

JOINT COMMITTEE ON GOVERNMENT AND FINANCE  
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

# POST AUDIT DIVISION

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## LEGISLATIVE AUDITOR'S REPORT

May 10, 2021

### **State Payments to the Association of Regional Colleges & Universities**

LEGISLATIVE AUDITOR'S  
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## **ISSUE 1: Many of West Virginia’s Smaller Public Colleges and Universities Formed the West Virginia Association of Regional Colleges and Universities as a 501(c)(6) in 2013/2014 and Made at least \$182,000 in Payments to the Association. The Association Subsequently Spent at Least \$105,000 Lobbying the West Virginia Legislature.**

### **Introduction**

In March 2021, the Legislative Auditor received information from the State Ethics Commission indicating that the West Virginia Association of Regional Colleges and Universities (WVARCU) had continued to receive payments of state funds from 2015 through 2020 despite its registration with the Secretary of State’s Office (WVSOS) having been dissolved. From 2015 to 2020, WVARCU received 19 payments totaling \$182,000<sup>1</sup> from West Virginia institutions of higher education, the majority of which were paid after WVARCU had been administratively dissolved.

The Legislative Auditor reviewed the purpose, activities, and receipt of state funds by WVARCU over this time period. The results of this review identified the following:

- Because WVARCU was issued a *Certificate of Administrative Dissolution* in November 2015, it had no legal authority to transact business in the State of West Virginia but continued its operations for an additional five years, receiving more than \$130,000 in payments from State institutions of higher education after being dissolved.
- Due to the payment classification used by the colleges and universities to pay WVARCU, the wvOASIS system had no checks or controls in place to ensure entities’ compliance or good standing with WVSOS. The Legislative Auditor questions whether this is a systemic issue.
- WVARCU was founded for the specific and sole purpose of lobbying the West Virginia Legislature. Between 2013 and 2020, 7 of West Virginia’s regional four-year colleges and universities collectively spent at least \$105,000 lobbying the West Virginia Legislature and likely more. Because these activities took place through a separately established non-profit, much of this took place with limited oversight, accountability, or transparency.

The Legislative Auditor intends to continue working with the WVSOS and the State Auditor’s Office (WVSAO) on the issue of ensuring proper vendor registration for entities conducting business in or with the State of West Virginia. The results of this additional review will be reported to the Post Audits Subcommittee at a future interim meeting.

<sup>1</sup> According to 990s filed by WVARCU and reviewed by the Legislative Auditor, WVARCU was receiving revenues in 2013 and 2014 as well, but the Legislative Auditor has yet to obtain payment documentation for those years.

**Between 2015 and 2020, the West Virginia Association of Regional Colleges and Universities Received \$132,000 in Payments from the State’s Regional Colleges That It Was Not Legally Authorized to Receive.**

In 2013, various presidents of West Virginia’s regional four-year colleges, led by the former presidents of West Liberty University and Shepherd University, came together to establish the WVARCU. WVARCU was recognized by WVSOS in May 2014 as a “Voluntary Association” and by the Internal Revenue Service (IRS) as a 501(c)(6) tax-exempt organization with a mission to “promote higher education in West Virginia through the advancement of the common missions of the regional colleges and universities.”

On November 1, 2015, the WVSOS issued a *Certificate of Administrative Dissolution* to WVARCU citing its failure to file annual reports and/or annual filing fees required under State law. In an accompanying letter to WVARCU, WVSOS indicated:

*Corporations, voluntary associations, limited partnerships, or business trusts that have been administratively dissolved or revoked may not continue to do business except those actions necessary to close the business and give notice to creditors.*

Despite having been administratively dissolved by WVSOS for noncompliance with State law, the Legislative Auditor determined that WVARCU continued its normal operations and continued to receive payments from the State’s institutions of higher education. As Figure 1 below demonstrates, WVARCU received 14 payments totaling \$132,000 from 6 West Virginia institutions of higher education after its dissolution.

<b>Figure 1 Illegal Payments by West Virginia Institutions of Higher Education to WVARCU 2015-2020</b>		
<b>Institution</b>	<b>No. of Payments</b>	<b>Total Amount</b>
<b>Bluefield State College</b>	1	\$8,000
<b>Concord University</b>	3	\$28,000
<b>Glenville State College</b>	1	\$10,000
<b>Shepherd University</b>	1	\$10,000
<b>West Liberty University</b>	4	\$38,000
<b>West Virginia State University</b>	4	\$38,000
<i>Source: West Virginia State Treasurer’s Office Vendor Report.</i>		

The Legislative Auditor worked with both the WWSAO and WVSOS to ascertain how WVARCU continued to receive payments of state funds after its administrative dissolution. When asked to explain the process by which noncompliant vendors are flagged by wvOASIS during the payment process, a representative of WWSAO indicated:

*ERP provides a daily file to the Secretary of State which lists all vendors. Any noncompliant vendors are flagged on this file by the Secretary of State and*

