

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

House Bill 3353

By Delegates McGeehan, Dillon and C. Pritt

[Introduced February 08, 2023; Referred to the
Committee on Government Organization then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §5A-3-3d; to amend and reenact §5F-2-2 of said code; and to amend said code
3 by adding thereto a new section, designated §31-15-6d; all relating to the limitations on the
4 financial relationships with foreign entities that have values antithetical to those of the
5 State of West Virginia.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3d. Limitations on purchasing activities.

1 (a) The Legislature finds that:

2 (1) The values of the State of West Virginia should be upheld by the government charged
3 with managing its affairs.

4 (2) As globalization has advanced over the last 30 years, American persons and entities
5 with values other than that of the State of West Virginia have sought partnerships with foreign
6 entities that have values contrary to that of the State of West Virginia.

7 (3) Through complex layering of various company legal entities interested in doing
8 business with the State of West Virginia, a company may obfuscate the beneficiaries of the
9 proposed commercial activity that are in fact foreign entities that have values contrary to that of the
10 State of West Virginia.

11 (4) Some foreign entities may have a strategic non-financial interest that would seek to
12 harm the United States of America for which the State of West Virginia does not want to
13 participate.

14 (b) Definitions – For the purpose of this section:

15 (1) "Company" means a corporation, partnership, joint venture, limited partnership, limited
16 liability partnership, limited liability company, organization, association, or any other business

17 entity that operates to earn a profit: *Provided*, That the term does not include a publicly traded
18 company incorporated within the United States and whose shares are regulated as over-the-
19 counter securities by the United States Securities and Exchange Commission.

20 (2) "Public Entity" means the State of West Virginia, or any political subdivision thereof,
21 and all spending units of the state government including those otherwise excluded from
22 applicability under §5A-3-1 of this code.

23 (3) For purposes of this section, "foreign entities" are those nations that have antithetical
24 values to those of the State of West Virginia and are specifically limited to the following:

25 (A) State sponsors of terrorism that have resulted in the nonmilitary deaths of United
26 States of America citizens and without admission and restitution or change in regime, which shall
27 include natural persons that hold government positions with the state, the political parties that
28 have control of the state, and natural persons that are officials of that political party. For purposes
29 of this section, these states are:

30 (i) Saudi Arabia

31 (ii) Islamic Republic of Iran

32 (B) States that align with communist ideology, which shall include natural persons that hold
33 government positions with the state, the political parties that have control of the state, and natural
34 persons that are officials of that political party. For purposes of this section, these states are:

35 (i) People's Republic of China

36 (ii) Democratic People's Republic of Korea

37 (iii) Lao People's Democratic Republic

38 (iv) Republic of Cuba

39 (v) Socialist Republic of Vietnam

40 (c) A public entity may not enter a contract with a company for goods or services unless the
41 contract includes written certification that the company provides no direct financial benefit to a
42 foreign entity with values antithetical to those of the State of West Virginia and is able to provide

43 evidence to that end. For purposes of this section, “direct financial benefit” is that which is realized
44 through the ownership of the company or ownership of any other entity that participates in
45 ownership of the company. Such evidence should include documentation demonstrating
46 ownership layers that conclude with individual natural persons.

47 (d) Any contract that violates the requirements of this section shall be void as against
48 public policy.

49 (e) The Director of Purchasing Division is authorized to promulgate legislative rules,
50 including emergency rules, to implement the provisions of this section.

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF
STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to the contrary, the secretary of each
2 department shall have plenary power and authority within and for the department to:

3 (1) Employ and discharge within the office of the secretary employees as may be
4 necessary to carry out the functions of the secretary, which employees shall serve at the will and
5 pleasure of the secretary;

6 (2) Cause the various agencies and boards to be operated effectively, efficiently, and
7 economically and develop goals, objectives, policies, and plans that are necessary or desirable for
8 the effective, efficient, and economical operation of the department;

9 (3) Eliminate or consolidate positions, other than positions of administrators or positions of
10 board members and name a person to fill more than one position;

11 (4) Transfer permanent state employees between departments in accordance with the
12 provisions of §5F-2-7 of this code;

13 (5) Delegate, assign, transfer, or combine responsibilities or duties to or among
14 employees, other than administrators or board members;

15 (6) Reorganize internal functions or operations;

