

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4499**

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

[BY REQUEST OF THE EXECUTIVE]

[Introduced February 02, 2022; Referred to the  
Committee on Government Organization then the  
Judiciary]

1 A BILL to amend and reenact §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-10, §5A-3-10a, §5A-3-11, §5A-  
2 3-12, §5A-3-17, §5A-3-18, §5A-3-29, §5A-3-35, and §5A-3-45 of the Code of West Virginia,  
3 1931, as amended; and to amend and reenact §6D-1-2, of said code, all relating generally  
4 to making the procurement process more efficient by modifying and updating outdated  
5 processes and requirements and encouraging earlier communication with and assistance  
6 from experts within the purchasing division regarding manner and process of procurement  
7 of commodities and services by the various spending units of the state; to eliminate  
8 outdated audit references of exempted agencies; to allow the director to exempt certain  
9 transactions from the requirements of chapter 5A, article 3; to clarify that grant recipients  
10 need not pay registration fees as a vendor; to authorize other procurement methods in  
11 lieu of formal competitive bidding when determined to be in the best interest of the state;  
12 to increase delegated procurement limits in the director's discretion; to make procurement  
13 from nonprofit workshops optional; to clarify timing required on rebidding; to change the  
14 requirement for an affidavit verifying that no debt is owed to an affirmation; to provide the  
15 Purchasing Division Director with discretion in increasing the \$2,500 no bid limit; to  
16 eliminate outdated information reporting requirements for vendor registration; to clarify  
17 procurement penalties and inventory submission language; to remove surplus fees for  
18 inter-agency asset transfers; to require inter-agency asset transfers be recorded in  
19 accordance with governmental accounting standards; to shift the collection of the  
20 interested party disclosure information from contract award to before work begins in an  
21 effort to make the procurement process.

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

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

### **ARTICLE 3. PURCHASING DIVISION.**

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

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

3 ~~(1) To establish centralized offices to provide purchasing and travel services to the various~~  
4 ~~state agencies~~ To serve as a source of expertise in procurement methods and practices for the  
5 various state agencies, and to assist and facilitate state agencies in procurement matters,  
6 including for travel services;

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

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

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

11 (5) To provide for increased public confidence in the procedures followed in public  
12 procurement;

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

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

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

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

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

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

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

25 ~~(2) Have spent a minimum of 10 of the 15 years immediately preceding his or her~~  
26 ~~appointment employed in an executive capacity in purchasing for any unit of government or for~~

27 ~~any business, commercial or industrial enterprise.~~

28       ~~(e) (b)~~ The provisions of this article apply to all of the spending units of state government,  
29 except as otherwise provided by this article or by law.

30       ~~(d) (c)~~ The provisions of this article do not apply to the judicial branch, the West Virginia  
31 State Police, the West Virginia Office of Laboratory Services, the legislative branch, to purchases  
32 of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks,  
33 instructional materials, digital content resources, instructional technology, hardware, software,  
34 telecommunications and technical services by the State Board of Education for use in and in  
35 support of the public schools.

36       (d) Notwithstanding any other provisions of this article, commodities and services may be  
37 purchased by a spending unit in the open market for immediate delivery in emergencies:  
38 Provided, That the purchase and a description of the circumstances warranting such emergency  
39 purchase are timely reported by the agency head or other authorized agent of the spending unit  
40 under the provisions of § 5A-3-4(a)(2) of this code.

41       ~~(e) During the 2018 calendar year, the Legislative Auditor shall audit purchasing~~  
42 ~~procedures of the West Virginia State Police pursuant to the exemption provided in subsection~~  
43 ~~(d) of this section and report the results to the Joint Committee on Government and Finance.~~

44       ~~(f) During the 2019 calendar year, the Legislative Auditor shall audit purchasing~~  
45 ~~procedures of the West Virginia State Police pursuant to the exemption provided in subsection~~  
46 ~~(d) of this section and report the results to the Joint Committee on Government and Finance.~~

47       ~~(g) On or before December 31, 2020, the West Virginia State Police shall report to the~~  
48 ~~Joint Committee on Government and Finance on the effects of exempting said agency from the~~  
49 ~~provisions of this article, including but not limited to, any realized cost savings and changes in~~  
50 ~~purchasing policies resulting from such exemption~~

51           ~~(h)~~(e) The provisions of this article apply to every expenditure of public funds by a  
 52 spending unit for commodities and services irrespective of the source of the funds, except as  
 53 otherwise provided by this article or by law.

