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H. B. 2632

(By Delegates Westfall, Pasdon, Hamrick, Ambler, Cooper, Upson,
Statler, Kurcaba, Duke, Rohrbach and Espinosa)

[Passed March 11, 2015; in effect from passage.]

**FISCAL
NOTE**

10 AN ACT to amend and reenact §5A-3-1 of the Code of West Virginia, 1931, as amended; to amend
11 and reenact §5A-3-3 of said code; to amend and reenact §18-2E-7 of said code; and to amend
12 and reenact §18-9A-10 of said code, all relating to purchasing guidelines; exempting the
13 West Virginia State Police Forensics Laboratory and the West Virginia Office of Laboratory
14 Services from state purchasing guidelines; exempting procurement of instructional materials,
15 digital content resources, instructional technology, hardware, software, telecommunications
16 and technical services for use in and in support of public schools; exempting procurement
17 of these items from division of purchasing requirements; removing outdated language and
18 updating name of state technology plan; requiring the State Board of Education to define
19 "equitable distribution"; requiring certain technology tools to adhere to state contract prices;
20 adding personalized learning as potential student use for technology; providing for
21 technology system specialists; and removing expired transitional funding language and
22 references to the twenty-first century.

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

24 That §5A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted;

1 that §5A-3-3 of said code be amended and reenacted; that §18-2E-7 of said code be amended and
2 reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:

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

4 **ARTICLE 3. PURCHASING DIVISION.**

5 **§5A-3-1. Division created; purpose; director; applicability of article; continuation.**

6 (a) The Purchasing Division within the Department of Administration is continued. The
7 underlying purposes and policies of the Purchasing Division are:

8 (1) To establish centralized offices to provide purchasing and travel services to the
9 various state agencies;

10 (2) To simplify, clarify and modernize the law governing procurement by this state;

11 (3) To permit the continued development of procurement policies and practices;

12 (4) To make as consistent as possible the procurement rules and practices among the
13 various spending units;

14 (5) To provide for increased public confidence in the procedures followed in public
15 procurement;

16 (6) To ensure the fair and equitable treatment of all persons who deal with the
17 procurement system of this state;

18 (7) To provide increased economy in procurement activities and to maximize to the
19 fullest extent practicable the purchasing value of public funds;

20 (8) To foster effective broad-based competition within the free enterprise system;

21 (9) To provide safeguards for the maintenance of a procurement system of quality and
22 integrity; and

1 (10) To obtain in a cost-effective and responsive manner the commodities and services
2 required by spending units in order for those spending units to better serve this state's businesses
3 and residents.

4 (b) The Director of the Purchasing Division shall, at the time of appointment:

5 (1) Be a graduate of an accredited college or university; and

6 (2) Have spent a minimum of ten of the fifteen years immediately preceding his or her
7 appointment employed in an executive capacity in purchasing for any unit of government or for
8 any business, commercial or industrial enterprise.

9 (c) The provisions of this article apply to all of the spending units of state government,
10 except as otherwise provided by this article or by law.

11 (d) The provisions of this article do not apply to the judicial branch, the West Virginia
12 State Police Forensics Laboratory, the West Virginia Office of Laboratory Services, the
13 legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner
14 and to purchases of textbooks , instructional materials, digital content resources, instructional
15 technology, hardware, software, telecommunications and technical services by the State Board of
16 Education for use in and in support of the public schools.

17 (e) The provisions of this article apply to every expenditure of public funds by a spending
18 unit for commodities and services irrespective of the source of the funds.

