

Senate Bill No. 52

(By Senator Yost)

[Introduced January 14, 2015; referred to the Committee on Labor; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-5a; to amend and reenact §15-2-10 of said code; to amend said code by adding thereto a new section, designated §18-2-23b; and to amend and reenact §18B-5-4 of said code, all relating to requiring all uniforms purchased by the state to be used or worn by employees of the state, including State Police officers, State Board of Education employees and employees of state institutions of higher education, to be manufactured in the United States; providing effective date; and removing outdated provision.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-3-5a; that §15-2-10 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-2-23b; and that §18B-5-4 of said code be amended and reenacted, all to read as follows:

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

2 **ARTICLE 3. PURCHASING DIVISION.**

3 **§5A-3-5a. Uniforms to be made in the United States.**

4 The director shall promulgate and adopt standards that require all uniforms worn or used by
5 employees of the state, including, but not limited to, the employees of the boards and agencies
6 identified in section one, article two, chapter five-f of this code, be manufactured in the United
7 States. Notwithstanding any provision of this code to the contrary, these standards apply to every
8 future purchase of uniforms after June 30, 2015. No purchase by any spending unit is exempt from
9 compliance with these standards.

10 **CHAPTER 15. PUBLIC SAFETY.**

11 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

12 **§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters;**
13 **quarters for members; life insurance; medical and hospital fees for injuries**
14 **and illnesses of members incurred in line of duty.**

15 (a) The standard uniform to be used by the West Virginia State Police after the effective date
16 of this article shall be as follows: Forestry green blouse with West Virginia State Police emblem on
17 sleeve; black shoulder strap one-inch black stripe around sleeve, four inches from end of sleeve;
18 forestry green breeches with one-inch black stripe down the side; trousers (slacks) with one-inch
19 black stripe down the side for officers and clerks regularly enlisted in the State Police; forestry green
20 shirts with West Virginia State Police emblem on sleeve; black shoulder straps; forestry green
21 mackinaw with West Virginia State Police emblem on sleeve; black shoulder straps; one-inch black

1 stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam
2 Browne belt with holster; black leggings and shoes; the officer's uniform will have one and
3 one-quarter inch black stripe around the sleeve of blouse and mackinaw four inches from end of
4 sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver
5 shoulder bars for captains, one silver shoulder bar for first lieutenant, one gold shoulder bar for
6 second lieutenant. For noncommissioned officers the uniform blouse and shirt will have thereon
7 black chevrons of the appropriate rank.

8 (b) The standard uniform used by the West Virginia State Police identified in subsection (a)
9 of this section purchased after June 30, 2015 shall be manufactured in the United States.

10 ~~(b)~~ (c) The superintendent shall establish the weapons and enforcement equipment which are
11 authorized for use by members of the State Police and shall provide for periodic inspection of the
12 weapons and equipment. He or she shall provide for the discipline of members using other than
13 authorized weapons and enforcement equipment.

14 ~~(c)~~ (d) The superintendent shall provide the members of the State Police with suitable arms
15 and weapons and, when he or she considers it necessary, with suitably equipped automobiles,
16 motorcycles, watercraft, airplanes and other means of conveyance to be used by the West Virginia
17 State Police, the Governor and other officers and executives in the discretion of the Governor, in
18 times of flood, disaster and other emergencies, for traffic study and control, criminal and safety work
19 and in other matters of official business. He or she shall also provide the standard uniforms for all
20 members of the State Police, for officers, noncommissioned officers and troopers provided for in this
21 section. All uniforms and all arms, weapons and other property furnished the members of the State

1 Police by the State of West Virginia are and remain the property of the state.

2 ~~(d)~~ (e) The superintendent may purchase and maintain on behalf of members group life
3 insurance not to exceed the amount of \$5,000 on behalf of each member.

4 ~~(e)~~ (f) The superintendent may contract and furnish at state police expense medical and
5 hospital services for treatment of illness or injury of a member which shall be determined by the
6 superintendent to have been incurred by the member while engaged in the performance of duty and
7 from causes beyond control of the members. Notwithstanding any other provision of this code, the
8 superintendent has the right of subrogation in any civil action or settlement brought by or on behalf
9 of a member in relation to any act by another which results in the illness, injury or death of a
10 member. To this end, the superintendent may initiate an action on behalf of the State Police in order
11 to recover the costs incurred in providing medical and hospital services for the treatment of a
12 member resulting from injury or illness originating in the performance of official duties. This
13 subsection shall not affect the power of a court to apply ordinary equitable defenses to the right of
14 subrogation.