16 (7) Formulate comprehensive budgets for consideration by the Governor and transfer
17 within the department funds appropriated to the various agencies of the department which are not
18 expended due to cost savings resulting from the implementation of the provisions of this chapter:
19 *Provided*, That no more than 25 percent of the funds appropriated to any one agency or board may
20 be transferred to other agencies or boards within the department: *Provided, however*, That no
21 funds may be transferred from a special revenue account, dedicated account, capital expenditure
22 account, or any other account or funds specifically exempted by the Legislature from transfer,
23 except that the use of appropriations from the State Road Fund transferred to the office of the
24 Secretary of the Department of Transportation is not a use other than the purpose for which the
25 funds were dedicated and is permitted: *Provided further*, That if the Legislature by subsequent
26 enactment consolidates agencies, boards, or functions, the appropriate secretary may transfer the
27 funds formerly appropriated to the agency, board, or function in order to implement consolidation.
28 The authority to transfer funds under this section shall expire on June 30, 2010;

29 (8) Enter into contracts or agreements requiring the expenditure of public funds and
30 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the
31 powers granted to the secretary to enter into contracts or agreements and to make expenditures or
32 obligations of public funds under this provision shall not exceed or be interpreted as authority to
33 exceed the powers granted by the Legislature to the various commissioners, directors, or board
34 members of the various departments, agencies, or boards that comprise and are incorporated into
35 each secretary's department under this chapter: *Provided, That limitations as provided in §5A-3-*
36 *3d of this code are observed;*

37 (9) Acquire by lease or purchase property of whatever kind or character and convey or
38 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the

39 powers granted to the secretary to lease, purchase, convey, or dispose of such property shall be
40 exercised in accordance with §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code:
41 *Provided, however,* That the powers granted to the secretary to lease, purchase, convey, or
42 dispose of such property shall not exceed or be interpreted as authority to exceed the powers
43 granted by the Legislature to the various commissioners, directors, or board members of the
44 various departments, agencies, or boards that comprise and are incorporated into each
45 secretary's department under this chapter;

46 (10) Conduct internal audits;

47 (11) Supervise internal management;

48 (12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make
49 effective the powers, authority, and duties granted and imposed by the provisions of this chapter in
50 accordance with the provisions of chapter 29A of this code;

51 (13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2 of
52 this code, by any administrator, agency, or board within the department. Without written consent,
53 no proposal for a rule shall have any force or effect;

54 (14) Delegate to administrators the duties of the secretary as the secretary may deem
55 appropriate, from time to time, to facilitate execution of the powers, authority, and duties delegated
56 to the secretary; and

57 (15) Take any other action involving or relating to internal management not otherwise
58 prohibited by law.

59 (b) The secretaries of the departments hereby created shall engage in a comprehensive
60 review of the practices, policies, and operations of the agencies and boards within their
61 departments to determine the feasibility of cost reductions and increased efficiency which may be
62 achieved therein, including, but not limited to, the following:

63 (1) The elimination, reduction, and restriction of the state's vehicle or other transportation
64 fleet;

65 (2) The elimination, reduction, and restriction of state government publications, including
66 annual reports, informational materials, and promotional materials;

67 (3) The termination or rectification of terms contained in lease agreements between the
68 state and private sector for offices, equipment, and services;

69 (4) The adoption of appropriate systems for accounting, including consideration of an
70 accrual basis financial accounting and reporting system;

71 (5) The adoption of revised procurement practices to facilitate cost-effective purchasing
72 procedures, including consideration of means by which domestic businesses may be assisted to
73 compete for state government purchases; and

74 (6) The computerization of the functions of the state agencies and boards.

75 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the
76 powers granted to the secretaries herein shall be exercised by the secretary if to do so would
77 violate or be inconsistent with the provisions of any federal law or regulation, any federal-state
78 program or federally delegated program or jeopardize the approval, existence or funding of any
79 program.

80 (d) The layoff and recall rights of employees within the classified service of the state as
81 provided in §29-6-10(5) and §29-6-10(6) of this code shall be limited to the organizational unit
82 within the agency or board and within the occupational group established by the classification and
83 compensation plan for the classified service of the agency or board in which the employee was
84 employed prior to the agency or board's transfer or incorporation into the department: *Provided,*
85 That the employee shall possess the qualifications established for the job class. The duration of
86 recall rights provided in this subsection shall be limited to two years or the length of tenure,
87 whichever is less. Except as provided in this subsection, nothing contained in this section shall be
88 construed to abridge the rights of employees within the classified service of the state as provided
89 in §29-6-10 and §29-6-10a of this code.

