

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 356**

7 (BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,

8 BY REQUEST OF THE EXECUTIVE)

9 _____
10 [Passed March 8, 2014; in effect ninety days from passage.]
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13
14 AN ACT to amend and reenact §5A-1-1 of the Code of West Virginia,
15 1931, as amended; to amend said code by adding thereto a new
16 section, designated §5A-1-10; to amend and reenact §5A-3-1,
17 §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28,
18 §5A-3-30 and §5A-3-31 of said code; to amend said code by
19 adding thereto three new sections, designated §5A-3-10d,
20 §5A-3-10e and §5A-3-60; and to amend and reenact §12-3-10d of
21 said code, all relating generally to purchasing; revising
22 definitions; eliminating definitions; defining terms;
23 requiring state spending units purchase commodities and
24 services on a competitive basis where possible; authorizing

1 the Secretary of the Department of Administration to issue a
2 notice to cease and desist when purchases are not made on a
3 competitive basis; clarifying the purposes and policies of the
4 Purchasing Division; clarifying the applicability of the
5 article; clarifying that procurements must include adequate
6 specifications and descriptions; clarifying the powers and
7 duties of the Director of Purchasing; authorizing the Director
8 of Purchasing to issue a notice to cease and desist when
9 purchases are not made on a competitive basis; ensuring the
10 purchasing requirements apply to services and commodities;
11 authorizing reverse auctions for purchasing commodities;
12 permitting third-party vendors to administer reverse auctions;
13 affording the Director of the Purchasing Division rule-making
14 authority to implement reverse auctions; authorizing master
15 contracts and the direct order process for the direct
16 procurement of certain commodities; defining additional terms;
17 requiring approval of the Director of the Purchasing Division
18 for master contracts; setting forth direct order requirements
19 and procedures; authorizing direct order of commodities in
20 certain amounts; permitting direct order of certain
21 commodities in excess of statutory amount with the written
22 approval of the Director of Purchasing; affording the Director
23 of the Purchasing Division rule-making authority to establish
24 procedures regarding master contracts, preapproval, the direct

1 ordering process and related matters; clarifying circumstances
2 in which grants are exempt from competitive bidding
3 requirements; imposing personal liability upon spending
4 officers and other responsible individuals who have knowingly
5 and willfully violated competitive bidding requirements;
6 creating felony offense for acting alone to undermine
7 competition; requiring certain executive department officials
8 to attend annual training on purchasing procedures; adjusting
9 the percentage rebate moneys transferred to the Purchasing
10 Improvement Fund; adjusting the percentage of rebate moneys
11 transferred to the Hatfield-McCoy Regional Recreation
12 Authority; transferring ten percent of rebate moneys to the
13 State Park Operating Fund; and making technical corrections.

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

15 That §5A-1-1 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted; that said code be amended by adding
17 thereto a new section, designated §5A-1-10; that §5A-3-1, §5A-3-3,
18 §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and
19 §5A-3-31 of said code be amended and reenacted; that said code be
20 amended by adding thereto three new sections, designated §5A-3-10d,
21 §5A-3-10e and §5A-3-60; and that §12-3-10d of said code be amended
22 and reenacted, all to read as follows:

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

24 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

1 **§5A-1-1. Definitions.**

2 For the purpose of this chapter:

3 (1) "Commodities" means supplies, material, equipment and any
4 other articles or things used by or furnished to a department,
5 agency or institution of state government.

6 (2) "Contract" means an agreement between a state spending
7 unit and a vendor relating to the procurement of commodities or
8 services, or both.

9 (3) "Debarment" means the exclusion of a vendor from the right
10 to bid on contracts to sell goods or supply services to the state
11 or its subdivisions for a specified period of time.

12 (4) "Director" means the director of the division referred to
13 in the heading of the article in which the word appears.

14 (5) "Electronic" means electrical, digital, magnetic, optical,
15 electromagnetic or any other similar technology.

