

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3295

By Delegate Criss

[Introduced February 06, 2023; Referred to the
Committee on Government Organization then
Finance]

1 A BILL to amend and reenact §5A-3-4 and §5A-3-12 of the Code of West Virginia, 1931, as
 2 amended, all relating to terminating the authority of the Director of the Purchasing Division
 3 to impose a certain annual fee upon vendors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-4. Rules of director.

1 (a) The director shall propose rules for legislative approval in accordance with the
 2 provisions of §29A-3-1 *et seq.* 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) Prescribe the manner in which emergency purchases made under §5A-3-1(d) of this
 6 code shall be reported to the director;

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

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

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

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

17 (7) Prescribe a system whereby the director shall be required ~~upon the payment by a~~
 18 ~~vendor of an annual fee established by the director~~ to give notice to such vendor of all bid
 19 solicitations for commodities and services of the type with respect to which such vendor specified
 20 notice was to be given: ~~but no such fee shall exceed the cost of giving the notice to such vendor,~~

21 ~~nor shall such fee exceed the sum of \$125 per fiscal year nor shall such fee be charged to persons~~
22 ~~or entities seeking only reimbursement from a spending unit or to persons or entities only seeking~~
23 ~~to accept moneys granted by a spending unit under a grant agreement Provided, That the~~
24 ~~authority to charge a fee under this section or pursuant to legislative rule as provided in this section~~
25 ~~is terminated upon the effective date of the amendments to this section enacted in 2023.~~

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 §5-22-1 *et seq.* of this code;

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

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

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

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

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

43 (b) A person may not be employed as a state buyer unless he or she at the time of
44 employment fulfills either of the following requirements:

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

47 (2) Has at least two years' experience in purchasing for any unit of government or for any
48 business, commercial or industrial enterprise.

49 Persons serving as State buyers are subject to the provisions of §29-6-1 *et seq.* of this
50 code. Any director of the Purchasing Division hired after July 1, 2022, shall serve at the will and
51 pleasure of the secretary and may not be subject to the provisions of §29-6-1 *et seq.* of this code.

**§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 §5A-3-4 of this code and~~ has filed with the director a certificate of
3 the vendor or the certificate of a member of the vendor's firm or, if the vendor is a corporation, the
4 certificate of an officer, director or managing agent of the corporation, disclosing the following
5 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 names
8 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 of
10 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;

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

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

18 (6) The vendor's tax identification number.

19 (b) Whenever a change occurs in the information submitted as required, the change shall

20 be reported immediately in the same manner as required in the original disclosure certificate.

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

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

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

NOTE: The purpose of this bill is to terminate the authority of the Purchasing Division to impose a certain annual fee upon vendors.

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