

Senate Bill No. 363

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

[Introduced February 25, 2013; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto three new sections, designated §5A-3-10d,
§5A-3-10e and §5A-3-60; and to amend and reenact §9-2-9b of
said code, all relating generally to purchasing; authorizing
reverse auction pilot program for purchasing commodities;
defining "reverse auction"; permitting third-party vendors to
administer reverse auctions; affording the Director of the
Purchasing Division rule-making authority to implement reverse
auction pilot program; providing that reverse auction pilot
program expires on July 1, 2017; authorizing prequalification
agreements and the secondary bid process for the direct
procurement of commodities; defining "state",
"prequalification agreement", "prequalified vendor" and the

1 "secondary bid process"; requiring approval of the Director of
2 the Purchasing Division for prequalification agreement and
3 secondary bid process procurements anticipated to cost in
4 excess of \$50,000; affording the Director of the Purchasing
5 Division rule-making authority to establish procedures
6 regarding prequalification agreements, prequalification, the
7 secondary bid process and related matters; requiring certain
8 executive department officials to attend annual training on
9 purchasing procedures; and repealing the Department of Health
10 and Human Resources' Medicaid purchasing exemption.

11 *Be it enacted by the Legislature of West Virginia:*

12 That the Code of West Virginia, 1931, as amended, be amended
13 by adding thereto three new sections, designated §5A-3-10d,
14 §5A-3-10e and §5A-3-60; and that §9-2-9b of said code be amended
15 and reenacted, all to read as follows:

16 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

17 **ARTICLE 3. PURCHASING DIVISION.**

18 **§5A-3-10d. Reverse auction pilot program.**

19 (a) Notwithstanding any other provision of this code, the
20 director is hereby authorized to initiate a reverse auction pilot
21 program to procure commodities. The program may be utilized if the
22 director determines the use of a reverse auction would be fair,

1 economical and in the best interests of the state: *Provided, That*
2 the director determines that the commodity to be procured:

3 (1) Is subject to low price volatility;

4 (2) Has specifications that are common and not complex;

5 (3) Varies little between suppliers;

6 (4) Is sourced primarily on price, with limited ancillary
7 considerations;

8 (5) Requires little collaboration from suppliers; and

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

10 (b) For purposes of this section, "reverse auction" means a
11 process by which bidders compete to provide commodities in an open
12 and interactive market, including, but not limited to, the
13 Internet. Reverse auction bids are opened and made public upon
14 receipt by the director, and then bidders are given the opportunity
15 to submit revised bids until the bidding process is complete. The
16 contract is awarded to the lowest responsible bidder.

17 (c) The director may contract with qualified,
18 industry-recognized third-party vendors to conduct reverse auctions
19 on behalf of the director.

20 (d) The director shall propose rules for legislative approval
21 in accordance with the provisions of article three, chapter
22 twenty-nine-a of this code to establish the procedures for

1 conducting reverse auctions under the pilot program authorized by
2 this section. The rules shall include procedures for contracting
3 with qualified, industry-recognized third-party vendors.

4 (e) This section shall expire and be of no further force and
5 effect on and after July 1, 2017.

6 **§5A-3-10e. Prequalification agreements; secondary bid process.**

7 Notwithstanding any other provision of this code, the director
8 may permit the state and its spending units to procure commodities
9 directly and on a recurrent basis pursuant to a prequalification
10 agreement and a secondary bid process if the director determines
11 the process is fair, economical and in the best interests of the
12 state.

13 (a) For purposes of this section, the term "state" includes
14 the State of West Virginia and its spending units.

15 (b) For purposes of this section, a "prequalification
16 agreement" is an agreement between the state and at least two
17 prequalified vendors authorizing the state to purchase a commodity
18 or commodities on a direct and recurrent basis through the
19 secondary bid process. All prequalification agreements shall be of
20 a specified duration and shall set forth the special requirements,
21 technical or otherwise, for the commodity or commodities the state
22 may wish to procure. Further, all prequalification agreements

1 shall be approved by the director of the Purchasing Division.

2 (c) For purposes of this section, a "prequalified vendor" is
3 a "vendor," as that term is defined in section one, article one,
4 chapter five-a of this code, that enters into a prequalification
5 agreement after demonstrating it is responsible and qualified to
6 provide the commodity or commodities identified or to be identified
7 in the prequalification agreement.

8 (d) For purposes of this section, the "secondary bid process"
9 is the competitive bidding process whereby the prequalified vendors
10 that are parties to a prequalification agreement may submit sealed
11 bids to provide the commodity or commodities identified therein.
12 The state shall commence the secondary bid process by issuing an
13 order for the commodity or commodities identified in the
14 prequalification agreement, stating in the order the quantity of
15 the commodity or commodities to be procured in that particular
16 instance. The prequalified vendor that submits the lowest
17 secondary bid in response to the order shall be awarded the
18 procurement in that particular instance.

