

1 **Senate Bill No. 91**

2 (By Senators Yost and Fitzsimmons)

3

4 [Introduced January 8, 2014; referred to the Committee on Labor;  
5 and then to the Committee on Finance.]

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7

**FISCAL  
NOTE**

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §5A-3-5a; to amend  
12 and reenact §15-2-10 of said code; to amend said code by  
13 adding thereto a new section, designated §18-2-23b; and to  
14 amend and reenact §18B-5-4 of said code, all relating to  
15 requiring all uniforms purchased by the state to be used or  
16 worn by employees of the state, including State Police  
17 officers, State Board of Education employees and employees of  
18 state institutions of higher education, to be manufactured in  
19 the United States; providing an effective date; and removing  
20 an outdated provision.

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

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new section, designated §5A-3-5a; that §15-2-10

1 of said code be amended and reenacted; that said code be amended by  
2 adding thereto a new section, designated §18-2-23b; and that §18B-  
3 5-4 of said code be amended and reenacted, all to read as follows:

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

5 **ARTICLE 3. PURCHASING DIVISION.**

6 **§5A-3-5a. Uniforms to be made in the United States.**

7           The director shall promulgate and adopt standards that require  
8 all uniforms worn or used by employees of the state, including, but  
9 not limited to, the employees of the boards and agencies identified  
10 in section one, article two, chapter five-f of this code, be  
11 manufactured in the United States. Notwithstanding any provision  
12 of this code to the contrary, these standards apply to every future  
13 purchase of uniforms after June 30, 2014. No purchase by any  
14 spending unit is exempt from compliance with these standards.

15           **CHAPTER 15. PUBLIC SAFETY.**

16 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

17 **§15-2-10. Uniforms; authorized equipment, weapons and supplies;**  
18           **local headquarters; quarters for members; life**  
19           **insurance; medical and hospital fees for injuries and**  
20           **illnesses of members incurred in line of duty.**

21           (a) The standard uniform to be used by the West Virginia State  
22 Police after the effective date of this article shall be as

1 follows: Forestry green blouse with West Virginia State Police  
2 emblem on sleeve; black shoulder strap one-inch black stripe around  
3 sleeve, four inches from end of sleeve; forestry green breeches  
4 with one-inch black stripe down the side; trousers (slacks) with  
5 one-inch black stripe down the side for officers and clerks  
6 regularly enlisted in the State Police; forestry green shirts with  
7 West Virginia State Police emblem on sleeve; black shoulder straps;  
8 forestry green mackinaw with West Virginia State Police emblem on  
9 sleeve; black shoulder straps; one-inch black stripe around sleeve  
10 four inches from end of sleeve; campaign hat of olive drab color;  
11 black Sam Browne belt with holster; black leggings and shoes; the  
12 officer's uniform will have one and one-quarter inch black stripe  
13 around the sleeve of blouse and mackinaw four inches from end of  
14 sleeve circumposed with one-half inch gold braid, also black  
15 collars on blouse, with two silver shoulder bars for captains, one  
16 silver shoulder bar for first lieutenant, one gold shoulder bar for  
17 second lieutenant. For noncommissioned officers the uniform blouse  
18 and shirt will have thereon black chevrons of the appropriate rank.

19 (b) The standard uniform used by the West Virginia State  
20 Police identified in subsection (a) of this section purchased after  
21 June 30, 2014 shall be manufactured in the United States.

22 ~~(b)~~ (c) The superintendent shall establish the weapons and  
23 enforcement equipment which are authorized for use by members of

1 the State Police and shall provide for periodic inspection of the  
2 weapons and equipment. He or she shall provide for the discipline  
3 of members using other than authorized weapons and enforcement  
4 equipment.

5 ~~(c)~~ (d) The superintendent shall provide the members of the  
6 State Police with suitable arms and weapons and, when he or she  
7 considers it necessary, with suitably equipped automobiles,  
8 motorcycles, watercraft, airplanes and other means of conveyance to  
9 be used by the West Virginia State Police, the Governor and other  
10 officers and executives in the discretion of the Governor, in times  
11 of flood, disaster and other emergencies, for traffic study and  
12 control, criminal and safety work and in other matters of official  
13 business. He or she shall also provide the standard uniforms for  
14 all members of the State Police, for officers, noncommissioned  
15 officers and troopers provided ~~for~~ in this section. All uniforms  
16 and all arms, weapons and other property furnished the members of  
17 the State Police by the State of West Virginia are and remain the  
18 property of the state.

