

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 4364

FISCAL  
NOTE

By Delegate McGeehan

[Introduced January 10, 2024 ; Referred  
to the Committee on Government Organization then  
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.**

<b>ARTICLE</b>	<b>3.</b>	<b>PURCHASING</b>	<b>DIVISION</b>
<b>§5A-3-3d.</b>	<b>Limitations</b>	<b>on</b>	<b>purchasing activities.</b>

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 and;

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 and;

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 has no financial benefit to a foreign entity  
42 with values antithetical to those of the State of West Virginia and is able provide evidence to that

43 end. Such evidence should include documentation demonstrating ownership layers that conclude  
44 with individual natural persons.

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

47 (e) The Director of Purchasing Division is authorized to promulgate legislative rules,  
48 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;

17 (8) Enter into contracts or agreements requiring the expenditure of public funds and  
18 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the  
19 powers granted to the secretary to enter into contracts or agreements and to make expenditures or  
20 obligations of public funds under this provision shall not exceed or be interpreted as authority to  
21 exceed the powers granted by the Legislature to the various commissioners, directors, or board  
22 members of the various departments, agencies, or boards that comprise and are incorporated into  
23 each secretary's department under this chapter: *Provided*, That limitations as provided in §5A-3-  
24 3d of this code are observed;

25 (9) Acquire by lease or purchase property of whatever kind or character and convey or  
26 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the  
27 powers granted to the secretary to lease, purchase, convey, or dispose of such property shall be  
28 exercised in accordance with §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code:  
29 *Provided, however*, That the powers granted to the secretary to lease, purchase, convey, or  
30 dispose of such property shall not exceed or be interpreted as authority to exceed the powers  
31 granted by the Legislature to the various commissioners, directors, or board members of the  
32 various departments, agencies, or boards that comprise and are incorporated into each  
33 secretary's department under this chapter;

34 (10) Conduct internal audits;

35 (11) Supervise internal management;

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

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

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

45 (15) Enter into memoranda of understanding; and

46 (16) Take any other action involving or relating to internal management not otherwise  
47 prohibited by law.

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

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

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

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

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

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

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

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

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

78 (e) Notwithstanding any other provision of this code to the contrary, the secretary of each  
 79 department shall cooperate with the State Resiliency Office to the fullest extent practicable to  
 80 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  
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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:

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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-  
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20 (2) "Public Entity" means the State of West Virginia, or any political subdivision thereof,  
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23 (3) For purposes of this section, "foreign entities" are those nations that have antithetical  
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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.