

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 363**

(By Senators Kessler (Mr. President) and M. Hall,  
By Request of the Executive)

---

[Originating in the Committee on Government Organization;  
reported March 27, 2013.]

---

A BILL to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5A-3-10d, §5A-3-60 and §5A-3-61, all relating to the Purchasing Division; clarifying the powers and duties of the director under the direction and supervision of the Administration Secretary; prohibiting the Purchasing Division from using the secondary bid process commencing July 1, 2013; requiring annual purchasing training for executive branch officials; creating a Purchasing Task Force; study and reporting requirements for

the task force; and expense reimbursement for legislative members of the task force.

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

That §5A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §5A-3-10d, §5A-3-60 and §5A-3-61, all to read as follows:

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-3. Powers and duties of director of purchasing.**

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

4           (1) Direct the activities and employees of the Purchasing  
5 Division;

6           (2) Ensure that the purchase of or contract for  
7 commodities shall be based, whenever possible, on  
8 competitive bid;

9           (3) Maintain a record of all procurements and purchases  
10 not obtained under the competitive bid process set out in  
11 section ten of this article;

12 (4) Propose rules for legislative approval in accordance  
13 with the provisions of article three, chapter twenty-nine-a of  
14 this code, that are consistent with, and not contrary to, the  
15 provisions of this article;

16 (5) Provide a handbook that is consistent with, and not  
17 contrary to, the provisions of this article;

18 ~~(3) Purchasing~~ (6) Purchase or contract for, in the name  
19 of the state, the commodities and printing required by the  
20 spending units of the state government;

21 ~~(4) (7)~~ (7) Apply and enforce standard specifications  
22 established in accordance with section five of this article; ~~as~~  
23 ~~hereinafter provided~~

24 ~~(5) (8)~~ (8) Transfer to or between spending units or sell  
25 commodities that are surplus, obsolete or unused as  
26 ~~hereinafter provided~~ in this article;

27 ~~(6) (9)~~ (9) Have charge of central storerooms for the supply  
28 of spending units, as the director deems advisable;

29 ~~(7) (10)~~ (10) Establish and maintain a laboratory for the  
30 testing of commodities and make use of existing facilities in

31 state institutions for that purpose as ~~hereinafter~~ provided in  
32 this article, as the director deems advisable;

33 (8) (11) Suspend the right and privilege of a vendor to  
34 bid on state purchases when the director has evidence that  
35 such vendor has violated any of the provisions of the  
36 purchasing law or the rules ~~and regulations~~ of the director;

37 (9) (12) Examine the provisions and terms of every  
38 contract entered into for and on behalf of the State of West  
39 Virginia that impose any obligation upon the state to pay any  
40 sums of money for commodities or services and approve each  
41 ~~such~~ contract as to ~~such~~ the provisions and terms, and ~~the~~ this  
42 duty of examination and approval ~~herein set forth~~ does not  
43 supersede the responsibility and duty of the Attorney General  
44 to approve such contracts as to form: *Provided*, That the  
45 provisions of this subdivision do not apply ~~in any respect~~  
46 ~~whatever~~ to construction or repair contracts entered into by  
47 the Division of Highways of the Department of  
48 Transportation: *Provided, however*, That the provisions of  
49 this subdivision do not apply in any respect whatever to

50 contracts entered into by the University of West Virginia  
51 Board of Trustees or by the Board of Directors of the State  
52 College System, except to the extent that such boards request  
53 the facilities and services of the director under the provisions  
54 of this subdivision; and

55 ~~(10)~~ (13) Assure that the specifications and commodity  
56 descriptions in all “requests for quotations” are prepared so  
57 as to permit all potential suppliers-vendors who can meet the  
58 requirements of the state an opportunity to bid and to assure  
59 that the specifications and descriptions do not favor a  
60 particular brand or vendor. If the director determines that  
61 any such specifications or descriptions as written favor a  
62 particular brand or vendor or if it is decided, either before or  
63 after the bids are opened, that a commodity having different  
64 specifications or quality or in different quantity can be  
65 bought, the director may rewrite the “requests for quotations”  
66 and the matter shall be rebid. If a matter has to be rebid, then  
67 the director must state the reasons for the rebid in writing and  
68 place it in the file.

**§5A-3-10d. Prohibition of secondary bid process.**

1 Commencing July 1, 2013, the Purchasing Division is  
2 prohibited from using the secondary bid process to procure  
3 commodities and services.

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

1 (a) Commencing July 1, 2013, all executive department  
2 secretaries, commissioners, deputy commissioners, assistant  
3 commissioners, directors, deputy directors, assistant  
4 directors, department heads, deputy department heads and  
5 assistant department heads are required to take one hour of  
6 training on purchasing procedures annually.

7 (b) The Director of the Purchasing Division shall  
8 provide the required one-hour training at least two times per  
9 year. The training shall include purchasing requirements and  
10 procedures set out in this article. The training shall be  
11 recorded by audio and visual means and shall be made  
12 available to the individuals listed in subsection (a) of this  
13 section in the event they are unable to attend the training in  
14 person.

15 (c) All individuals listed in subsection (a) of this section  
16 shall certify, in writing and on a form developed by the  
17 Director of the Purchasing Division, the date, time, location  
18 and manner in which they took the training. Completed  
19 forms shall be returned to the director and maintained in his  
20 or her office.

**§5A-3-61. Purchasing Task Force; study; report.**

1 (a) The President of the Senate and the Speaker of the  
2 House of Delegates shall convene a Purchasing Task Force  
3 to study:

- 4 (1) Purchasing procedures;
- 5 (2) The purchasing process;
- 6 (3) The current purchasing code and legislative rules;
- 7 (4) The Purchasing Division's Procedures Handbook;
- 8 (5) The possible adoption of the Model Procurement  
9 Act, in whole or part;
- 10 (6) Procurement methods currently being used,  
11 including, but not limited to, open-ended contracts,  
12 piggyback contracts and contracts awarded to multiple  
13 vendors; and

14 (7) Alternative procurement methods, including, but not  
15 limited to, reverse auctions and multiple-step sealed bidding.

16 (b) The Purchasing Task Force shall consist of:

17 (1) Three Senators appointed by the President of the  
18 Senate;

19 (2) Three Delegates appointed by the Speaker of the  
20 House of Delegates; and

21 (3) One representative from the Governor's Office.

22 (c) The Purchasing Task Force shall report to the Joint  
23 Committee on Government and Finance by January 1, 2014.  
24 The report shall include recommendations and proposed  
25 legislation.

26 (d) A state agency shall provide information requested  
27 by the Purchasing Task Force in a timely manner.

28 (e) The members of the legislature appointed to the  
29 Purchasing Task Force shall receive reimbursement for  
30 expenses incurred while performing duties as members  
31 thereof, as provided in section seven, article two-a, chapter  
32 four.