

WEST VIRGINIA  
SECRETARY OF STATE

JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In This Box

FILED

2003 MAY 19 P 3:26

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W. Va. Constitution, Article XII, §2, W.Va. Code §§5-22-1, 6B-1-1 et seq., 15-5-6(g), 18-2-5, 61-5A-6 and 61-10-15.

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §§ 29A-3B-1, et seq.; W.Va. Board of Education  
v. Hechler, 180 W.Va. 451; 376 S.E.2d 839 (1988).

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 203

TITLE OF RULE BEING PROPOSED: Emergency Purchasing Procedures (8210)

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS June 18, 2003.



David Stewart  
State Superintendent of Schools

**EXECUTIVE SUMMARY**  
**WEST VIRGINIA BOARD OF EDUCATION**  
**Policy Number and Title: Policy 8210**  
**Emergency Purchasing Procedures**

**PUBLIC COMMENT PERIOD ENDED: April 15, 2003**

**BACKGROUND:**

Confusion has existed in the past as to the procedures that were to be followed in situations where the Governor has declared an emergency and suspended normal purchasing procedures. To resolve this situation, the Department of Administration developed and issued purchasing procedures on January 13, 2003, which are to be implemented immediately by all public organizations in declared emergency situations.

**PURPOSE:**

Policy 8210 is a new policy developed to establish the procedures to be followed in the purchasing of goods and services obtained during an emergency situation by the West Virginia Board of Education, the West Virginia Department of Education, the Office of Education Performance Audits and the West Virginia Schools for the Deaf and the Blind. The policy incorporates the emergency procedures developed by the West Virginia Department of Administration in declared emergency situations.

A separate comprehensive policy is being developed for county boards of education, regional education service agencies, and multi-county vocational centers that established the minimum procedures and requirements to be followed in the purchase of all commodities and services used in their operations, and that policy will also incorporate the procedures developed by the Department of Administration for declared emergency situations. That policy will be completed and ready for review within the next 30 days.

**COMMENTS/SUGGESTIONS RECEIVED**

The comment period extended from March 17, 2003 through April 15, 2003. No comments were received during the period, therefore, it is recommended that the policy be adopted as proposed with no revisions made.

TITLE 126  
LEGISLATIVE RULE  
BOARD OF EDUCATION

FILED

SERIES 203  
Emergency Purchasing Procedures (8210)

2003 MAY 19 P 3:27  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§126-203-1. General.**

1.1. Purpose. - The purpose of this policy is to establish the procedures to be followed by the West Virginia Board of Education, hereinafter referred to as the WVBE, the West Virginia Department of Education, hereinafter referred to as the WVDE; the Office of Education Performance Audits, hereinafter referred to as the OEPA; and the West Virginia Schools for the Deaf and the Blind, hereinafter referred to as the WVSDB, in the purchasing of goods and services obtained during an emergency situation, whether declared by the Governor or of a local nature. This policy incorporates the emergency procedures developed by the West Virginia Department of Administration to be implemented by all public organizations in declared emergency situations.

1.2. Authority. - West Virginia Constitution, Article XII, §2 and W.Va. Code §§5-22-1, 6B-1-1 et seq., 15-5-6(g), 18-2-5, 61-5A-6, and 61-10-15.

1.3. Filing Date. - May 19, 2003.

1.4. Effective Date. - June 18, 2003.

1.5. Repeal of Former Rule. - None. This a new rule/policy.

**§126-203-2. Applicability.**

2.1. This policy applies to the WVBE, the WVDE, the OEPA and the WVSDB.

**§126-203-3. Definitions.**

3.1. *Bid* – A competitive offer made by a seller.

3.2. *Bidding* – The process of soliciting the price and other considerations for goods and services from qualified vendors in a fair and equitable manner. The solicitation of prices from more than one vendor constitutes competitive bidding. Bids include those solicited in an informal manner by telephone, facsimile, internet or mail, or through a formal sealed bid process.

3.3. *Chief Executive Officer* – The executive who is highest in rank and authority, which, for the purpose of this policy, includes the president of the WVBE, the state

superintendent of schools, the director of the OEPA, and the superintendent of the WVSDB.

3.4. *Competitive Bids* – The process of soliciting the price and other considerations for goods and services from more than one qualified vendor in a fair and equitable manner.

3.5. *Declared Emergency* – An unexpected situation or sudden occurrence of a serious and urgent nature that has been declared an emergency by the Governor of the State of West Virginia.

3.6. *Emergency* – An unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action. These situations can arise from acts of nature, conditions that are detrimental to the health, safety, or welfare of students, or other unforeseen events that threaten the termination of essential services, including delays in the transportation of indispensable goods and materials. Situations created by improper planning or negligence are not to be considered an emergency.

