

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4546

FISCAL
NOTE

BY DELEGATES HOWELL, ARVON, HILL, STANSBURY,
CADLE, IHLE, BLAIR, HAMRICK, MOFFATT, FAIRCLOTH AND
R. SMITH

[Introduced February 16, 2016; Referred
to the Committee on Education then Finance.]

1 A BILL to amend and reenact §18B-5-4 of the Code of West Virginia, 1931, as amended, relating
2 to use of statewide contracts issued by the State Purchasing Division.

Be it enacted by the Legislature of West Virginia:

1 That §18B-5-4 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

1 (a) The council, commission and each governing board shall purchase or acquire all
2 materials, supplies, equipment, services and printing required for that governing board or the
3 council or commission, as appropriate, and the state institutions of higher education under their
4 jurisdiction, except the governing boards of Marshall University and West Virginia University,
5 respectively, are subject to subsection (d) of this section: Provided, That all higher education
6 institutions shall use statewide contracts issued by the Purchasing Division, for frequently
7 purchased goods and services, when cost effective.

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

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

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

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

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

23 (5) Bids are advertised on all purchases exceeding \$50,000 and made by means of sealed
24 or electronically submitted bids and competitive bidding or advantageous purchases effected
25 through other accepted governmental methods and practices. Competitive bids are not required
26 for purchases of \$50,000 or less.

27 (6) Notices for acquisitions and purchases for which competitive bids are being solicited
28 are posted either in the purchasing office of the specified institution involved in the purchase or
29 by electronic means available to the public at least five days prior to making the purchases. The
30 rules shall ensure that the notice is available to the public during business hours;

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

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

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

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

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

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

43 (3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state
44 institution of higher education in writing that the contract, agreement or other document is
45 approved or disapproved as to form. If the contract, agreement or other document is disapproved

46 as to form, the notice of disapproval shall identify each defect that supports the disapproval; and

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

50 (d) Pursuant to this subsection, the governing boards of Marshall University and West
51 Virginia University, respectively, may carry out the following actions, except as provided in
52 subsection-a of this section requiring use of statewide contracts when cost effective:

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

57 (2) Purchase from cooperative buying groups, consortia, the federal government or from
58 federal government contracts if the materials, supplies, services, equipment or printing to be
59 purchased is available from these groups and if this would be the most financially advantageous
60 manner of making the purchase;

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

64 (4) Use purchase cards under terms approved for the commission, the council and
65 governing boards of state institutions of higher education and participate in any expanded
66 program of use as provided in subsection (u) of this section.

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

71 (f) The council, commission or each governing board may issue a check in advance to a

72 company supplying postage meters for postage used by that board, the council or commission
73 and by the state institutions of higher education under their jurisdiction.

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

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

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

84 (A) Designation as the successful bid;

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

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

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

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

95 (i) The commission and council, also jointly, shall promulgate rules to prescribe
96 qualifications to be met by any person who is to be employed as a buyer pursuant to this section.
97 These rules shall require that a person may not be employed as a buyer unless that person, at

98 the time of employment, has one of the following qualifications:

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

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

102 (j) Any person making purchases and acquisitions pursuant to this section shall execute
103 a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding
104 or surety company authorized to do business in this state as surety thereon, in form prescribed
105 by the Attorney General and conditioned upon the faithful performance of all duties in accordance
106 with this section and sections five through eight, inclusive, of this article and the rules of the
107 governing board and the council and commission. In lieu of separate bonds for these buyers, a
108 blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the
109 cost of the bond shall be paid from funds appropriated to the applicable governing board or the
110 council or commission.

111 (k) All purchases and acquisitions shall be made in consideration and within limits of
112 available appropriations and funds and in accordance with applicable provisions of article two,
113 chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds.
114 Notwithstanding any other provision of this code to the contrary, only those purchases exceeding
115 the dollar amount for competitive sealed bids in this section are required to be encumbered. Such
116 purchases may be entered into the state's centralized accounting system by the staff of the
117 commission, council or governing boards to satisfy the requirements of article two, chapter five-a
118 of this code to determine whether the amount of the purchase is within the quarterly allotment of
119 the commission, council or governing board, is in accordance with the approved expenditure
120 schedule and otherwise conforms to the article: *Provided*, That notwithstanding the foregoing
121 provisions of this subsection or any other provision of this code to the contrary, purchases by
122 Marshall University or West Virginia University are not required to be encumbered.