*returned to ERP. The vendor noted in your letter [WVARCU] was never marked by the Secretary of State as being non-compliant.*

Subsequently, WVSOS explained why WVARCU was not flagged for WVSAO as being noncompliant:

*The WVSAO statement accurately summarizes the procedure. However, importantly, a vendor's name that is spelled differently in the ERP list than it appears on official SOS records will not be flagged excepting the most customary abbreviations (e.g. "WV" instead of "West Virginia)."*

With respect to WVARCU, WVSOS indicated that the ERP's vendor list contains the name as *WV ASSOC OF REGIONAL COLLEGES & UNIVERSITIES*. However, the WVSOS's official records list the association's name as *West Virginia Association of Regional Colleges and Universities*. The Secretary of State's Office added:

*It is unclear why the vendor's name was modified from its official version, or whether the WVSAO inquired whether the system logic would identify the abbreviated terms "WV", "ASSOC", or "&." Regardless, the ERP list abbreviation in this manner are significantly different enough from the official spelling that the data comparison did not trigger a flag by the system's logic.*

Accordingly, this deviation in the spelling of WVARCU's name within the official records of each office contributed to the vendor not being flagged as noncompliant in the wvOASIS system.

The Legislative Auditor further inquired of WVSOS as to whether it felt that this instance was indicative of a systemic issue in flagging noncompliant vendors. In response, WVSOS stated, *"The process. . . does not represent a 'systemic issue.' **However, the instant matter is capable of repetition if not addressed by ERP list review and maintenance** (Emphasis added)."* **Therefore, the Legislative Auditor recommends that the ERP Board and the Secretary of State's Office work together to ensure, to the extent feasible, that vendor names match or are substantially similar to ensure noncompliant vendors are appropriately flagged as such.**

Additionally, WVSOS and WVSAO could improve the effectiveness of vendor compliance matches between their two systems if the WVSOS integrated vendor tax identification numbers into its systems or overall process. WVSAO states, *"Compliance checks are built into the system as previously noted, but since the SOS system does not contain tax ID numbers, the match cannot take place in an entirely reliable fashion."* Checking vendor compliance by matching the tax identification numbers could help ensure that noncompliant vendors are flagged in the respective systems, irrespective of any deviations in how the vendor's name is listed. **Therefore, the Legislative Auditor recommends that the West Virginia Secretary of State's Office integrate vendor tax ID numbers number into its system or its process in order to more reliably match vendors and ensure compliance with the applicable registration requirements.**

Another factor contributing to WVARCU's ability to continue to receive payments from state spending units is the apparent lack of system checks in place when spending units use certain payment classifications. According to WVSAO:

*When a payment request reaches the WWSAO, there is no manual check performed by Audit to ensure compliance with Secretary of State (SOS) registration or filing requirements.*

...

*In this particular instance, as the vendor was paid by GAX there would have been no System edit to stop the processing. If the department had created a commodity-based procurement document to encumber the funds and the vendor was not compliant with the SOS or any other of the checks (State Tax Dept., Workforce, Insurance Commissioner), then the System would have thrown an error (if flagged).*

Therefore, the Legislative Auditor questions whether payments to WVARCU by state colleges and universities would have been stopped even if the vendor had been appropriately flagged as noncompliant with the WVSOS registration requirements.

In a series of legislative audit reports released between 2010 and 2013,<sup>2</sup> the Legislative Auditor highlighted the importance of vendors being properly registered with WVSOS as required by West Virginia Code:

*It is vital that organizations properly register with the Secretary of State to prevent citizens and other entities from entering into contracts or agreements with fraudulent organizations, potentially not receiving the expected goods or services and being defrauded out of money. Because they are accountable for the use of public funds, it is of particular importance that state agencies only conduct business with legitimate vendors.*

Based on this information, as well as the Legislative Auditor's prior body of work regarding compliance with WVSOS registration requirements, the Legislative Auditor questions the pervasiveness of this issue and intends to continue working with WWSAO and WVSOS on the issue of ensuring proper vendor registration for entities conducting business in or with the State of West Virginia. The results of this review will be reported to the Post Audits Subcommittee at a future interim meeting.

### **Regional West Virginia Colleges and Universities Used the Association For the Purpose of Lobbying the West Virginia Legislature. However, It Is Unclear Whether the Services Provided by These Lobbyists Were Better Than or Different From Services Already Available to the Schools Through the Higher Education Policy Commission.**

While reviewing the invoices paid by West Virginia colleges and universities to WVARCU, the Legislative Auditor notes that most institutions categorized their payments as "association dues." However, one institution—West Liberty University—specifically noted in its

<sup>2</sup> [https://www.wvlegislature.gov/legisdocs/reports/perd/corpreg\\_12\\_2010.pdf](https://www.wvlegislature.gov/legisdocs/reports/perd/corpreg_12_2010.pdf)  
[https://www.wvlegislature.gov/legisdocs/reports/perd/Charitable\\_6\\_2012.pdf](https://www.wvlegislature.gov/legisdocs/reports/perd/Charitable_6_2012.pdf)  
[https://www.wvlegislature.gov/legisdocs/reports/perd/VendReg\\_6\\_2013.pdf](https://www.wvlegislature.gov/legisdocs/reports/perd/VendReg_6_2013.pdf)

payment documentation that the payments to WVARCU were **not** for association dues but rather were for professional lobbying services provided to the institutions through WVARCU.