15 The superintendent may also consult with the executive director of the Workers'
16 Compensation Commission in an effort to defray the cost of medical and hospital services. In no
17 case will the compensation rendered to health care providers for medical and hospital services
18 exceed the then current rate schedule in use by the Workers' Compensation Commission.

19 Third-party reimbursements received by the superintendent after the expiration of the fiscal
20 year in which the injury, illness or death occurred will be deposited to a nonexpiring special revenue
21 account. Funds deposited to this account may be used solely for defraying the costs of medical or

1 materials, supplies, equipment, services and printing required for that governing board or the council
2 or commission, as appropriate, and the state institutions of higher education under their jurisdiction,
3 except the governing boards of Marshall University and West Virginia University, respectively, are
4 subject to subsection (d) of this section.

5 (b) The commission and council jointly shall adopt rules governing and controlling
6 acquisitions and purchases in accordance with this section. The rules shall ensure that the following
7 procedures are followed:

8 (1) No person is precluded from participating and making sales thereof to the council,
9 commission or governing board except as otherwise provided in section five of this article.
10 Providing consulting services such as strategic planning services does not preclude or inhibit the
11 governing boards, council or commission from considering a qualified bid or response for delivery
12 of a product or a commodity from the individual providing the services;

13 (2) Specifications are established and prescribed for materials, supplies, equipment, services
14 and printing to be purchased;

15 (3) Purchase order, requisition or other forms as may be required are adopted and prescribed;

16 (4) Purchases and acquisitions in such quantities, at such times and under contract, are
17 negotiated for and made in the open market or through other accepted methods of governmental
18 purchasing as may be practicable in accordance with general law;

19 (5) Bids are advertised on all purchases exceeding \$25,000, and made by means of sealed or
20 electronically-submitted bids and competitive bidding or advantageous purchases effected through
21 other accepted governmental methods and practices. Competitive bids are not required for purchases

1 of \$25,000 or less.

2 (6) Notices for acquisitions and purchases for which competitive bids are being solicited are
3 posted in the purchasing office of the specified institution involved in the purchase, at least two
4 weeks prior to making the purchases. The rules shall ensure that the notice is available to the public
5 during business hours;

6 (7) Purchases are made in the open market;

7 (8) Vendors are notified of bid solicitation and emergency purchasing; ~~and~~

8 (9) Purchases after June 30, 2015 of uniforms to be used or worn by employees of a state
9 institution of higher learning shall be manufactured in the United States; and

10 ~~(9)~~ (10) No fewer than three bids are obtained when bidding is required, except if fewer than
11 three bids are submitted, an award may be made from among those received.

12 (c) When a state institution of higher education submits a contract, agreement or other
13 document to the Attorney General for approval as to form as required by this chapter the following
14 conditions apply:

15 (1) "Form" means compliance with the Constitution and statutes of the State of West
16 Virginia;

17 (2) The Attorney General does not have the authority to reject a contract, agreement or other
18 document based on the substantive provisions in the contract, agreement or document or any
19 extrinsic matter as long as it complies with the Constitution and statutes of this state;

20 (3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state
21 institution of higher education in writing that the contract, agreement or other document is approved

1 or disapproved as to form. If the contract, agreement or other document is disapproved as to form,
2 the notice of disapproval shall identify each defect that supports the disapproval; and

3 (4) If the state institution elects to challenge the disapproval by filing a writ of mandamus or
4 other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs
5 incurred.

6 (d) Pursuant to this subsection, the governing boards of Marshall University and West
7 Virginia University, respectively, may carry out the following actions:

8 (1) Purchase or acquire all materials, supplies, equipment, services and printing required for
9 the governing board without approval from the commission or the Vice Chancellor for
10 Administration and may issue checks in advance to cover postage as provided in subsection (f) of
11 this section;

12 (2) Make purchases from cooperative buying groups, consortia, the federal government or
13 from federal government contracts if the materials, supplies, services, equipment or printing to be
14 purchased is available from these groups and if this would be the most financially advantageous
15 manner of making the purchase;

16 (3) Select and acquire by contract or lease all grounds, buildings, office space or other space,
17 and capital improvements, including equipment, if the rental is necessarily required by the governing
18 board; and

19 (4) Use purchase cards under terms approved for the commission, the council and governing
20 boards of state institutions of higher education and participate in any expanded program of use as
21 provided in subsection ~~(t)~~ (t) of this section.

