

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 4855**

By Delegate Burkhammer

[Introduced January 17, 2024; Referred to the  
Committee on Government Organization]

1 A BILL to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating to  
 2 the purchasing division; and requiring the purchasing division contracts to be nonspecific  
 3 in regards to manufacturers or suppliers of commodities.

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

**ARTICLE 3. PURCHASING DIVISION.**  
**§5A-3-3. Authority of Director of Purchasing.**

1 The director, under the direction and supervision of the secretary, is the executive officer of  
 2 the Purchasing Division and has the 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 on  
 5 competitive bid, except when another method of procurement is determined to be in the best  
 6 interest of the state, and shall be nonspecific in regards to a specific manufacturer or supplier of  
 7 the commodities procured;
- 8 (3) Purchase or contract for, or assist and facilitate the purchase or contract for the  
 9 spending units of the state government, in the name of the state, the commodities, services, and  
 10 printing required by the spending units of the state government;
- 11 (4) Apply and enforce standard specifications established in accordance with §5A-3-5 of  
 12 this code as hereinafter provided;
- 13 (5) Transfer to or between spending units or sell commodities that are surplus, obsolete, or  
 14 unused as hereinafter provided;
- 15 (6) Have charge of central storerooms for the supply of spending units as the director  
 16 considers advisable;
- 17 (7) Establish and maintain a laboratory for the testing of commodities and make use of  
 18 existing facilities in state institutions for that purpose as hereinafter provided as the director  
 19 considers advisable;
- 20 (8) Suspend the right and privilege of a vendor to bid on state purchases when the director

21 has evidence that the vendor has violated any of the provisions of the purchasing law or the rules  
22 and regulations of the director;

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

40 (10) Timely provide guidance to and assist any spending unit in the development of the  
41 specifications and descriptions in solicitations to be prepared so as to provide all potential  
42 suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure  
43 that the specifications and descriptions do not favor a particular brand or vendor; If the director  
44 determines that any such specifications or descriptions as written favor a particular brand or  
45 vendor or if it is decided by the relevant spending unit, in consultation with the director, either  
46 before or after the bids are opened, that a commodity or service having different specifications or

47 quality or in different quantity can be acquired to better achieve the ends sought by the relevant  
48 spending unit, the solicitation may be rewritten and the matter shall be rebid or another  
49 procurement method pursued, where determined appropriate;

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 the requirements of this article and the rules  
52 promulgated hereunder. Failure to abide by the notice may result in penalties set forth in §5A-3-17  
53 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.

NOTE: The purpose of this bill is to require purchasing division contracts to be nonspecific in regards to manufacturers or suppliers of commodities to be purchased.

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