Subsequently, the Legislative Auditor spoke with both the lobbying firm mentioned in the invoice documentation and the most recent president of WVARCU. Both parties acknowledged that the association’s **sole purpose and scope of its activities** was the procuring of lobbyist services for West Virginia public institutions of higher education. In addition, the Legislative Auditor obtained an April 2013 memo (Appendix A) from one of WVARCU’s founders. The memo clearly establishes the schools’ perception that they needed a lobbyist to represent their interests:

*As we have discussed, our inability to not only confront these challenges but also advance a higher education agenda of our own is directly related to our lack of a unified proponent that represents our interests. This is more pronounced in terms of the regional colleges and universities who lack the personnel dedicated to governmental affairs.*

In addition to establishing lobbying as the chief purpose for the Association, the memo also identifies the specific lobbying firm, TSG Consulting, that WVARCU’s founder wished to hire.

According to payment data and related documentation obtained by the Legislative Auditor, from 2015 to 2020, seven West Virginia institutions of higher education collectively paid \$182,000 to WVARCU who procured registered lobbyists to represent the schools before the West Virginia Legislature. Figure 2 provides a breakdown of these expenditures, by institution. The Legislative Auditor notes that based on its tax filings, WVARCU received revenues in both 2013 and 2014 as well. However, the Legislative Auditor has not obtained any payment documentation from the schools for these years.

Figure 2 Payments from West Virginia Higher Education Institutions to WVARCU 2015-2020		
Institution	Total Payments	Years Active
Bluefield State College	\$8,000	2019
Concord University	\$28,000	2018 - 2020
Fairmont State University	\$10,000	2015
Glenville State College	\$20,000	2015-2016
Shepherd University	\$20,000	2015-2016
West Liberty University	\$48,000	2015-2016; 2018-2020
West Virginia State University	\$48,000	2015-2016; 2018-2020

*Source: West Virginia State Treasurer’s Office Vendor Report.*

The Legislative Auditor requested and obtained various contracts between WVARCU and lobbying firms from 2015-2020 to ascertain the nature of services provided to the schools by these registered lobbyists. The contracts clearly indicate the services to be provided to WVARCU’s members include:

- Advocating for the interest of WVARCU members on legislative and regulatory issues;

- Monitoring proposed legislation, polices, and rules related to higher education or other interests to WVARCU members;
- Connecting WVARCU members directly with government officials, arranging meetings, and/or attending meetings related to higher education generally; and
- Responding to legislative questions or addressing concerns related to issues concerning member institutions.

The Legislative Auditor noted that no college or university has made payments to WVARCU for calendar year 2021. When asked to explain their decisions to no longer participate with WVARCU, the schools gave varying responses.

Concord University indicates that new leadership at the West Virginia Higher Education Policy Commission (HEPC) has done a better job tracking legislation and representing the schools' interest with the Legislature. In addition, it cited dwindling participation from other state institutions of higher education as its reasons for withdrawing from WVARCU.

Shepherd University indicates that by 2015 its administration began to have mixed feelings about continuing its participation with WVARCU. Ultimately, Shepherd withdrew from the Association after several leadership transitions among the member institutions and amid growing concerns at the university over *“ambiguity in the organization’s structure and operations, as well as our uncertainty as to our alignment with the others in some of our views.”*

Finally, West Liberty University explained its withdrawal from the Association as follows: *“West Liberty University has not seen a return on their investment in the Association, considering there are other entities working on the Universities behalf for the same common mission. This being said, we are not a part of the Association this year.”*

In light of these responses, the Legislative Auditor asked the Chancellor of HEPC to describe the extent to which it provides the same services (or substantially similar services) as those listed in WVARCU’s contracts with lobbying firms.

In its response, HEPC makes clear that it does not see its role as “lobbying” the Legislature on behalf of the institutions, but that it does provide many of the same services for which the institutions paid lobbyists.

Specifically, HEPC indicates that it serves as a conduit and information resources between the institutions and the Legislature:

*The Commission connects the state’s colleges and universities with other state and federal government agencies regularly throughout the year. Commission staff maintain contact with the Governor’s Office, the Auditor’s Office, the Attorney General’s Office, the Treasurer’s Office and the executive branch agencies including Administration, Commerce, DHHR, and the West Virginia Department of Education on policy and regulatory issues and other initiatives, in addition to serving as the central point of contact for higher education for legislators. The Chancellor and Commission staff often meet with legislative leaders to discuss potential policy changes, workforce*

*trends, statewide education initiative, college access and completion or other issues on behalf of the state's colleges and universities.*

In addition, HEPC indicates that it facilitates meetings between executive and legislative leaders and the institutions of higher education, regularly communicates issues or concerns of the institutions to legislative committees and members, and routinely address questions or issues related to higher education during legislative committee meetings.