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

1           The director, under the direction and supervision of the secretary, is the executive officer  
 2 of the Purchasing Division and has the ~~power and duty~~ authority to:

- 3           (1) Direct the activities and employees of the Purchasing Division;
- 4           (2) Ensure that the purchase of or contract for commodities and services are based,  
 5 ~~whenever possible,~~ on competitive bid, except when another method of procurement is  
 6 determined to be in the best interest of the state;
- 7           (3) Purchase or contract for, or assist and facilitate the purchase or contract for the  
 8 spending units of the state government, in the name of the state, the commodities, services, and  
 9 printing required by the spending units of the state government;
- 10          (4) Apply and enforce standard specifications established in accordance with §5A-3-5 of  
 11 this code as hereinafter provided;
- 12          (5) Transfer to or between spending units or sell commodities that are surplus, obsolete,  
 13 or unused as hereinafter provided;
- 14          (6) Have charge of central storerooms for the supply of spending units as the director  
 15 considers advisable;
- 16          (7) Establish and maintain a laboratory for the testing of commodities and make use of  
 17 existing facilities in state institutions for that purpose as hereinafter provided as the director  
 18 considers advisable;
- 19          (8) Suspend the right and privilege of a vendor to bid on state purchases when the director  
 20 has evidence that the vendor has violated any of the provisions of the purchasing law or the rules  
 21 and regulations of the director;
- 22          (9) ~~Examine~~ Timely provide guidance to and assist any spending unit in the development

23 of the provisions and terms of every contracts entered into for and on behalf of the State of West  
24 Virginia that impose any obligation upon the state to pay any sums of money for commodities or  
25 services and approve ~~the contracts~~ contracts as to such provisions and terms; and the duties of  
26 ~~examination~~ providing guidance and assistance and approval herein set forth does not supersede  
27 the responsibility and duty of the Attorney General to approve the contracts as to form; *Provided,*  
28 That the provisions of this subdivision do not apply in any respect whatever to construction or  
29 repair contracts entered into by the Division of Highways of the Department of Transportation or  
30 to construction or reclamation contracts entered into by the Department of Environmental  
31 Protection; *Provided, however,* That the provisions of this subdivision do not apply in any respect  
32 whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by  
33 the board of directors of the state college system, except to the extent that such boards request  
34 the facilities and services of the director under the provisions of this subdivision: *Provided further,*  
35 That the provisions of this subdivision do not apply to the West Virginia State Police and the West  
36 Virginia Office of Laboratory Services: *And provided further,* That the provisions of this subdivision  
37 shall not apply to contracts for any natural disaster recovery activities entered into by the West  
38 Virginia State Conservation Committee or the West Virginia Conservation Agency;

39 (10) ~~Assure that~~ Timely provide guidance to and assist any spending unit in the  
40 development of the specifications and descriptions in all solicitations to be ~~are~~ prepared so as to  
41 provide all potential suppliers-vendors who can meet the requirements of the state an opportunity  
42 to bid and to assure that the specifications and descriptions do not favor a particular brand or  
43 vendor; If the director determines that any such specifications or descriptions as written favor a  
44 particular brand or vendor or if it is decided by the relevant spending unit, in consultation with the  
45 director, either before or after the bids are opened, that a commodity or service having different  
46 specifications or quality or in different quantity can be ~~bought~~ acquired to better achieve the ends  
47 sought by the relevant spending unit, the ~~director may rewrite the solicitation~~ may be rewritten  
48 and the matter shall be rebid or another procurement method pursued, where determined

49 appropriate; and

50 (11) Issue a notice to cease and desist to a spending unit when the director has credible  
51 evidence that a spending unit has violated ~~competitive bidding or other~~ the requirements  
52 ~~established by~~ of this article and the rules promulgated hereunder. Failure to abide by the notice  
53 may result in penalties set forth in §5A-3-17 of this code; and

54 (12) Exempt particular transactions, or particular categories of transactions, from the  
55 requirements of this article; provided that the director, in consultation with any relevant spending  
56 unit, shall determine such exemption to be in the best interest of the state.

