

HB# 2224

FILED

2003 MAR 18 P 3:11

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



# ENROLLED

## House Bill No. 2224

(By Delegates Williams, Shaver, Tabb, Canterbury, Hamilton, Sobonya and Howard)



Passed March 8, 2003

In Effect Ninety Days from Passage

**FILED**

2003 MAR 18 P 3:11

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

## **H. B. 2224**

(BY DELEGATES WILLIAMS, SHAVER, TABB,  
CANTERBURY, HAMILTON, SOBONYA AND HOWARD)

[Passed March 8, 2003; in effect from passage.]

AN ACT to repeal section two, article eight, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article five, chapter five of said code; to amend and reenact section two, article one, chapter eighteen-b of said code; to further amend said article by adding thereto two new sections, designated sections eight and ten; to amend and reenact section three, article one-a of said chapter; to amend and reenact section six, article one-b of said chapter; to further amend said article by adding thereto a new section, designated section ten; to amend and reenact sections three, four, and eight, article three-c of said chapter; to amend and reenact sections three, four, five, six, and seven, article five of said chapter; to further amend said article by adding thereto a new section, designated section nine; to amend article six of said chapter by adding thereto a new section, designated section four-b; to amend and reenact sections four and six, article seven of said chapter; to amend and reenact section three, article eight of said chapter; to amend and reenact sections five and ten, article nine of said chapter; to amend and reenact sections one and fourteen,

article ten of said chapter; and to amend article fourteen of said chapter by adding thereto a new section, designated section eleven, all relating to higher education; higher education policy commission; governing, advisory and visitor boards; administrative heads; faculty; staff; students; administrative and programmatic efficiencies; definitions; clarifying certain student rights; providing for Potomac state college to become a fully-integrated division of West Virginia university; limiting certain operational costs; incorporation of certain auxiliary enterprises; auxiliary service and product rates; establishing areas of academic emphasis at the Potomac campus; institutional missions; program and service contracts and collaboration; reports to the policy commission, legislative oversight commission on education accountability and Legislature; draft legislation submission requirements; peers; peer approval; appointment and evaluation of administrative heads; directing Concord college and Bluefield state college to make a joint study on progress toward meeting goals; altering sponsoring institutions for certain community and technical college components; implementation of certain institutional changes; monitoring institutional progress toward meeting goals; clarifying reporting relationships of certain provosts; establishing and redesignating certain community and technical college responsibility districts; transfer of certain property, obligations and staff; deleting references to Bluefield community and technical college and the center for higher education and work force development at Beckley; creating new river community and technical college of Bluefield state college from existing components and entities; transfer and retention of certain academic programs; findings and intent; governance and program offerings; expenditures; contractual arrangements; responsibilities and duties of certain executive agencies and officials; expanding certain purchasing authority; eliminating bid preference for institutional print shops; modifying attorney general lease purchase agreement and contract approval; authorizing certain leasing authority for the policy commission and the governing

boards; requiring prior review of lease agreements; lease cancellation and renewal; authorized signatures on approved leases; requirements and authorizations for promulgating policies, rules and emergency rules; adjusting purchasing threshold for requiring vendor registration; vendor eligibility; clarifying provisions relating to purchasing; disposal of obsolete or unusable equipment, surplus supplies; application of proceeds; ensuring the fiscal integrity of certain institutional procedures; providing for expanded electronic transfers; expanding purchasing authority on purchase cards; authorizing certain emergency expenditures; consolidating certain financial and administrative operations; authorizing fee charges for services provided; limiting certain fee charges; authorizing certain services to be provided by higher education institutions; reduction of low-enrollment sections of certain courses; directing utilization of certain natural resources and alternative fuel resources; retention of cost savings; establishing staff councils; election of members and chair; meetings; notice to probationary faculty of retention status; consideration of need for flexibility at community and technical colleges when reviewing institutional policies; deleting obsolete language referencing faculty salary schedule; modifying certain salary provisions; competitive faculty salary schedule requirement; removing obsolete references to annual experience increment; providing means for funding certain salary increases; participation in catastrophic leave banks; authorizing certain mandatory auxiliary fee increases; limiting certain tuition and fee increases; increase approval; use of fees; reduction of certain state subsidies; return of funds to general revenue; certification of fee revenues; expanding use of bookstore revenues; and public employees insurance agency benefit option expansion study.

*Be it enacted by the Legislature of West Virginia:*

That section two, article eight, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article five, chapter five of said code be

amended and reenacted; that section two, article one, chapter eighteen-b of said code be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections eight and ten; that section three, article one-a of said chapter be amended and reenacted; that section six, article one-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten; that sections three, four and eight, article three-c of said chapter be amended and reenacted; that sections three, four, five, six and seven, article five of said chapter be amended and reenacted; the said article be further amended by adding thereto a new section, designated section nine; that article six of said chapter be amended by adding thereto a new section, designated section four-b; that sections four and six, article seven of said chapter be amended and reenacted; that section three, article eight of said chapter be amended and reenacted; that sections five and ten, article nine of said chapter be amended and reenacted; that sections one and fourteen, article ten of said chapter be amended and reenacted; and that article fourteen of said chapter be further amended by adding thereto a new section, designated section eleven, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF  
THE GOVERNOR, SECRETARY OF STATE AND ATTOR-  
NEY GENERAL; BOARD OF PUBLIC WORKS; MISCEL-  
LANEOUS AGENCIES, COMMISSIONS, OFFICES, PRO-  
GRAMS, ETC.**

**ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.**

**§5-5-1. Definitions.**

- 1 For the purposes of this article:
- 2 (a) “Eligible employee” means either of the following:
- 3 (1) Any regular full-time employee of the state or any
- 4 spending unit of the state who is eligible for membership in any

5 state retirement system of the state of West Virginia or other  
 6 retirement plan authorized by the state: *Provided*, That the  
 7 mandatory salary increase required by this article shall not  
 8 apply to any faculty employee at state institutions of higher  
 9 education, or any employee of the state whose compensation is  
 10 fixed by statute or by statutory schedule other than employees  
 11 described in this section. Clerks, deputy clerks and magistrate  
 12 assistants of magistrate courts are eligible for the incremental  
 13 salary increases provided in this article with the increases to be  
 14 allowable in addition to the maximum salaries and compensa-  
 15 tion for the employee offices under the magistrate court system  
 16 statutes of article one, chapter fifty of the code. This article may  
 17 not be construed to mandate an increase in the salary of any  
 18 elected or appointed officer of the state; or

19 (2) Any classified employee as defined in section two,  
 20 article nine, chapter eighteen-b of this code who is an employee  
 21 of a state institution of higher education or of the higher  
 22 education policy commission;

23 (b) “Years of service” means full years of totaled service as  
 24 an employee of the state of West Virginia; and

25 (c) “Spending unit” means any state office, department,  
 26 agency, board, commission, institution, bureau or other  
 27 designated body authorized to hire employees.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **§18B-1-2. Definitions.**

1 The following words when used in this chapter and chapter  
 2 eighteen-c of this code have the meaning hereinafter ascribed  
 3 to them unless the context clearly indicates a different meaning:

4 (a) Effective the first day of July, two thousand five,  
 5 “regional campus” means West Virginia university at

6 Parkersburg, and West Virginia university institute of technol-  
7 ogy.

8 (b) "Governing boards" or "boards" means the institutional  
9 boards of governors created pursuant to subsection (b), section  
10 one, article two-a of this chapter;

11 (c) "Freestanding community and technical colleges"  
12 means southern West Virginia community and technical  
13 college, West Virginia northern community and technical  
14 college, eastern West Virginia community and technical  
15 college, which shall not be operated as branches or off-campus  
16 locations of any other state institution of higher education;

17 (d) "Community college" or "community colleges" means  
18 community and technical college or colleges as those terms are  
19 defined in this section;

20 (e) "Community and technical college", in the singular or  
21 plural, means the freestanding community and technical  
22 colleges and other state institutions of higher education which  
23 have defined community and technical college responsibility  
24 districts and programs in accordance with the provisions of  
25 sections four and six, article three-c of this chapter;