90 (e) Notwithstanding any other provision of this code to the contrary, the secretary of each
91 department with authority over programs which have an impact on the delivery of health care
92 services in the state or are payors for health care services or are payors for prescription drugs,
93 including, but not limited to, the Public Employees Insurance Agency, the Department of Health
94 and Human Resources, the Bureau of Senior Services, the Children's Health Insurance Program,
95 the Health Care Authority, the Office of the Insurance Commissioner, the Division of Corrections,
96 the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state
97 colleges and universities, public hospitals, state or local institutions including nursing homes and
98 veterans' homes, the Division of Rehabilitation Services, public health departments, the Bureau
99 for Medical Services and other programs, which have an impact on the delivery of health care
100 services or are payors for health care services or are payors for prescription drugs, in West
101 Virginia shall cooperate with the Governor's Office of Health Enhancement and Lifestyle Planning
102 established pursuant to §16-29H-1 *et seq.* of this code for the purpose of improving the health care
103 delivery services in West Virginia for any program over which they have authority.

104 (f) Notwithstanding any other provision of this code to the contrary, the secretary of each
105 department shall cooperate with the State Resiliency Office to the fullest extent practicable to
106 assist that office in fulfilling its duties.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6d. Limits to authority as it relates to collaborating with companies that benefit foreign entities that have values antithetical to that of the State of West Virginia.

1 (a) The Legislature finds that:

2 (1) The values of the State of West Virginia should be upheld by the government charged
3 with managing its affairs.

4 (2) As globalization has advanced over the last 30 years, American persons and entities
5 with values other than that of the State of West Virginia have sought partnerships with foreign
6 entities that have values contrary to that of the State of West Virginia.

7 (3) Through complex layering of various company legal entities interested in doing
8 business with the State of West Virginia, a company may obfuscate the beneficiaries of the
9 proposed commercial activity that are in fact foreign entities that have values contrary to that of the
10 State of West Virginia.

11 (4) Some foreign entities may have a strategic non-financial interest that would seek to
12 harm the United States of America for which the State of West Virginia does not want to
13 participate.

14 (b) Definitions – For the purpose of this section:

15 (1) "Company" means a corporation, partnership, joint venture, limited partnership, limited
16 liability partnership, limited liability company, organization, association, or any other business
17 entity that operates to earn a profit: *Provided*, That the term does not include a publicly traded
18 company incorporated within the United States and whose share are regulated as over-the-
19 counter securities by the United States Securities and Exchange Commission.

20 (2) "Public Entity" means the State of West Virginia, or any political subdivision thereof,
21 and all spending units of the state government including those otherwise excluded from
22 applicability under §5A-3-1 of this code.

23 (3) For purposes of this section, "foreign entities" are those nations that have antithetical
24 values to those of the State of West Virginia and are specifically limited to the following:

25 (A) State sponsors of terrorism that have resulted in the nonmilitary deaths of United
26 States of America citizens and without admission and restitution or change in regime:

27 (i) Saudi Arabia

28 (ii) Islamic Republic of Iran

29 (B) States that align with communist ideology, which shall include individuals that hold
30 government positions with the state, the political parties that have control of the state, and
31 individuals that are officials of that political party.

32 (i) People's Republic of China

33 (ii) Democratic People's Republic of Korea

34 (iii) Lao People's Democratic Republic

35 (iv) Republic of Cuba

36 (v) Socialist Republic of Vietnam

37 (c) The West Virginia Economic Development Board may not exercise its authorities for any
38 projects involving a company that is unable to certify and evidence that there is no financial benefit
39 to a foreign entity with values antithetical to those of the State of West Virginia. Such evidence
40 should include documentation demonstrating ownership layers that conclude with individual
41 natural persons.

42 (d) Any action that is violates the requirements of this section shall be void as against
43 public policy.

44 (e) The West Virginia Economic Development Authority is authorized to promulgate
45 legislative rules, including emergency rules, to implement the provisions of this section.

46 (f) The West Virginia Economic Development Authority shall maintain accurate records
47 reflecting the cost of administering the provisions of this article.

NOTE: The purpose of this bill is to limit state agencies from forming financial relationships that will benefit foreign entities that have values antithetical to those of the State of West Virginia.

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