57 (13) Make the resources and expertise of the division available to spending units  
58 exempted from the requirements of this article: *Provided, That* the director may, in consultation  
59 with the relevant spending unit, assess an exempt spending unit for the division's reasonable  
60 costs in order to ensure sufficient staffing and other resources to timely provide all necessary or  
61 requested assistance to the various spending units of the state.

**§5A-3-4. Rules of director.**

1 (a) The director shall propose rules for legislative approval in accordance with the  
2 provisions of article three, chapter 29-a of this code to:

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

5 (2) ~~Authorize, in writing, a spending unit to purchase commodities and services in the open~~  
6 ~~market for immediate delivery in emergencies, define emergencies and prescribe~~ Prescribe the  
7 manner in which such emergency purchases made under § 5-3-1(d) shall be ~~made and~~ reported  
8 to the director;

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

11 (4) Prescribe the time for making requisitions and estimates of commodities and services,  
12 the future period which they are to cover, the form in which they shall be submitted and the manner

13 of their authentication;

14 (5) Prescribe the manner of inspecting all deliveries of commodities, and making chemical  
15 and physical tests of samples submitted with bids and samples of deliveries to determine  
16 compliance with specifications;

17 (6) Prescribe the amount and type of deposit or bond to be submitted with a bid or contract  
18 and the amount of deposit or bond to be given for the faithful performance of a contract;

19 (7) Prescribe a system whereby the director shall be required, upon the payment by a  
20 vendor of an annual fee established by the director, to give notice to such vendor of all bid  
21 solicitations for commodities and services of the type with respect to which such vendor specified  
22 notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor,  
23 nor shall such fee exceed the sum of \$125 per fiscal year nor shall such fee be charged to persons  
24 or entities seeking only reimbursement from a spending unit or to persons or entities only seeking  
25 to accept moneys granted by a spending unit under a grant agreement:

26 (8) Prescribe that each state contract entered into by the Purchasing Division shall contain  
27 provisions for liquidated damages, remedies or provisions for the determination of the amount or  
28 amounts which the vendor shall owe as damages, in the event of default under such contract by  
29 such vendor, as determined by the director;

30 (9) Prescribe contract management procedures for all state contracts except government  
31 construction contracts including, but not limited to, those set forth in article 22, chapter five of this  
32 code;

33 (10) Prescribe procedures by which oversight is provided to actively monitor spending unit  
34 purchases, including, but not limited to, all technology and software commodities and services  
35 exceeding \$1 million, approval of change orders and final acceptance by the spending units;

36 (11) Prescribe that each state contract entered into by the Purchasing Division contain  
37 provisions for the cancellation of the contract upon 30 days' notice to the vendor;

38 (12) Prescribe procedures for selling surplus commodities to the highest bidder by means



39 of an Internet auction site;

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

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

44 (b) The director shall propose rules for legislative approval in accordance with the  
45 provisions of article three, chapter 29-a of this code to prescribe qualifications to be met by any  
46 person who is to be employed in the Purchasing Division as a state buyer. The rules must provide  
47 that a person may not be employed as a state buyer unless he or she at the time of employment  
48 either is:

49 (1) A graduate of an accredited college or university in a field determined relevant by the  
50 director; or