16 (6) "Electronic transmission" or "electronically transmitted"
17 means any process of communication not directly involving the
18 physical transfer of paper that is suitable for the retention,
19 retrieval and reproduction of information by the recipient.

20 (7) "Expendable commodities" means those commodities which,
21 when used in the ordinary course of business, will become consumed
22 or of no market value within the period of one year or less.

23 (8) "Grant" means the furnishing of assistance, financial or
24 otherwise, to any person or entity to support a program authorized

1 by law.

2 (9) "Nonprofit workshops" means an establishment: (A) Where
3 any manufacture or handiwork is carried on; (B) which is operated
4 either by a public agency or by a cooperative or by a nonprofit
5 private corporation or nonprofit association in which no part of
6 the net earnings thereof inures, or may lawfully inure, to the
7 benefit of any private shareholder or individual; (C) which is
8 operated for the primary purpose of providing remunerative
9 employment to blind or severely disabled persons who cannot be
10 absorbed into the competitive labor market; and (D) which shall be
11 approved, as evidenced by a certificate of approval, by the State
12 Board of Vocational Education, Division of Vocational
13 Rehabilitation.

14 (10) "Printing" means printing, binding, ruling,
15 lithographing, engraving and other similar services.

16 (11) "Procurement" means the buying, purchasing, renting,
17 leasing or otherwise obtaining of commodities or services.

18 (12) "Public funds" means funds of any character, including
19 federal moneys, belonging to or in the custody of any state
20 spending unit.

21 (13) "Record" means information that is inscribed on a
22 read-only tangible medium or that is stored in an electronic or
23 other medium and is retrievable in perceivable form.

24 (14) "Removable property" means any personal property not

1 permanently affixed to or forming a part of real estate.

2 (15) "Request for quotations" means a solicitation for a bid
3 where cost is the primary factor in determining the award.

4 (16) "Responsible bidder" means a vendor who has the
5 capability to fully perform the contract requirements, and the
6 integrity and reliability which will assure good-faith performance.

7 (17) "Responsive bidder" means a vendor who has submitted a
8 bid which conforms in all material respects to the bid
9 solicitation.

10 (18) "Secretary" means the Secretary of Administration.

11 (19) "Services" means the furnishing of labor, time, expertise
12 or effort, not involving the delivery of a specific end commodity
13 or product other than one that may be incidental to the required
14 performance.

15 (20) "Spending officer" means the executive head of a spending
16 unit, or a person designated by him or her.

17 (21) "Spending unit" means a department, bureau, department,
18 division, office, board commission, authority, agency or
19 institution of the state government for which an appropriation is
20 requested of the Governor, or to which an appropriation is made by
21 the Legislature, unless a specific exemption from this chapter is
22 provided in this code.

23 (22) "The state and its subdivisions" means the State of West
24 Virginia, every political subdivision thereof, every administrative

1 entity that includes such a subdivision, all municipalities and all
2 county boards of education.

3 (23) "Vendor" means any person or entity that may, through
4 contract or other means, supply the state or its subdivisions with
5 commodities or services, and lessors of real property.

6 **§5A-1-10. General procurement provisions for state spending units.**

7 (a) Unless this code specifically provides to the contrary,
8 all spending units, whenever possible, shall base purchases for
9 commodities and services on a competitive process and utilize
10 available statewide contracts.

11 (b) The secretary shall issue a notice to cease and desist to
12 any spending unit when the secretary has credible evidence that a
13 spending unit has failed, whenever possible, to purchase
14 commodities and services on a competitive basis or to use available
15 statewide contracts. Failure to abide by such notice may result in
16 penalties set forth in section seventeen, article three of this
17 chapter.

