

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4379

FISCAL
NOTE

BY DELEGATES HANNA, CLARK, TONEY, HORST,

MAZZOCCHI, HAYNES, MARTIN, AND MANDT

[Introduced January 25, 2022; 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 requiring all higher education institutions use statewide contracts issued by the
3 Purchasing Division for frequently purchased goods and services, when cost effective.

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

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 their respective needs:
3 *Provided, That the governing boards under the jurisdiction of the commission, including the*
4 *exempted schools, are subject to §18B-5-4(d) of this code: Provided, however, That all higher*
5 *education institutions shall use statewide contracts issued by the Purchasing Division for*
6 *frequently purchased goods and services, when cost effective.*

7 (b) The commission and council jointly shall adopt rules governing and controlling
8 acquisitions and purchases in accordance with this section: *Provided, That these rules do not*
9 *apply to the exempted schools and the governing boards of the exempted schools shall adopt*
10 *their own rules consistent with this section: Provided, however, That the joint rules shall provide*
11 *for appropriate deference to the value judgments of governing boards under the jurisdiction of the*
12 *commission. The rules shall ensure that the following procedures are followed:*

13 (1) No person is precluded from participating and making sales thereof to the council,
14 commission, or governing board except as otherwise provided in §18B-5-5 of this code. Providing
15 consulting services such as strategic planning services does not preclude or inhibit the governing
16 boards, council, or commission from considering a qualified bid or response for delivery of a
17 product or a commodity from the individual providing the services;

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

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

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

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

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

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

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

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

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

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

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

45 (3) Within 15 days of receipt, the Attorney General shall notify the appropriate state

46 institution of higher education in writing that the contract, agreement, or other document is
47 approved or disapproved as to form. If the contract, agreement, or other document is disapproved
48 as to form, the notice of disapproval shall identify each defect that supports the disapproval; and

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

52 (d) Pursuant to this subsection, the governing boards under the jurisdiction of the
53 commission, including the exempted schools, respectively, may carry out the following actions
54 except as provided in subsection (a) of this section requiring use of statewide contracts when cost
55 effective:

56 (1) Purchase or acquire all materials, supplies, equipment, services, and printing required
57 for the governing board without approval from the commission or the Vice Chancellor for
58 Administration and may issue checks in advance to cover postage as provided in §18B-5-4(f) of
59 this code;

60 (2) Purchase from cooperative buying groups, consortia, the federal government or from
61 federal government contracts, or from West Virginia public institution of higher education
62 contracts, if the materials, supplies, services, equipment, or printing to be purchased is available
63 from these groups and if this would be the most financially advantageous manner of making the
64 purchase;

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

68 (4) Use purchase cards.

69 (e) The governing boards shall adopt sufficient accounting and auditing procedures and
70 promulgate and adopt appropriate rules subject to §18B-1-6 of this code to govern and control
71 acquisitions, purchases, leases, and other instruments for grounds, buildings, office, or other

72 space, and capital improvements, including equipment, or lease-purchase agreements.

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

76 (g) When a purchase is to be made by bid, any or all bids may be rejected. However, all
77 purchases based on advertised bid requests shall be awarded to the lowest responsible bidder
78 taking into consideration the qualities of the articles to be supplied, their conformity with
79 specifications, their suitability to the requirements of the governing boards, council, or commission
80 and delivery terms.

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

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

85 (A) Designation as the successful bid;

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

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

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

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

96 (i) The commission and council, also jointly, shall promulgate rules to prescribe
97 qualifications to be met by any person who is to be employed as a buyer at a state college and

98 university or community and technical college pursuant to this section. These rules shall require
99 that a person may not be employed as a buyer unless that person, at the time of employment,
100 has one of the following qualifications:

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

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

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

113 (k) All purchases and acquisitions shall be made in consideration and within limits of
114 available appropriations and funds and in accordance with applicable provisions of §5A-2-1 *et*
115 *seq.* of this code relating to expenditure schedules and quarterly allotments of funds.
116 Notwithstanding any other provision of this code to the contrary, only those purchases exceeding
117 the dollar amount for competitive sealed bids in this section are required to be encumbered. Such
118 purchases may be entered into the state's centralized accounting system by the staff of the
119 commission, council, or governing boards to satisfy the requirements of §5A-2-1 *et seq.* of this
120 code to determine whether the amount of the purchase is within the quarterly allotment of the
121 commission, council, or governing board, is in accordance with the approved expenditure
122 schedule and otherwise conforms to the article: *Provided, That*, notwithstanding the foregoing
123 provisions of this subsection or any other provision of this code to the contrary, purchases by

124 exempted schools are not required to be encumbered.