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

53 Persons serving as State buyers are subject to the provisions of article six, chapter 29 of  
54 this code.

**§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  
2 ~~whenever possible,~~ on competitive bids, except when another method of procurement is  
3 determined to be in the best 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) No spending unit~~ Spending units shall not make an individual purchase in excess of  
12 the delegated procurement limit established in subsection b of this section, issue a series of  
13 requisitions for the same or similar commodity or service or divide or plan procurements with the  
14 intention to circumvent ~~this \$25,000 threshold~~ the delegated procurement limit established in  
15 subsection (b), or otherwise avoid the use of sealed bids. Any spending unit ~~which awards multiple~~  
16 ~~contracts for the same or similar commodity or service to an individual vendor over any 12-month~~  
17 ~~period, the total value of which exceeds \$25,000~~ that discovers it has awarded multiple contracts  
18 for the same or similar commodity or service to an individual vendor over any 12-month period  
19 shall file copies of all contracts awarded ~~to the vendor~~ or orders placed for the commodity, service,  
20 or printing in question within the 12 preceding months with the director ~~immediately~~ upon  
21 exceeding the ~~\$25,000~~ delegated limit, along with a statement explaining how either the multiple  
22 contract awards or orders do not circumvent the ~~\$25,000 threshold~~ delegated procurement limit,  
23 or how the contracts or orders were not intended to circumvent the delegated limit. If the spending  
24 unit does not ~~immediately~~ report to the director within a reasonable period, the director shall  
25 contact the spending unit to request such statement and may suspend the purchasing authority  
26 of the spending unit until the spending unit complies with the reporting requirement of this  
27 subsection, as determined appropriate. The director may conduct a review of any spending unit  
28 to ensure compliance with this subsection. Following a review, in consultation with the relevant  
29 spending unit, the director shall complete a report summarizing his or her findings and forward  
30 the report to the spending unit. In addition, the director shall report to the Joint Committee on  
31 Government and Finance on January 1 and July 1 of each year the spending units which have  
32 reported under this subsection and the findings of the director.

33 ~~(e)~~ (d) The director may permit bids by electronic transmission to be accepted in lieu of

34 sealed bids.

35 ~~(d)~~ (e) Bids shall be solicited by public notice. The notice may be published by any  
36 advertising medium the director considers advisable. The director may also solicit sealed bids by  
37 sending requests by mail or electronic transmission to prospective vendors.

38 ~~(e)~~ (f) (1) The director ~~may~~ shall, without competitive bidding, purchase commodities and  
39 services produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code,  
40 which are located in this state: *Provided*, That the commodities and services shall be of a fair  
41 market price and of like quality comparable to other commodities and services otherwise available  
42 as determined by the director. ~~with the advice of the Committee on the Purchase of Commodities~~  
43 ~~and Services from the Handicapped~~

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

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

**§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the State or**

**its political subdivisions.**

1 (a) Unless the context clearly requires a different meaning, for the purposes of this section,  
2 the terms:

3 (1) "Debt" means any assessment, premium, penalty, fine, tax or other amount of money  
4 owed to the state or any of its political subdivisions because of a judgment, fine, permit violation,  
5 license assessment, amounts owed to the Workers' Compensation Funds as defined in article  
6 two-c, chapter 23 of this code, penalty or other assessment or surcharge presently delinquent or  
7 due and required to be paid to the state or any of its political subdivisions, including any interest  
8 or additional penalties accrued thereon.

9 (2) "Debtor" means any individual, corporation, partnership, association, limited liability  
10 company or any other form or business association owing a debt to the state or any of its political  
11 subdivisions, and includes any person or entity that is in employer default.

12 (3) "Employer default" means having an outstanding balance or liability to the old fund or  
13 to the uninsured employers' fund or being in policy default, as defined in section two, article two-  
14 c, chapter 23, of this code, failure to maintain mandatory workers' compensation coverage, or  
15 failure to fully meet its obligations as a workers' compensation self-insured employer. An employer  
16 is not in employer default if it has entered into a repayment agreement with the Insurance  
17 Commissioner and remains in compliance with the obligations under the repayment agreement.

18 (4) "Political subdivision" means any county commission; municipality; county board of  
19 education; any instrumentality established by a county or municipality; any separate corporation  
20 or instrumentality established by one or more counties or municipalities, as permitted by law; or  
21 any public body charged by law with the performance of a government function and whose  
22 jurisdiction is coextensive with one or more counties or municipalities.

