

ENROLLED

COMMITTEE SUBSTITUTE
FOR

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FOR

Senate Bill No. 455

(Senators Prezioso, Carmichael, D. Hall, Kessler, Leonhardt, Plymale,
Walters, Williams, Palumbo and Stollings, *original sponsors*)

[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1F-4 of said code; to amend and reenact §18B-5-4, §18B-5-6 and §18B-5-7 of said code; and to amend said code by adding thereto a new section, designated §18B-5-4a, all relating to public higher education procurement and payment generally; modifying receipting of certain electronic commerce purchases; increasing monetary threshold for certain required bids and surety; modifying notification of certain required bids; exempting purchases by certain higher education institutions from requirement to be encumbered; providing certain exemptions from certain design-build procurement requirements; increasing time period for certain required audits; authorizing Higher Education Policy Commission to issue certain revenue bonds; and modifying requirements for disposition of certain items and the reporting requirements therefor.

Be it enacted by the Legislature of West Virginia:

That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-1F-4 of said code be amended and reenacted; that §18B-5-4, §18B-5-6 and §18B-5-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-5-4a, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

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

(a) The state treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the state Treasurer's system for acceptance of payments except as provided in subsection (b) of this section.

(b) A state institution of higher education may receive credit card payments from systems of acceptance other than that provided by the state Treasurer if:

(1) The proposed alternate system is compliant with the payment card industry data security standards for acceptance of payments, and the institution is proposing to use the alternate system for the sole purpose of:

(A) Processing the payment of academic transcripts; or

(B) Accepting payment for applications for admission if necessary to participate in a national or regional program for applications for admission; or

(2) The institution certifies that the use of the alternate system will not cause a reduction in

the volume of credit card revenues by more than ten percent as compared to previous credit card revenues processed on behalf of the institution during the previous fiscal year and the state Treasurer consents to the use.

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

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

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

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

CHAPTER 18B. HIGHER EDUCATION.

**ARTICLE 1F. MANAGEMENT AGREEMENTS FOR THE HIGHER EDUCATION
POLICY COMMISSION.**

§18B-1F-4. Powers and duties of board of directors and corporation.

(a) The primary responsibility of the corporation is to manage the day-to-day operations of the technology park through collaboration agreements with the commission. To that end, the board of directors has the following powers and duties:

(1) To employ an executive director subject to the provisions of section five of this article;

(2) To approve employment of other staff recommended by the executive director as being necessary and appropriate to carry out the purposes of this article and subject to agreements with the commission;

(3) To serve as fiscal agent and provide additional services, including, but not limited to, property management, human resources management and purchasing;

(4) To meet as a governing body. A corporation created under this article is exempt from the provisions of section three, article nine-a, chapter six of this code and from the provisions of article one, chapter twenty-nine-b of this code;

(5) To receive, purchase, hold, lease, use, sell and dispose of real and personal property of all classes, subject to the provisions of subdivision (8) of this subsection and section eight of this article;

(6) To receive from any source whatsoever grants to be expended in accomplishing the objectives of this article;

(7) To receive from any source whatsoever aid or contributions of money, property or other things of value to be held, used and applied only for the purposes for which the aid or contributions may be made;

(8) To accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article. Any transfer of endowment or other assets by the commission to the

corporation or by the corporation to the commission for management shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are preserved. The commission may not transfer ownership of the technology park property to the corporation;

(9) To make, amend and repeal bylaws, rules and its governing documents consistent with the provisions of this article to effectuate the purpose and scope of the corporation;

(10) To alter the purpose or scope of the corporation; and

(11) To delegate the exercise of any of its powers except for the power to approve budgets to the executive director, subject to the directions and limitations contained in its governing documents.

(b) In addition to the powers and duties provided for in this section and any other powers and duties that may be assigned to it by law or agreement, the corporation has other powers and duties necessary to accomplish the objectives of this article or as provided by law.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

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

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

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section. The rules shall ensure that the following

procedures are followed:

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

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

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

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

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

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

(7) Purchases are made in the open market;

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

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

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

(1) "Form" means compliance with the constitution and statutes of the state of West Virginia;

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

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

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

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

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

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

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

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

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

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

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

five-a of this code applies to the competitive bids made pursuant to this section.

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

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

(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

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

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

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

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

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

(2) Has at least four years' experience in purchasing for any unit of government or for any

business, commercial or industrial enterprise.

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

(k) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered. Such purchases may be entered into the state's centralized accounting system by the staff of the commission, council or governing boards to satisfy the requirements of article two, chapter five-a of this code to determine whether the amount of the purchase is within the quarterly allotment of the commission, council or governing board, is in accordance with the approved expenditure schedule and otherwise conforms to the article: *Provided*, That, notwithstanding the foregoing provisions of this subsection or any other provision of this code to the contrary, purchases by Marshall University or West Virginia University are not required to be encumbered.

(l) The governing boards, council and commission may make requisitions upon the state

Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the state Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every thirty days or more often if required by the state Auditor.

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

(n) If the governing board, council or commission purchases or contracts for materials,

supplies, equipment, services and printing contrary to sections four through seven, inclusive, of this article or the rules pursuant to this article, the purchase or contract is void and of no effect.

(o) A governing board or the council or commission, as appropriate, may request the director of purchasing to make available the facilities and services of that department to the governing boards, council or commission in the purchase and acquisition of materials, supplies, equipment, services and printing. The director of purchasing shall cooperate with that governing board, council or commission, as appropriate, in all such purchases and acquisitions upon that request.

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

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

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher education shall be performed at least once in each three-year period. The Joint Committee on Government and Finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(1) The governing board shall provide for independent performance audits of all purchasing functions and duties on its campus at least once in each three-year period.

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

(3) Copies of all appropriate documents relating to any audit performed by a governing board shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

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

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

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

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any institution under their respective jurisdictions using purchasing cards.

The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

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

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

(2) Notwithstanding any other provision of this code to the contrary, the council, commission and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing cards for the following purposes:

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

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

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

§18B-5-4a. Construction projects.

Notwithstanding any other provision of this code to the contrary, and specifically section one, article twenty-two, chapter five of this code, a state institution of higher education is not required to solicit competitive bids or require a valid bid bond or other surety for any construction project unless the value exceeds \$100,000 in total cost.

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

controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

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

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

A person who violates any of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one year, or fined not less than \$50 nor more than \$1,000, or both imprisoned and fined, in the discretion

of the court. Any person who violates any provisions of this section by receiving money or other thing of value under circumstances constituting the crime of bribery under the provisions of section three, article five-a, chapter sixty-one of this code shall, upon conviction of bribery, be punished as provided in section nine of said article.

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

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

(b) The commission, council or governing board, as appropriate, shall report biannually to the Legislative Auditor all sales of commodities made during the preceding biennium. The report shall include a description of the commodities sold, the name of the buyer to whom each commodity was sold, the price paid by the buyer.

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

the provisions of this section.

(d) Notwithstanding the provisions of this section, the commission, council or a governing board may donate equipment, supplies and materials with the approval of the commission, council or governing board or their designee, as appropriate.