19 **§5A-3-3. Powers and duties of Director of Purchasing.**

20 The director, under the direction and supervision of the secretary, shall be the executive
21 officer of the Purchasing Division and shall have the power and duty to:

22 (1) Direct the activities and employees of the Purchasing Division;

1 (2) Ensure that the purchase of or contract for commodities and services shall be based,
2 whenever possible, on competitive bid;

3 (3) Purchase or contract for, in the name of the state, the commodities, services and
4 printing required by the spending units of the state government;

5 (4) Apply and enforce standard specifications established in accordance with section five
6 of this article as hereinafter provided;

7 (5) Transfer to or between spending units or sell commodities that are surplus, obsolete or
8 unused as hereinafter provided;

9 (6) Have charge of central storerooms for the supply of spending units, as the director
10 deems advisable;

11 (7) Establish and maintain a laboratory for the testing of commodities and make use of
12 existing facilities in state institutions for that purpose as hereinafter provided, as the director
13 deems advisable;

14 (8) Suspend the right and privilege of a vendor to bid on state purchases when the director
15 has evidence that such vendor has violated any of the provisions of the purchasing law or the
16 rules and regulations of the director;

17 (9) Examine the provisions and terms of every contract entered into for and on behalf of
18 the State of West Virginia that impose any obligation upon the state to pay any sums of money
19 for commodities or services and approve each such contract as to such provisions and terms; and
20 the duty of examination and approval herein set forth does not supersede the responsibility and
21 duty of the Attorney General to approve such contracts as to form: *Provided*, That the provisions
22 of this subdivision do not apply in any respect whatever to construction or repair contracts

1 entered into by the Division of Highways of the Department of Transportation: *Provided*,
2 *however*, That the provisions of this subdivision do not apply in any respect whatever to
3 contracts entered into by the University of West Virginia Board of Trustees or by the Board of
4 Directors of the State College System, except to the extent that such boards request the facilities
5 and services of the director under the provisions of this subdivision: *Provided further*, That the
6 provisions of this subdivision do not apply to the West Virginia State Police Forensic Laboratory
7 and the West Virginia Office of Laboratory Services;

8 (10) Assure that the specifications and descriptions in all solicitations are prepared so as
9 to provide all potential suppliers-vendors who can meet the requirements of the state an
10 opportunity to bid and to assure that the specifications and descriptions do not favor a particular
11 brand or vendor. If the director determines that any such specifications or descriptions as written
12 favor a particular brand or vendor or if it is decided, either before or after the bids are opened,
13 that a commodity or service having different specifications or quality or in different quantity can
14 be bought, the director may rewrite the solicitation and the matter shall be rebid; and

15 (11) Issue a notice to cease and desist to a spending unit when the director has credible
16 evidence that a spending unit has violated competitive bidding or other requirements established
17 by this article and the rules promulgated hereunder. Failure to abide by such notice may result in
18 penalties set forth in section seventeen of this article.

19 **CHAPTER 18. EDUCATION.**

20 **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

21 **§18-2E-7. Providing for instruction and learning in all public schools.**

22 (a) The Legislature finds that:

1 (1) The knowledge and skills children need to succeed are changing dramatically and that
2 West Virginia students must develop proficiency in the subject matter content, technology tools
3 and learning skills to succeed and prosper in life, in school and on the job;

4 (2) Students must be equipped to live in a multitasking, multifaceted, technology-driven
5 world;

6 (3) The provision technologies and software resources in grades prekindergarten through
7 twelve is necessary to meet the goal that high school graduates will be prepared fully for college,
8 other post-secondary education or gainful employment;

9 (4) This goal reflects a fundamental belief that the youth of the state exit the system
10 equipped with the skills, competencies and attributes necessary to succeed, to continue learning
11 throughout their lifetimes and to attain self-sufficiency;

12 (5) To promote learning, teachers must be competent in content and learning skills and
13 must be equipped to fully integrate technology to transform instructional practice and to support
14 skills acquisition;

15 (6) For students to learn technology skills, students and teachers must have equitable
16 access to high quality, technology tools and resources;

17 (7) When aligned with standards and curriculum, technology-based assessments can be a
18 powerful tool for teachers; and

19 (8) Teachers must understand how to use technology to create classroom assessments for
20 accurate, timely measurements of student proficiency in attainment of academic content.