With respect to tracking legislation related to higher education, generally, or specific institutions of higher education, HEPC indicates that it tracks all legislation related to higher education in West Virginia. Moreover, HEPC provides weekly updates to college presidents and staff. Upon the conclusion of each legislative session, HEPC prepare and transmits summaries of all relevant legislation passed by the Legislature, including a memorandum on the final budget, and their impacts on the institutions, individually, and higher education in general.

While the HEPC declined to offer an opinion on the necessity or advisability of public institutions procuring the services of registered lobbyists, it indicates that the Commission has been tasked by the Legislature to coordinate the relationship between institutions of higher education and the Legislature and, as specified in West Virginia Code, “*serve as the point of contact to the Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability.*”

Based on a comparison of the services provided by WVARCU's lobbyists and the HEPC, there appears to be broad overlap in the services and benefits received by state institutions of higher education who participated in the association. Moreover, comments from West Liberty University regarding limited or no return on its investment, as well as comment from other institutions regarding ambiguity in WVARCU's structure and operations leads the Legislative Auditor to question the benefits of this arrangement of using a private organization. It is unclear what, if any, benefits or services the institutions derived through their participation in WVARCU that were not already available through HEPC.

The Legislative Auditor also reviewed the IRS Form 990s filed by WVARCU with the Internal Revenue Service. The Legislative Auditor notes that while the Association made its required tax filings in a timely fashion from 2014 through 2018, he has been unable to find the 990s for tax years 2019 or 2020. In addition, in each filing reviewed from 2015-2018, WVARCU attributes \$0 of its functional expenses to lobbying on the IRS required 990s. However, Section IX, Line 11d, of the 990s specifically request expenditures for “Lobbying.” Instead, all of its functional expenditures, with the exception of Legal (Line 11b), Accounting (Line 11c), Office Expenses (Line 130) are listed as “Other” (Line 11g). The Association's 990s, from 2015-2018 then explains on the Supplemental Information to 990s that 100 percent of “Other” is expenses for “Government/Public Relations.”<sup>3</sup>

It is the opinion of both the Legislative Auditor and counsel with Legislative Services that WVARCU's expenditures were clearly for lobbying. It is unclear why the Association chose to list these expenses as “Other” and it is unclear what the effect is of having categorized these expenses in this manner. Moreover, given that WVARCU's revenues comprise state dollars and all of its membership are state agencies, it remains a question as to whether any potential tax

<sup>3</sup> In 2014 50% of “Other” was for Government/Public Relations and 50% was for Administrative. In 2013, 28% was for Consulting, 30% was for Government/Public Relations, and 42% was for Administrative.



ramifications could fall back on the State if the 990s should have shown the 2015-2018 “Other” expenses instead on the “Lobbying” line.

### **Many States Prohibit the Use of Taxpayer Funds to Hire or Contract with Registered Professional Lobbyists.**

While the West Virginia Legislature did act during the 2019 Regular Session to prohibit professional and occupations licensing boards organized under Chapter 30 from hiring or contracting with registered lobbyists, current law does not prohibit state spending units from using their appropriated state funds to pay lobbyists.

The Legislative Auditor reviewed data provided by the National Conference of State Legislatures (NCSL) regarding the use of lobbyists by state agencies. NCSL data indicates that more than 20 other states have enacted laws specifically designed to restrict or prohibit the use of taxpayer funds to pay registered professional lobbyists. Among these states, 14 specifically prohibit some or all state agencies from using any public funds to pay for lobbying services,<sup>4</sup> similar to West Virginia’s current prohibition for professional and occupational licensing boards. Four additional states require government agencies to designate official liaisons to represent their interests before the legislature and often require those agency-appointed liaisons to register in a similar manner as professional lobbyists.

While the Legislative Auditor offers no specific recommendation on this issue at this time, Appendix B provides statutory citations from other states should the West Virginia Legislature desire to restrict or prohibit the use of taxpayer funds for hiring or contracting with lobbyists, similar to the prohibition it enacted for professional and occupational licensing boards in 2019.

### **Current State Law Allows State Spending Units to Collectively Establish Private Associations Where State Funds Can Be Used With No Oversight, Transparency, or Accountability.**

The Legislative Auditor’s findings with respect to WVARCU raises concerns over the ability of state spending units to collectively establish similar associations and use state funds in an unregulated manner. Moreover, while state spending units are subject to a myriad of laws and requirements aimed at ensuring oversight, accountability, and transparency, it does not appear that WVARCU’s operations or use of state funds from 2013 through 2020 were subject to any of the requirements that would usually govern state spending units. Also of note is that the lobbying activities undertaken by the schools, through WVARCU, are not prohibited under current law. Therefore, it is unclear why the schools opted to form a separate, private entity to engage in activities they were legally authorized to undertake anyway.