19 ~~(d)~~ (e) The superintendent may purchase and maintain on behalf  
20 of members group life insurance not to exceed the amount of \$5,000  
21 on behalf of each member.

22 ~~(e)~~ (f) The superintendent may contract and furnish at state  
23 police expense medical and hospital services for treatment of

1 illness or injury of a member which shall be determined by the  
2 superintendent to have been incurred by the member while engaged in  
3 the performance of duty and from causes beyond control of the  
4 members. Notwithstanding any other provision of this code, the  
5 superintendent has the right of subrogation in any civil action or  
6 settlement brought by or on behalf of a member in relation to any  
7 act by another which results in the illness, injury or death of a  
8 member. To this end, the superintendent may initiate an action on  
9 behalf of the State Police in order to recover the costs incurred  
10 in providing medical and hospital services for the treatment of a  
11 member resulting from injury or illness originating in the  
12 performance of official duties. This subsection shall not affect  
13 the power of a court to apply ordinary equitable defenses to the  
14 right of subrogation.

15       The superintendent may also consult with the executive  
16 director of the Workers' Compensation Commission in an effort to  
17 defray the cost of medical and hospital services. In no case will  
18 the compensation rendered to health care providers for medical and  
19 hospital services exceed the then current rate schedule in use by  
20 the Workers' Compensation Commission.

21       Third-party reimbursements received by the superintendent  
22 after the expiration of the fiscal year in which the injury,  
23 illness or death occurred will be deposited to a nonexpiring

1 special revenue account. Funds deposited to this account may be  
2 used solely for defraying the costs of medical or hospital services  
3 rendered to any sworn members as a direct result of an illness,  
4 injury or death resulting from the performance of official duties.

5 ~~(f)~~ (g) The superintendent shall establish and maintain local  
6 headquarters at those places in West Virginia that are in his or  
7 her judgment suitable and proper to render the West Virginia State  
8 Police most efficient for the purpose of preserving the peace,  
9 protecting property, preventing crime, apprehending criminals and  
10 carrying into effect all other provisions of this article. The  
11 superintendent shall provide, by acquisition, lease or otherwise,  
12 for local headquarters, for housing and quarters for the  
13 accommodation of the members of the West Virginia State Police, and  
14 for any other facilities necessary or useful for the effective  
15 operation of the West Virginia State Police and shall provide all  
16 equipment and supplies necessary for the members of the West  
17 Virginia State Police to perform their duties.

18 **CHAPTER 18. EDUCATION.**

19 **ARTICLE 2. STATE BOARD OF EDUCATION.**

20 **§18-2-23b. Purchase of uniforms; made in the United States.**

21 The West Virginia Board of Education, through the state  
22 superintendent of schools, shall promulgate and establish standards  
23 requiring all uniforms worn or used by employees of the State Board

1 of Education purchased after June 30, 2014 to be manufactured in  
2 the United States.

3 **CHAPTER 18B. HIGHER EDUCATION.**

4 **ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

5 **§18B-5-4. Purchase or acquisition of materials, supplies,**  
6 **equipment, services and printing.**

7 (a) The council, commission and each governing board shall  
8 purchase or acquire all materials, supplies, equipment, services  
9 and printing required for that governing board or the council or  
10 commission, as appropriate, and the state institutions of higher  
11 education under their jurisdiction, except the governing boards of  
12 Marshall University and West Virginia University, respectively, are  
13 subject to subsection (d) of this section.