18 **ARTICLE 3. PURCHASING DIVISION.**

19 **§5A-3-1. Division created; purpose; director; applicability of**
20 **article; continuation.**

21 (a) The Purchasing Division within the Department of
22 Administration is continued. The underlying purposes and policies
23 of the Purchasing Division are:

24 (1) To establish centralized offices to provide purchasing and

1 travel services to the various state agencies;

2 (2) To simplify, clarify and modernize the law governing
3 procurement by this state;

4 (3) To permit the continued development of procurement
5 policies and practices;

6 (4) To make as consistent as possible the procurement rules
7 and practices among the various spending units;

8 (5) To provide for increased public confidence in the
9 procedures followed in public procurement;

10 (6) To ensure the fair and equitable treatment of all persons
11 who deal with the procurement system of this state;

12 (7) To provide increased economy in procurement activities and
13 to maximize to the fullest extent practicable the purchasing value
14 of public funds;

15 (8) To foster effective broad-based competition within the
16 free enterprise system;

17 (9) To provide safeguards for the maintenance of a procurement
18 system of quality and integrity; and

19 (10) To obtain in a cost-effective and responsive manner the
20 commodities and services required by spending units in order for
21 those spending units to better serve this state's businesses and
22 residents.

23 (b) The Director of the Purchasing Division shall, at the time
24 of appointment:

1 (1) Be a graduate of an accredited college or university; and

2 (2) Have spent a minimum of ten of the fifteen years
3 immediately preceding his or her appointment employed in an
4 executive capacity in purchasing for any unit of government or for
5 any business, commercial or industrial enterprise.

6 (c) The provisions of this article apply to all of the
7 spending units of state government, except as otherwise provided by
8 this article or by law.

9 (d) The provisions of this article do not apply to the
10 judicial branch, the legislative branch, to purchases of stock made
11 by the Alcohol Beverage Control Commissioner and to purchases of
12 textbooks for the State Board of Education.

13 (e) The provisions of this article apply to every expenditure
14 of public funds by a spending unit for commodities and services
15 irrespective of the source of the funds.

16 **§5A-3-3. Powers and duties of Director of Purchasing.**

17 The director, under the direction and supervision of the
18 secretary, shall be the executive officer of the Purchasing
19 Division and shall have the power and duty to:

20 (1) Direct the activities and employees of the Purchasing
21 Division;

22 (2) Ensure that the purchase of or contract for commodities
23 and services shall be based, whenever possible, on competitive bid;

24 (3) Purchase or contract for, in the name of the state, the

1 commodities, services and printing required by the spending units
2 of the state government;

3 (4) Apply and enforce standard specifications established in
4 accordance with section five of this article as hereinafter
5 provided;

6 (5) Transfer to or between spending units or sell commodities
7 that are surplus, obsolete or unused as hereinafter provided;

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

10 (7) Establish and maintain a laboratory for the testing of
11 commodities and make use of existing facilities in state
12 institutions for that purpose as hereinafter provided, as the
13 director deems advisable;

14 (8) Suspend the right and privilege of a vendor to bid on
15 state purchases when the director has evidence that such vendor has
16 violated any of the provisions of the purchasing law or the rules
17 and regulations of the director;

18 (9) Examine the provisions and terms of every contract entered
19 into for and on behalf of the State of West Virginia that impose
20 any obligation upon the state to pay any sums of money for
21 commodities or services and approve each such contract as to such
22 provisions and terms; and the duty of examination and approval
23 herein set forth does not supersede the responsibility and duty of
24 the Attorney General to approve such contracts as to form:

1 *Provided*, That the provisions of this subdivision do not apply in
2 any respect whatever to construction or repair contracts entered
3 into by the Division of Highways of the Department of
4 Transportation: *Provided, however*, That the provisions of this
5 subdivision do not apply in any respect whatever to contracts
6 entered into by the University of West Virginia Board of Trustees
7 or by the Board of Directors of the State College System, except to
8 the extent that such boards request the facilities and services of
9 the director under the provisions of this subdivision;

10 (10) Assure that the specifications and descriptions in all
11 solicitations are prepared so as to provide all potential
12 suppliers-vendors who can meet the requirements of the state an
13 opportunity to bid and to assure that the specifications and
14 descriptions do not favor a particular brand or vendor. If the
15 director determines that any such specifications or descriptions as
16 written favor a particular brand or vendor or if it is decided,
17 either before or after the bids are opened, that a commodity or
18 service having different specifications or quality or in different
19 quantity can be bought, the director may rewrite the solicitation
20 and the matter shall be rebid; and

21 (11) Issue a notice to cease and desist to a spending unit
22 when the director has credible evidence that a spending unit has
23 violated competitive bidding or other requirements established by
24 this article and the rules promulgated hereunder. Failure to abide

1 by such notice may result in penalties set forth in section
2 seventeen of this article.

