1, 2024, the Secretary of Administration shall approve at
2 least two IT marketplace portals for use by state spending units. Any IT marketplace approved
3 by the Secretary must meet the following minimum qualifications: (1) Be as equally accessible to

4 West Virginia-based third-party solutions as they are to national solutions; (2) offer real-time
5 transaction capability; (3) offer third-party solutions in addition to a providers' own products; (4)
6 have the capability to apply negotiated contracts; (5) have the capability to search and filter by
7 compliance frameworks; (6) have capability to view product security compliance in real-time; and
8 (7) offer diverse solution types. Diverse solution types include, but are not limited to software,
9 software as a service, machine learning algorithms, professional services, large data sets, and
10 virtual images.

11 (b) The Chief Information Officer shall determine if the procurement of technical
12 infrastructure through an IT marketplace portal is advantageous for the State of West Virginia.
13 The Chief Information Officer may utilize best value procurement when determining if using an IT
14 marketplace portal is most advantageous for the State.

15 (c) Upon the approval of an IT marketplace portal by the Secretary, a state spending unit
16 may use the IT marketplace to procure technical infrastructure.

CHAPTER 11. TAXATION.

ARTICLE 8. LEVIES.

§11-8-26. Unlawful expenditures by local fiscal body.

1 (a) Except as provided in §11-8-14b, §11-8-25a, and §11-8-26a of this code, or subsection
2 (b) of this section, a local fiscal body may not expend money or incur obligations:

- 3 (1) In an unauthorized manner;
- 4 (2) For an unauthorized purpose;
- 5 (3) In excess of the amount allocated to the fund in the levy order; or
- 6 (4) In excess of the funds available for current expenses.

7 (b) Local fiscal bodies may not obligate funds beyond the current fiscal year except for
8 contracts executed to procure technology licensing service agreements or technology services
9 including cloud computing. Local fiscal bodies shall justify entering into multi-year technology

10 license service agreements or technology services including cloud computing by maintaining
11 documentation of material fiscal savings to the body.

12 (c) Notwithstanding the foregoing and any other provision of law to the contrary, a local
13 fiscal body or its duly authorized officials may not be penalized for a casual deficit which does not
14 exceed its approved levy estimate by more than three percent: *Provided*, That such casual deficit
15 is satisfied in the levy estimate for the succeeding fiscal year: *Provided, however*, That in
16 calculating a deficit for purposes of this section, account shall not be taken of any amount for
17 which the local fiscal body may be liable for the unfunded actuarial accrued liability of the West
18 Virginia Retiree Health Benefit Trust Fund or any amount allocated to the local fiscal body as an
19 employer annual required contribution that exceeds the minimum annual employer payment
20 component of the contribution, all as provided under §5-16D-1 *et seq.* of this code.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.


.....
Clerk of the House of Delegates



.....
Clerk of the Senate

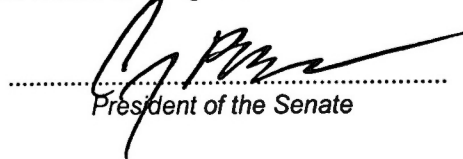
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED

Originated in the House of Delegates.

In effect ninety days from passage.


.....
Speaker of the House of Delegates


.....
President of the Senate

The within is disapproved this the 27th
Day of March, 2024.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am