

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 64

**FISCAL
NOTE**

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Government

Organization; and then to the Committee on Finance.]

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 7 manufactured in the United States; providing effective date; and removing outdated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

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §5A-3-5a; that §15-2-10 of said code be amended and reenacted; that said
 3 code be amended by adding thereto a new section, designated §18-2-23b; and that §18B-5-4 of
 4 said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

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

1 The director shall promulgate and adopt standards that require all uniforms worn or used
 2 by employees of the state, including, but not limited to, the employees of the boards and agencies
 3 identified in section one, article two, chapter five-f of this code, be manufactured in the United
 4 States. Notwithstanding any provision of this code to the contrary, these standards apply to every
 5 future purchase of uniforms after June 30, 2016. No purchase by any spending unit is exempt
 6 from compliance with these standards.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters;

quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

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

15 (b) The standard uniform used by the West Virginia State Police identified in subsection
16 (a) of this section purchased after June 30, 2016, shall be manufactured in the United States.

17 ~~(b)~~ (c) The superintendent shall establish the weapons and enforcement equipment which
18 are authorized for use by members of the State Police and shall provide for periodic inspection of
19 the weapons and equipment. He or she shall provide for the discipline of members using other
20 than authorized weapons and enforcement equipment.

21 ~~(e)~~ (d) The superintendent shall provide the members of the State Police with suitable
22 arms and weapons and, when he or she considers it necessary, with suitably equipped

23 automobiles, motorcycles, watercraft, airplanes and other means of conveyance to be used by
24 the West Virginia State Police, the Governor and other officers and executives in the discretion of
25 the Governor, in times of flood, disaster and other emergencies, for traffic study and control,
26 criminal and safety work and in other matters of official business. He or she shall also provide
27 the standard uniforms for all members of the State Police, for officers, noncommissioned officers
28 and troopers provided ~~for~~ in this section. All uniforms and all arms, weapons and other property
29 furnished the members of the State Police by the State of West Virginia are and remain the
30 property of the state.

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

33 ~~(e)~~ (f) The superintendent may contract and furnish at state police expense medical and
34 hospital services for treatment of illness or injury of a member which shall be determined by the
35 superintendent to have been incurred by the member while engaged in the performance of duty
36 and from causes beyond control of the members. Notwithstanding any other provision of this
37 code, the superintendent has the right of subrogation in any civil action or settlement brought by
38 or on behalf of a member in relation to any act by another which results in the illness, injury or
39 death of a member. To this end, the superintendent may initiate an action on behalf of the State
40 Police in order to recover the costs incurred in providing medical and hospital services for the
41 treatment of a member resulting from injury or illness originating in the performance of official
42 duties. This subsection shall not affect the power of a court to apply ordinary equitable defenses
43 to the right of subrogation.

44 The superintendent may also consult with the executive director of the Workers'
45 Compensation Commission in an effort to defray the cost of medical and hospital services. In no
46 case will the compensation rendered to health care providers for medical and hospital services

47 exceed the then current rate schedule in use by the Workers' Compensation Commission.

48 Third-party reimbursements received by the superintendent after the expiration of the
49 fiscal year in which the injury, illness or death occurred will be deposited to a nonexpiring special
50 revenue account. Funds deposited to this account may be used solely for defraying the costs of
51 medical or hospital services rendered to any sworn members as a direct result of an illness, injury
52 or death resulting from the performance of official duties.

53 (f) (g) The superintendent shall establish and maintain local headquarters at those places
54 in West Virginia that are in his or her judgment suitable and proper to render the West Virginia
55 State Police most efficient for the purpose of preserving the peace, protecting property, preventing
56 crime, apprehending criminals and carrying into effect all other provisions of this article. The
57 superintendent shall provide, by acquisition, lease or otherwise, for local headquarters, for
58 housing and quarters for the accommodation of the members of the West Virginia State Police,
59 and for any other facilities necessary or useful for the effective operation of the West Virginia
60 State Police and shall provide all equipment and supplies necessary for the members of the West
61 Virginia State Police to perform their duties.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

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

1 The West Virginia Board of Education, through the State Superintendent of schools, shall
2 promulgate and establish standards requiring all uniforms worn or used by employees of the State
3 Board of Education purchased after June 30, 2016, to be manufactured in the United States.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

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

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

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

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

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

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

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

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

24 for purchases of \$50,000 or less.

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

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

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

31 (9) Purchases after June 30, 2016, of uniforms to be used or worn by employees of a state
32 institution of higher learning shall be manufactured in the United States; and

33 ~~(9)~~ (10) No fewer than three bids are obtained when bidding is required, except if fewer
34 than three bids are submitted, an award may be made from among those received.

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

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

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

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

47 (4) If the state institution elects to challenge the disapproval by filing a writ of mandamus

48 or other action and prevails, then the Attorney General shall pay reasonable attorney fees and
49 costs incurred.

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

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

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

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

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

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

70 (f) The council, commission or each governing board may issue a check in advance to a
71 company supplying postage meters for postage used by that board, the council or commission

72 and by the state institutions of higher education under their jurisdiction.

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

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

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

83 (A) Designation as the successful bid;

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

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

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

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

94 (i) The commission and council, also jointly, shall promulgate rules to prescribe
95 qualifications to be met by any person who is to be employed as a buyer pursuant to this section.

96 These rules shall require that a person may not be employed as a buyer unless that person, at
97 the time of employment, has one of the following qualifications:

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

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

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

110 (k) All purchases and acquisitions shall be made in consideration and within limits of
111 available appropriations and funds and in accordance with applicable provisions of article two,
112 chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds.
113 Notwithstanding any other provision of this code to the contrary, only those purchases exceeding
114 the dollar amount for competitive sealed bids in this section are required to be encumbered. Such
115 purchases may be entered into the state's centralized accounting system by the staff of the
116 commission, council or governing boards to satisfy the requirements of article two, chapter five-a
117 of this code to determine whether the amount of the purchase is within the quarterly allotment of
118 the commission, council or governing board, is in accordance with the approved expenditure
119 schedule and otherwise conforms to the article: *Provided, That*, notwithstanding the foregoing

120 provisions of this subsection or any other provision of this code to the contrary, purchases by
121 Marshall University or West Virginia University are not required to be encumbered.

122 (l) The governing boards, council and commission may make requisitions upon the State
123 Auditor for a sum to be known as an advance allowance account, not to exceed five percent of
124 the total of the appropriations for the governing board, council or commission, and the State
125 Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance
126 accounts shall be accounted for by the applicable governing board or the council or commission
127 once every thirty days or more often if required by the State Auditor.

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

144 for the faithful performance of a contract.

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

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

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

164 (q) Notwithstanding any other provision of this code to the contrary, the governing boards,
165 council and commission, as appropriate, may make purchases from cooperative buying groups,
166 consortia, the federal government or from federal government contracts if the materials, supplies,
167 services, equipment or printing to be purchased is available from that source, and purchasing

168 from that source would be the most financially advantageous manner of making the purchase.

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

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

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

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

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

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

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

191 (1) The council and commission jointly shall establish procedures to be implemented by

192 the council, commission and any institution under their respective jurisdictions using purchasing
193 cards. The procedures shall ensure that each meets the following conditions:

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

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

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

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

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

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

205 (3) The commission and council each shall evaluate the capacity of each institution under
206 its jurisdiction for complying with the procedures established pursuant to subdivision (2) of this
207 subsection. The commission and council each shall authorize expanded use of purchasing cards
208 pursuant to that subdivision for 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, 2016. The bill also deletes a subsection that refers to a code section that was repealed in 2010.

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