WEST VIRGINIA CODE CHAPTER 18B ARTICLE 5

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§18B-5-1.

Repealed.

Acts, 2000 Reg. Sess., Ch. 100.

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§18B-5-2.

Repealed.

Acts, 2000 Reg. Sess., Ch. 100.

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§18B-5-2a

Repealed

Acts, 2017 Reg. Sess., Ch. 122.

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§18B-5-2b.

Repealed.

Acts, 2000 Reg. Sess., Ch. 100.

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§18B-5-2c.

Repealed.

Acts, 2000 Reg. Sess., Ch. 100.

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§18B-5-2d.

Repealed.

Acts, 2005 Reg. Sess., Ch. 86.

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§18B-5-3. Authority to contract for programs, services and facilities.

(a) The governing boards, the commission, and the council are authorized and empowered to enter into contracts and expend funds for programs, services and facilities provided by public and private education institutions, associations, boards, agencies, consortia, corporations, partnerships, individuals and local, state and federal governmental bodies within and outside of West Virginia in order that maximum higher education opportunities of high quality may be provided to the citizens of the state in the most economical manner. In no event may a contract for such services and facilities be entered into unless the commission, the council, or the governing boards have determined that such services and facilities are necessary and would be at a savings to the state.

(b) When a governing board, the commission, or the council determines that a contract for financial services is necessary and proper, it may enter into such a contract with an affiliated nonprofit corporation under such financial terms as the governing board, commission, or council determines are reasonable and proper in the sound administration of their financial responsibilities to the state. In so doing, the affiliated nonprofit corporation shall be deemed a sole source in respect to any applicable law or regulation relating to expenditures of public funds.

(c) As used in this section, "affiliated nonprofit corporation" means a West Virginia nonprofit, nonstock corporation which:

(1) Is organized as for charitable, educational, and scientific purposes, or for similar purposes;

(2) Is recognized by the Internal Revenue Service as a Section 501(c)3, or successor provision of federal law, tax-exempt organization;

(3) Is organized solely to support and contribute to the respective institution of higher education, or to the commission, or to the council, as applicable; and

(4) Has annually independently audited financial statements, which have been included and presented, for at least the preceding five fiscal years, in the audited financial statements of the respective governing board, or of the respective institution of higher education under the authority of a governing board, or of the commission or council.

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§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 their respective needs: Provided, That the governing boards under the jurisdiction of the commission, including the exempted schools, are subject to §18B-5-4(d) of this code.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section: Provided, That these rules do not apply to the exempted schools and the governing boards of the exempted schools shall adopt their own rules consistent with this section: Provided, however, That the joint rules shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission. 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 §18B-5-5 of this code. 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

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(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 15 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 under the jurisdiction of the commission, including the exempted schools, 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 §18B-5-4(f) of this code;

(2) Purchase from cooperative buying groups, consortia, the federal government or from federal government contracts, or from West Virginia public institution of higher education 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.

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(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to §18B-1-6 of this code 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.

(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 at a state college and university or community and technical college 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

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(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 §5A-2-1 et seq. 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 §5A-2-1 et seq. 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 exempted schools are not required to be encumbered.

(l) The governing boards, council, or 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 30 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 15 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

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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 §18B-5-4 through §18B-5-7 of this code 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 affiliated organizations, state institutions of higher education, or 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. An affiliated organization, state institution of higher education, or 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 affiliated organization, state institution of higher education, or 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 affiliated organization, state institution of higher education, or 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 require a 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.

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(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 30 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 §5A-3-54 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 state college and university or community and technical college using purchasing cards. The governing boards of the exempted schools shall establish procedures to be implemented by their respective institutions. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance of §12-3-1 et seq. 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 §18B-5-4(u)(3) of this code 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 state college and

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university and community and technical college under its jurisdiction for complying with the procedures established pursuant to §18B-5-4(u)(2) of this code. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any state college and university and community and technical college it determines has the capacity to comply.

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§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.

