

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 455**

4 (By Senators Prezioso, Carmichael, D. Hall, Kessler, Leonhardt, Plymale, Walters, Williams,
5 Palumbo and Stollings)

6 _____
7 [Originating in the Committee on Education;
8 reported February 17, 2015.]
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11
12 A BILL to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended; to amend
13 and reenact §18B-5-4, §18B-5-6 and §18B-5-7 of said code; and to amend said code by
14 adding thereto a new section, designated §18B-5-4a, all relating to public higher education
15 procurement and payment generally; receipting of electronic commerce purchases; purchase
16 or acquisition of materials, supplies, equipment, services and printing at institutions of higher
17 education; construction projects at Marshall University and West Virginia University;
18 design-build procurement at institutions of higher education; and disposition of obsolete and
19 unusable equipment, surplus supplies and other needed materials at institutions of higher
20 education.

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

22 That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted;

1 that §18B-5-4, §18B-5-6 and §18B-5-7 of said code be amended and reenacted; and that said code
2 be amended by adding thereto a new section, designated §18B-5-4a, all to read as follows:

3 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

4 **ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**

5 **§12-3A-6. Receipting of electronic commerce purchases.**

6 (a) The State Treasurer may establish a system for acceptance of credit card and other
7 payment methods for electronic commerce purchases from spending units. Notwithstanding any
8 other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic
9 commerce or other method that offers products or services for sale shall utilize the State Treasurer's
10 system for acceptance of payments: Provided, That four year institutions under the Higher Education
11 Policy Commission may be exempted from this subsection if enrollment after June 30, 2015 in a
12 regional or national program cannot be accomplished by using the State Treasurer's system, and the
13 alternate system is compliant with the Payment Card Industry Data Security Standards for acceptance
14 of payments.

15 (b) To facilitate electronic commerce, the State Treasurer may charge a spending unit for the
16 banking and other expenses incurred by the Treasurer on behalf of the spending unit and for any
17 work performed, including, without limitation, assisting in the development of a website and
18 utilization of the Treasurer's payment gateway. A special revenue account, entitled the Treasurer's
19 Financial Electronic Commerce Fund, is created in the State Treasury to receive the amounts charged
20 by the Treasurer. The Treasurer may expend the funds received in the Treasurer's Financial
21 Electronic Commerce Fund only for the purposes of this article and for other purposes as determined
22 by the Legislature.

1 (c) The State Treasurer may authorize a spending unit to assess and collect a fee to recover
2 or pay the cost of accepting bank, charge, check, credit or debit cards from amounts collected.

3 (d) Upon written request from a political subdivision, the State Treasurer may provide
4 services of his or her office to a political subdivision and charge for the services.

5 (e) The State Treasurer shall propose legislative rules for promulgation in accordance with
6 the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this
7 section.

8 **CHAPTER 18B. HIGHER EDUCATION.**

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

10 **§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.**

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

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

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

1 or a commodity from the individual providing the services;

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

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

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

8 (5) Bids are advertised on all purchases exceeding ~~\$25,000~~ \$50,000, and made by means of
9 sealed or electronically-submitted bids and competitive bidding or advantageous purchases effected
10 through other accepted governmental methods and practices. Competitive bids are not required for
11 purchases of ~~\$25,000~~ \$50,000 or less.

12 (6) Notices for acquisitions and purchases for which competitive bids are being solicited are
13 posted either in the purchasing office of the specified institution involved in the purchase or by
14 electronic means available to the public, at least ~~two weeks~~ five days prior to making the purchases.
15 The rules shall ensure that the notice is available to the public during business hours;

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

17 (8) Vendors are notified of bid solicitation and emergency purchasing; and

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

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

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

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

6 (3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state
7 institution of higher education in writing that the contract, agreement or other document is approved
8 or disapproved as to form. If the contract, agreement or other document is disapproved as to form,
9 the notice of disapproval shall identify each defect that supports the disapproval; and

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

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

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

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

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

4 (4) Use purchase cards under terms approved for the commission, the council and governing
5 boards of state institutions of higher education and participate in any expanded program of use as
6 provided in subsection (u) of this section.

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

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

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

20 (h) The governing boards, council and commission shall maintain a purchase file, which shall
21 be a public record and open for public inspection.

22 (1) After the award of the order or contract, the governing boards, council and commission

1 shall indicate upon the successful bid the following information:

2 (A) Designation as the successful bid;

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

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

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

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

13 (I) The commission and council, also jointly, shall promulgate rules to prescribe
14 qualifications to be met by any person who is to be employed as a buyer pursuant to this section.
15 These rules shall require that a person may not be employed as a buyer unless that person, at the time
16 of employment has one of the following qualifications:

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

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

20 (j) Any person making purchases and acquisitions pursuant to this section shall execute a
21 bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding or
22 surety company authorized to do business in this state as surety thereon, in form prescribed by the

1 Attorney General and conditioned upon the faithful performance of all duties in accordance with this
2 section and sections five through eight, inclusive, of this article and the rules of the governing board
3 and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond
4 may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall
5 be paid from funds appropriated to the applicable governing board or the council or commission.