19 (e) For purposes of this section, all orders anticipated to
20 cost \$50,000 or less may be issued by the state directly to the
21 prequalified vendors. However, orders anticipated to cost in
22 excess of \$50,000 require advance approval from the director of

1 the Purchasing Division. The state is not permitted to issue a
2 series of orders anticipated to cost \$50,000 or less to circumvent
3 the requirements stated in this subsection.

4 (f) The director of the Purchasing Division shall propose
5 rules for legislative approval in accordance with the provisions of
6 article three, chapter twenty-nine-a of this code, to establish,
7 among other things, procedures by which prequalification agreements
8 are solicited and entered into; procedures by which interested
9 vendors may be prequalified; and procedures by which the secondary
10 bid process is conducted. The rules shall also address the
11 procedures the state and the Purchasing Division shall follow in
12 the event an order is anticipated to cost in excess of \$50,000.

13 **§5A-3-60. Annual purchasing training.**

14 (a) All executive department secretaries, commissioners,
15 deputy commissioners, assistant commissioners, directors, deputy
16 directors, assistant directors, department heads, deputy department
17 heads, and assistant department heads are hereby required to take
18 one hour of training on purchasing procedures annually.

19 (b) The director of the Purchasing Division shall offer the
20 one-hour training contemplated by this section at least two times
21 per year and shall develop its substance in accordance with the
22 requirements of this article. The training shall be recorded by

1 audio and visual means and shall be made available to the
2 individuals listed in subsection (a) of this section in the event
3 they are unable to attend the training in person.

4 (c) All individuals listed in subsection (a) shall certify, in
5 writing and on a form developed by the director of the Purchasing
6 Division, the date, time, location and manner in which they took
7 the training. Completed forms shall be returned to the director
8 and maintained in his or her office.

9 **CHAPTER 9. HUMAN SERVICES.**

10 **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS; DUTIES AND**
11 **RESPONSIBILITIES GENERALLY.**

12 **§9-2-9b. Contract procedure for the Medicaid program.**

13 (a) The secretary is authorized to execute a contract to
14 implement professional health care, managed care, actuarial and
15 health care-related monitoring, quality review/utilization, claims
16 processing and independent professional consultant contracts for
17 the Medicaid program.

18 (b) The provisions of article three, chapter five-a of this
19 code do not apply to contracts set out in subsection (a) of this
20 section: *Provided*, That the secretary shall comply with the
21 requirements set forth in this section.

22 (c) The secretary shall develop procedures and requirements

1 for competitive bidding and the awarding of contracts set out in
2 subsection (a) of this section, which procedures and requirements
3 shall include, but are not limited to, the following:

4 (1) Submitting public notice bids;

5 (2) The general terms and conditions for the contract;

6 (3) Awarding contracts;

7 (4) The description of the commodities and services required
8 for the contract, stated with sufficient clarity to assure that
9 there is a comprehensive understanding of the contract's scope and
10 requirements; and

11 (5) Contract management procedures which will ensure the
12 assessment of contractor performance and compliance with contract
13 requirements on a regular basis as appropriate for the specific
14 contract and no less frequently than on an annual basis for any
15 contract awarded pursuant to the provisions of this section.

16 (d) The awarding of the contract may be based on:

17 (1) Best value;

18 (2) Low bid;

19 (3) Sole source; or

20 (4) Any other basis the secretary chooses to award or reject
21 the bid: *Provided*, That the secretary shall document the basis of
22 any decision made pursuant to the provisions of this subsection.

1 (e) The secretary may employ the services of independent
2 professional consultants to assist in preparing solicitations or
3 for the evaluation of any responses to such solicitations:
4 *Provided*, That the independent professional consultant, or member
5 of his or her immediate family, or business with which he or she is
6 associated may not have any interest in the profits or benefits of
7 the contract for which he or she may participate in the preparation
8 of the solicitation or in the evaluation of the response.

9 (f) The secretary may terminate any contract with thirty days'
10 prior written notice.

11 (g) The provisions of subsections (b), (c), (d), (e) and (f)
12 of this section expire on and are of no further force and effect
13 after June 30, 2013: *Provided*, That the secretary may continue
14 with any procurement pursuant to the provisions of this section for
15 the competitive bidding and awarding of a contract in which a
16 public notice bid issued pursuant to this section occurred on or
17 before January 1, 2013: *Provided*, however, That the secretary
18 retains authority to review, approve and issue changes to contracts
19 issued under this section, and is responsible for challenges,
20 disputes, protests, and legal actions related to contracts issued
21 under this section.

NOTE: The purpose of this bill is to implement purchasing reforms. Specifically, the bill provides the Purchasing Division with alternative methods to purchase commodities, including the reverse auction and prequalification agreement/secondary bid processes; requires certain executive department officials to attend annual training on purchasing procedures; and repeals the Department of Health and Human Resources' Medicaid program purchasing exemption.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§5A-3-10d, §5A-3-10e and §5A-3-60 are new; therefore, strike-throughs and underscoring have been omitted.