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§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

(a) Every person, firm or corporation selling or offering to sell to the commission or the governing boards, upon competitive bids or otherwise, any materials, equipment, services or supplies in excess of $25,000:

(1) Shall comply with the provisions of section twelve, article three, chapter five-a of this code;

(2) Shall file with the director of the Purchasing Division of the State of West Virginia the affidavit required herein; and (3) If presently in compliance with said section may not be required to requalify thereunder to be able to transact business with the commission or the governing boards.

(b) Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to sell or offer to sell materials, supplies, equipment, services or printing to the commission or the governing boards as hereinafter set forth. Any person suspended under the provisions of section thirty-two, article three, chapter five-a of this code is not eligible to sell or offer to sell materials, supplies, equipment, services or printing to the commission or the governing boards. The commission or the governing boards may suspend, for a period not to exceed one year, the right and privilege of a person to bid on purchases of the commission or the governing boards when there is reason to believe that such person has violated any of the provisions in sections four through seven of this article or the rules of the governing boards pursuant thereto. Any person whose right to bid has been so suspended shall be notified thereof by a letter posted by registered mail containing the reason for the suspension and has the right to have the action of the commission or the governing board, as applicable, reviewed in accordance with section thirty-three, article three, chapter five-a of this code. A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

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§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.

(a) The provisions of article three, chapter five-a of this code and 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.

(b) Notwithstanding any provision of this code to the contrary, state institutions of higher education, through their governing boards, may enter into design-build contracts and are not subject to the provisions of article twenty-two-a, chapter five of this code and may also utilize other commonly accepted methods of procurement and contracting for construction projects: Provided, That such state institution of higher education meets the following criteria:

(1) Employs at least one Leadership in Energy and Environmental Design (LEED) certified administrator; and

(2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the International Facility Management Association, or employs at least one Project Management Professional (PMP) as certified by the Project Management Institute.

(c) 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

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shall, upon conviction of bribery, be punished as provided in section nine of said article.

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§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 to any not for profit entity to promote public welfare.

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§18B-5-8

Repealed.

Acts, 2016 Reg. Sess., Ch. 88

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§18B-5-9. Higher education fiscal responsibility.

(a) The governing boards shall ensure the fiscal integrity of their operations using best business and management practices.

(1) The practices include at least the following:

(A) Complying with Generally Accepted Accounting Principles of the Governmental Accounting Standards Board (GAAP); and the Generally Accepted Government Auditing Standards of the Government Accountability Office (GAGAS);

(B) Operating without material weakness in internal controls as defined by GAAP, GAGAS and, where applicable, the Office of Management and Budget (OMB) Uniform Guidance Audit requirements;

(C) Maintaining annual audited financial statements with an unqualified opinion;

(D) Preparing annual audited financial statements as coordinated and directed by the commission and council, respectively, and as the commission requires to complete the higher education fund audit;

(E) Maintaining quarterly financial statements certified by the chief financial officer of the institution; and

(F) Implementing best practices from Sarbanes-Oxley, or adopting the applicable tenets of Sarbanes-Oxley as best practices.

(2) Each governing board and any affiliated research corporation shall comply with the OMB Uniform Guidance Audit requirements and are exempt from section fourteen, article four, chapter twelve of this code.

(3) Within thirty days of the completion of the financial audit report, the governing boards shall furnish to the commission or council, respectively, copies of the annual audited financial statements.

(b) The commission and council, each, shall ensure the fiscal integrity of any electronic process conducted at its offices and by the governing boards under its respective jurisdiction by applying best business and management practices.

(c) To the maximum extent practicable, each higher education organization shall provide for its employees to receive their wages via electronic transfer or direct deposit.

(d) Notwithstanding any other provision of this code to the contrary, a purchasing card may be used by the council, the commission or a governing board of a state institution of higher education to make any payment authorized by the Auditor, including regular routine

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payments and travel and emergency payments. Payments are set at an amount to be determined by the Auditor.

