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**H. B. 4317**

(By Delegates Morgan, Stephens, Hartman,  
Kinsey, P. Smith, Caputo and Romine)

[Introduced January 24, 2014; referred to the  
Committee on Government Organization then the Judiciary.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-1-10; and to amend said code by adding thereto a new section, designated §5A-3-14; and to amend and reenact §5A-3-1, §5A-3-3 and §5A-3-17 of said code, all relating to state procurement; requiring spending units and subdivisions to purchase commodities and services on a competitive basis; authorizing the Secretary of the Department of Administration to issue a notice to cease and desist when purchases are not made on a competitive basis; clarifying the purposes and policies of the Purchasing Division; clarifying the applicability of the article; authorizing the director of the Purchasing Division to issue a notice to cease and desist when purchases are not made on a competitive basis; requiring the Purchasing Division director to comply with federal law and authorized regulations

1 when a procurement involves the expenditure of federal  
2 assistance or contract funds; requiring the Purchasing  
3 Division director to offer mandatory annual procurement  
4 training; and clarifying any person found to have willfully  
5 entered into a contract contrary to the article shall be  
6 subject to penalty.

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

8 That the Code of West Virginia, 1931, as amended, be amended  
9 by adding thereto a new section, designated §5A-1-10; that said  
10 code be amended by adding thereto a new section, designated  
11 §5A-3-14; and that §5A-3-1, §5A-3-3 and §5A-3-17 of said code be  
12 amended and reenacted, all to read as follows:

13 **ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

14 **§5A-1-10. General procurement provisions for the state and its**  
15 **subdivisions, and spending units.**

16 (a) Notwithstanding an exemption from chapter 5A, article 3 of  
17 this code, purchases for commodities and services by spending units  
18 and political subdivisions shall be based, whenever possible and  
19 practicable, on a competitive basis.

20 (b) The secretary shall issue a notice to cease and desist to  
21 any spending unit or political subdivision when the secretary has  
22 credible evidence that a spending unit or political subdivision has  
23 failed, when possible and practicable, to purchase commodities and

1 services on a competitive basis.

2 **ARTICLE 3. PURCHASING DIVISION.**

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

5 (a) The Purchasing Division within the Department of  
6 Administration is ~~continued for the purpose of establishing~~  
7 ~~centralized offices to provide purchasing, and travel services to~~  
8 ~~the various state agencies.~~ The underlying purpose and policies of  
9 the Purchasing Division are:

10 (1) To simplify, clarify, and modernize the law governing  
11 procurement by this state;

12 (2) To permit the continued development of procurement  
13 policies and practices;

14 (3) To make as consistent as possible the procurement laws  
15 among the various spending units;

16 (4) To provide for increased public confidence in the  
17 procedures followed in public procurement;

18 (5) To ensure the fair and equitable treatment of all persons  
19 who deal with the procurement system of this state;

20 (6) To provide increased economy in procurement activities and  
21 to maximize to the fullest extent practicable the purchasing value  
22 of public funds;

23 (7) To foster effective broad-based competition within the  
24 free enterprise system;

1       (8) To provide safeguards for the maintenance of a procurement  
2 system of quality and integrity; and

3       (9) To obtain in a cost-effective and responsive manner the  
4 materials, services, and construction required by spending units in  
5 order for those spending units to better serve this state's  
6 businesses and residents.

7       (b) The director of the Purchasing Division shall, at the time  
8 of appointment:

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

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

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

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

21       (e) The provisions of this article apply to every expenditure  
22 of public funds for commodities and services irrespective of their  
23 source, including federal assistance moneys, by this state, acting  
24 through a governmental body, under any contract: *Provided, That*

1 nothing in this article or the rules promulgated hereunder  
2 prevents any spending unit or political subdivision from complying  
3 with the terms and conditions of any grant, gift, bequest, or  
4 cooperative agreement.