The Legislative Auditor asked each member institution of WVARCU to provide its opinion on whether the Association was required to comply with the State’s:

- Record Retention Act
- Open Meetings Act
- Freedom of Information Act
- Ethics Act
- Purchasing Laws

<sup>4</sup>In addition, the state of Hawaii only prohibits the use of state grant funds to pay for lobbying services.

In response, the institutions mostly indicate that no consideration was given to these questions, or that they did not feel that WVARCU was subject to these laws and requirements. According to Legislative Services, it is unlikely that a court would view WVARCU as a “public body,” as defined in W.Va. Code §29B-1-2(3). However, it is important to note that the unique structure of WVARCU is such that the entirety of its operations constituted state employees taking action using state funds.

To further highlight these issues, the Legislative Auditor notes he presently does not know the exact amount of state monies channeled through WVARCU between 2013 and 2020. While the Legislative Auditor is able to identify \$182,000 in payments made to WVARCU through wvOASIS, the 990s filed by WVARCU in 2013 and 2014 identify revenues received for which the Legislative Auditor has not found payment documentation. The Legislative Auditor summed the total receipts for WVARCU from 2013 to 2018, based on its 990 filings and identified \$222,000 received by the Association over that time. However, the 990s also do not give a complete picture as they do not include any payments made by the schools in 2019 and 2020. Not only is WVARCU’s use of state funds difficult to ascertain and analyze, it is also not clear how much state funds were paid to it.

It is unclear whether the Legislature intended to allow the formation of associations like WVARCU where state funds can be funneled and then used in an unchecked fashion, with little to no oversight, and which are not subject to audit or public disclosure. If the Legislature desires to preclude the formation by state spending units of associations like WVARCU, the Legislature could expressly prohibit the expenditure of state funds for the purpose of forming or participating in such associations. Alternatively, the Legislature could modify the definition of “public body” under West Virginia Code to include organizations such as WVARCU to make applicable the acts and requirements noted herein.

## **Conclusion**

As the Legislative Auditor has concluded in the past, ensuring that entities properly register with the Secretary of State and maintain their good standing is an important consumer protection. With respect to state spending units who spend taxpayer dollars, it is even more important to ensure that the State is doing business with legitimate vendors. The payment of state funds made by institutions of higher education to WVARCU after its administrative dissolution by the Secretary of State, and the Legislative Auditor’s understanding of the process for ensuring compliance with State’s registration requirements raise a number of questions and concerns as to the pervasiveness of the State conducting business with unregistered or noncompliant vendors. It is the intent of the Legislative Auditor to work with the State Auditor’s Office and the Secretary of State’s Office to revisit this issue on a broader level.

With respect to WVARCU’s purpose and activities, it is clear that seven of West Virginia’s colleges and universities collectively spent at least \$105,000 lobbying the West Virginia Legislature but potentially much more based upon the total revenues reported by WVARCU from 2013 to 2020. What is less clear is the extent to which the use of these public funds resulted in any added benefit or additional level of services than those already available to the institutions through HEPC. While the broader question regarding the prudence of using taxpayer funds to hire lobbyists is a policy question for the Legislature to decide, the Legislative Auditor concludes that the illegal payments made to WVARCU are questionable, at best. If the procurement of professional lobbying services was, in fact, necessary for some or all of the institutions, there still appears to be no logical

reason to explain why it was done the way it was done. Any use of state funds should take place in a manner that allows for proper oversight, accountability, and full transparency.

## **Recommendations**

1. The Legislative Auditor recommends that the ERP Board and the West Virginia Secretary of State's Office work together to ensure, to the extent feasible, that vendor names match or are substantially similar to ensure noncompliant vendors are appropriately flagged as such.
2. The Legislative Auditor recommends that the West Virginia Secretary of State's Office integrate vendor tax ID numbers into its system or its process in order to more reliably match vendors and ensure compliance with the applicable registration requirements.



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### MEMORANDUM

**TO:** Presidents of West Virginia's Regional Colleges and Universities

**FROM:** Robin Capehart, President  
West Liberty University

**RE:** The Presidents Council  
West Virginia Association of Regional Colleges and Universities

**DATE:** April 8, 2013

As public colleges and universities in West Virginia, we currently face a number of significant challenges. The ramifications of Senate Bill 330 and the public's apparent lack of interest in establishing higher education as a priority will have a detrimental impact on our institutions that will be extensive and long-term.

As we have discussed, our inability to not only confront these challenges but also advance a higher education agenda of our own is directly related to our lack of a unified proponent that represents our interests. This is more pronounced in terms of the regional colleges and universities who lack the personnel dedicated to governmental affairs.