21 (b) The state board shall ensure that the resources to be used to provide technology
22 services to students in grades prekindergarten through twelve are included in a West Virginia

1 Strategic Technology Learning Plan to be developed by the Department of Education as an
2 integral component of the county electronic strategic improvement plan required in section five
3 of this article. The provision of technologies and services to students and teachers shall be based
4 on a county technology plan developed by a team that includes school building-level professional
5 educators and is aligned with the goals and objectives of the West Virginia Strategic Technology
6 Learning Plan. This plan shall be an integral component of the county electronic strategic
7 improvement plan as required in section five of this article. Funds shall be allocated equitably to
8 county school systems following peer review of the plans that includes providing necessary
9 technical assistance prior to submission and allows timely review and approval by the West
10 Virginia Department of Education. Equitable allocation shall be defined by the state board and
11 may include per school-site equity for technologies requiring a site license or other per school
12 application. Technology tools purchased from appropriations for this section shall adhere to state
13 contract prices: *Provided*, That contingent upon approval of the county technology plan,
14 counties that identify, within that plan, specific software or peripheral equipment not listed on the
15 state contract, but necessary to support implementation, may request the West Virginia
16 Department of Education to secure state purchasing prices for those identified items. Total
17 expenditure to purchase these additional items may not exceed ten percent of the annual county
18 allocation. To the extent practicable, the technology shall be used:

19 (1) To maximize student access to learning tools and resources at all times including
20 during regular school hours, before and after school or class, in the evenings, on weekends and
21 holidays and for public education, noninstructional days and during vacations; and

22 (2) For student use for homework, remedial work, personalized learning, independent

1 learning, career planning and adult basic education.

2 (c) The implementation of this section should provide a technology infrastructure capable
3 of supporting multiple technology-based learning strategies designed to enable students to
4 achieve at higher academic levels. The technology infrastructure should facilitate student
5 development by addressing the following areas:

6 (1) Mastery of rigorous core academic subjects in grades prekindergarten through eight by
7 providing software, other technology resources or both aligned with state standards in reading,
8 mathematics, writing, science, social studies and learning tools;

9 (2) Mastery of rigorous core academic subjects in grades nine through twelve by
10 providing appropriate technology tools aligned with state standards for learning skills and
11 technology tools;

12 (3) Attainment of skill outcomes for all students in the use of technology tools and
13 learning skills;

14 (4) Proficiency in new, emerging content;

15 (5) Participation in relevant, contextual instruction that uses dynamic, real-world contexts
16 that are engaging and meaningful for students, making learning relevant to life outside of school
17 and bridging the gap between how students live and how they learn in school;

18 (6) Ability to use digital and emerging technologies to manage information, communicate
19 effectively, think critically, solve problems, work productively as an individual and
20 collaboratively as part of a team and demonstrate personal accountability and other
21 self-directional skills;

22 (7) Providing students with information on post-secondary educational opportunities,

1 financial aid and the skills and credentials required in various occupations that will help them
2 better prepare for a successful transition following high school;

3 (8) Providing greater access to advanced and other curricular offerings than could be
4 provided efficiently through traditional on-site delivery formats, including increasing student
5 access to quality distance learning curricula and online distance education tools;

6 (9) Providing resources for teachers in differentiated instructional strategies, technology
7 integration, sample lesson plans, curriculum resources and online staff development that enhance
8 student achievement; and

9 (10) Providing resources to support basic skills acquisition and improvement at the above
10 mastery and distinguished levels.

11 (d) Developed with input from appropriate stakeholder groups, the West Virginia
12 Strategic Technology Learning Plan shall be an integral component of the electronic strategic
13 county improvement plan as required in section five of this article. The West Virginia Strategic
14 Technology Learning Plan shall be comprehensive and shall address, but not necessarily be
15 limited to, the following provisions:

16 (1) Allocation of adequate resources to provide students with equitable access to
17 technology tools, including instructional offerings and appropriate curriculum, assessment and
18 technology integration resources aligned to both the content and rigor of state content standards
19 as well as to learning skills and technology tools;