3 **§5A-3-4. Rules of director.**

4 (a) The director shall propose rules for legislative approval
5 in accordance with the provisions of article three, chapter
6 twenty-nine-a of this code to:

7 (1) Authorize a spending unit to purchase specified
8 commodities and services directly and prescribe the manner in which
9 such purchases shall be made;

10 (2) Authorize, in writing, a spending unit to purchase
11 commodities and services in the open market for immediate delivery
12 in emergencies, define emergencies and prescribe the manner in
13 which such purchases shall be made and reported to the director;

14 (3) Prescribe the manner in which commodities and services
15 shall be purchased, delivered, stored and distributed;

16 (4) Prescribe the time for making requisitions and estimates
17 of commodities and services, the future period which they are to
18 cover, the form in which they shall be submitted and the manner of
19 their authentication;

20 (5) Prescribe the manner of inspecting all deliveries of
21 commodities, and making chemical and physical tests of samples
22 submitted with bids and samples of deliveries to determine
23 compliance with specifications;

24 (6) Prescribe the amount and type of deposit or bond to be

1 submitted with a bid or contract and the amount of deposit or bond
2 to be given for the faithful performance of a contract;

3 (7) Prescribe a system whereby the director shall be required,
4 upon the payment by a vendor of an annual fee established by the
5 director, to give notice to such vendor of all bid solicitations
6 for commodities and services of the type with respect to which such
7 vendor specified notice was to be given, but no such fee shall
8 exceed the cost of giving the notice to such vendor, nor shall such
9 fee exceed the sum of \$125 per fiscal year nor shall such fee be
10 charged to persons seeking only reimbursement from a spending unit;

11 (8) Prescribe that each state contract entered into by the
12 Purchasing Division shall contain provisions for liquidated
13 damages, remedies or provisions for the determination of the amount
14 or amounts which the vendor shall owe as damages, in the event of
15 default under such contract by such vendor, as determined by the
16 director;

17 (9) Prescribe contract management procedures for all state
18 contracts except government construction contracts including, but
19 not limited to, those set forth in article twenty-two, chapter five
20 of this code;

21 (10) Prescribe procedures by which oversight is provided to
22 actively monitor spending unit purchases, including, but not
23 limited to, all technology and software commodities and services
24 exceeding \$1 million, approval of change orders and final

1 acceptance by the spending units;

2 (11) Prescribe that each state contract entered into by the
3 Purchasing Division contain provisions for the cancellation of the
4 contract upon thirty days' notice to the vendor;

5 (12) Prescribe procedures for selling surplus commodities to
6 the highest bidder by means of an Internet auction site;

7 (13) Provide such other matters as may be necessary to give
8 effect to the foregoing rules and the provisions of this article;
9 and

10 (14) Prescribe procedures for encumbering purchase orders to
11 ensure that the proper account may be encumbered before sending
12 purchase orders to vendors.

13 (b) The director shall propose rules for legislative approval
14 in accordance with the provisions of article three, chapter
15 twenty-nine-a of this code to prescribe qualifications to be met by
16 any person who is to be employed in the Purchasing Division as a
17 state buyer. The rules must provide that a person may not be
18 employed as a state buyer unless he or she at the time of
19 employment either is:

20 (1) A graduate of an accredited college or university; or

21 (2) Has at least four years' experience in purchasing for any
22 unit of government or for any business, commercial or industrial
23 enterprise.

24 Persons serving as state buyers are subject to the provisions

1 of article six, chapter twenty-nine of this code.

