

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2297

FISCAL  
NOTE

By Delegate Hanna

[Introduced January 11, 2023; 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 their  
10 own rules consistent with this section: *Provided, however*, That the joint rules shall provide for  
11 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 by  
31 electronic means available to the public at least five days prior to making the purchases. The rules  
32 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 or  
50 other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs  
51 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, has  
100 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 a  
105 bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding or  
106 surety company authorized to do business in this state as surety thereon, in form prescribed by the  
107 Attorney General and conditioned upon the faithful performance of all duties in accordance with  
108 this section and sections five through eight, inclusive, of this article and the rules of the governing  
109 board and the council and commission. In lieu of separate bonds for these buyers, a blanket surety  
110 bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond  
111 shall be paid from funds appropriated to the applicable governing board or the council or  
112 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 the  
127 total of the appropriations for the governing board, council, or commission, and the State Auditor  
128 shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall  
129 be accounted for by the applicable governing board or the council or commission once every 30  
130 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 to  
133 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 any  
136 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 State  
142 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, or  
144 commission shall make all contracts available for inspection by the State Auditor. The governing  
145 board, council, or commission, as appropriate, shall prescribe the amount of deposit or bond to be  
146 submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the  
147 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 purchaser  
162 on purchase contracts shall file with that governing board or the council or commission, as  
163 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, or  
168 commission may prescribe and that it will be responsible for payment directly to the vendor under  
169 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 of  
184 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, also  
191 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 and
- 214 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.