125 (l) The governing boards, council, or commission may make requisitions upon the State
126 Auditor for a sum to be known as an advance allowance account, not to exceed five percent of
127 the total of the appropriations for the governing board, council, or commission, and the State
128 Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance
129 accounts shall be accounted for by the applicable governing board or the council or commission
130 once every 30 days or more often if required by the State Auditor.

131 (m) Contracts entered into pursuant to this section shall be signed by the applicable
132 governing board or the council or commission in the name of the state and shall be approved as
133 to form by the Attorney General. A contract which requires approval as to form by the Attorney
134 General is considered approved if the Attorney General has not responded within 15 days of
135 presentation of the contract. A contract or a change order for that contract and notwithstanding
136 any other provision of this code to the contrary, associated documents such as performance and
137 labor/material payments, bonds, and certificates of insurance which use terms and conditions or
138 standardized forms previously approved by the Attorney General and do not make substantive
139 changes in the terms and conditions of the contract do not require approval as to form by the
140 Attorney General. The Attorney General shall make a list of those changes which he or she
141 considers to be substantive and the list, and any changes to the list, shall be published in the
142 State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this
143 section shall be filed with the State Auditor. If requested to do so, the governing boards, council,
144 or commission shall make all contracts available for inspection by the State Auditor. The
145 governing board, council, or commission, as appropriate, shall prescribe the amount of deposit or
146 bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given
147 for the faithful performance of a contract.

148 (n) If the governing board, council, or commission purchases or contracts for materials,
149 supplies, equipment, services, and printing contrary to §18B-5-4 through §18B-5-7 of this code or

150 the rules pursuant to this article, the purchase or contract is void and of no effect.

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

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

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

175 (r) An independent performance audit of all purchasing functions and duties which are

176 performed at any state institution of higher education shall be performed at least once in each
177 three-year period. The Joint Committee on Government and Finance shall require a performance
178 audit and the governing boards, council, and commission, as appropriate, are responsible for
179 paying the cost of the audit from funds appropriated to the governing boards, council, or
180 commission.

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

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

185 (3) Copies of all appropriate documents relating to any audit performed by a governing
186 board shall be furnished to the Joint Committee on Government and Finance and the Legislative
187 Oversight Commission on Education Accountability within 30 days of the date the audit report is
188 completed.

189 (s) The governing boards shall require each institution under their respective jurisdictions
190 to notify and inform every vendor doing business with that institution of §5A-3-54 of this code,
191 also known as the Prompt Pay Act of 1990.

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

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

197 (1) The council and commission jointly shall establish procedures to be implemented by
198 the council, commission, and any state college and university or community and technical college
199 using purchasing cards. The governing boards of the exempted schools shall establish
200 procedures to be implemented by their respective institutions. The procedures shall ensure that
201 each meets the following conditions:

- 202 (A) Appropriate use of the purchasing card system;
- 203 (B) Full compliance of §12-3-1 *et seq.* of this code relating to the purchasing card program;
- 204 and
- 205 (C) Sufficient accounting and auditing procedures for all purchasing card transactions.
- 206 (2) Notwithstanding any other provision of this code to the contrary, the council,
- 207 commission, and any institution authorized pursuant to §18B-5-4(u)(3) of this code may use
- 208 purchasing cards for the following purposes:
- 209 (A) Payment of travel expenses directly related to the job duties of the traveling employee,
- 210 including, but not limited to, fuel and food; and
- 211 (B) Payment of any routine, regularly scheduled payment, including, but not limited to,
- 212 utility payments and real property rental fees.
- 213 (3) The commission and council each shall evaluate the capacity of each state college
- 214 and university and community and technical college under its jurisdiction for complying with the
- 215 procedures established pursuant to §18B-5-4(u)(2) of this code. The commission and council
- 216 each shall authorize expanded use of purchasing cards pursuant to that subdivision for any state
- 217 college and university and community and technical college it determines has the capacity to
- 218 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.