(1) Subject to approval of the Auditor, an emergency payment and a routine, regularly scheduled payment, including, but not limited to, utility payments, contracts and real property rental fees, may exceed this limit by an amount to be determined by the Auditor.

(2) The council, commission and a governing board of a state institution of higher education may use a purchasing card for travel expenses directly related to the job duties of the traveling employee. Where approved by the Auditor, the expenses may exceed $5,000 by an amount to be determined by the Auditor. Traveling expenses may include registration fees and airline and other transportation reservations, if approved by the president of the institution. Traveling expenses may include purchases of fuel and food.

(3) The commission, council, and governing boards each shall maintain one purchasing card for use only in a situation declared an emergency by the appropriate chancellor or the institution's president. Emergencies may include, but are not limited to, partial or total destruction of a facility; loss of a critical component of utility infrastructure; heating, ventilation or air condition failure in an essential academic building; loss of campus road, parking lot or campus entrance; a technology breach; or a local, regional, or national emergency situation that has a direct impact on the campus.

(e) Notwithstanding section ten-f, article three, chapter twelve of this code, or any other provision of this code or law to the contrary, the Auditor shall accept any receiving report submitted in a format utilizing electronic media. The Auditor shall conduct any audit or investigation of the council, commission or governing board at its own expense and at no cost to the council, commission or governing board.

(f) The council and the commission each shall maintain a rule in accordance with article three-a, chapter twenty-nine-a of this code. The rule shall provide for governing boards individually or cooperatively to maximize their use of any of the following purchasing practices that are determined to provide a financial advantage:

(1) Bulk purchasing;

(2) Reverse bidding;

(3) Electronic marketplaces; and

(4) Electronic remitting.

(g) Each governing board may establish a consortium with at least one other governing board, in the most cost-efficient manner feasible, to consolidate the following operations and student services:

(1) Payroll operations;

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(2) Human resources operations;

(3) Warehousing operations;

(4) Financial transactions;

(5) Student financial aid application, processing and disbursement;

(6) Standard and bulk purchasing; and

(7) Any other operation or service appropriate for consolidation as determined by the council or commission.

(h) A governing board may charge a fee to the governing board of each institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing the service.

(i) A governing board may provide the services authorized by this section for the benefit of any governmental body or public or private institution.

(j) Each governing board shall strive to minimize its number of low-enrollment sections of introductory courses. To the maximum extent practicable, governing boards shall use distance learning to consolidate the course sections. The council and commission shall report the progress of reductions as requested by the Legislative Oversight Commission on Education Accountability.

(k) A governing board shall use its natural resources and alternative fuel resources to the maximum extent feasible. The governing board:

(1) May supply the resources for its own use and for use by the governing board of any other institution;

(2) May supply the resources to the general public at fair market value;

(3) Shall maximize all federal or grant funds available for research regarding alternative energy sources; and

(4) May develop research parks to further the purpose of this section and to expand the economic development opportunities in the state.

(l) Any cost-savings realized or fee procured or retained by a governing board pursuant to this section is retained by the governing board.

(m) Each governing board is authorized, but not required, to implement subsections (f), (g) and (h) of this section.

If a governing board elects to implement subsection (g) of this section, the following

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conditions apply:

(1) The governing board makes the determination regarding any additional operation or service which is appropriate for consolidation without input from the council or commission;

(2) The governing board sets the fee charged to the governing board of the institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing the service and is not subject to approval by the council or commission; and

(3) The governing board may not implement this subdivision in a manner which supersedes the requirements established in section twelve, article three-c of this chapter.

(n) The governing boards of the exempted schools, respectively, each shall promulgate a rule on purchasing procedures in accordance with section six, article one of this chapter.

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§18B-5-10. Medical professional liability insurance and risk management functions.

(a) The Legislature finds that, while recent reforms have helped to address the rising costs and limited availability of medical malpractice and risk management insurance in West Virginia, the state's doctoral-granting research universities and their medical schools continue to face significant challenges related to the cost and operation of insurance and risk management programs.