23 (5) "Related party" means a party, whether an individual, corporation, partnership,  
24 association, limited liability company or any other form or business association or other entity  
25 whatsoever, related to any vendor by blood, marriage, ownership or contract through which the

26 party has a relationship of ownership or other interest with the vendor so that the party will actually  
27 or by effect receive or control a portion of the benefit, profit or other consideration from  
28 performance of a vendor contract with the party receiving an amount that meets or exceeds five  
29 percent of the total contract amount.

30 (b) No contract or renewal of any contract may be awarded by the state or any of its  
31 political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor  
32 or a related party to the vendor or prospective vendor is a debtor and:

33 (1) The debt owed is an amount greater than \$1,000 in the aggregate; or

34 (2) The debtor is in employer default.

35 (c) The prohibition of this section does not apply where a vendor has contested any tax  
36 administered pursuant to chapter 11 of this code, amount owed to the Workers' Compensation  
37 Funds as defined in article two-c, chapter 23 of this code, permit fee or environmental fee or  
38 assessment and the matter has not become final or where the vendor has entered into a payment  
39 plan or agreement and the vendor is not in default of any of the provisions of such plan or  
40 agreement.

41 (d) ~~All bids~~ By submitting a bid or contract proposals or entering into a contracts with the  
42 state or any of its political subdivisions, ~~submitted or approved under the provisions of this code~~  
43 ~~shall include an affidavit that~~ the vendor or prospective vendor is deemed to be affirming that the  
44 vendor or prospective vendor or a related party to the vendor or prospective vendor is not in  
45 employer default and does not owe any debt in an amount in excess of \$1,000 or, if a debt is  
46 owed, that the provisions of subsection (c) of this section apply. This affirmation, combined with  
47 verification of State tax compliance, will satisfy the public contracting entities verification  
48 requirements contained in §5-22-1(j) of this code.

**§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on  
written specifications; period for alteration or withdrawal of bids; awards to lowest  
responsible bidder; uniform bids; record of bids; requirements of vendors to pay**

**taxes, fees and debts; exception; grant exemption.**

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

6 (b) The director may authorize spending units to purchase commodities, printing and  
7 services in the amount of \$2,500 or less in the open market without competitive bids: *Provided,*  
8 That the cost of maintenance and expected life of the commodities must be taken into  
9 consideration if the director determines there are nationally accepted industry standards for the  
10 commodities being purchased: *Provided, however, That the director may authorize spending units*  
11 *to purchase commodities, printing and services in an amount greater than \$2,500 in the open*  
12 *market without competitive bids when the director determines, in consultation with the relevant*  
13 *spending unit, that such purchase is in the best interest of the state.*

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

16 (d) A vendor who has been debarred pursuant to the provisions of sections 33-b through  
17 33-f of this article may not bid on or be awarded a contract under this section.

18 (e) All open market orders, purchases based on advertised bid requests or contracts made  
19 by the director or by a state department shall be awarded to the lowest responsible bidder or  
20 bidders, taking into consideration the qualities of the commodities or services to be supplied, their  
21 conformity with specifications, their suitability to the requirements of the government, the delivery  
22 terms and, if the director determines there are nationally accepted industry standards, cost of  
23 maintenance and the expected life of the commodities: *Provided,* That state bids on school buses  
24 shall be accepted from all bidders who shall then be awarded contracts if they meet the state  
25 board's Minimum Standards for Design and Equipment of School Buses. County boards of

26 education may select from those bidders who have been awarded contracts and shall pay the  
27 difference between the state aid formula amount and the actual cost of bus replacement. Any or  
28 all bids may be rejected.

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

33 (g) The bid must be received by the Purchasing Division prior to the specified date and  
34 time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing  
35 Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is  
36 solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and  
37 hour of the bid opening. All bids will be opened publicly by two or more persons from the  
38 Purchasing Division. Vendors will be given notice of the day, time and place of the public bid  
39 opening. Bids may be viewed immediately after being opened.

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

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

48 (2) If a grant awarded to the state requires the procurement of commodities or services  
49 that will directly benefit a spending unit, the procurement is not exempt from the competitive  
50 bidding requirements set forth in this chapter.

51 (3) If a grant awarded to the state requires the state to transfer some or all of the grant to

52 an individual, entity or vendor as a subgrant to accomplish a public purpose, and no contract for  
53 commodities or services directly benefitting a spending unit will result, the subgrant is not subject  
54 to the competitive bidding requirements set forth in this chapter.