123 (l) The governing boards, council and commission may make requisitions upon the State

124 Auditor for a sum to be known as an advance allowance account, not to exceed five percent of
125 the total of the appropriations for the governing board, council or commission, and the State
126 Auditor shall draw a warrant upon the treasurer for those accounts. All advance allowance
127 accounts shall be accounted for by the applicable governing board or the council or commission
128 once every thirty days or more often if required by the State Auditor.

129 (m) Contracts entered into pursuant to this section shall be signed by the applicable
130 governing board or the council or commission in the name of the state and shall be approved as
131 to form by the Attorney General. A contract which requires approval as to form by the Attorney
132 General is considered approved if the Attorney General has not responded within fifteen days of
133 presentation of the contract. A contract or a change order for that contract and notwithstanding
134 any other provision of this code to the contrary, associated documents such as performance and
135 labor/material payments, bonds and certificates of insurance which use terms and conditions or
136 standardized forms previously approved by the Attorney General and do not make substantive
137 changes in the terms and conditions of the contract do not require approval as to form by the
138 Attorney General. The Attorney General shall make a list of those changes which he or she
139 considers to be substantive and the list, and any changes to the list, shall be published in the
140 State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this
141 section shall be filed with the State Auditor. If requested to do so, the governing boards, council
142 or commission shall make all contracts available for inspection by the State Auditor. The
143 governing board, council or commission, as appropriate, shall prescribe the amount of deposit or
144 bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given
145 for the faithful performance of a contract.

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

149 (o) A governing board or the council or commission, as appropriate, may request the

150 director of purchasing to make available the facilities and services of that department to the
151 governing boards, council or commission in the purchase and acquisition of materials, supplies,
152 equipment, services and printing. The director of purchasing shall cooperate with that governing
153 board, council or commission, as appropriate, in all such purchases and acquisitions upon that
154 request.

155 (p) Each governing board or the council or commission, as appropriate, may permit private
156 institutions of higher education to join as purchasers on purchase contracts for materials, supplies,
157 services and equipment entered into by that governing board or the council or commission. A
158 private institution desiring to join as purchaser on purchase contracts shall file with that governing
159 board or the council or commission, as appropriate, an affidavit signed by the president or
160 designee of the private institution requesting that it be authorized to join as purchaser on purchase
161 contracts of that governing board or the council or commission, as appropriate. The private
162 institution shall agree that it is bound by such terms and conditions as that governing board or the
163 council or commission may prescribe and that it will be responsible for payment directly to the
164 vendor under each purchase contract.

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

170 (r) An independent performance audit of all purchasing functions and duties which are
171 performed at any state institution of higher education shall be performed at least once in each
172 three-year period. The Joint Committee on Government and Finance shall conduct the
173 performance audit and the governing boards, council and commission, as appropriate, are
174 responsible for paying the cost of the audit from funds appropriated to the governing boards,
175 council or commission.

176 (1) The governing board shall provide for independent performance audits of all
177 purchasing functions and duties on its campus at least once in each three-year period.

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

180 (3) Copies of all appropriate documents relating to any audit performed by a governing
181 board shall be furnished to the Joint Committee on Government and Finance and the Legislative
182 Oversight Commission on Education Accountability within thirty days of the date the audit report
183 is completed.

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

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

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

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

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

196 (B) Full compliance with article three, chapter twelve of this code relating to the purchasing
197 card program; and

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

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

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

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

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

NOTE: The purpose of this bill is to require all higher education institutions to use statewide contracts issued by the Purchasing Division, when cost effective, to have a centralized location for contracts for goods and services frequently 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.