2 **§5A-3-5. Purchasing section standard specifications --**
3 **Promulgation and adoption by director; applicable to all**
4 **purchases.**

5 (a) The director shall promulgate and adopt standard
6 specifications based on scientific and technical data for
7 appropriate commodities and services, which shall establish the
8 quality to which commodities to be purchased and services to be
9 contracted for by the state must conform.

10 (b) Standard specifications shall apply to every future
11 purchase of or contract for the commodities or services described
12 in the specifications and shall include information relating to the
13 cost of maintenance and expected life of the commodity if the
14 director determines there are nationally accepted industry
15 standards for the commodity.

16 (c) No purchases by any spending unit may be exempt from
17 compliance with the standard specifications so established, but the
18 director may exempt the purchase of particular items from the
19 standard specifications if it is considered necessary and
20 advisable.

21 (d) The director shall update the standard specifications, as
22 necessary.

23 **§5A-3-10d. Reverse auctions.**

24 (a) Notwithstanding any other provision of this code, the

1 director is hereby authorized to initiate reverse auctions to
2 procure commodities. The director may not use reverse auctions for
3 the procurement of services under any circumstances.

4 (b) Reverse auctions may be utilized if the director
5 determines their use would be fair, economical and in the best
6 interests of the state, and the commodities to be procured:

7 (1) Are subject to low price volatility;

8 (2) Have specifications that are common and not complex;

9 (3) Vary little between suppliers;

10 (4) Are sourced primarily based on price, with limited
11 ancillary considerations;

12 (5) Require little collaboration from suppliers; and

13 (6) Are sold by a large, competitive supply base.

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

21 (d) The director may contract with qualified,
22 industry-recognized third-party vendors to conduct reverse auctions
23 on behalf of the director.

24 (e) The director shall propose rules for legislative approval

1 in accordance with the provisions of article three, chapter
2 twenty-nine-a of this code to establish the procedures for
3 conducting reverse auctions. The rules shall include procedures
4 for contracting with qualified, industry-recognized third-party
5 vendors.

6 **§5A-3-10e. Master contracts; direct ordering process.**

7 (a) Subject to the limitations of this section, the director
8 may permit spending units to procure commodities directly from a
9 preapproved vendor through a master contract direct ordering
10 process if the director determines the process is fair, economical
11 and in the best interests of the state.

12 (b) *Definitions.* -- For purposes of this section:

13 (1) "Information technology" means hardware and software
14 related to electronic processing, and storage, retrieval,
15 transmittal and manipulation of data.

16 (2) "Master contract" means an agreement, having a term of no
17 more than one year, between the Purchasing Division and at least
18 two preapproved vendors authorizing a spending unit to purchase a
19 commodity directly and on a recurrent basis through the direct
20 ordering process.

21 (3) "Preapproved vendor" means a "vendor", as that term is
22 defined in section one, article one, chapter five-a of this code,
23 that has entered into a master contract with the Purchasing
24 Division and may participate in the direct ordering process subject

1 to the terms and conditions of the master contract.

2 (4) "Direct ordering process" means the competitive bidding
3 process whereby the preapproved vendors that are parties to a
4 master contract may submit sealed bids directly to spending units
5 to provide a commodity identified in the master contract subject to
6 the limitations set forth in this section.

7 (c) *Master contract procedures.* --

8 (1) For each master contract, the director shall set forth the
9 requirements, technical or otherwise, under which a vendor may be
10 qualified to supply a commodity through the direct ordering
11 process. For each master contract, the director shall follow the
12 notice and advertising requirements set forth in section ten,
13 article three, chapter five-a of this code.

14 (2) A master contract may authorize the direct ordering
15 process for only one type of commodity.

16 (3) A vendor may submit information to the director to
17 establish that it meets the requirements set forth in the master
18 contract.

19 (4) If the director determines that a vendor meets the
20 requirements set forth in the master contract, the vendor may enter
21 into the master contract as a preapproved vendor.

22 (d) *Direct ordering procedures.* --

23 (1) A spending unit may commence the direct ordering process
24 by issuing a request for a commodity identified in the master

1 contract, stating in the request the quantity of the commodity to
2 be procured in that particular instance.