26 (f) "Community and technical college education" means the  
27 programs, faculty, administration and funding associated with  
28 the mission of community and technical colleges as provided in  
29 article three-c of this chapter;

30 (g) "Essential conditions" means those conditions which  
31 shall be met by community and technical colleges as provided  
32 in section three, article three-c of this chapter;

33 (h) "Higher education institution" means any institution as  
34 defined by Sections 401(f), (g) and (h) of the federal Higher  
35 Education Facilities Act of 1963, as amended;

36 (i) “Higher education policy commission”, “policy com-  
37 mission” or commission means the commission created  
38 pursuant to section one, article one-b of this chapter;

39 (j) “Chancellor” means the chief executive officer of the  
40 higher education policy commission employed pursuant to  
41 section five, article one-b of this chapter;

42 (k) “Institutional operating budget” or “operating budget”  
43 for any fiscal year means an institution’s total unrestricted  
44 education and general funding from all sources in a prior fiscal  
45 year, including, but not limited to, tuition and fees and legisla-  
46 tive appropriation, and any adjustments to that funding as  
47 approved by the commission based on comparisons with peer  
48 institutions or to reflect consistent components of peer operat-  
49 ing budgets;

50 (l) “Post-secondary vocational education programs” means  
51 any college-level course or program beyond the high school  
52 level provided through an institution of higher education under  
53 the jurisdiction of a governing board which results in or may  
54 result in the awarding of a two-year associate degree;

55 (m) “Rule” or “rules” means a regulation, standard, policy  
56 or interpretation of general application and future effect;

57 (n) For the purposes of this chapter and chapter eighteen-c  
58 of this code, “senior administrator” means the vice chancellor  
59 for administration employed by the chancellor in accordance  
60 with section two, article four of this chapter. The vice chancel-  
61 lor for administration shall assume all the powers and duties  
62 that are assigned by law to the senior administrator;

63 (o) “State college” means Bluefield state college, Concord  
64 college, Fairmont state college, Glenville state college, Shep-  
65 herd college, West Liberty state college or West Virginia state  
66 college;



67 (p) “State institution of higher education” means any  
68 university, college or community and technical college under  
69 the direct or indirect jurisdiction of a governing board as that  
70 term is defined in this section;

71 (q) “Regional campus” means West Virginia university at  
72 Parkersburg, Potomac state college of West Virginia university,  
73 and West Virginia university institute of technology;

74 (r) The advisory board previously appointed for the West  
75 Virginia graduate college shall be known as the “board of  
76 visitors” and shall provide guidance to the Marshall university  
77 graduate college;

78 (s) “Institutional compact” means a compact between a  
79 state institution of higher education and the commission, as  
80 described in section two, article one-a of this chapter;

81 (t) “Peer institutions”, “peer group” or “peers” means  
82 public institutions of higher education used for comparison  
83 purposes and selected by the commission pursuant to section  
84 three, article one-a of this chapter;

85 (u) “Administratively linked community and technical  
86 college” means a community and technical college created  
87 pursuant to section eight, article three-c of this chapter;

88 (v) “Sponsoring institution” means the state institution of  
89 higher education that maintains an administrative link to a  
90 community and technical college pursuant to section eight,  
91 article three-c of this chapter;

92 (w) “Collaboration” means entering into an agreement with  
93 one or more providers of education services in order to enhance  
94 the scope, quality, or efficiency of education services;

95 (x) “Broker” or the act of “brokering” means serving as an  
96 agent on behalf of students, employers, communities or  
97 responsibility areas to obtain education services not offered by  
98 a sponsoring institution. These services include courses, degree  
99 programs or other services contracted through an agreement  
100 with a provider of education services either in-state or out-of-  
101 state; and

102 (y) “Joint commission for vocational-technical-occupa-  
103 tional education” or “joint commission” means the commission  
104 established pursuant to article three-a of this chapter.

**§18B-1-8. Student rights when institutions merge or become  
administratively-linked.**

1 (a) Commencing with the effective date of this section,  
2 when a conflict exists between academic program requirements  
3 at an institution to be consolidated, merged or administratively-  
4 linked to another state institution of higher education, the  
5 requirements of the institution at which the student initially  
6 enrolled prevail. A student may not be required to earn addi-  
7 tional credits toward the degree pursued, or to take additional  
8 courses, that were not included in the program of study at the  
9 time the student declared that major at the enrolling institution.

10 (b) A student enrolled in an institution to be consolidated,  
11 merged or administratively-linked to another state institution of  
12 higher education shall continue to receive any state-funded  
13 student financial aid for which he or she would otherwise be  
14 eligible.

**§18B-1-10. Potomac branch of West Virginia university.**

1 (a) Notwithstanding any other provision of this code to the  
2 contrary, by the first day of July, two thousand five, Potomac  
3 state college shall merge and consolidate with West Virginia  
4 university, and become a fully integrated division of the

5 university. All administrative and academic units shall be  
6 consolidated with primary responsibility for direction and  
7 support assigned to West Virginia university. The advisory  
8 board previously appointed for Potomac state college shall be  
9 known as the board of visitors and shall provide guidance to the  
10 division in carrying out its mission.

11 (b) Operational costs for the Potomac campus may not  
12 exceed by more than ten percent the average cost per full-time  
13 equivalent student for freestanding community and technical  
14 colleges or the southern regional education board average  
15 expenditures for two-year institutions. West Virginia University  
16 shall reduce these costs to the mandated level within four years.

17 (c) Auxiliary enterprises shall be incorporated into the West  
18 Virginia university auxiliary enterprise system. The West  
19 Virginia university board of governors shall determine if  
20 operations at the Potomac campus can be operated on a self-  
21 sufficient basis when establishing rates for auxiliary services  
22 and products.

23 (d) Potomac state college has a strong reputation in  
24 agriculture and forestry instruction, pre-professional programs  
25 in business, computer science and education, and basic liberal  
26 arts instruction. These programs shall be further cultivated and  
27 emphasized as the sustaining mission of the Potomac campus  
28 over the next decade, except that the higher education policy  
29 commission may change the mission of the Potomac campus at  
30 any time the commission determines appropriate. In order to  
31 focus its resources on these programs, the campus shall contract  
32 through eastern West Virginia community and technical college  
33 to provide work force development training, literacy education  
34 and technical education programs which are most efficiently  
35 offered within a flexible community and technical college  
36 curriculum. This collaborative relationship shall serve to  
37 strengthen both institutions and generate a model relationship

38 between traditional and community and technical college  
39 education for institutions throughout the state.

40 (e) Beginning the first day of November, two thousand-  
41 three, and annually thereafter, Potomac state college and eastern  
42 West Virginia community and technical college shall report to  
43 the higher education policy commission on plans, accomplish-  
44 ments and recommendations in implementing the cooperative  
45 relationship authorized in subsection (d) of this section. The  
46 commission shall report to the legislative oversight commission  
47 on education accountability on the cooperative activities, results  
48 and recommendations for changes by the fifteenth day of  
49 December, two thousand three, and annually thereafter.

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FU-  
TURE OF WEST VIRGINIA.**

**§18B-1A-3. Peer institutions.**

1 (a) The commission shall select not fewer than ten peer  
2 institutions for each state institution of higher education in West  
3 Virginia, including, but not limited to, independently accredited  
4 community and technical colleges.

5 (b) The peer institutions shall be selected from among  
6 institutions throughout the United States and not solely from the  
7 states that are members of the southern regional education  
8 board.

9 (c) The peer institutions, as selected by the commission,  
10 shall be used as benchmarks for comparison purposes only and  
11 are not intended to reflect funding goals for West Virginia  
12 institutions of higher education. Such a use is inappropriate  
13 since institutions selected as peers for a state institution may be  
14 located in an area of high per capita income or have their  
15 funding subject to other factors that make its use unrealistic for

16 setting funding goals in West Virginia. The peer institutions  
17 shall be used for comparison in the following areas:

18 (1) To determine adjustments to base operating budgets as  
19 described in section five of this article;

20 (2) To determine comparable levels of tuition;

21 (3) To determine comparable faculty and staff teaching  
22 requirements and other workloads; and

23 (4) For such other purposes as the law may require or the  
24 commission may find useful or necessary.