14 (b) The commission and council jointly shall adopt rules  
15 governing and controlling acquisitions and purchases in accordance  
16 with this section. The rules shall ensure that the following  
17 procedures are followed:

18 (1) No person is precluded from participating and making sales  
19 thereof to the council, commission or governing board except as  
20 otherwise provided in section five of this article. Providing  
21 consulting services such as strategic planning services does not  
22 preclude or inhibit the governing boards, council or commission  
23 from considering a qualified bid or response for delivery of a

1 product or a commodity from the individual providing the services;

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

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

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

11       (5) Bids are advertised on all purchases exceeding \$25,000,  
12 and made by means of sealed or electronically-submitted bids and  
13 competitive bidding or advantageous purchases effected through  
14 other accepted governmental methods and practices. Competitive  
15 bids are not required for purchases of \$25,000 or less.

16       (6) Notices for acquisitions and purchases for which  
17 competitive bids are being solicited are posted in the purchasing  
18 office of the specified institution involved in the purchase, at  
19 least two weeks prior to making the purchases. The rules shall  
20 ensure that the notice is available to the public during business  
21 hours;

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

23       (8) Vendors are notified of bid solicitation and emergency



1 purchasing; ~~and~~

2 (9) Purchases after June 30, 2014 of uniforms to be used or  
3 worn by employees of a state institution of higher learning shall  
4 be manufactured in the United States; and

5 ~~(9)~~ (10) No fewer than three bids are obtained when bidding is  
6 required, except if fewer than three bids are submitted, an award  
7 may be made from among those received.

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

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

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

19 (3) Within fifteen days of receipt, the Attorney General shall  
20 notify the appropriate state institution of higher education in  
21 writing that the contract, agreement or other document is approved  
22 or disapproved as to form. If the contract, agreement or other  
23 document is disapproved as to form, the notice of disapproval shall

1 identify each defect that supports the disapproval; and

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

6       (d) Pursuant to this subsection, the governing boards of  
7 Marshall University and West Virginia University, respectively, may  
8 carry out the following actions:

9       (1) Purchase or acquire all materials, supplies, equipment,  
10 services and printing required for the governing board without  
11 approval from the commission or the Vice Chancellor for  
12 Administration and may issue checks in advance to cover postage as  
13 provided in subsection (f) of this section;

14       (2) Make purchases from cooperative buying groups, consortia,  
15 the federal government or from federal government contracts if the  
16 materials, supplies, services, equipment or printing to be  
17 purchased is available from these groups and if this would be the  
18 most financially advantageous manner of making the purchase;

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

23       (4) Use purchase cards under terms approved for the

1 commission, the council and governing boards of state institutions  
2 of higher education and participate in any expanded program of use  
3 as provided in subsection ~~(u)~~ (t) of this section.

4 (e) The governing boards shall adopt sufficient accounting and  
5 auditing procedures and promulgate and adopt appropriate rules  
6 subject to section six, article one of this chapter to govern and  
7 control acquisitions, purchases, leases and other instruments for  
8 grounds, buildings, office or other space, and capital  
9 improvements, including equipment, or lease-purchase agreements.

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

14 (g) When a purchase is to be made by bid, any or all bids may  
15 be rejected. However, all purchases based on advertised bid  
16 requests shall be awarded to the lowest responsible bidder taking  
17 into consideration the qualities of the articles to be supplied,  
18 their conformity with specifications, their suitability to the  
19 requirements of the governing boards, council or commission and  
20 delivery terms. The preference for resident vendors as provided in  
21 section thirty-seven, article three, chapter five-a of this code  
22 applies to the competitive bids made pursuant to this section.

23 (h) The governing boards, council and commission shall  
24 maintain a purchase file, which shall be a public record and open

1 for public inspection.

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

5 (A) Designation as the successful bid;

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

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

9 (2) A record in the purchase file may not be destroyed without  
10 the written consent of the Legislative Auditor. Those files in  
11 which the original documentation has been held for at least one  
12 year and in which the original documents have been reproduced and  
13 archived on microfilm or other equivalent method of duplication may  
14 be destroyed without the written consent of the Legislative  
15 Auditor.