3 (2) The preapproved vendor that submits the lowest bid in
4 response to the request shall be awarded the procurement in that
5 particular instance.

6 (3) The direct ordering process may not be utilized for any
7 request for commodities, other than information technology,
8 anticipated to cost more than \$50,000, unless approved in writing
9 by the Director of Purchasing. The state may not issue a series of
10 orders each anticipated to cost less than \$50,000 to circumvent the
11 monetary limitation in this subsection.

12 (4) The direct ordering process may not be utilized for any
13 request for information technology anticipated to cost more than \$1
14 million, unless approved in writing by the Director of Purchasing.
15 The state may not issue a series of orders each anticipated to cost
16 less than \$1 million to circumvent the monetary limitation in this
17 subsection.

18 (e) *Rule-making authority.* -- The Director of the Purchasing
19 Division shall propose rules for legislative approval in accordance
20 with the provisions of article three, chapter twenty-nine-a of this
21 code to implement this section, including but not limited to
22 provisions to establish procedures for the solicitation and
23 authorization of master contracts, preapproval of vendors and
24 implementation of direct ordering.

1 §5A-3-11. Purchasing in open market on competitive bids;
2 debarment; bids to be based on written
3 specifications; period for alteration or withdrawal
4 of bids; awards to lowest responsible bidder;
5 uniform bids; record of bids; requirements of
6 vendors to pay taxes, fees and debts; exception;
7 grant exemption.

8 (a) The director may make a purchase of commodities, printing
9 and services of \$25,000 or less in amount in the open market, but
10 the purchase shall, wherever possible, be based on at least three
11 competitive bids, and shall include the cost of maintenance and
12 expected life of the commodities if the director determines there
13 are nationally accepted industry standards for the commodities
14 being purchased.

15 (b) The director may authorize spending units to purchase
16 commodities, printing and services in the amount of \$2,500 or less
17 in the open market without competitive bids: *Provided*, That the
18 cost of maintenance and expected life of the commodities must be
19 taken into consideration if the director determines there are
20 nationally accepted industry standards for the commodities being
21 purchased.

22 (c) Bids shall be based on the written specifications in the
23 advertised bid request and may not be altered or withdrawn after
24 the appointed hour for the opening of the bids.

1 (d) A vendor who has been debarred pursuant to the provisions
2 of sections thirty-three-b through thirty-three-f of this article
3 may not bid on or be awarded a contract under this section.

4 (e) All open market orders, purchases based on advertised bid
5 requests or contracts made by the director or by a state department
6 shall be awarded to the lowest responsible bidder or bidders,
7 taking into consideration the qualities of the commodities or
8 services to be supplied, their conformity with specifications,
9 their suitability to the requirements of the government, the
10 delivery terms and, if the director determines there are nationally
11 accepted industry standards, cost of maintenance and the expected
12 life of the commodities: *Provided*, That state bids on school buses
13 shall be accepted from all bidders who shall then be awarded
14 contracts if they meet the state board's Minimum Standards for
15 Design and Equipment of School Buses. County boards of education
16 may select from those bidders who have been awarded contracts and
17 shall pay the difference between the state aid formula amount and
18 the actual cost of bus replacement. Any or all bids may be
19 rejected.

20 (f) If all bids received on a pending contract are for the
21 same unit price or total amount, the director has the authority to
22 reject all bids, and to purchase the required commodities, printing
23 and services in the open market, if the price paid in the open
24 market does not exceed the bid prices.

1 (g) The bid must be received by the Purchasing Division prior
2 to the specified date and time of the bid opening. The failure to
3 deliver or the nonreceipt of the bid by the Purchasing Division
4 prior to the appointed date and hour shall result in the rejection
5 of the bid. The vendor is solely responsible for the receipt of
6 bid by the Purchasing Division prior to the appointed date and hour
7 of the bid opening. All bids will be opened publicly by two or
8 more persons from the Purchasing Division. Vendors will be given
9 notice of the day, time and place of the public bid opening. Bids
10 may be viewed immediately after being opened.