25 (d) The commission shall contract with a national, inde-  
26 pendent education consulting firm to assist in the unbiased  
27 selection of peer institutions for each West Virginia institution.  
28 The commission shall select peer institutions for each institu-  
29 tion through an open, deliberative, objective process and in  
30 consultation with the institutional boards of governors, intended  
31 to achieve broad understanding of the basis for this selection in  
32 the higher education community and the Legislature. Final peer  
33 selection is subject to the approval of the legislative oversight  
34 commission on education accountability. In selecting peer  
35 institutions, the commission shall use criteria such as, but not  
36 limited to:

37 (1) Institutional mission;

38 (2) Institutional size related to full-time equivalent students;

39 (3) The proportions of full-time and part-time students;

40 (4) The level of academic programs, including, but not  
41 limited to, number of degrees granted at the associate, baccalau-  
42 reate, masters, doctoral and first-professional level;

43 (5) The characteristics of academic programs such as health  
44 sciences, professional, technical or liberal arts and sciences; and

45 (6) The level of research funding from federal competitive  
46 funding sources.

47 (e) Subject to the approval of the legislative oversight  
48 commission on education accountability, the commission shall  
49 review and make necessary adjustments to peer institutions at  
50 least every six years or as necessary based on changes in  
51 institutional missions as approved in institutional compacts or  
52 in changes at peer institutions.

53 (f) Nothing herein may be construed to prevent the commis-  
54 sion from using the same peers or peer groups for more than  
55 one institution of higher education.

**ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

**§18B-1B-6. Appointment of institutional presidents, provosts;  
evaluation.**

1 (a) *Appointment of institutional presidents.* — Appointment  
2 of presidents of the public institutions of higher education shall  
3 be made as follows:

4 (1) Subject to the approval of the commission, the appropri-  
5 ate governing board of the institution shall appoint a president  
6 for Bluefield state college, Concord college, eastern West  
7 Virginia community and technical college, Fairmont state  
8 college, Glenville state college, Marshall university, Shepherd  
9 college, southern West Virginia community and technical  
10 college, West Liberty state college, West Virginia northern  
11 community and technical college, West Virginia school of  
12 osteopathic medicine, West Virginia state college and West  
13 Virginia university;

14       (2) Subject to the approval of the appropriate governing  
15 board and to the provisions of article three-c of this chapter, the  
16 president of the appropriate institution shall appoint the  
17 president of the regional campuses of West Virginia university  
18 and of the community and technical colleges which remain  
19 linked administratively to a sponsoring institution. The presi-  
20 dents of such regional campuses and community and technical  
21 colleges shall serve at the will and pleasure of the institutional  
22 president. The president of the sponsoring institution shall  
23 appoint a president for the administratively linked community  
24 and technical college at the appropriate time as outlined in the  
25 institutional compact and approved by the commission.

26       (3) Subject to the approval of the commission and to the  
27 provisions of article three-c of this chapter, the president of the  
28 appropriate institution shall appoint the provost in those cases  
29 where the community and technical college remains as a  
30 component of another institution. The provost shall serve at the  
31 will and pleasure of the president of the employing institution.

32       (b) *Other appointments.* — Appointments of administrative  
33 heads of state institutions of higher education shall be made in  
34 accordance with the provisions of subsection (a) of this section  
35 except in the following instances:

36       (1) Effective the first day of July, two thousand three, the  
37 institutional president shall appoint a provost to be the adminis-  
38 trative head of new river community and technical college; and

39       (2) Effective the first day of July, two thousand five, the  
40 institutional president shall appoint a provost to be the adminis-  
41 trative head of the Potomac campus of West Virginia univer-  
42 sity;

43       (c) *Evaluation of administrative heads.* — The governing  
44 boards shall conduct written performance evaluations of each  
45 institution's president except the presidents of regional cam-

46 puses shall be evaluated by the president of West Virginia  
47 university. The provosts of administratively linked community  
48 and technical colleges and other consolidated, merged or  
49 administratively linked units shall be evaluated by the president  
50 of the employing institution. Evaluations shall be done in every  
51 fourth year of employment as administrative head, recognizing  
52 unique characteristics of the institution and utilizing institu-  
53 tional personnel, institutional boards of advisors as appropriate,  
54 staff of the appropriate governing board and persons knowl-  
55 edgeable in higher education matters who are not otherwise  
56 employed by a governing board. A part of the evaluation shall  
57 be a determination of the success of the institution in meeting  
58 the requirements of its institutional compact.

**§18B-1B-10. Goals of efficiency and effectiveness; findings;  
reports to commission and legislative oversight  
commission on education accountability.**

1 (a) The Legislature finds that it is in the best interests of the  
2 citizens of West Virginia for state institutions of higher  
3 education to work diligently toward achieving the goals and  
4 objectives set forth in section one-a, article one of this chapter  
5 and in the institutional compacts. One way these goals may be  
6 achieved is through collaborative agreements between or  
7 among two or more institutions to enhance the scope, quality,  
8 or efficiency of education services.

9 (b) To further these goals of cooperation and coordination,  
10 to avoid unnecessary duplication of program development and  
11 delivery, and to ensure that programs and services address the  
12 public policy agenda established by the Legislature and the  
13 commission, compact elements and goals for post-secondary  
14 education, by the first day of September, two thousand three,  
15 Concord college and Bluefield state college jointly shall  
16 complete a comprehensive study of the degree to which these  
17 institutions are making progress toward meeting the goals for



18 post-secondary education, their institutional compacts and the  
19 public policy agenda and shall report their finding to the  
20 commission. The report shall address specific examples of  
21 collaboration, cooperation or brokering in academic programs,  
22 administrative services or any joint efforts which aim to avoid  
23 unnecessary duplication and to ensure delivery of high quality  
24 education services.

25 (c) The commission shall analyze the report prepared by  
26 Concord college and Bluefield state college, together with any  
27 other relevant data, and report to the legislative oversight  
28 commission on education accountability by the first day of  
29 November, two thousand three. The report shall contain  
30 findings and recommendations to address at least the following  
31 areas relevant to the two institutions:

32 (1) The fiscal status;

33 (2) The progress in meeting the goals for post-secondary  
34 education, the institutional compact, and the public policy  
35 agenda;

36 (3) Possible academic and fiscal advantages that might be  
37 derived from an administrative link between the two institu-  
38 tions; and

39 (4) Any changes to the programs or services of either  
40 institution required by the commission based on their findings  
41 or those of the institutions.

42 (d) If the commission determines that either institution has  
43 made insufficient progress toward the goals established in this  
44 chapter, in the institutional compacts, in the public policy  
45 agenda established by the commission, or has not complied  
46 with the changes required by the commission pursuant to  
47 subsection (c) of this section, the commission immediately shall

48 take any action necessary to further the goals and requirements  
49 of this section.

50 (e) The commission shall continue to monitor and review  
51 each institution's compliance with this section.

**ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

**§18B-3C-3. Essential conditions for community and technical college programs and services.**

1 The Legislature hereby establishes the following essential  
2 conditions for community and technical college programs and  
3 services:

4 (a) Independent accreditation by the commission on  
5 institutions of higher education of the north central association  
6 of colleges and schools (NCA) reflecting external validation  
7 that academic programs, services, faculty, governance, financ-  
8 ing and other policies are aligned with the community and  
9 technical college mission of the institution;

10 (b) A full range of community and technical college  
11 services offered as specified in section six of this article;

12 (c) Programmatic approval consistent with the provisions  
13 of section nine of this article;

14 (d) A fee structure competitive with its peer institutions;

15 (e) Basic services, some of which may be obtained under  
16 contract with existing institutions in the region. These basic  
17 services shall include, but are not limited to, the following:

18 (1) Student services, including, but not limited to, advising,  
19 academic counseling, financial aid and provision of the first  
20 line of academic mentoring and mediation;

- 21       (2) Instructional support services;
- 22       (3) Access to information and library services;
- 23       (4) Physical space in which courses can be offered;
- 24       (5) Access to necessary technology for students, faculty and  
25 mentors;
- 26       (6) Monitoring and assessment; and
- 27       (7) Administrative services, including, but not limited to,  
28 registration, fee collection and bookstore and other services for  
29 the distribution of learning materials;
- 30       (f) A provost who is the chief academic and administrative  
31 officer of the community and technical college appointed and  
32 serving pursuant to the terms of section six, article one-b of this  
33 chapter. The provost shall report directly to the president of the  
34 institution and shall have appropriate direct contact with the  
35 institutional board of governors. It is the responsibility of the  
36 board of governors to provide sufficient time on its agenda for  
37 each provost of a component community and technical college  
38 to discuss issues relevant to the mission of the component.
- 39       (g) An institutional board of governors or an institutional  
40 board of advisors appointed and serving as required by law;
- 41       (h) A full-time core faculty, complemented by persons  
42 engaged through contract or other arrangements, including  
43 college and university faculty, to teach community college  
44 courses and qualified business, industry and labor persons  
45 engaged as adjunct faculty in technical areas;
- 46       (i) A faculty personnel policy, formally established to be  
47 separate and distinct from that of other institutions, which  
48 includes, but is not limited to, appointment, promotion,

49 workload and, if appropriate, tenure pursuant to section nine of  
50 this article. These policies shall be appropriate for the commu-  
51 nity and technical college mission and may not be linked to the  
52 policies of any other institution;

53 (j) Community and technical colleges designed and  
54 operating as open-provider centers with the authority and  
55 flexibility to draw on the resources of the best and most  
56 appropriate provider to ensure that community and technical  
57 college services are available and delivered in the region in a  
58 highly responsive manner. A community and technical college  
59 may contract with other institutions and providers as necessary  
60 to obtain the academic programs and resources to complement  
61 those available through a sponsoring college, where applicable,  
62 in order to meet the region's needs.

63 (k) Separately identified state funding allocations for each  
64 of the community and technical colleges. The provost of the  
65 community and technical college has full budgetary authority  
66 for the entity, subject to accountability to its governing board,  
67 including authority to retain all tuition and fees generated by  
68 the community and technical college for use to carry out its  
69 mission.

#### **§18B-3C-4. Responsibility districts.**

1 (a) Each community and technical college is hereby  
2 assigned a responsibility district within which it is responsible  
3 for providing the full array of community and technical college  
4 programs and services as defined in section six of this article.  
5 The programs and services shall address the public policy  
6 agenda, compact elements and goals for post-secondary  
7 education established in section one-a, article one of this  
8 chapter as they relate to community and technical colleges, and  
9 other goals which may be established by the commission. The  
10 responsibility districts shall be comprised of contiguous areas

11 of the state which have similar economic, industrial, educa-  
12 tional, community and employment characteristics to facilitate  
13 specialization in mission and programming. For the purposes of  
14 initial implementation and organization, the districts shall be  
15 comprised as follows and assigned to the designated community  
16 and technical colleges:

17 (1) West Virginia northern community and technical  
18 college - Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel  
19 counties;

20 (2) West Virginia university at Parkersburg - Wood,  
21 Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

22 (3) Southern West Virginia community and technical  
23 college - Logan, Boone, Lincoln, McDowell, Mingo, Raleigh  
24 and Wyoming counties;

25 (4) Bluefield state community and technical college -  
26 Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh  
27 and Summers counties;

28 (5) Glenville state community and technical college -  
29 Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas,  
30 Roane, Upshur and Webster counties;

31 (6) Fairmont state community and technical college -  
32 Marion, Doddridge, Harrison, Monongalia, Preston, Randolph,  
33 Taylor and Barbour counties;

34 (7) Shepherd community and technical college - Jefferson,  
35 Berkeley, and Morgan counties;

36 (8) Eastern West Virginia community and technical college  
37 - Mineral, Grant, Hampshire, Hardy, Tucker and Pendleton  
38 counties;

39 (9) West Virginia state community and technical college -  
40 Kanawha, Putnam and Clay counties;

41 (10) West Virginia university institute of technology  
42 community and technical college - Fayette, Clay, Kanawha,  
43 Raleigh and Nicholas counties;

44 (11) Marshall university community and technical college -  
45 Cabell, Kanawha, Mason, Putnam and Wayne counties; and

46 (12) Effective the first day of July, two thousand three, the  
47 following changes are made to the responsibility districts:

48 (A) The responsibility districts of the components known as  
49 Glenville state community and technical college and Bluefield  
50 state community and technical college are abolished and the  
51 counties formerly within those responsibility districts are  
52 reassigned as provided in this subsection.

53 (B) New river community and technical college of  
54 Bluefield state college - Clay, Fayette, Greenbrier, Mercer,  
55 McDowell, Monroe, Nicholas, Pocahontas, Raleigh, Summers,  
56 and Webster counties; and

57 (C) Fairmont state community and technical college -  
58 Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison,  
59 Lewis, Marion, Monongalia, Preston, Randolph, Taylor and  
60 Upshur counties;

61 (b) It is the intent of the Legislature that, where counties are  
62 listed in more than one district, the county shall be the joint  
63 responsibility of each community and technical college  
64 assigned that county or shall be divided as determined by the  
65 commission. The boundaries of the districts may be modified  
66 from time to time by the commission to serve better the needs  
67 within the districts. Such modifications are not required to  
68 follow county boundaries.

69 (c) Prior to the first day of July, two thousand three,  
70 Glenville state college, Fairmont state college and Bluefield

71 state college shall agree as to the transfer of ownership of or  
72 title to any property, materials, equipment or supplies of the  
73 former Glenville state community and technical college; the  
74 transfer of any valid agreement, obligation or claim entered into  
75 or incurred by the Glenville state community and technical  
76 college; and the transfer, if any, of faculty and staff employed  
77 by Glenville state college for the benefit of its community and  
78 technical college. Any disagreement regarding these transfers  
79 shall be submitted to the higher education policy commission  
80 for resolution.

**§18B-3C-8. Process for achieving independently-accredited  
community and technical colleges.**

1 (a) Over a six-year period beginning the first day of July,  
2 two thousand one, West Virginia shall move from having  
3 “component” community and technical colleges to having a  
4 statewide network of independently-accredited community and  
5 technical colleges serving every region of the state. This section  
6 does not apply to the freestanding community and technical  
7 colleges, West Virginia university at Parkersburg and Potomac  
8 state college of West Virginia university.

9 (b) To be eligible for funds appropriated to develop  
10 independently accredited community and technical colleges, a  
11 state institution of higher education shall demonstrate the  
12 following:

13 (1) That it has as a part of its institutional compact ap-  
14 proved by the council and the commission a step-by-step plan  
15 with measurable benchmarks for developing an independently  
16 accredited community and technical college that meets the  
17 essential conditions set forth in section three of this article;

18 (2) That it is able to offer evidence annually to the satisfac-  
19 tion of the council and the commission that it is making  
20 progress toward accomplishing the benchmarks established in

21 its institutional compact for developing an independently  
22 accredited community and technical college; and

23 (3) That it has submitted an expenditure schedule approved  
24 by the council and the commission which sets forth a proposed  
25 plan of expenditures for funds allocated to it from the fund.

26 (c) The following are recommended strategies for moving  
27 from the current arrangement of “component” community and  
28 technical colleges to the legislatively mandated statewide  
29 network of independently accredited community and technical  
30 colleges serving every region of the state. The Legislature  
31 recognizes that there may be other means to achieve this  
32 ultimate objective; however, it is the intent of the Legislature  
33 that the move from the current arrangement of “component”  
34 community and technical colleges to the legislatively-mandated  
35 statewide network of independently-accredited community and  
36 technical colleges serving every region of the state shall be  
37 accomplished. The following recommendations are designed to  
38 reflect significant variations among regions and the potential  
39 impacts on the sponsoring institutions.