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

6 The director, under the direction and supervision of the  
7 secretary, shall be the executive officer of the Purchasing  
8 Division and shall have the power and duty to:

9 (1) Direct the activities and employees of the Purchasing  
10 Division;

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

13 (3) Purchasing or contract for, in the name of the state, the  
14 commodities and printing required by the spending units of the  
15 state government;

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

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

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

23 (7) Establish and maintain a laboratory for the testing of  
24 commodities and make use of existing facilities in state

1 institutions for that purpose as hereinafter provided, as the  
2 director deems advisable;

3 (8) Suspend the right and privilege of a vendor to bid on  
4 state purchases when the director has evidence that such vendor has  
5 violated any of the provisions of the purchasing law or the rules  
6 and regulations of the director;

7 (9) Examine the provisions and terms of every contract entered  
8 into for and on behalf of the State of West Virginia that impose  
9 any obligation upon the state to pay any sums of money for  
10 commodities or services and approve each such contract as to such  
11 provisions and terms; and the duty of examination and approval  
12 herein set forth does not supersede the responsibility and duty of  
13 the Attorney General to approve such contracts as to form:  
14 *Provided*, That the provisions of this subdivision do not apply in  
15 any respect whatever to construction or repair contracts entered  
16 into by the Division of Highways of the Department of  
17 Transportation: *Provided, however*, That the provisions of this  
18 subdivision do not apply in any respect whatever to contracts  
19 entered into by the University of West Virginia Board of Trustees  
20 or by the Board of Directors of the State College System, except to  
21 the extent that such boards request the facilities and services of  
22 the director under the provisions of this subdivision; ~~and~~

23 (10) Assure that the specifications and commodity descriptions  
24 in all "requests for quotations" are prepared so as to permit all

1 potential suppliers-vendors who can meet the requirements of the  
2 state an opportunity to bid and to assure that the specifications  
3 and descriptions do not favor a particular brand or vendor. If the  
4 director determines that any such specifications or descriptions as  
5 written favor a particular brand or vendor or if it is decided,  
6 either before or after the bids are opened, that a commodity having  
7 different specifications or quality or in different quantity can be  
8 bought, the director may rewrite the "requests for quotations" and  
9 the matter shall be rebid;

10 (11) Issue a notice to cease and desist to a spending unit  
11 when the director has credible evidence that a spending unit has  
12 violated competitive bidding requirements established by this  
13 article or the rules promulgated hereunder; and

14 (12) When a procurement involves the expenditure of federal  
15 assistance or contract funds, the director shall comply with such  
16 federal law and authorized regulations which are mandatorily  
17 applicable and which are not presently reflected in this article.

18 **§5A-3-14. Mandatory training for spending units.**

19 (a) The director shall provide at least one seminar each year  
20 for spending units to inform the spending units of the procurement  
21 duties and requirements imposed by state law and rule. All  
22 spending units shall cooperate with and assist in providing the  
23 seminar if the director requests.

24 (b) The head of each spending unit and the head procurement

1 officer for the spending unit shall annually attend at least one  
2 seminar provided under this section.

3 (c) The director may charge a registration fee for the seminar  
4 to cover the cost of providing the seminar. The fee may be paid  
5 from funds available to the spending unit and a spending unit may  
6 approve an expense reimbursement for the attendance of its  
7 employees.

8 (d) Prior to January 1 of each year, the director shall  
9 provide to the chairs of the Joint Standing Committee on Government  
10 Organization a list of:

- 11 (1) The names and titles of persons who attended the seminar;  
12 (2) The spending units represented; and  
13 (3) The number and dates of the seminars offered by the  
14 director during the previous year.

15 **§5A-3-17. Purchases or contracts violating article void; personal**  
16 **liability.**

17 If a spending unit purchases or contracts for commodities  
18 contrary to the provisions of this article or the rules and  
19 regulations made thereunder, such purchase or contract shall be  
20 void and of no effect. ~~The head of such spending unit~~ Any person  
21 found to have willfully entered into a contract contrary to the  
22 provisions of this article shall be personally liable for the costs  
23 of such purchase or contract, and, if already paid out of state  
24 funds, the amount thereof may be recovered in the name of the state



1 in an appropriate action instituted therefor.

NOTE: The purpose of this bill is to require spending units and subdivisions to purchase commodities and services on a competitive basis; authorize the secretary of the Department of Administration to issue a notice to cease and desist when purchases are not made on a competitive basis; clarify the purposes and policies of the Purchasing Division; clarify the applicability of the article; authorize the director of the Purchasing Division to issue a notice to cease and desist when purchases are not made on a competitive basis; require the Purchasing Division director to comply with federal law and authorized regulations when a procurement involves the expenditure of federal assistance or contract funds; require the Purchasing Division director to offer mandatory annual procurement training; and clarify that any person found to have willfully entered into a contract contrary to the article shall be subject to penalty. This bill is recommended for passage by the Joint Committee on Government Organization.

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

§5A-1-10 and §5A-3-14 are new; therefore they are completely underlined.