11 (h) After the award of the order or contract, the director, or
12 someone appointed by him or her for that purpose, shall indicate
13 upon the successful bid that it was the successful bid.
14 Thereafter, the copy of each bid in the possession of the director
15 shall be maintained as a public record, shall be open to public
16 inspection in the office of the director and may not be destroyed
17 without the written consent of the Legislative Auditor.

18 (i)(1) A grant awarded by the state is exempt from the
19 competitive bidding requirements set forth in this chapter, unless
20 the grant is used to procure commodities or services that directly
21 benefit a spending unit.

22 (2) If a grant awarded to the state requires the procurement
23 of commodities or services that will directly benefit a spending
24 unit, the procurement is not exempt from the competitive bidding

1 requirements set forth in this chapter.

2 (3) If a grant awarded to the state requires the state to
3 transfer some or all of the grant to an individual, entity or
4 vendor as a subgrant to accomplish a public purpose, and no
5 contract for commodities or services directly benefitting a
6 spending unit will result, the subgrant is not subject to the
7 competitive bidding requirements set forth in this chapter.

8 **§5A-3-17. Purchases or contracts violating article void; personal**
9 **liability.**

10 If a spending unit purchases or contracts for commodities or
11 services contrary to the provisions of this article or the rules
12 and regulations made thereunder, such purchase or contract shall be
13 void and of no effect. The spending officer of such spending unit,
14 or any other individual charged with responsibility for the
15 purchase or contract, shall be personally liable for the costs of
16 such purchase or contract and, if already paid out of state funds,
17 the amount thereof may be recovered in the name of the state in an
18 appropriate action instituted therefor: *Provided*, That the state
19 establishes by a preponderance of the evidence that the individual
20 acted knowingly and willfully.

21 **§5A-3-28. Financial interest of secretary, etc.; receiving reward**
22 **from interested party; penalty; application of bribery**
23 **statute.**

24 (a) Neither the secretary, nor the director nor any employee

1 of the Division of Purchasing, shall be financially interested, or
2 have any beneficial personal interest, directly or indirectly, in
3 the purchase of any commodities, services or printing, nor in any
4 firm, partnership, corporation or association furnishing them.
5 Neither the secretary, nor the director nor any employee of the
6 Division of Purchasing, shall accept or receive directly or
7 indirectly from any person, firm or corporation, known by such
8 secretary, director or employee to be interested in any bid,
9 contract or purchase, by rebate, gift or otherwise, any money or
10 other thing of value whatsoever, or any promise, obligation or
11 contract for future reward or compensation.

12 (b) A person who violates this section shall be guilty of a
13 misdemeanor, and, upon conviction thereof, shall be confined in
14 jail not less than three months nor more than one year, or fined
15 not less than \$50 nor more than \$1,000, or both, in the discretion
16 of the court: *Provided*, That any person who violates any of the
17 provisions of the last sentence of the first paragraph of this
18 section under circumstances constituting the crime of bribery under
19 the provisions of section three, article five-a, chapter sixty-one
20 of this code, shall, upon conviction of bribery, be punished as
21 provided in said article five-a.

22 **§5A-3-30. Statement of purpose; obtaining money and property under**
23 **false pretenses or by fraud from the state;**
24 **penalties; definition.**

1 (a) The Legislature of the State of West Virginia hereby
2 declares that the purpose of this statute is to promote equal and
3 fair bidding for the purchase of commodities and services by the
4 state, to eliminate fraud in the procurement of commodities and
5 services by the state.

6 (b) It is unlawful for any person to obtain any services,
7 money, goods or other property from the state under any contract
8 made under the provisions of this article, by false pretense, token
9 or representation, or by delivery of inferior commodities, with
10 intent to defraud. A person who violates this subsection is guilty
11 of a felony and, upon conviction thereof, shall be confined in a
12 state correctional facility for not less than one year nor more
13 than five years, and shall be fined not exceeding \$10,000.