40 (1) *New River Community and Technical College of*  
41 *Bluefield State College* —

42 (A) Bluefield state shall retain its existing mission but place  
43 greater emphasis and priority on its community and technical  
44 college role and serving the citizens of its expanded service  
45 district. Subject to the provisions of section twelve of this  
46 article, the community and technical college will remain  
47 administratively linked to Bluefield state college. Nothing  
48 herein may be construed to require Bluefield state college to  
49 discontinue any associate degree program in areas of particular  
50 institutional strength which are closely articulated to their  
51 baccalaureate programs and missions or which are of a high-



52 cost nature and can best be provided in direct coordination with  
53 a baccalaureate institution.

54 (B) Effective the first day of July, two thousand three, the  
55 component formerly known as Bluefield state community and  
56 technical college shall become a multi-campus entity known as  
57 new river community and technical college, administratively  
58 linked to Bluefield state college. The multi-campus community  
59 and technical college shall serve Raleigh, Summers, Fayette,  
60 Greenbrier, Clay, Mercer, McDowell, Monroe, Nicholas,  
61 Pocahontas, and Webster counties and be headquartered in  
62 Beckley. The West Virginia council for community and  
63 technical college education shall appoint an institutional board  
64 of advisors, pursuant to section one, article six or this chapter,  
65 for new river community and technical college which is  
66 separate from the institutional board of governors of Bluefield  
67 state college.

68 (C) Bluefield state college shall take immediate steps to  
69 seek independent accreditation of new river community and  
70 technical college including all sites within its revised service  
71 district. The president and the board of governors are responsi-  
72 ble for obtaining independent accreditation of the community  
73 and technical college by the thirty-first day of December, two  
74 thousand four. If the multi-campus entity known as new river  
75 community and technical college has not obtained independent  
76 accreditation by this date, the commission shall choose one of  
77 the following options:

78 (i) Create new river as a freestanding community and  
79 technical college; or

80 (ii) Assign the responsibility for obtaining independent  
81 accreditation to another state institution of higher education.

82 (D) The president and the board of governors of Bluefield  
83 state college also are accountable to the commission for

84 ensuring that the full range of community and technical college  
85 services is available throughout the region and that new river  
86 community and technical college adheres to the essential  
87 conditions pursuant to section three of this article.

88 (E) As an independently accredited community and  
89 technical college, new river also shall serve as a higher educa-  
90 tion center for its region by brokering with other colleges,  
91 universities and other providers, in-state and out-of-state, both  
92 public and private, to ensure the coordinated access of students,  
93 employers, and other clients to needed programs and services.

94 (F) New river community and technical college shall  
95 facilitate the planning and development of a unified effort  
96 involving multiple providers and facilities, including, but not  
97 limited to, Concord college, the college of West Virginia,  
98 Marshall university, West Virginia university, West Virginia  
99 university institute of technology and other entities to meet the  
100 documented work force development needs in the region.  
101 Nothing in this subdivision prohibits or limits any existing, or  
102 the continuation of any existing, affiliation between the college  
103 of West Virginia, West Virginia university institute of technol-  
104 ogy and West Virginia university. New river community and  
105 technical college also shall provide the facilities and support  
106 services for other public and private institutions delivering  
107 courses, programs and services in Beckley. The objective is to  
108 assure students and employers in the area that there is coordina-  
109 tion and efficient use of resources among the separate programs  
110 and facilities, existing and planned, in the Beckley area.

111 (2) *Fairmont state community and technical college.* —  
112 Fairmont state community and technical college shall be an  
113 independently accredited community and technical college  
114 serving Marion, Doddridge, Barbour, Harrison, Monongalia,  
115 Preston, Randolph Taylor, Braxton, Calhoun, Gilmer, Lewis,  
116 and Upshur counties. The community and technical college is

117 developed on the base of the existing component community  
118 and technical college of Fairmont state college. Subject to the  
119 provisions of this section, the president and the governing board  
120 of Fairmont state college are responsible, according to a plan  
121 approved by the commission, for step-by-step implementation  
122 of the independently accredited community and technical  
123 college which adheres to the essential conditions pursuant to  
124 section three of this article. Subject to the provisions of section  
125 twelve of this article, the community and technical college will  
126 remain administratively linked to Fairmont state college.  
127 Nothing herein may be construed to require Fairmont state  
128 college to discontinue any associate degree program in areas of  
129 particular institutional strength which are closely articulated to  
130 their baccalaureate programs and missions or which are of a  
131 high-cost nature and can best be provided in direct coordination  
132 with a baccalaureate institution.

133       (3) *Marshall university community and technical college.*  
134 — Senate Bill 653 created an implementation board charged  
135 with the responsibility to develop a plan, to be recommended to  
136 the commission, for the most effective and efficient method to  
137 deliver comprehensive community and technical college  
138 education to the citizens and employers of the responsibility  
139 areas of Marshall university, West Virginia state college and  
140 West Virginia university institute of technology. Pursuant to the  
141 recommendation of the implementation board and of the  
142 commission, Marshall university community and technical  
143 college shall become an independently accredited community  
144 and technical college. It shall serve Cabell, Kanawha, Mason,  
145 Putnam and Wayne counties. The new community and technical  
146 college is developed on the base of the existing component  
147 community and technical college of Marshall university.  
148 Subject to the provisions of this section, the president and the  
149 governing board of Marshall university are responsible,  
150 according to a plan approved by the commission, for  
151 step-by-step implementation of the new independently accred-

152 ited community and technical college which adheres to the  
153 essential conditions pursuant to section three of this article.  
154 Subject to the provisions of section twelve of this article, the  
155 community and technical college will remain administratively  
156 linked to Marshall university. Nothing herein may be construed  
157 to require Marshall university to discontinue any associate  
158 degree program in areas of particular institutional strength  
159 which are closely articulated to their baccalaureate programs  
160 and missions or which are of a high-cost nature and can best be  
161 provided in direct coordination with a baccalaureate institution.

162       (4) *Shepherd community and technical college.* — Shep-  
163 herd community and technical college shall become an inde-  
164 pendently accredited community and technical college. It shall  
165 serve Jefferson, Berkeley and Morgan counties. The new  
166 community and technical college is developed on the base of  
167 the existing component community and technical college of  
168 Shepherd college. Subject to the provisions of this section, the  
169 president and the governing board of Shepherd college are  
170 responsible, according to a plan approved by the commission,  
171 for step-by-step implementation of the new independently  
172 accredited community and technical college which adheres to  
173 the essential conditions pursuant to section three of this article.  
174 Subject to the provisions of section twelve of this article, the  
175 community and technical college will remain administratively  
176 linked to Shepherd college. Nothing herein may be construed to  
177 require Shepherd college to discontinue any associate degree  
178 program in areas of particular institutional strength which are  
179 closely articulated to their baccalaureate programs and missions  
180 or which are of a high-cost nature and can best be provided in  
181 direct coordination with a baccalaureate institution.

182       (5) *West Virginia state community and technical college.* —  
183 Senate Bill 653 created an implementation board charged with  
184 the responsibility to develop a plan, to be recommended to the  
185 commission, for the most effective and efficient method to

186 deliver comprehensive community and technical college  
187 education to the citizens and employers of the responsibility  
188 areas of Marshall university, West Virginia state college and  
189 West Virginia university institute of technology. Pursuant to the  
190 recommendation of the implementation board and of the  
191 commission, West Virginia state community and technical  
192 college shall become an independently accredited community  
193 and technical college. It shall serve Kanawha, Putnam and Clay  
194 counties. The new community and technical college is devel-  
195 oped on the base of the existing component community and  
196 technical college of West Virginia state college. Subject to the  
197 provisions of this section, the president and the governing board  
198 of West Virginia state college are responsible, according to a  
199 plan approved by the commission, for step-by-step implementa-  
200 tion of the new independently accredited community and  
201 technical college which adheres to the essential conditions  
202 pursuant to section three of this article. Subject to the provi-  
203 sions of section twelve of this article, the community and  
204 technical college will remain administratively linked to West  
205 Virginia state college. Nothing herein may be construed to  
206 require West Virginia state college to discontinue any associate  
207 degree program in areas of particular institutional strength  
208 which are closely articulated to their baccalaureate programs  
209 and missions or which are of a high-cost nature and can best be  
210 provided in direct coordination with a baccalaureate institution.