True, we currently have a small working group addressing Senate Bill 330 and a group that has done an outstanding job of monitoring the progress of the outcomes-based funding bill. However, while well-intentioned and a valuable medium for maintaining a line of communication with the Chancellor and the Higher Education Policy Commission, the current Council of Presidents has not been consistently effective in its ability to:

- (1) Articulate the educational, social and economic value of the regional colleges and universities;
- (2) Generate research and information services that advance the policy and resource needs from the perspective of the regional institutions;
- (3) Advocate public policies that enhance the ability of the state's regional colleges and universities to achieve effective and efficient institutional performance, autonomous governance and public accountability;
- (4) Maintain the constant, year-round monitoring of various legislative and regulatory initiatives; and
- (5) Promote cooperation and collaboration among all colleges and universities.

Over the past several years, we have discussed the need for an association of regional colleges and universities. Based upon my discussion with several of you, it is time to move forward with the creation of such an entity.

Such organizations are common in many states. Two of the most prominent organizations are in Michigan (<http://www.pcsum.org/>) and Texas (<http://www.cpupc.org/>). These organizations would provide good model in terms of purpose, organization and operation.

### TSG Consulting

I have been in contact with TSG Consulting, a governmental affairs firm located in Charleston. The firm's principal is Tom Susman, a former legislator and cabinet member who is extremely well respected among the opinion and policy leaders in Charleston. Mr. Susman currently serves on the Board of Governors of West Virginia State University and has an established relationship with the Chancellor. This relationship would serve us well in working with the Chancellor and the Higher Education Policy Commission to address our challenges and advance our agenda.

TSG maintains an association with Beyond Marketing, a marketing, communications and public relations firm. Again, Beyond Marketing is one of the most widely respected marketing firms in the state. Together, the group's clients include such various state and national financial, health care and educational organizations.

I have met with the group and discussed retaining their services. In particular, this group would:

- (1) Create and administer the West Virginia Association of Regional Colleges and Universities (ARCU). The organization would be governed by The Presidents Council, which would consist of all of the presidents from member institutions. TSG would provide administrative services such maintaining the financial affairs of the organization, creating a website that will serve as a primary source of information for member institutions and meeting and event planning.
- (2) Establish a Legislative Outreach program that would include the retention of a lobbyist to represent the members' interests before the State Legislature and various governmental entities; build relationships with legislative leaders; monitor ongoing legislation and other public policy initiatives that affect the interests of the members; and organize research and the generation of information by and on behalf of the members institutions.
- (3) Create a marketing and public relations program that promotes the value of the regional colleges and universities to our communities and our State, in general.
- (4) Promote the cooperation and collaboration of both member and nonmember institutions in discussing and addressing issues confronting higher education in West Virginia.

### Short-term Plan of Action (Present to June 30, 2013)

In particular, in the short term, we would ask the TSG to organize the following:

- Create the organization and develop the group's identity.
- Meet with presidents to discuss pending issues
- Represent the presidents' interest in the bill establishing an outcomes-based funding model
- Meet and assist the working group that has been monitoring higher education issues.
- Conduct a review of pending legislation and provide the presidents with an assessment as to their viability for the remainder of the session.
- Organize a meeting of the group working on SB330 to develop strategies for addressing its implementation
  - Organize the institutional human resource leaders.
- Organize a work group to address the funding of higher education.
- Organize a "Higher Education Caucus" among legislators who possess a high interest in advancing higher education in West Virginia.
- Conduct weekly telephone briefings on Friday mornings at 8:00 a.m. throughout the remainder of the session.

### Long-term Plan of Action (July 1, 2013 to December 31, 2013)

- Organize a schedule of regular meetings of The Presidents Council
- Create a Legislative Outreach program
- Develop a long-term plan to address the implementation of SB 330.
- Organize a series of "Higher Education Summits" to include the Governor, legislators, board chairs and members, the presidents, the Chancellor and members of the Higher Education Policy Commission.
- Create a public relations and marketing plan to advance the importance of higher education to the future of West Virginia.
- Create research groups to address various issues
- Develop a legislative agenda to advance during the 2014 legislative session.

### Membership

Currently, we are discussing dues of approximately \$10,000 per institution per year. For the current FY 2013, the dues would be prorated at \$2,500 per institution.

The Presidents Council will govern the organization. Tom will serve as the organization's executive director. We will select a chair among the members.

I know several of you have agreed to join already. We need to know of the interest of all as soon as possible.