14 (c) It shall not be a defense to a charge under this section
15 that: (1) The commodities or services purchased were accepted and
16 used, or are being used, by the state; or (2) the commodities or
17 services are functional or suitable for the purpose for which the
18 commodities or services were purchased by the state notwithstanding
19 the standard or specification issued by the purchasing agency or
20 the division of purchasing.

21 (d) For the purpose of this section, "inferior commodities"
22 includes, but shall not be limited to: (1) Any commodity which does
23 not meet the specification or standard issued by the purchasing
24 agency and the Division of Purchasing, or any change order approved

1 by both the purchasing agency and Division of Purchasing; and (2)
2 any commodity which is of a lesser quality, quantity or measure of
3 any kind set forth within the specification or standard issued by
4 the purchasing agency and the Division of Purchasing.

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

7 (a) It shall be unlawful for any person to corruptly act alone
8 or combine, collude or conspire with one or more other persons with
9 respect to the purchasing or supplying of services, commodities or
10 printing to the state under the provisions of this article if the
11 purpose or effect of such action, combination, collusion or
12 conspiracy is either to: (1) Lessen competition among prospective
13 vendors; or (2) cause the state to pay a higher price for such
14 services, commodities or printing than would be or would have been
15 paid in the absence of such action, combination, collusion or
16 conspiracy; or (3) cause one prospective vendor or vendors to be
17 preferred over one or more other prospective vendor or vendors.

18 (b) Any person who violates any provision of this section is
19 guilty of a felony and, upon conviction thereof, shall be
20 imprisoned in a state correctional facility not less than one nor
21 more than five years, and be fined not exceeding \$10,000.

22 **§5A-3-60. Annual purchasing training.**

23 (a) All executive department secretaries, commissioners,
24 deputy commissioners, assistant commissioners, directors, deputy

1 directors, assistant directors, department heads, deputy department
2 heads and assistant department heads are hereby required to take
3 two hours of training on purchasing procedures and purchasing cards
4 annually.

5 (b) The Director of the Purchasing Division and the Auditor
6 shall offer the two-hour training required by this section at least
7 two times per year and shall develop its substance in accordance
8 with the requirements of this article and other relevant provisions
9 of this code. The training shall be recorded by audio and visual
10 means and shall be made available to the individuals listed in
11 subsection (a) of this section in the event they are unable to
12 attend the training in person.

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

18 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

19 **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

20 **§12-3-10d. Purchasing Card Fund created; expenditures.**

21 (a) All money received by the state pursuant to any agreement
22 with vendors providing purchasing charge cards, and any interest or
23 other return earned on the money, shall be deposited in a special
24 revenue revolving fund, designated the Purchasing Card

1 Administration Fund, in the State Treasury to be administered by
2 the Auditor. The fund shall be used to pay all expenses incurred
3 by the Auditor in the implementation and operation of the
4 Purchasing Card Program and may be used to pay expenses related to
5 the general operation of the Auditor's office. The Auditor also
6 may use the fund to pay expenses incurred by spending units
7 associated with the use of the card, including system and program
8 enhancements, and inspection and monitoring of compliance with all
9 applicable rules and procedures. Expenditures from the fund shall
10 be made in accordance with appropriations by the Legislature
11 pursuant to the provisions of article three, chapter twelve of this
12 code and upon fulfillment of the provisions of article two, chapter
13 five-a of this code.

14 (b) Within three days of receiving rebate moneys resulting
15 from state spending unit purchasing card purchases, the Auditor
16 shall transfer fifteen and one-half percent of such rebate moneys
17 to the Purchasing Improvement Fund created pursuant to section
18 fifty-eight, article three, chapter five-a of this code.

19 (c) Within three days of receiving rebate moneys resulting
20 from state spending unit purchasing card purchases, the Auditor
21 shall transfer ten percent of such rebate moneys to the Hatfield-
22 McCoy Regional Recreation Authority and ten percent of such moneys
23 to the State Park Operating Fund.