**§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form  
and contents; register of vendors; false certificates; penalties.**

1 (a) The director may not accept any bid received from any vendor unless the vendor has  
2 paid the annual fee specified in section four of this article and has filed with the director a  
3 certificate of the vendor or the certificate of a member of the vendor's firm or, if the vendor is a  
4 corporation, the certificate of an officer, director or managing agent of the corporation, disclosing  
5 the following information:

6 (1) If the vendor is an individual, his or her name and city and state of residence and  
7 business address, and, if he or she has associates or partners sharing in his business, their  
8 names and city and state of residence and business addresses;

9 (2) If the vendor is a firm, the name and city and state of residence and business address  
10 of ~~each member, partner or associate of the firm;~~

11 (3) If the vendor is a corporation created under the laws of this state or authorized to do  
12 business in this state, the name and business address of the corporation; ~~the names and city and  
13 state of residence and business addresses of the president, vice president, secretary, treasurer  
14 and general manager, if any, of the corporation; and the names and city and state of residence  
15 and business addresses of each stockholder of the corporation owning or holding at least ten  
16 percent of the capital stock thereof~~

17 (4) A statement of whether the vendor is acting as agent for some other individual, firm or  
18 corporation, and if so, a statement of the principal authorizing the representation shall be attached  
19 to the certificate or whether the vendor is doing business as another entity;

20 (5) The vendor's latest Dun & Bradstreet number and rating, if there is any rating as to the  
21 vendor; and



22           ~~(6) A list of one or more banking institutions, if such institution is available, to serve as~~  
23 ~~references for the vendor; and~~

24           ~~(7) The vendor's tax identification number.~~

25           (b) Whenever a change occurs in the information submitted as required, the change shall  
26 be reported immediately in the same manner as required in the original disclosure certificate.

27           (c) The certificate and information received by the director shall be public record.

28           (d) The director may waive the above requirements in the case of any corporation listed  
29 on any nationally recognized stock exchange and in the case of any vendor who or which is the  
30 sole source for the commodity in question.

31           (e) Any person who submits a false certificate or who knowingly files or causes to be filed  
32 with the director, a certificate containing a false statement of a material fact or omitting any  
33 material fact, is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000,  
34 and, in the discretion of the court, confined in jail not more than one year. An individual convicted  
35 of a misdemeanor under this subsection may never hold an office of honor, trust or profit in this  
36 state, or serve as a juror.

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

1           If a spending unit purchases or contracts for commodities or services contrary to the  
2 provisions of this article or the rules and regulations made thereunder, in any material respect, as  
3 determined by the director, such purchase or contract shall be void and of no effect. The spending  
4 officer of such spending unit, or any other individual charged with responsibility for the purchase  
5 or contract, shall be personally liable for the costs of such purchase or contract and, if already  
6 paid out of state funds, the amount thereof may be recovered in the name of the state in an  
7 appropriate action instituted therefor: *Provided*, That the state establishes by a preponderance of  
8 the evidence that the individual acted knowingly and willfully.

**§5A-3-18. Substituting for commodity bearing particular trade name or brand.**

9           If a spending unit requests the purchase of a commodity bearing a particular trade name

10 or brand, the director may substitute, after consultation with the relevant spending unit, a  
 11 commodity bearing a different trade name or brand, if the substituted commodity reasonably  
 12 conforms to the adopted standard specifications and can be obtained at an equal or lower price.

**§5A-3-29. Penalty for violation of article.**

13 Any person who knowingly and willfully violates a provision of this article, except where  
 14 another penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof,  
 15 shall be confined in jail not less than ten days nor more than one year, or fined not less than ten  
 16 nor more than \$500, or both, in the discretion of the court.

**§5A-3-35. Submission of annual inventories.**

1 The head of every spending unit of State government shall, on or before July 15, of each  
 2 year, make an accounting and inventory of, and file with the director, ~~an inventory~~ of all real and  
 3 personal property, and of all equipment, supplies and commodities in its possession as of the  
 4 close of the last fiscal year, ~~as directed by the director~~.