## Appendix B

State	Restrictions on the Use of Public Funds to Lobby
<b>Alaska</b>	Restricts lobbyists from contracting with the following agencies: (1) Alaska Aerospace Development Corporation; (2) Alaska Commercial Fishing and Agriculture Bank; (3) Alaska Energy Authority; (4) Alaska Housing Finance Corporation; (5) Alaska Industrial Development and Export Authority; (6) Alaska Medical Facility Authority; (7) Alaska Mental Health Trust Authority; (8) Alaska Municipal Bond Authority; (9) Alaska Permanent Fund Corporation; (10) Alaska Railroad Corporation; (11) Alaska Science and Technology Foundation; (12) Alaska Seafood Marketing Institute; (13) Alaska Student Loan Corporation. Alaska Stat. § 44.99.030.
<b>Arizona</b>	<p>State agencies, offices, departments, boards or commissions shall not enter into a contract or agreement with a person or entity for lobbying services or spend money to lobby on behalf of the entity unless that lobbyist is a state employee. Ariz. Rev. Stat. Ann. § 41-1234.</p> <p>Restricts individuals acting on behalf of a university from using public funds or equipment for the purposes of influencing the outcome of any election or to advocate for or against pending or proposed legislation. Ariz. Rev. Stat. § 15-1633. The restriction does not apply to registered lobbyists who advocate on behalf of the university or the Arizona board of regents and other employees assisting such lobbyists in their official capacity.</p>
<b>Colorado</b>	Each principal department of state government shall designate one person who shall be responsible for any lobbying by a state official or employee on behalf of said principal department. All persons lobbying on behalf of an institution or governing board of higher education shall register with the Secretary of State. Colo. Rev. Stat. § 24-6-303.5.
<b>Connecticut</b>	No quasi-public agency or state agency may retain a lobbyist. Does not prohibit a director, officer or employee of a quasi-public agency or state agency from lobbying on behalf of the quasi-public agency or state agency. Conn. Gen. Stat. Ann. § 1-101bb.
<b>Florida</b>	<p>No state funds may be used for lobbying purposes. Fla. Stat. § 11.062.</p> <p>A department of the executive branch, a state university, a community college, or a water management district may not use public funds to retain a lobbyist to represent it before the legislative or executive branch. However, full-time employees of may register as lobbyists and represent that employer before the legislative or executive branch. Fla. Stat. § 11.062.</p>
<b>Guam</b>	No government of public funds of any nature shall be expended in support of any lobbyist, unless specifically authorized by law. Applies to all line agencies, autonomous agencies, and public corporations. No government officer or employee may accept the services of a lobbyist on a volunteer basis. 5 G.C.A. § 7119. Some exceptions are provided in 5 G.C.A. § 7118.
<b>Hawaii</b>	State grants shall not be awarded for lobbying activities. Haw. Rev. Stat. § 42F-103.

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<b>Illinois</b>	Lobbyists may not accept or agree to accept compensation from a State agency for the purpose of lobbying legislative action. This does not apply to salary compensation that is part of a full-time employee of an agency whose responsibility or authority includes, but is not limited to, lobbying executive, legislative. 25 Ill. Comp. Stat. § 170/11.3.
<b>Indiana</b>	No statutes forbidding the use of public funds for lobbying were found. However, public employees and public officials are not considered lobbyists. Ind. Code Ann. § 2-7-1-10.
<b>Iowa</b>	<p>A statewide elected official, executive or administrative head of an agency of state government, etc. shall not act as a lobbyist unless the person is designated, by the agency in which the person serves or is employed, to represent the official position of the agency. Iowa Code § 68B.5A.</p> <p>State agency of the executive branch shall not employ a person through the use of public funds whose position with the agency is primarily representing the agency relative to the passage, defeat, approval, or modification of legislation that is being considered by the general assembly. Shall also not use or permit the use of public funds for paid advertisement of public service announcement 30 days prior to or during a legislative session for the purposes of encouraging the passage, defeat, approval, or modification of a bill that is being considered, or was considered during the previous legislative session by the general assembly. Iowa Code § 68B.8.</p>
<b>Kansas</b>	Every person registered as a lobbyist shall file a detailed report listing the amount of public funds paid to hire or contract for the lobbying services on behalf of a governmental entity or any association of governmental entities that receive public funds. Kan. Stat. Ann. § 46-295.
<b>Louisiana</b>	No state employee in his official capacity or on behalf of his agency shall lobby for or against any matter intended to have the effect of law pending before the legislature or any committee thereof. Exception for dissemination of factual information relative to any such matter or the use of public meeting rooms or meeting facilities available to all citizens to lobby for or against any such matter. No state employee in his official capacity or on behalf of his agency shall enter into a contract with a lobbyist or a contract for lobbying services to lobby for or against any matter intended to have the effect of law pending before the legislature or any committee thereof. La. Stat. Ann. § 24:56.
<b>Maine</b>	Within 15 days of convening a regular legislative session, a department or agency shall register with the commission officers or employees who will serve as the department's or agency's legislative designees for the session. Me. Stat. tit. 3 § 313-A.
<b>Massachusetts</b>	Absent any law to the contrary, a state agency or state authority shall not use state funds to pay for an executive or legislative agent unless the agent is a full-time employee of the state agency or state authority. Mass. Gen. Laws Ann. ch. 29, § 29J. Exceptions: employees or agents of the commonwealth or of a city, town, district or regional school district who are acting in their capacity as such employees or agents or any person requested to appear before any committee or commission of the general court by a majority of the