211 (6) *West Virginia university institute of technology.* —  
212 Senate Bill 653 created an implementation board charged with  
213 the responsibility to develop a plan, to be recommended to the  
214 commission, for the most effective and efficient method to  
215 deliver comprehensive community and technical college  
216 education to the citizens and employers of the responsibility  
217 areas of Marshall university, West Virginia state college and  
218 West Virginia university institute of technology. Pursuant to the  
219 recommendation of the implementation board and of the  
220 commission, West Virginia university institute of technology

221 community and technical college shall become an independ-  
222 ently accredited community and technical college. It shall serve  
223 Fayette, Clay, Kanawha, Raleigh and Nicholas counties. The  
224 new community and technical college is developed on the base  
225 of the existing component community and technical college of  
226 West Virginia university institute of technology. Subject to the  
227 provisions of this section, the president and the governing board  
228 of West Virginia university institute of technology are responsi-  
229 ble, according to a plan approved by the commission, for  
230 step-by-step implementation of the new independently accred-  
231 ited community and technical college which adheres to the  
232 essential conditions pursuant to section three of this article.  
233 Subject to the provisions of section twelve of this article, the  
234 community and technical college will remain administratively  
235 linked to West Virginia university institute of technology.  
236 Nothing herein may be construed to require West Virginia  
237 university institute of technology to discontinue any associate  
238 degree program in areas of particular institutional strength  
239 which are closely articulated to their baccalaureate programs  
240 and missions or which are of a high-cost nature and can best be  
241 provided in direct coordination with a baccalaureate institution.

**ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

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

1       The governing boards and the commission are authorized  
2 and empowered to enter into contracts and expend funds for  
3 programs, services and facilities provided by public and private  
4 education institutions, associations, boards, agencies, consortia,  
5 corporations, partnerships, individuals and local, state and  
6 federal governmental bodies within and outside of West  
7 Virginia in order that maximum higher education opportunities  
8 of high quality may be provided to the citizens of the state in  
9 the most economical manner. In no event may a contract for

10 such services and facilities be entered into unless the commis-  
11 sion or the governing boards have determined that such services  
12 and facilities are necessary and would be at a savings to the  
13 state.

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

1 (a) The commission and each governing board, through the  
2 vice chancellor for administration, shall purchase or acquire all  
3 materials, supplies, equipment, services and printing required  
4 for that governing board or the commission, as appropriate, and  
5 the state institutions of higher education under their jurisdiction.  
6 The commission shall adopt rules governing and controlling  
7 acquisitions and purchases in accordance with the provisions of  
8 this section. The rules shall assure that the commission and the  
9 governing boards:

10 (1) Do not preclude any person from participating and  
11 making sales thereof to the governing board or to the commis-  
12 sion except as otherwise provided in section five of this article.  
13 Provision of consultant services such as strategic planning  
14 services will not preclude or inhibit the governing boards or the  
15 commission from considering any qualified bid or response for  
16 delivery of a product or a commodity because of the rendering  
17 of those consultant services;

18 (2) Establish and prescribe specifications, in all proper  
19 cases, for materials, supplies, equipment, services and printing  
20 to be purchased; and

21 (3) Adopt and prescribe such purchase order, requisition or  
22 other forms as may be required;

23 (4) Negotiate for and make purchases and acquisitions in  
24 such quantities, at such times and under contract, in the open  
25 market or through other accepted methods of governmental

26 purchasing as may be practicable in accordance with general  
27 law;

28 (5) Advertise for bids on all purchases exceeding twenty-  
29 five thousand dollars, to purchase by means of sealed bids and  
30 competitive bidding or to effect advantageous purchases  
31 through other accepted governmental methods and practices;

32 (6) Post notices of all acquisitions and purchases for which  
33 competitive bids are being solicited in the purchasing office of  
34 the specified institution involved in the purchase, at least two  
35 weeks prior to making such purchases and ensure that the notice  
36 is available to the public during business hours;

37 (7) Provide for purchasing in the open market;

38 (8) Make provision for vendor notification of bid solicita-  
39 tion and emergency purchasing; and

40 (9) Provide that competitive bids are not required for  
41 purchases of five thousand dollars or less.

42 (b) The commission or each governing board, through the  
43 vice chancellor for administration, may issue a check in  
44 advance to a company supplying postage meters for postage  
45 used by that board, the commission and by the state institutions  
46 of higher education under their jurisdiction.

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



55 this code apply to the competitive bids made pursuant to this  
56 section.

57 (d) The governing boards and the commission shall  
58 maintain a purchase file, which shall be a public record and  
59 open for public inspection. After the award of the order or  
60 contract, the governing boards and the commission shall  
61 indicate upon the successful bid that it was the successful bid  
62 and shall further indicate why bids are rejected and, if the  
63 mathematical low vendor is not awarded the order or contract,  
64 the reason therefor. No records in the purchase file may be  
65 destroyed without the written consent of the legislative auditor.  
66 Those files in which the original documentation has been held  
67 for at least one year and in which the original documents have  
68 been reproduced and archived on microfilm or other equivalent  
69 method of duplication may be destroyed without the written  
70 consent of the legislative auditor. All files, no matter the  
71 storage method, shall be open for inspection by the legislative  
72 auditor upon request.

73 (e) The commission also shall adopt rules to prescribe  
74 qualifications to be met by any person who is to be employed  
75 as a buyer pursuant to this section. These rules shall require that  
76 no person may be employed as a buyer unless that person, at the  
77 time of employment, either is:

78 (1) A graduate of an accredited college or university; or

79 (2) Has at least four years' experience in purchasing for any  
80 unit of government or for any business, commercial or indus-  
81 trial enterprise.

82 (f) Any person making purchases and acquisitions pursuant  
83 to this section shall execute a bond in the penalty of fifty  
84 thousand dollars, payable to the state of West Virginia, with a  
85 corporate bonding or surety company authorized to do business  
86 in this state as surety thereon, in form prescribed by the

87 attorney general and conditioned upon the faithful performance  
88 of all duties in accordance with sections four through eight of  
89 this article and the rules of the interim governing board and the  
90 commission. In lieu of separate bonds for such buyers, a blanket  
91 surety bond may be obtained. Any such bond shall be filed with  
92 the secretary of state. The cost of any such bond shall be paid  
93 from funds appropriated to the applicable governing board or  
94 commission.

95 (g) All purchases and acquisitions shall be made in consid-  
96 eration and within limits of available appropriations and funds  
97 and in accordance with applicable provisions of article two,  
98 chapter five-a of this code, relating to expenditure schedules  
99 and quarterly allotments of funds.

100 (h) The governing boards and the commission may make  
101 requisitions upon the auditor for a sum to be known as an  
102 advance allowance account, in no case to exceed five percent of  
103 the total of the appropriations for the governing board or the  
104 commission, and the auditor shall draw a warrant upon the  
105 treasurer for such accounts. All advance allowance accounts  
106 shall be accounted for by the applicable governing board or  
107 commission once every thirty days or more often if required by  
108 the state auditor.