(b) The Legislature further finds that the availability of cost-efficient insurance and risk management programs is essential to the long-term financial integrity and viability of these universities and their medical and other health professional schools.

(c) It is the responsibility of the Legislature to make the best use of available resources and to assure the availability of high quality medical education to meet the needs of the citizens of the state.

(d) Therefore, to aid the medical and other health professional schools in meeting these goals and objectives, the following program is authorized:

(1) Upon the agreement of the West Virginia State Board of Risk and Insurance Management, the health professionals schools under the jurisdiction of the governing boards of Marshall University, West Virginia University and the West Virginia School of Osteopathic Medicine, respectively, may participate, separately, in a self-insurance retention program in conjunction with the state insurance program administered by the West Virginia State Board of Risk and Insurance Management to provide medical professional liability coverage to its health care professionals and students.

(2) In administering the self-insurance retention program, each governing board has the authority to administer, manage and/or settle its own medical professional liability insurance claims.

(e) Notwithstanding the provisions of article twelve, chapter twenty-nine of this code, the West Virginia State Board of Risk and Insurance Management is hereby authorized and empowered to enter into separate agreements with the health professionals schools under the jurisdiction of the governing boards of Marshall University, West Virginia University, and the West Virginia School of Osteopathic Medicine, respectively, to develop and implement a self-insurance retention program for medical professional liability insurance.

(f) Prior to the implementation of any self-insurance retention program, the governing boards of Marshall University, West Virginia University, and the West Virginia School of Osteopathic Medicine, respectively, shall submit the proposed program plan to the state Insurance Commissioner for review:

(1) The review shall include, but is not limited to, claims handling procedures, investment policies, and reserving practices.

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(2) A governing board may not implement a plan until it has been reviewed by the state Insurance Commissioner.

(g) The Insurance Commissioner and Board of Risk and Insurance Management each may promulgate an emergency rule as necessary pursuant to the provisions of article three, chapter twenty-nine-a of this code, to specify further the requirements of self-insurance retention programs under this section.

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§18B-5-11. Energy and Water Savings Revolving Loan Program Fund.

(a) There is created in the state Treasury a special revolving loan fund known as the "Energy and Water Savings Revolving Loan Fund". The fund is administered by the commission and used to effectuate the purposes of this section. The fund consists of moneys received from the following sources:

(1) All appropriations provided by the Legislature for energy and water savings revolving loans;

(2) Repayment of loans made to state institutions of higher education pursuant to this section;

(3) Any moneys available from external sources; and

(4) All interest and other income earned from investment of moneys in the fund.

(b) The commission shall utilize moneys in the fund to provide loans to state institutions of higher education under the jurisdiction of the commission or the council to finance projects that will achieve significant reductions in campus energy and water consumption and costs.

(c) The commission shall propose a rule for legislative approval in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement the provisions of this section. The rule shall provide at least the following:

(1) Project information required in a loan application;

(2) Criteria for evaluating loan applications;

(3) A method for calculating the terms of loan repayment; and

(4) Other provisions the commission considers necessary to administer the program in accordance with this section.

(d) Projects shall be considered on a competitive basis. Highest priority is given to projects guaranteeing the greatest reductions in energy and water consumption and costs and the earliest loan repayments.

(e) Any balance, including accrued interest and any other returns, in the Energy and Water Savings Revolving Loan Fund at the end of each fiscal year shall not expire to the General Revenue Fund, but shall remain in the loan fund and be expended for the purposes provided by this section. The commission may use up to four percent of the total loan amount in a fiscal year for administrative expenses incurred in that fiscal year.

(f) Fund balances may be invested with the state's consolidated investment fund. Any earnings on the investments shall be used solely for the purpose defined in subsection (b) of

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this section.

(g) The Legislature finds that an emergency exists and, therefore, the commission shall propose an emergency rule to implement the provisions of this section in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code by October 1, 2008. The emergency rule may not be implemented without prior approval of the Legislative Oversight Commission on Education Accountability.

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