6 (k) All purchases and acquisitions shall be made in consideration and within limits of
7 available appropriations and funds and in accordance with applicable provisions of article two,
8 chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds.
9 Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the
10 dollar amount for competitive sealed bids in this section are required to be encumbered and they may
11 be entered into the state's centralized accounting system by the staff of the commission, council or
12 governing boards to satisfy the requirements of article two, chapter five-a of this code to determine
13 whether the amount of the purchase is within the quarterly allotment of the commission, council or
14 governing board, is in accordance with the approved expenditure schedule and otherwise conforms
15 to the article: Provided, That, notwithstanding the foregoing or any other provision of this code to
16 the contrary, no purchases by Marshall University or West Virginia University are required to be
17 encumbered.

18 (l) The governing boards, council and commission may make requisitions upon the State
19 Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the
20 total of the appropriations for the governing board, council or commission, and the State Auditor
21 shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall
22 be accounted for by the applicable governing board or the council or commission once every thirty

1 days or more often if required by the State Auditor.

2 (m) Contracts entered into pursuant to this section shall be signed by the applicable governing
3 board or the council or commission in the name of the state and shall be approved as to form by the
4 Attorney General. A contract which requires approval as to form by the Attorney General is
5 considered approved if the Attorney General has not responded within fifteen days of presentation
6 of the contract. A contract or a change order for that contract and notwithstanding any other
7 provision of this code to the contrary, associated documents such as performance and labor/material
8 payments, bonds and certificates of insurance which use terms and conditions or standardized forms
9 previously approved by the Attorney General and do not make substantive changes in the terms and
10 conditions of the contract do not require approval as to form by the Attorney General. The Attorney
11 General shall make a list of those changes which he or she considers to be substantive and the list,
12 and any changes to the list, shall be published in the State Register. A contract that exceeds the dollar
13 amount requiring competitive sealed bids in this section shall be filed with the State Auditor. If
14 requested to do so, the governing boards, council or commission shall make all contracts available
15 for inspection by the State Auditor. The governing board, council or commission, as appropriate,
16 shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the
17 amount of deposit or bond to be given for the faithful performance of a contract.

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

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

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

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

14 (q) Notwithstanding any other provision of this code to the contrary, the governing boards,
15 council and commission, as appropriate, may make purchases from cooperative buying groups,
16 consortia, the federal government or from federal government contracts if the materials, supplies,
17 services, equipment or printing to be purchased is available from that source, and purchasing from
18 that source would be the most financially advantageous manner of making the purchase.

19 (r) An independent performance audit of all purchasing functions and duties which are
20 performed at any state institution of higher education, except Marshall University and West Virginia
21 University, shall be performed each fiscal year. The Joint Committee on Government and Finance
22 shall conduct the performance audit and the governing boards, council and commission, as

1 appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing
2 boards, council or commission.

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

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

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

12 (s) The governing boards shall require each institution under their respective jurisdictions to
13 notify and inform every vendor doing business with that institution of section fifty-four, article three,
14 chapter five-a of this code, also known as the Prompt Pay Act of 1990.

15 (t) Consultant services, such as strategic planning services, do not preclude or inhibit the
16 governing boards, council or commission from considering any qualified bid or response for delivery
17 of a product or a commodity because of the rendering of those consultant services.

18 (u) Purchasing card use may be expanded by the council, commission and state institutions
19 of higher education pursuant to this subsection.

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

- 1 (A) Appropriate use of the purchasing card system;
- 2 (B) Full compliance with article three, chapter twelve of this code relating to the purchasing
- 3 card program; and
- 4 (C) Sufficient accounting and auditing procedures for all purchasing card transactions.

5 (2) Notwithstanding any other provision of this code to the contrary, the council, commission

6 and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing

7 cards for the following purposes:

8 (A) Payment of travel expenses directly related to the job duties of the traveling employee,

9 including, but not limited to, fuel and food; and

10 (B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility

11 payments and real property rental fees.

12 (3) The commission and council each shall evaluate the capacity of each institution under its

13 jurisdiction for complying with the procedures established pursuant to subdivision (2) of this

14 subsection. The commission and council each shall authorize expanded use of purchasing cards

15 pursuant to that subdivision for any institution it determines has the capacity to comply.

16 **§18B-5-4a. Construction projects at Marshall University and West Virginia University.**

17 Notwithstanding any other provision of the code to the contrary, including section one, article

18 twenty-two, chapter five, Marshall University and West Virginia University are not required to

19 solicit competitive bids for any construction project or require a valid bid bond or other surety for

20 a construction project unless the value exceeds \$100,000 in total cost.