**§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.**

1 (a) The State agency for surplus property has the exclusive power and authority to make  
 2 disposition of commodities or expendable commodities now owned or in the future acquired by  
 3 the State when the commodities are or become obsolete or unusable or are not being used or  
 4 should be replaced: Provided, That the director may grant authority to spending units to make  
 5 disposition of commodities or expendable commodities in appropriate circumstances when  
 6 determined by the director to be in the State's best interest.

7 (b) The agency shall determine what commodities or expendable commodities should be  
 8 disposed of and make disposition in the manner which will be most advantageous to the state.  
 9 The disposition may include:

10 (1) Transferring the particular commodities or expendable commodities between  
 11 departments, after consultation with any relevant spending units, and recording the transfer in

12 accordance with governmental accounting standards;

13 (2) Selling the commodities to county commissions, county boards of education,  
14 municipalities, public service districts, county building commissions, airport authorities, parks and  
15 recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section  
16 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in  
17 this state when the volunteer fire departments have been held exempt from taxation under Section  
18 501(c) of the Internal Revenue Code 1986, as amended;

19 (3) Trading in the commodities as a part payment on the purchase of new commodities;

20 (4) Cannibalizing the commodities pursuant to procedures established under §5A-3-45(g)  
21 of this code;

22 (5) Properly disposing of the commodities as waste;

23 (6) Selling the commodities to the general public at the posted price or to the highest  
24 bidder by means of public auctions or sealed bids, after having first advertised the time, terms,  
25 and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-  
26 3-1 *et seq.* of this code. The publication area for the publication is the county in which the sale is  
27 to be conducted. The sale may also be advertised in other advertising media that the agency  
28 considers advisable. The agency may sell to the highest bidder or to any one or more of the  
29 highest bidders, if there is more than one, or, if the best interest of the state will be served, reject  
30 all bids; or

31 (7) Selling the commodities to the highest bidder by means of an internet auction site  
32 approved by the director, as set forth in a legislative rule pursuant to the provisions of chapter  
33 29A of this code.

34 (c) Upon the sale to the general public, ~~or transfer of commodities or expendable~~  
35 ~~commodities between departments~~ or upon the sale of commodities or expendable commodities  
36 to an eligible organization, the agency shall set the price to be paid by the receiving eligible  
37 organization, with due consideration given to current market prices.

38 (d) The agency may sell expendable, obsolete, or unused motor vehicles owned by the  
39 state to an eligible organization, other than volunteer fire departments. In addition, the agency  
40 may sell expendable, obsolete, or unused motor vehicles owned by the state with a gross weight  
41 in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with due  
42 consideration given to fair market value as determined by an independent automotive pricing  
43 guide, shall set the price at a fair market price to be paid by the receiving eligible organization for  
44 motor vehicles sold pursuant to this provision. The fair market value shall be based on a thorough  
45 inspection of the vehicle by an employee of the agency who shall consider the mileage of the  
46 vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no  
47 fair market value is available, the agency shall set the price to be paid by the receiving eligible  
48 organization with due consideration given to current market prices. The duly authorized  
49 representative of the eligible organization, for whom the motor vehicle or other similar surplus  
50 equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor  
51 vehicle to be vested only in the official name of the authorized governing body for whom the  
52 purchase or transfer was made. The ownership or title, or both, shall remain in the possession of  
53 that governing body and be nontransferable for a period of not less than one year from the date  
54 of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment  
55 prior to an elapsed period of one year may be made only by reason of certified unserviceability.

56 (e) The agency shall report to the Legislative Auditor, semiannually, all sales of  
57 commodities or expendable commodities made during the preceding six months to eligible  
58 organizations. The report shall include a description of the commodities sold, the price paid by  
59 the eligible organization which received the commodities, and to whom each commodity was sold.