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	members of such committee or commission; provided that person performs no other act to influence legislation and the name of that person is recorded in the official records of such committee or commission. Mass. Gen. Laws Ann. ch. 3, § 50.
<b>Nebraska</b>	No statutes forbidding the use of public funds for lobbying were found. However, public employees and public officials, other than the University of Nebraska, or an elected official of a political subdivision who is acting in the scope of his or her office or employment, are not considered lobbyists. Neb. Rev. Stat. Ann. § 49-1434.
<b>New Hampshire</b>	No recipient of a grant or appropriation of state funds may use the state funds to lobby or attempt to influence legislation, participate in political activity, or contribute funds to any engaged in these activities. Any recipient of a grant or appropriation of state funds that wishes to engage in any of these prohibited activities shall segregate state funds in such a manner that such funds are physically and financially separate from any non-state funds that may be used for any of these purposes. Mere bookkeeping separation shall not be sufficient. N.H. Rev. Stat. Ann. § 15:5.
<b>North Carolina</b>	No State agency or constitutional officer may contract with individuals who are not employed by the State to lobby legislators and legislative employees. No more than 2 individuals may be designated liaison personnel for each agency and constitutional officers of the State. N.C. Gen. Stat. Ann. § 163A-345. Other information about the rules that apply to "liaison personnel" is at N.C. Gen. Stat. Ann. § 163A-346.
<b>Oklahoma</b>	No state officer or state employee shall receive any additional compensation or reimbursement from any person for personally engaging in lobbying other than compensation or reimbursements provided by law for that member's job position. Okla. Stat. tit 74, § 4254.
<b>Puerto Rico</b>	No statutes forbidding the use of public funds for intra-jurisdictional lobbying were found. However, Puerto Rico does allow for the use of public funds for lobbying the federal government, subject to the restriction that any public funds used shall be limited to lobbying services used exclusively for the attainment of federal funds in a greater amount of federal funds than is spent on lobbying. 3 L.P.R.A. § 8767.
<b>South Carolina</b>	No statutory restrictions forbidding the use of public funds for lobbying were found.  Executive Order 2003-09 directs executive agencies to refrain from hiring independent contractor lobbyists.
<b>South Dakota</b>	Any person employed in the executive branch of state government, a constitutional office, or the judicial system, who is not an elected official or who is not subject to confirmation by the senate, who is authorized to officially represent any department of the executive branch, constitutional office, Public Utilities Commission, or judicial system in any

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	capacity before the Legislature or any of its several committees shall register as an executive or judicial agency representative for such department or office in the same manner and under the same provisions of this chapter as apply to all lobbyists, but need pay no fee. S.D. Codified Laws § 2-12-7.1.
<b>Texas</b>	<p>A state agency may not use appropriated money to employ a lobbyist. Also may not pay membership dues to an organization that pays part or all of the salary of a lobbyist. Tex. Gov. Code § 556.005.</p> <p>A political subdivision or private entity that receives state funds may not use those funds to pay lobbying state funds. Tex. Gov. Code § 556.0055.</p> <p>Public funds available to a political subdivision (municipality, county, or special district) may not be used to compensate or reimburse expenses over \$50 for the purposes of communicating directly with a member of the legislative branch to influence legislation, unless the person resides in the district of the member or files a written statement with the commission. Tex. Gov. Code § 305.026.</p>
<b>Utah</b>	An agency to which money is appropriated by the Legislature may not expend any money to pay a contracted lobbyist. Utah Code § 63J-1-210.
<b>Virginia</b>	Employment of a lobbyist for compensation by an officer, board, institution or agency of the commonwealth is expressly prohibited; however, this section shall not apply to any individual who is a full-time or part-time employee of such office, board, department, institution or agency of the commonwealth. Va. Code Ann. § 2.2-434.
<b>Washington</b>	<p>Subject to exceptions, no public funds may be used directly or indirectly for lobbying. Exceptions: officers or employees of an agency communicating with a member of the legislature upon request of that member; communicating to the legislature through proper official channels requests for legislative action or appropriations necessary for the efficient conduct of the public business or actually made in the performance of official duties; lobbying activity limited to a) providing information or communicating on matters pertaining to official agency business, b) advocating the official position or interests of the agency. Wash. Rev. Code § 42.17A.635.</p> <p>May not use any of the facilities of a public office or agency in any effort to support or oppose an initiative to the legislature. Wash. Rev. Code § 42.17A.635.</p> <p>Each state agency, county, city, town, municipal corporation, etc. that expends public funds for lobbying shall file quarterly statements detailing lobbying expenses and related information. Wash. Rev. Code § 42.17A.635.</p>

Source: National Conference of State Legislatures (NCSL).