21 **§18B-5-6. Other code provisions relating to purchasing and design-build procurement not**

22 **controlling; exceptions; criminal provisions and penalties; financial interest of**

1 **governing boards, etc.; receiving anything of value from interested party and**
2 **penalties therefor; application of bribery statute.**

3 The provisions of article three, chapter five-a, and section five, article twenty-two-a, chapter
4 five of this code do not control or govern design-build procurement or the purchase, acquisition or
5 other disposition of any equipment, materials, supplies, services or printing by the commission or
6 the governing boards, except as provided in sections four through seven of this article. Sections
7 twenty-nine, thirty and thirty-one, article three, chapter five-a of this code apply to all purchasing
8 activities of the commission and the governing boards.

9 Neither the commission, the governing boards, nor any employee of the commission or
10 governing boards, may be financially interested, or have any beneficial personal interest, directly or
11 indirectly, in the purchase of any equipment, materials, supplies, services or printing, nor in any firm,
12 partnership, corporation or association furnishing them, except as may be authorized by the
13 provisions of chapter six-b of this code. Neither the commission, the governing boards nor any
14 employee of the commission or governing boards may accept or receive directly or indirectly from
15 any person, firm or corporation, known by the commission, governing boards or such employee to
16 be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing
17 of value whatsoever or any promise, obligation or contract for future reward or compensation, except
18 as may be authorized by the provisions of chapter six-b of this code.

19 A person who violates any of the provisions of this section is guilty of a misdemeanor, and,
20 upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one
21 year, or fined not less than \$50 nor more than \$1,000, or both imprisoned and fined, in the discretion
22 of the court. Any person who violates any provisions of this section by receiving money or other

1 thing of value under circumstances constituting the crime of bribery under the provisions of section
2 three, article five-a, chapter sixty-one of this code, shall, upon conviction of bribery, be punished as
3 provided in section nine of said article.

4 **§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other**
5 **unneeded materials.**

6 (a) The commission, the council and the governing boards shall dispose of obsolete and
7 unusable equipment, surplus supplies and other unneeded materials, either by transfer to other
8 governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The
9 commission, the council and each governing board shall adopt rules governing and controlling the
10 disposition of all such equipment, supplies and materials and those rules must provide for disposition
11 of the equipment, supplies and materials as sound business practices may warrant under existing
12 circumstances and conditions and adequate prior notice of the disposition to the public.

13 ~~(1) At least ten days prior to the disposition, the Commission, the Council or the governing~~
14 ~~boards, as applicable, shall advertise, by newspaper publication as a Class II legal advertisement in~~
15 ~~compliance with the provisions of article three, chapter fifty-nine of this code, in the county in which~~
16 ~~the equipment, supplies and materials are located, the availability or sales of such disposable~~
17 ~~equipment, supplies and materials.~~

18 ~~(2) The Commission, the Council or governing boards, as applicable, may sell the disposable~~
19 ~~equipment, supplies and materials, in whole or in part, at public auction or by sealed bid, or may~~
20 ~~transfer, exchange or trade the same to other governmental agencies or institutions (if by transfer,~~
21 ~~exchange or trade, then without advertising), in whole or in part, as sound business practices may~~
22 ~~warrant under existing circumstances and conditions.~~

1 ~~(3) The requirements set forth in subsection (a) of this section apply to Marshall University~~
2 ~~and West Virginia University relating only to those items of obsolete and unusable equipment,~~
3 ~~surplus supplies and other unneeded materials that exceed five thousand dollars in recorded net book~~
4 ~~value. Marshall University and West Virginia University may dispose of obsolete and unusable~~
5 ~~computers and computer-related equipment pursuant to the provisions of section two, article three~~
6 ~~of this chapter.~~

7 (b) The commission, council or governing board, as appropriate, ~~except for Marshall~~
8 ~~University and West Virginia University,~~ shall report ~~annually~~ biannually to the Legislative Auditor,
9 all sales of commodities made during the preceding ~~six months~~ biennium. ~~(†)~~ The report shall
10 include a description of the commodities sold, the name of the buyer to whom each commodity was
11 sold, and the price paid by the buyer.

12 ~~(2) Marshall University and West Virginia University shall report biennially to the~~
13 ~~Legislative Auditor the total sales of commodities made during the preceding biennium along with~~
14 ~~the total recorded net book value of such commodities.~~

15 (c) The proceeds of sales or transfers shall be deposited in the State Treasury to the credit on
16 a pro rata basis of the fund or funds from which the purchase of the particular commodities or
17 expendable commodities was made. The commission, council or governing board, as appropriate,
18 may charge and assess fees reasonably related to the costs of care and handling with respect to the
19 transfer, warehousing, sale and distribution of state property that is disposed of or sold pursuant to
20 the provisions of this section.

21 (d) Notwithstanding the provisions of this section, the commission, council, or a governing
22 board may donate equipment, supplies and materials with the approval of the commission, council,

1 or governing board or their designee, as appropriate.

NOTE: The purpose of this bill is to allow boards of Governors of institutions of higher education more flexibility in the procurement and payment of certain expenses.

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

§18B-5-4a is new; therefore, strike-throughs or underscoring have been omitted.