1 (e) The governing boards shall adopt sufficient accounting and auditing procedures and
2 promulgate and adopt appropriate rules subject to section six, article one of this chapter to govern
3 and control acquisitions, purchases, leases and other instruments for grounds, buildings, office or
4 other space, and capital improvements, including equipment, or lease-purchase agreements.

5 (f) The council, commission or each governing board may issue a check in advance to a
6 company supplying postage meters for postage used by that board, the council or commission and
7 by the state institutions of higher education under their jurisdiction.

8 (g) When a purchase is to be made by bid, any or all bids may be rejected. However, all
9 purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking
10 into consideration the qualities of the articles to be supplied, their conformity with specifications,
11 their suitability to the requirements of the governing boards, council or commission and delivery
12 terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter
13 five-a of this code applies to the competitive bids made pursuant to this section.

14 (h) The governing boards, council and commission shall maintain a purchase file, which shall
15 be a public record and open for public inspection.

16 (1) After the award of the order or contract, the governing boards, council and commission
17 shall indicate upon the successful bid the following information:

18 (A) Designation as the successful bid;

19 (B) The reason any bids were rejected; and

20 (C) The reason for rejection, if the mathematical low vendor was not awarded the order or
21 contract.

1 (2) A record in the purchase file may not be destroyed without the written consent of the
2 Legislative Auditor. Those files in which the original documentation has been held for at least one
3 year and in which the original documents have been reproduced and archived on microfilm or other
4 equivalent method of duplication may be destroyed without the written consent of the Legislative
5 Auditor.

6 (3) All files, no matter the storage method, shall be open for inspection by the Legislative
7 Auditor upon request.

8 (i) The commission and council, also jointly, shall promulgate rules to prescribe
9 qualifications to be met by any person who is to be employed as a buyer pursuant to this section.
10 These rules shall require that a person may not be employed as a buyer unless that person, at the time
11 of employment has one of the following qualifications:

12 (1) Is a graduate of an accredited college or university; or

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

15 (j) Any person making purchases and acquisitions pursuant to this section shall execute a
16 bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding or
17 surety company authorized to do business in this state as surety thereon, in form prescribed by the
18 Attorney General and conditioned upon the faithful performance of all duties in accordance with this
19 section and sections five through eight, inclusive, of this article and the rules of the governing board
20 and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond
21 may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall

1 be paid from funds appropriated to the applicable governing board or the council or commission.

2 (k) All purchases and acquisitions shall be made in consideration and within limits of
3 available appropriations and funds and in accordance with applicable provisions of article two,
4 chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds.
5 Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the
6 dollar amount for competitive sealed bids in this section are required to be encumbered and they may
7 be entered into the state's centralized accounting system by the staff of the commission, council or
8 governing boards to satisfy the requirements of article two, chapter five-a of this code to determine
9 whether the amount of the purchase is within the quarterly allotment of the commission, council or
10 governing board, is in accordance with the approved expenditure schedule and otherwise conforms
11 to the article.

12 (l) The governing boards, council and commission may make requisitions upon the State
13 Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the
14 total of the appropriations for the governing board, council or commission, and the State Auditor
15 shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall
16 be accounted for by the applicable governing board or the council or commission once every thirty
17 days or more often if required by the State Auditor.

18 (m) Contracts entered into pursuant to this section shall be signed by the applicable governing
19 board or the council or commission in the name of the state and shall be approved as to form by the
20 Attorney General. A contract which requires approval as to form by the Attorney General is
21 considered approved if the Attorney General has not responded within fifteen days of presentation

1 of the contract. A contract or a change order for that contract and notwithstanding any other
2 provision of this code to the contrary, associated documents such as performance and labor/material
3 payments, bonds and certificates of insurance which use terms and conditions or standardized forms
4 previously approved by the Attorney General and do not make substantive changes in the terms and
5 conditions of the contract do not require approval as to form by the Attorney General. The Attorney
6 General shall make a list of those changes which he or she considers to be substantive and the list,
7 and any changes to the list, shall be published in the State Register. A contract that exceeds the
8 dollar amount requiring competitive sealed bids in this section shall be filed with the State Auditor.
9 If requested to do so, the governing boards, council or commission shall make all contracts available
10 for inspection by the State Auditor. The governing board, council or commission, as appropriate,
11 shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the
12 amount of deposit or bond to be given for the faithful performance of a contract.

13 (n) If the governing board, council or commission purchases or contracts for materials,
14 supplies, equipment, services and printing contrary to sections four through seven of this article or
15 the rules pursuant to this article, the purchase or contract is void and of no effect.