20 (2) Providing students and staff with equitable access to a technology infrastructure that
21 supports the acquisition of skills in the use of technology, including the ability to access
22 information, solve problems, communicate clearly, make informed decisions, acquire new

- 1 knowledge, construct products, reports and systems and access online assessment systems;
- 2 (3) Inclusion of various technologies that enable and enhance the attainment of the skills
- 3 outcomes for all students;
- 4 (4) Collaboration with various partners, including parents, community organization,
- 5 higher education, schools of education in colleges and universities, employers and content
- 6 providers;
- 7 (5) Seeking of applicable federal government funds, philanthropic funds, other
- 8 partnership funds or any combination of those types of funds to augment state appropriations and
- 9 encouraging the pursuit of funding through grants, gifts, donations or any other sources for uses
- 10 related to education technology;
- 11 (6) Sufficient bandwidth to support teaching and learning and to provide satisfactorily for
- 12 instructional management needs;
- 13 (7) Protection of the integrity and security of the network, as well as student and
- 14 administrative workstations;
- 15 (8) Flexibility to adjust the plan based on developing technology, federal and state
- 16 requirements and changing local school and county needs;
- 17 (9) Incorporation of findings based upon validation from research-based evaluation
- 18 findings from previous West Virginia-based evaluation projects;
- 19 (10) Continuing study of emerging technologies for application in a learning environment
- 20 and inclusion in the technology plan, as appropriate;
- 21 (11) An evaluation component to determine the effectiveness of the program and make
- 22 recommendations for ongoing implementation;

1 (12) A program of embedded, sustained professional development for teachers that is
2 strategically developed to support a thorough and efficient education for all students and that
3 aligns with state standards for technology, integrates technology skills into educational practice
4 and supports the implementation of software, technology and assessment resources in the
5 classroom;

6 (13) Providing for uniformity in technological hardware and software standards and
7 procedures;

8 (14) The strategy for ensuring that the capabilities and capacities of the technology
9 infrastructure is adequate for acceptable performance of the technology being implemented in the
10 public schools;

11 (15) Providing for a comprehensive, statewide uniform, integrated education management
12 and information system for data collection and reporting to the Department of Education and the
13 public;

14 (16) Providing for an effective model for the distance delivery, virtual delivery or both
15 types of delivery of instruction in subjects where there exists low student enrollment or a
16 shortage of certified teachers or where the delivery method substantially improves the quality of
17 an instructional program such as the West Virginia Virtual School;

18 (17) Providing a strategy to implement, support and maintain technology in the public
19 schools;

20 (18) Providing a strategy to provide ongoing support and assistance to teachers in
21 integrating technology into instruction such as with technology integration specialists and
22 technology system specialists;

1 (19) A method of allowing public education to take advantage of appropriate bulk
2 purchasing abilities and to purchase from competitively bid contracts initiated through the
3 southern regional education board educational technology cooperative and the America
4 TelEdCommunications Alliance;

5 (20) Compliance with United States Department of Education regulations and Federal
6 Communications Commission requirements for federal E-rate discounts; and

7 (21) Other provisions as considered appropriate, necessary or both to align with
8 applicable guidelines, policies, rules, regulations and requirements of the West Virginia
9 Legislature, the Board of Education and the Department of Education.

10 (e) Any state code and budget references to the Basic Skills/Computer Education Program
11 and the SUCCESS Initiative will be understood to refer to the statewide technology initiative
12 referenced in this section, commonly referred to as the 21st Century Tools for 21st Century
13 Schools Technology Initiative.

14 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

15 **§18-9A-10. Foundation allowance to improve instructional programs.**

16 (a) The total allowance to improve instructional programs shall be the sum of the
17 following:

18 (1) For instructional improvement, in accordance with county and school electronic
19 strategic improvement plans required by section five, article two-e of this chapter, an amount
20 equal to ten percent of the increase in the local share amount for the next school year above any
21 required allocation pursuant to section six-b of this article shall be added to the amount of the
22 appropriation for this purpose for the immediately preceding school year. The sum of these

1 amounts shall be distributed to the counties as follows:

2 (A) One hundred fifty thousand dollars shall be allocated to each county; and

3 (B) Distribution to the counties of the remainder of these funds shall be made

4 proportional to the average of each county's average daily attendance for the preceding year and

5 the county's second month net enrollment.