109 (i) Contracts entered into pursuant to this section shall be  
110 signed by the applicable governing board or the commission in  
111 the name of the state and shall be approved as to form by the  
112 attorney general. A contract which requires approval as to form  
113 by the attorney general and for which the attorney general has  
114 not responded within fifteen days of presentation of the  
115 contract, the contract shall be considered approved. A contract  
116 or a change order for that contract and notwithstanding any  
117 other provision of this code to the contrary, associated docu-  
118 ments such as performance and labor/material payments, bonds  
119 and certificates of insurance which use terms and conditions or

120 standardized forms previously approved by the attorney general  
121 and do not make substantive changes in the terms and condi-  
122 tions of the contract do not require approval by the attorney  
123 general. The attorney general shall make a list of those changes  
124 which he or she deems to be substantive and the list, and any  
125 changes thereto, shall be published in the state register. A  
126 contract that exceeds fifteen thousand dollars shall be filed with  
127 the state auditor. If requested to do so, the governing boards or  
128 the commission shall make all contracts available for inspection  
129 by the state auditor. The governing board or the commission, as  
130 appropriate, shall prescribe the amount of deposit or bond to be  
131 submitted with a bid or contract, if any, and the amount of  
132 deposit or bond to be given for the faithful performance of a  
133 contract.

134 (j) If the governing board or the commission purchases or  
135 contracts for materials, supplies, equipment, services and  
136 printing contrary to the provisions of sections four through  
137 seven of this article or the rules pursuant thereto, such purchase  
138 or contract shall be void and of no effect.

139 (k) Any governing board or the commission, as appropriate,  
140 may request the director of purchases to make available, from  
141 time to time, the facilities and services of that department to the  
142 governing boards or the commission in the purchase and  
143 acquisition of materials, supplies, equipment, services and  
144 printing and the director of purchases shall cooperate with that  
145 governing board or the commission, as appropriate, in all such  
146 purchases and acquisitions upon such request.

147 (l) Each governing board or the commission, as appropriate,  
148 shall permit private institutions of higher education to join as  
149 purchasers on purchase contracts for materials, supplies,  
150 services and equipment entered into by that governing board or  
151 the commission. Any private school desiring to join as purchas-  
152 ers on such purchase contracts shall file with that governing

153 board or the commission an affidavit signed by the president of  
154 the institution of higher education or a designee requesting that  
155 it be authorized to join as purchaser on purchase contracts of  
156 that governing board or the commission, as appropriate. The  
157 private school shall agree that it is bound by such terms and  
158 conditions as that governing board or the commission may  
159 prescribe and that it will be responsible for payment directly to  
160 the vendor under each purchase contract.

161 (m) Notwithstanding any other provision of this code to the  
162 contrary, the governing boards and the commission, as appro-  
163 priate, may make purchases from cooperative buying groups,  
164 consortia, the federal government or from federal government  
165 contracts if the materials, supplies, services, equipment or  
166 printing to be purchased is available from cooperative buying  
167 groups, consortia, the federal government or from a federal  
168 contract and purchasing from the cooperative buying groups,  
169 consortia, federal government or from a federal government  
170 contract would be the most financially advantageous manner of  
171 making the purchase.

172 (n) An independent performance audit of all purchasing  
173 functions and duties which are performed at any institution of  
174 higher education shall be performed each fiscal year. The joint  
175 committee on government and finance shall conduct the  
176 performance audit and the governing boards and the commis-  
177 sion, as appropriate, shall be responsible for paying the cost of  
178 the audit from funds appropriated to the governing boards or the  
179 commission.

180 (o) The governing boards shall require each institution  
181 under their respective jurisdictions to notify and inform every  
182 vendor doing business with that institution of the provisions of  
183 section fifty-four, article three, chapter five-a of this code, also  
184 known as the "prompt pay act of 1990".

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

190 (q) After the commission has granted approval for  
191 lease-purchase arrangements by the governing boards, a  
192 governing board may enter into lease-purchase arrangements  
193 for capital improvements, including equipment. Any lease-  
194 purchase arrangement so entered shall constitute a special  
195 obligation of the state of West Virginia. The obligation under  
196 a lease-purchase arrangement so entered may be from any funds  
197 legally available to the institution and must be cancelable at the  
198 option of the governing board or institution at the end of any  
199 fiscal year. The obligation, any assignment or securitization  
200 thereof, shall never constitute an indebtedness of the state of  
201 West Virginia or any department, agency or political subdivi-  
202 sion thereof, within the meaning of any constitutional provision  
203 or statutory limitation, and may not be a charge against the  
204 general credit or taxing powers of the state or any political  
205 subdivision thereof; and such facts shall be plainly stated in any  
206 lease-purchase agreement. Further, the lease-purchase agree-  
207 ment shall prohibit assignment or securitization without consent  
208 of the lessee and the approval of the attorney general of West  
209 Virginia. Proposals for any arrangement must be requested in  
210 accordance with the requirements of this section and any rules  
211 or guidelines of the commission. In addition, any lease-pur-  
212 chase agreement which exceeds one hundred thousand dollars  
213 total shall be approved by the attorney general of West Vir-  
214 ginia. The interest component of any lease-purchase obligation  
215 shall be exempt from all taxation of the state of West Virginia,  
216 except inheritance, estate and transfer taxes. It is the intent of  
217 the Legislature that if the requirements set forth in the internal  
218 revenue code of one thousand nine hundred eighty-six, as  
219 amended, and any regulations promulgated pursuant thereto are

220 met, the interest component of any lease-purchase obligation  
221 also shall be exempt from the gross income of the recipient for  
222 purposes of federal income taxation and may be designated by  
223 the governing board or the president of the institution as a bank-  
224 qualified obligation.

225 (r) Notwithstanding any other provision of this code to the  
226 contrary, the commission and the governing boards have the  
227 authority, in the name of the state, to lease, or offer to lease, as  
228 lessee, any grounds, buildings, office or other space in accor-  
229 dance with this paragraph and as provided below:

230 (1) The commission and the governing boards have sole  
231 authority to select and to acquire by contract or lease all  
232 grounds, buildings, office space or other space, the rental of  
233 which is necessarily required by the commission or governing  
234 boards for the institutions under their jurisdiction. The chief  
235 executive officer of the commission or an institution shall  
236 certify the following:

237 (A) That the grounds, buildings, office space or other space  
238 requested is necessarily required for the proper function of the  
239 commission or institution;

240 (B) That the commission or institution will be responsible  
241 for all rent and other necessary payments in connection with the  
242 contract or lease; and

243 (C) That satisfactory grounds, buildings, office space or  
244 other space is not available on grounds and in buildings now  
245 owned or leased by the commission or the institution.

246 Before executing any rental contract or lease, the commis-  
247 sion or a governing board shall determine the fair rental value  
248 for the rental of the requested grounds, buildings, office space  
249 or other space, in the condition in which they exist, and shall

250 contract for or lease the premises at a price not to exceed the  
251 fair rental value.

252 (2) The commission and the governing boards are autho-  
253 rized to enter into long-term agreements for buildings, land and  
254 space for periods longer than one fiscal year, but not to exceed  
255 forty years. Any purchases of real estate, any lease-purchase  
256 agreement and any construction of new buildings or other  
257 acquisition of buildings, office space or grounds resulting  
258 therefrom, pursuant to the provisions of this subsection shall be  
259 presented by the policy commission to the joint committee on  
260 government and finance for prior review. Any such lease shall  
261 contain, in substance, all the following provisions:

262 (A) That the commission or the governing board, as lessee,  
263 have the right to cancel the lease without further obligation on  
264 the part of the lessee upon giving thirty days' written notice to  
265 the lessor at least thirty days prior to the last day of the succeed-  
266 ing month;

267 (B) That the lease shall be considered canceled without  
268 further obligation on the part of the lessee if the Legislature or  
269 the federal government fails to appropriate sufficient funds  
270 therefor or otherwise acts to impair the lease or cause it to be  
271 canceled; and

272 (C) That the lease shall be considered renewed for each  
273 ensuing fiscal year during the term of the lease unless it is  
274 canceled by the commission or the governing board before the  
275 end of the then-current fiscal year.