60 (f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the  
61 credit on a pro rata basis of the fund or funds out of which the purchase of the particular  
62 commodities or expendable commodities was made: *Provided*, That the agency may charge and  
63 assess fees reasonably related to the costs of care and handling with respect to the transfer,

64 warehousing, sale, and distribution of state property disposed of or sold pursuant to the provisions  
65 of this section. Notwithstanding §5A-3-45(e) of this code, if the fund or funds out of which the  
66 purchase was made no longer exist, the spending unit may designate an alternate fund within  
67 which the proceeds must be deposited.

68 (g)(1) For purposes of this section, “cannibalization” means the removal of parts from one  
69 commodity to use in the creation or repair of another commodity.

70 (2) The Director of the Purchasing Division shall propose for promulgation legislative rules  
71 to establish procedures that permit the cannibalization of a commodity when it is in the best  
72 interests of the state. The procedures shall require the approval of the director prior to the  
73 cannibalization of the commodity under such circumstances as the procedures may prescribe.

74 (3)(A) Under circumstances prescribed by the procedures, state agencies shall be  
75 required to submit a form, in writing or electronically, that, at a minimum, elicits the following  
76 information for the commodity the agency is requesting to cannibalize:

- 77 (i) The commodity identification number;
- 78 (ii) The commodity’s acquisition date;
- 79 (iii) The commodity’s acquisition cost;
- 80 (iv) A description of the commodity;
- 81 (v) Whether the commodity is operable and, if so, how well it operates;
- 82 (vi) How the agency will dispose of the remaining parts of the commodity; and
- 83 (vii) Who will cannibalize the commodity and how the person is qualified to remove and  
84 reinstall the parts.

85 (B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit  
86 the following information for the commodity or commodities that will receive the cannibalized part  
87 or parts:

- 88 (i) The commodity identification number;
- 89 (ii) The commodity’s acquisition date;

90 (iii) The commodity's acquisition cost;  
91 (iv) A description of the commodity;  
92 (v) Whether the commodity is operable;  
93 (vi) Whether the part restores the commodity to an operable condition; and  
94 (vii) The cost of the parts and labor to restore the commodity to an operable condition  
95 without cannibalization.

96 (C) If the agency intends to retain the cannibalized parts for future use, it shall provide  
97 information justifying its request.

98 (D) The procedures shall provide for the disposal of the residual components of  
99 cannibalized property.

100 (h)(1) The Director of the Purchasing Division shall propose for promulgation legislative  
101 rules to establish procedures that allow State agencies to dispose of commodities in a landfill, or  
102 by other lawful means of waste disposal, if the value of the commodity is less than the benefit that  
103 may be realized by the state by disposing of the commodity using another method authorized in  
104 this section. The procedures shall specify circumstances where the State agency for surplus  
105 property shall inspect the condition of the commodity prior to authorizing the disposal and those  
106 circumstances when the inspection is not necessary prior to the authorization.

107 (2) Whenever a State agency requests permission to dispose of a commodity in a landfill,  
108 or by other lawful means of waste disposal, the state agency for surplus property has the right to  
109 take possession of the commodity and to dispose of the commodity using any other method  
110 authorized in this section.

111 (3) If the State agency for surplus property determines, within 15 days of receiving a  
112 commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal  
113 would be more beneficial to the state than disposing of the commodity using any other method  
114 authorized in this section, the cost of the disposal is the responsibility of the agency from which it  
115 received the commodity.

**§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.**

1           (a) A State agency may not ~~enter into~~ allow a vendor to perform work on an applicable  
2 contract that has been awarded to a business entity unless and until the business entity submits  
3 to the state agency a disclosure of interested parties to the applicable contract.

4           (b) The business entity shall submit the disclosure to the State agency ~~no later than when~~  
5 ~~the contract is submitted to the state agency for signature and approval by the state agency:~~  
6 *Provided, That this provision does not require submission of a disclosure pursuant to this article*  
7 *as part of a bid for the contract* prior to commencing work on an applicable contract award.

8           (c) Within 30 days following the completion or termination of the applicable contract, the  
9 business entity shall submit a supplemental disclosure of interested parties reflecting any new or  
10 differing interested parties to the contract.

NOTE: The purpose of this bill is to modernize the operations of the Purchasing Division to encourage earlier communication with and assistance from experts within the division regarding manner and process of procurement of commodities and services by the various spending units of the State.

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