3.7. *Governing Body* – An organized group, whose members are either elected or appointed, that is charged with the control and administration of policy in an organization, business, or institution.

3.8. *Related Party* – Means a party, whether an individual, corporation, partnership, association, limited liability company or any other form of business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership, or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract.

3.9. *Solicitation* – The submission of a written, electronic, or oral request to obtain bids or proposals for the purchase of commodities or services.

3.10. *Specifications* – A detailed description of the commodity or service for which a request for information, quotation or proposal is being solicited.

3.11. *State Agency* – For the purpose of this policy, state agency means the WVBE, the WVDE, the OEPA, and the WVSDB.

3.12. *Vendor* – An individual, partnership or business authorized to conduct business in the State of West Virginia that is able to furnish the desired commodity or service.

**§126-203-4. Administration.**

## 126CSR203

4.1. Each state agency is responsible for adhering to the requirements included in this policy for the purchasing, receiving, safeguarding and disposal of commodities and services used in its operations.

### **§126-203-5. Authority.**

5.1. The governing body of each state agency is responsible for the purchasing, receiving, safeguarding, and disposal of all goods and services obtained for use by the state agency. This authority may be delegated to the chief executive officer, to a designee, or to the purchasing director of the agency.

### **§126-203-6. Purchasing Procedures.**

#### 6.1. General.

6.1.1. All procurement transactions will be conducted in a manner providing full and open competition, consistent with the ethical standards specified in state and federal statutes.

6.1.2. Procedures for the review of all proposed procurements must be established to ensure that only necessary items are purchased.

6.1.3. If written specifications are required, they must be written in such a manner as to maximize and encourage competition.

6.1.4. No board member, officer or employee shall participate in the selection, award, or administration of a contract or purchase order with a related party, or where a conflict of interest, real or apparent, exists.

6.1.5. No board member, officer, or employee shall solicit or accept gratuities, favors, or anything of monetary value from contractors, vendors, or parties to any awards, agreements, or contracts.

6.1.6. Awards will be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### 6.2. Declared Emergencies:

6.2.1. The Governor of the State of West Virginia has the inherent constitutional authority to declare an emergency situation. In the event the Governor declares such an emergency, the Governor has the authority to suspend certain laws, rules and/or regulations relating to the acquisition of commodities and service by public organizations pursuant to W.Va. Code § 15-5-6(g).

## 126CSR203

6.2.2. It is of the highest importance that state government responds quickly and effectively to safeguard the public safety and welfare during states of emergency. Yet, even under those circumstances, the acquisitions of commodities and services must be effectuated in a fair and accountable manner.

6.2.3. Accordingly, should the Governor suspend said laws, rules and/or regulations, the following procedures shall apply:

a. The employees or representative of the state agencies covered by this policy shall exercise sound judgment and discretion when acquiring commodities and services related to the emergency.

b. The employees or representatives of the state agencies shall operate with highest ideals of honor and integrity and strive to avoid the appearance of perceived impropriety.

c. No person shall corruptly combine, collude, or conspire with one or more persons to lessen competition, cause a higher price to be paid or cause one vendor to be unjustifiably preferred over one or more other prospective vendors.

d. No person shall solicit or receive anything of value, directly or indirectly, now or in the future, from any vendor or person supplying commodities or services in relation to the emergency.

e. The state agency shall be responsible for developing specifications for commodities and services that do not favor a particular brand or vendor.

f. Any contract and/or purchase order in excess of \$100,000 shall be reviewed, approved and signed by the chief executive officer of the state agency.

g. The acquisition of commodities and services not on a state-wide contract that is estimated to cost in excess of \$1,000 but less than \$5,000 shall at all times be based on three competitive bids. Bids may be verbal but shall be summarized and documented and include the date of purchase, vendor, dollar amount, commodity or service description, quantity, number of bids obtained and whether the award was made to the low bidder.

h. The acquisition of commodities and services not on state-wide contract that is estimated to cost in excess of \$5,000 shall be based on three written bids which shall be documented and include the date of purchase, vendor, dollar amount, commodity or service description, quantity, number of bids obtained and whether the award was made to the low bidder.