16 (o) A governing board or the council or commission, as appropriate, may request the director
17 of purchasing to make available the facilities and services of that department to the governing
18 boards, council or commission in the purchase and acquisition of materials, supplies, equipment,
19 services and printing. The director of purchasing shall cooperate with that governing board, council
20 or commission, as appropriate, in all such purchases and acquisitions upon that request.

21 (p) Each governing board or the council or commission, as appropriate, may permit private

1 institutions of higher education to join as purchasers on purchase contracts for materials, supplies,
2 services and equipment entered into by that governing board or the council or commission. A
3 private institution desiring to join as purchaser on purchase contracts shall file with that governing
4 board or the council or commission, as appropriate, an affidavit signed by the president or designee
5 of the private institution requesting that it be authorized to join as purchaser on purchase contracts
6 of that governing board or the council or commission, as appropriate. The private institution shall
7 agree that it is bound by such terms and conditions as that governing board or the council or
8 commission may prescribe and that it will be responsible for payment directly to the vendor under
9 each purchase contract.

10 (q) Notwithstanding any other provision of this code to the contrary, the governing boards,
11 council and commission, as appropriate, may make purchases from cooperative buying groups,
12 consortia, the federal government or from federal government contracts if the materials, supplies,
13 services, equipment or printing to be purchased is available from that source, and purchasing from
14 that source would be the most financially advantageous manner of making the purchase.

15 (r) An independent performance audit of all purchasing functions and duties which are
16 performed at any state institution of higher education, except Marshall University and West Virginia
17 University, shall be performed each fiscal year. The Joint Committee on Government and Finance
18 shall conduct the performance audit and the governing boards, council and commission, as
19 appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing
20 boards, council or commission.

21 (1) The governing boards of Marshall University and West Virginia University, respectively,

1 shall provide for independent performance audits of all purchasing functions and duties on their
2 campuses at least once in each three-year period.

3 (2) Each audit shall be inclusive of the entire time period that has elapsed since the date of
4 the preceding audit.

5 (3) Copies of all appropriate documents relating to any audit performed by the governing
6 boards of Marshall University and West Virginia University shall be furnished to the Joint
7 Committee on Government and Finance and the Legislative Oversight Commission on Education
8 Accountability within thirty days of the date the audit report is completed.

9 ~~(s) The governing boards shall require each institution under their respective jurisdictions to~~
10 ~~notify and inform every vendor doing business with that institution of section fifty-four, article three,~~
11 ~~chapter five-a of this code, also known as the Prompt Pay Act of 1990.~~

12 ~~(t)~~ (s) Consultant services, such as strategic planning services, do not preclude or inhibit the
13 governing boards, council or commission from considering any qualified bid or response for delivery
14 of a product or a commodity because of the rendering of those consultant services.

15 ~~(u)~~ (t) Purchasing card use may be expanded by the council, commission and state institutions
16 of higher education pursuant to this subsection.

17 (1) The council and commission jointly shall establish procedures to be implemented by the
18 council, commission and any institution under their respective jurisdictions using purchasing cards.
19 The procedures shall ensure that each meets the following conditions:

20 (A) Appropriate use of the purchasing card system;

21 (B) Full compliance with article three, chapter twelve of this code relating to the purchasing

1 card program; and

2 (C) Sufficient accounting and auditing procedures for all purchasing card transactions.

3 (2) Notwithstanding any other provision of this code to the contrary, the council, commission
4 and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing
5 cards for the following purposes:

6 (A) Payment of travel expenses directly related to the job duties of the traveling employee,
7 including, but not limited to, fuel and food; and

8 (B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility
9 payments and real property rental fees.

10 (3) The commission and council each shall evaluate the capacity of each institution under its
11 jurisdiction for complying with the procedures established pursuant to subdivision (2) of this
12 subsection. The commission and council each shall authorize expanded use of purchasing cards
13 pursuant to that subdivision for any institution it determines has the capacity to comply.

NOTE: The purpose of this bill is to require all uniforms purchased by the state to be used or worn by employees of the state and its agencies to be manufactured in the United States. The bill requires employee uniforms purchased by the State Board of Education and state institutions of higher education to be made in the United States. The bill provides an effective date of July 1, 2015. The bill also deletes a subsection that refers to a code section that was repealed in 2010.

§5A-3-5a and §18-2-23b are new; therefore, strike-throughs and underscoring have been omitted.

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