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

18 (i) The commission and council, also jointly, shall promulgate  
19 rules to prescribe qualifications to be met by any person who is to  
20 be employed as a buyer pursuant to this section. These rules shall  
21 require that a person may not be employed as a buyer unless that  
22 person, at the time of employment has one of the following  
23 qualifications:

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

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

4           (j) Any person making purchases and acquisitions pursuant to  
5 this section shall execute a bond in the penalty of \$50,000,  
6 payable to the State of West Virginia, with a corporate bonding or  
7 surety company authorized to do business in this state as surety  
8 thereon, in form prescribed by the Attorney General and conditioned  
9 upon the faithful performance of all duties in accordance with this  
10 section and sections five through eight, inclusive, of this article  
11 and the rules of the governing board and the council and  
12 commission. In lieu of separate bonds for these buyers, a blanket  
13 surety bond may be obtained. The bond shall be filed with the  
14 Secretary of State and the cost of the bond shall be paid from  
15 funds appropriated to the applicable governing board or the council  
16 or commission.

17           (k) All purchases and acquisitions shall be made in  
18 consideration and within limits of available appropriations and  
19 funds and in accordance with applicable provisions of article two,  
20 chapter five-a of this code relating to expenditure schedules and  
21 quarterly allotments of funds. Notwithstanding any other provision  
22 of this code to the contrary, only those purchases exceeding the  
23 dollar amount for competitive sealed bids in this section are  
24 required to be encumbered and they may be entered into the state's

1 centralized accounting system by the staff of the commission,  
2 council or governing boards to satisfy the requirements of article  
3 two, chapter five-a of this code to determine whether the amount of  
4 the purchase is within the quarterly allotment of the commission,  
5 council or governing board, is in accordance with the approved  
6 expenditure schedule and otherwise conforms to the article.

7       (1) The governing boards, council and commission may make  
8 requisitions upon the State Auditor for a sum to be known as an  
9 advance allowance account, not to exceed five percent of the total  
10 of the appropriations for the governing board, council or  
11 commission, and the State Auditor shall draw a warrant upon the  
12 Treasurer for those accounts. All advance allowance accounts shall  
13 be accounted for by the applicable governing board or the council  
14 or commission once every thirty days or more often if required by  
15 the State Auditor.

16       (m) Contracts entered into pursuant to this section shall be  
17 signed by the applicable governing board or the council or  
18 commission in the name of the state and shall be approved as to  
19 form by the Attorney General. A contract which requires approval  
20 as to form by the Attorney General is considered approved if the  
21 Attorney General has not responded within fifteen days of  
22 presentation of the contract. A contract or a change order for  
23 that contract and notwithstanding any other provision of this code  
24 to the contrary, associated documents such as performance and

1 labor/material payments, bonds and certificates of insurance which  
2 use terms and conditions or standardized forms previously approved  
3 by the Attorney General and do not make substantive changes in the  
4 terms and conditions of the contract do not require approval as to  
5 form by the Attorney General. The Attorney General shall make a  
6 list of those changes which he or she considers to be substantive  
7 and the list, and any changes to the list, shall be published in  
8 the State Register. A contract that exceeds the dollar amount  
9 requiring competitive sealed bids in this section shall be filed  
10 with the State Auditor. If requested to do so, the governing  
11 boards, council or commission shall make all contracts available  
12 for inspection by the State Auditor. The governing board, council  
13 or commission, as appropriate, shall prescribe the amount of  
14 deposit or bond to be submitted with a bid or contract, if any, and  
15 the amount of deposit or bond to be given for the faithful  
16 performance of a contract.

17 (n) If the governing board, council or commission purchases or  
18 contracts for materials, supplies, equipment, services and printing  
19 contrary to sections four through seven of this article or the  
20 rules pursuant to this article, the purchase or contract is void  
21 and of no effect.

22 (o) A governing board or the council or commission, as  
23 appropriate, may request the director of purchasing to make  
24 available the facilities and services of that department to the

1 governing boards, council or commission in the purchase and  
2 acquisition of materials, supplies, equipment, services and  
3 printing. The director of purchasing shall cooperate with that  
4 governing board, council or commission, as appropriate, in all such  
5 purchases and acquisitions upon that request.