## 126CSR203

i. If, in the opinion of the state agency, using sound judgment and discretion, time does not permit written bids to be received, verbal bids shall be obtained and documented, with written bids received within five working days of the request.

j. If, in the opinion of the state agency, using sound judgment and discretion, time does not permit verbal bids to be received, the public organization must secure written approval from the chief executive officer of the state agency to secure necessary services and supplies without bids for only that period of time absolutely necessary to abate the emergency.

k. All purchase order and/or contract awards shall be made to the lowest, responsible bidder meeting specifications.

l. Should the award not be made to the lowest priced bidder, a written justification shall be placed on file with the bids that documents the reason the low price was rejected. This justification must be signed by the chief executive officer of the state agency.

m. The state agency shall document each expenditure and include specifications, bids, no-bids, award justifications and any other relevant data.

n. The documentation for each expenditure shall be complete and shall be kept in an orderly manner that will enable any interested party to understand the specifics of the expenditure.

o. A complete written record of all expenditures relating to the emergency shall be submitted to the Governor within 30 days of the expiration of the declaration of the emergency.

p. The written record shall include a summary sheet that details all acquisitions for the emergency and lists date of purchase, vendor, dollar amount, commodity or service description, quantity, number of bids obtained and whether the award was made to the low bidder.

q. The Governor reserves the right to remove the spending authority at any time during the emergency and appoint a person or organization to manage the emergency expenditures and/or transfer that authority to another organization.

r. All emergency expenditures are subject to complete review and/or thorough audit as requested by the Governor.

s. The Governor has reserved the right to amend, alter, or cancel the preceding procedures as necessary through written amendments, alterations or cancellations with justification and documentation of specific situations and reasons.

6.3. Local Emergencies – Each agency shall establish the procedures to be followed in the case of emergencies at the local level that have not been declared emergencies by the Governor.

6.3.1. The chief executive officer, purchasing director or appointed designee shall issue prior written approval for purchases in an emergency situation. These situations can arise from acts of nature, conditions that are detrimental to the health, safety, or welfare of employees or students, or other unforeseen events that threaten the termination of essential services. These can include unforeseen delays by contractors or delays in the transportation of indispensable goods and materials. Emergency purchases are not to be used for hardships created by neglect, poor planning, or lack of organization.

6.3.2. Competitive bids must be obtained whenever possible. If, in the opinion of the state agency, using sound judgment and discretion, time does not permit verbal bids to be received, the state agency must secure written approval from the chief executive officer of the agency to secure necessary services and supplies without bids for only that period of time absolutely necessary to abate the emergency.

#### **§128-203-7. Violations.**

7.1. Any person who authorizes or approves a purchase or contract in violation of W.Va. Code, this policy or any procedure adopted by the state agency is personally liable for the cost of the purchase or contract. Purchases and contracts violating the W.Va. Code and/or this rule are void and of no effect.

7.2. The chief executive officer has the authority to suspend from bidding up to one year any vendor violating the W.Va. Code, this policy or any local policy or procedure adopted by the state agency.

7.3. Any person receiving anything of value from a known interested party in awarding a purchase order is subject to the provisions of W.Va. Code §§5A-3-28, 29, 30 and 31, 61-5A-6 and 61-10-15, and all rulings of the Ethics Commission, unless determined otherwise by a court of competent jurisdiction or the Ethics Commission.

#### **§128-203-8. Severability.**

8.1. If any part of this policy is declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this policy, or the policy in its entirety.

**FISCAL NOTE WORKSHEET**  
**(Submit 4 Copies)**

HD NO \_\_\_\_\_ DRAFT NO \_\_\_\_\_ BILL NO \_\_\_\_\_ RESOLUTION NO \_\_\_\_\_

SUBJECT Policy 8210: Emergency Purchasing Procedures FUND \_\_\_\_\_

SOURCE OF REVENUE:  GENERAL FUND  SPECIAL  OTHER (SPECIFY) \_\_\_\_\_

COST OF ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

INCOME ESTIMATE BASED ON:  AN ORIGINAL ESTIMATE  BUDGET BILL  OTHER (SPECIFY) \_\_\_\_\_

SHOW OVER-ALL EFFECT IN ITEMS 1 AND 2 & GIVE EXPLANATION OF BREAKDOWN BY FISCAL YEAR INCLUDING LONG-RANGE EFFECT

EFFECT OF PROPOSAL	INCREASE	ANNUAL		FISCAL YEAR		
		DECREASE	CURRENT	NEXT	THEREAFTER	
1. ESTIMATED TOTAL COST	\$	\$	\$ See Below	\$ See Below	\$ See Below	
PERSONAL SERVICES CURRENT EXPENSES REPAIRS/ALTERATIONS EQUIPMENT OTHER	\$	\$	\$	\$	\$	
2. ESTIMATED TOTAL REVENUES	\$	\$	\$	\$	\$	

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No additional costs will be incurred as a result of this policy.

DATE

AGENCY

AUTHORIZED REPRESENTATIVE

3-03-03

Education