6 Moneys allocated by provision of this subdivision shall be used to improve instructional

7 programs according to the county and school strategic improvement plans required by section

8 five, article two-e of this chapter and approved by the state board: *Provided, That*

9 notwithstanding any other provision of this code to the contrary, moneys allocated by provision

10 of this section also may be used in the implementation and maintenance of the uniform integrated

11 regional computer information system.

12 Up to twenty-five percent of this allocation may be used to employ professional educators

13 and service personnel in counties after all applicable provisions of sections four and five of this

14 article have been fully utilized.

15 Prior to the use of any funds from this subdivision for personnel costs, the county board

16 must receive authorization from the state superintendent. The state superintendent shall require

17 the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal

18 responsibility in staffing; (3) sharing of services with adjoining counties and the regional

19 educational service agency for that county in the use of the total local district board budget; and

20 (4) employment of technology integration specialists to meet the needs for implementation of the

21 West Virginia t Strategic Technology Learning Plan. County boards shall make application for

22 the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June

1 1, the state superintendent shall review all applications and notify applying county boards of the
2 approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The
3 state superintendent shall require the county board to demonstrate the need for an allocation for
4 personnel based upon the county's inability to meet the requirements of state law or state board
5 policy.

6 The provisions relating to the use of any funds from this subdivision for personnel costs
7 are subject to the following: (1) The funds available for personnel under this subsection may not
8 be used to increase the total number of professional noninstructional personnel in the central
9 office beyond four; and (2) For the school year beginning July 1, 2013, and thereafter, any funds
10 available to a county for use for personnel under this subsection above the amount available for
11 the 2012-2013 school year, only may be used for technology systems specialists until the state
12 superintendent determines that the county has sufficient technology systems specialists to serve
13 the needs of the county.

14 The plan shall be made available for distribution to the public at the office of each
15 affected county board; plus

16 (2) For the purposes of improving instructional technology, an amount equal to twenty
17 percent of the increase in the local share amount for the next school year above any required
18 allocation pursuant to section six-b of this article shall be added to the amount of the
19 appropriation for this purpose for the immediately preceding school year. The sum of these
20 amounts shall be distributed to the counties as follows:

21 (A) Thirty thousand dollars shall be allocated to each county; and

22 (B) Distribution to the counties of the remainder of these funds shall be made

1 proportional to the average of each county's average daily attendance for the preceding year and
2 the county's second month net enrollment.

3 Effective July 1, 2014, moneys allocated by provision of this subdivision shall be used to
4 improve instructional technology programs according to the county and school strategic
5 improvement plans; plus

6 (3) One percent of the state average per pupil state aid multiplied by the number of
7 students enrolled in dual credit, advanced placement and international baccalaureate courses, as
8 defined by the state board, distributed to the counties proportionate to enrollment in these courses
9 in each county; plus

10 (4) An amount not less than the amount required to meet debt service requirements on
11 any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any
12 revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994,
13 shall be paid into the School Building Capital Improvements Fund created by section six, article
14 nine-d of this chapter and shall be used solely for the purposes of that article. The School
15 Building Capital Improvements Fund shall not be utilized to meet the debt services requirement
16 on any revenue bonds or revenue refunding bonds for which moneys contained within the School
17 Building Debt Service Fund have been pledged for repayment pursuant to that section.

18 (b) When the school improvement bonds secured by funds from the School Building
19 Capital Improvements Fund mature, the state Board of Education shall annually deposit an
20 amount equal to \$24,000,000 from the funds allocated in this section into the School
21 Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter
22 to continue funding school facility construction and improvements.

- 1 (c) Any project funded by the School Building Authority shall be in accordance with a
- 2 comprehensive educational facility plan which must be approved by the state board and the
- 3 School Building Authority.