6 (p) Each governing board or the council or commission, as  
7 appropriate, may permit private institutions of higher education to  
8 join as purchasers on purchase contracts for materials, supplies,  
9 services and equipment entered into by that governing board or the  
10 council or commission. A private institution desiring to join as  
11 purchaser on purchase contracts shall file with that governing  
12 board or the council or commission, as appropriate, an affidavit  
13 signed by the president or designee of the private institution  
14 requesting that it be authorized to join as purchaser on purchase  
15 contracts of that governing board or the council or commission, as  
16 appropriate. The private institution shall agree that it is bound  
17 by such terms and conditions as that governing board or the council  
18 or commission may prescribe and that it will be responsible for  
19 payment directly to the vendor under each purchase contract.

20 (q) Notwithstanding any other provision of this code to the  
21 contrary, the governing boards, council and commission, as  
22 appropriate, may make purchases from cooperative buying groups,  
23 consortia, the federal government or from federal government  
24 contracts if the materials, supplies, services, equipment or



1 printing to be purchased is available from that source, and  
2 purchasing from that source would be the most financially  
3 advantageous manner of making the purchase.

4 (r) An independent performance audit of all purchasing  
5 functions and duties which are performed at any state institution  
6 of higher education, except Marshall University and West Virginia  
7 University, shall be performed each fiscal year. The Joint  
8 Committee on Government and Finance shall conduct the performance  
9 audit and the governing boards, council and commission, as  
10 appropriate, are responsible for paying the cost of the audit from  
11 funds appropriated to the governing boards, council or commission.

12 (1) The governing boards of Marshall University and West  
13 Virginia University, respectively, shall provide for independent  
14 performance audits of all purchasing functions and duties on their  
15 campuses at least once in each three-year period.

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

18 (3) Copies of all appropriate documents relating to any audit  
19 performed by the governing boards of Marshall University and West  
20 Virginia University shall be furnished to the Joint Committee on  
21 Government and Finance and the Legislative Oversight Commission on  
22 Education Accountability within thirty days of the date the audit  
23 report is completed.

24 ~~(s) The governing boards shall require each institution under~~

1 ~~their respective jurisdictions to notify and inform every vendor~~  
2 ~~doing business with that institution of section fifty-four, article~~  
3 ~~three, chapter five-a of this code, also known as the Prompt Pay~~  
4 ~~Act of 1990.~~

5       ~~(t)~~ (s) Consultant services, such as strategic planning  
6 services, do not preclude or inhibit the governing boards, council  
7 or commission from considering any qualified bid or response for  
8 delivery of a product or a commodity because of the rendering of  
9 those consultant services.

10       ~~(u)~~ (t) Purchasing card use may be expanded by the council,  
11 commission and state institutions of higher education pursuant to  
12 this subsection.

13       (1) The council and commission jointly shall establish  
14 procedures to be implemented by the council, commission and any  
15 institution under their respective jurisdictions using purchasing  
16 cards. The procedures shall ensure that each meets the following  
17 conditions:

18       (A) Appropriate use of the purchasing card system;

19       (B) Full compliance with article three, chapter twelve of this  
20 code relating to the purchasing card program; and

21       (C) Sufficient accounting and auditing procedures for all  
22 purchasing card transactions.

23       (2) Notwithstanding any other provision of this code to the  
24 contrary, the council, commission and any institution authorized

1 pursuant to subdivision (3) of this subsection may use purchasing  
2 cards for the following purposes:

3 (A) Payment of travel expenses directly related to the job  
4 duties of the traveling employee, including, but not limited to,  
5 fuel and food; and

6 (B) Payment of any routine, regularly scheduled payment,  
7 including, but not limited to, utility payments and real property  
8 rental fees.

9 (3) The commission and council each shall evaluate the  
10 capacity of each institution under its jurisdiction for complying  
11 with the procedures established pursuant to subdivision (2) of this  
12 subsection. The commission and council each shall authorize  
13 expanded use of purchasing cards pursuant to that subdivision for  
14 any institution it determines has the capacity to comply.

NOTE: The purpose of this bill is to require all uniforms purchased by the state to be used or worn by employees of the state and its agencies to be manufactured in the United States. The bill requires employee uniforms purchased by the State Board of Education and state institutions of higher education to be made in the United States. The bill provides an effective date of July 1, 2014. The bill also deletes a subsection that refers to a code section that was repealed in 2010.

§5A-3-5a and §18-2-23b are new; therefore, strike-throughs and underscoring have been omitted.

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