276 (3) The commission or an institution which is granted any  
277 grounds, buildings, office space or other space leased in  
278 accordance with this section may not order or make permanent  
279 changes of any type thereto, unless the commission or the  
280 governing board, as appropriate, has first determined that the  
281 change is necessary for the proper, efficient and economically

282 sound operation of the institution. For purposes of this section,  
 283 a “permanent change” means any addition, alteration, improve-  
 284 ment, remodeling, repair or other change involving the expendi-  
 285 ture of state funds for the installation of any tangible thing  
 286 which cannot be economically removed from the grounds,  
 287 buildings, office space or other space when vacated by the  
 288 institution.

289 (4) Leases and other instruments for grounds, buildings,  
 290 office or other space, once approved by the commission or  
 291 governing board, may be signed by the chief executive officer  
 292 of the commission or the institution. Any lease or instrument  
 293 exceeding one hundred thousand dollars annually shall be  
 294 approved as to form by the attorney general. A lease or other  
 295 instrument for grounds, buildings, office or other space that  
 296 contains a term, including any options, of more than six months  
 297 for its fulfillment shall be filed with the state auditor.

298 (5) The commission may promulgate rules it considers  
 299 necessary to carry out the provisions of this section.

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

1 (a) Every person, firm or corporation selling or offering to  
 2 sell to the commission or the governing boards, upon competi-  
 3 tive bids or otherwise, any materials, equipment, services or  
 4 supplies in excess of twenty-five thousand dollars:

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

7 (2) Shall file with the director of the purchasing division of  
 8 the state of West Virginia the affidavit required herein; and

9 (3) If presently in compliance with said section may not be  
 10 required to requalify thereunder to be able to transact business  
 11 with the commission or the governing boards.



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

**§18B-5-6. Other code provisions relating to purchasing 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.**

1 The provisions of article three, chapter five-a of this code  
2 do not control or govern the purchase, acquisition or other  
3 disposition of any equipment, materials, supplies, services or  
4 printing by the commission or the governing boards, except as

5 provided in sections four through seven of this article. Sections  
6 twenty-nine, thirty and thirty-one, article three, chapter five-a  
7 of this code apply to all purchasing activities of the commission  
8 and the governing boards.

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

25 A person who violates any of the provisions of this section  
26 is guilty of a misdemeanor, and, upon conviction thereof, shall  
27 be imprisoned in jail not less than three months nor more than  
28 one year, or fined not less than fifty nor more than one thousand  
29 dollars, or both imprisoned and fined, in the discretion of the  
30 court. Any person who violates any provisions of this section by  
31 receiving money or other thing of value under circumstances  
32 constituting the crime of bribery under the provisions of section  
33 three, article five-a, chapter sixty-one of this code, shall, upon  
34 conviction of bribery, be punished as provided in section nine  
35 of said article.

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

1 (a) The commission and the governing boards shall dispose  
2 of obsolete and unusable equipment, surplus supplies and other  
3 unneeded materials, either by transfer to other governmental  
4 agencies or institutions, by exchange or trade, or by sale as junk  
5 or otherwise. The commission and each governing board shall  
6 adopt rules governing and controlling the disposition of all such  
7 equipment, supplies and materials. At least ten days prior to the  
8 disposition, the commission or the governing boards, as  
9 applicable, shall advertise, by newspaper publication as a Class  
10 II legal advertisement in compliance with the provisions of  
11 article three, chapter fifty-nine of this code, in the county in  
12 which the equipment, supplies and materials are located the  
13 availability or sales of such disposable equipment, supplies and  
14 materials. The commission or governing boards, as applicable,  
15 may sell the disposable equipment, supplies and materials, in  
16 whole or in part, at public auction or by sealed bid, or may  
17 transfer, exchange or trade the same to other governmental  
18 agencies or institutions (if by transfer, exchange or trade, then  
19 without advertising), in whole or in part, as sound business  
20 practices may warrant under existing circumstances and  
21 conditions.

22 (b) The commission or governing board, as appropriate,  
23 shall report semiannually to the legislative auditor, all sales of  
24 commodities made during the preceding six months. The report  
25 shall include a description of the commodities sold, the name of  
26 the buyer to whom each commodity was sold, and the price  
27 paid by the buyer.

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

35 property that is disposed of or sold pursuant to the provisions of  
36 this section.

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

1 (a) The commission shall ensure the fiscal integrity of any  
2 electronic process conducted at its offices or at any institution  
3 using best business and management practices.

4 (b) The commission shall implement a process whereby, to  
5 the maximum extent practicable, employees of the commission  
6 and any state institution of higher education receive their wages  
7 via electronic transfer or direct deposit.

8 (c) Notwithstanding the provisions of section ten-a, article  
9 three, chapter twelve of this code, the amount of any purchase  
10 made with a purchasing card used by the commission or an  
11 institution may not exceed five thousand dollars. Subject to  
12 approval of the purchasing division of the department of  
13 administration, any routine, regularly-scheduled payment,  
14 including, but not limited to, utility payments and real property  
15 rental fees may exceed this amount limit. The commission or an  
16 institution may use a purchasing card for travel expenses  
17 directly related to the job duties of the traveling employee.  
18 Traveling expenses may include registration fees and airline  
19 and other transportation reservations, if approved by the  
20 administrative head of the institution. Traveling expenses may  
21 not include fuel or food purchases. The commission and each  
22 institution shall maintain one purchase card for use only in and  
23 for situations declared an emergency by the president of the  
24 institution and approved by the chancellor. Such emergencies  
25 may include, but are not limited to, partial or total destruction  
26 of a campus facility; loss of a critical component of utility  
27 infrastructure; heating, ventilation, or air conditioning failure in  
28 an essential academic building; loss of campus road, parking lot

29 or campus entrance; or a local, regional, or national emergency  
30 situation that has a direct impact on the campus.

31 (d) Notwithstanding the provisions of section ten-f, article  
32 three, chapter twelve of this code, or any other provision of this  
33 code or law to the contrary, by the thirtieth day of June, two  
34 thousand four, the auditor shall accept any receiving report  
35 submitted in a format utilizing electronic media and from the  
36 effective date of this section shall conduct any audit or investi-  
37 gation of the commission or any institution at its own expense  
38 and at no cost to the commission or institution.

39 (e) The Legislature finds that an emergency exists, and,  
40 therefore, by the first day of July, two thousand three, the  
41 commission shall file an emergency legislative rule in accor-  
42 dance with the provisions of article three-a, chapter twenty-  
43 nine-a of this code. The rule shall provide for institutions  
44 individually or cooperatively to maximize their use of any of  
45 the following purchasing practices that are determined to  
46 provide a financial advantage:

- 47 (1) Bulk purchasing;
- 48 (2) Reverse bidding;
- 49 (3) Electronic marketplaces; and
- 50 (4) Electronic remitting.

51 (f) Each institution shall establish a consortium with at least  
52 one other institution in the most cost-efficient manner feasible,  
53 to consolidate the following operations and student services:

- 54 (1) Payroll operations;
- 55 (2) Human resources operations;
- 56 (3) Warehousing operations;

57 (4) Financial transactions;

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

60 (6) Standard and bulk purchasing; and

61 (7) Any other operation or service appropriate for consoli-  
62 dation as determined by the commission.

63 (g) An institution may charge a fee to each institution for  
64 which it provides a service or performs an operation. The fee  
65 rate shall be in the best interest of both the institution being  
66 served and the providing institution, as approved by the  
67 commission.

68 (h) Any community and technical college, college and  
69 university may provide the services authorized by this section  
70 for the benefit of any governmental body or public or private  
71 institution.

72 (i) Commencing with the two thousand four fall academic  
73 term, each institution shall reduce its number of low-enrollment  
74 sections of introductory courses. To the maximum extent  
75 practicable, institutions shall use distance learning to consoli-  
76 date the course sections. The commission shall report the  
77 progress of the reduction to the legislative oversight commis-  
78 sion on education accountability by the first day of December,  
79 two thousand four.

80 (j) An institution shall use its natural resources and alterna-  
81 tive fuel resources to the maximum extent feasible. The  
82 institution may supply the resources for its own use and for use  
83 by any other institution. The institution may supply the re-  
84 sources to the general public at fair market value. An institution  
85 shall maximize all federal or grant funds available for research  
86 regarding alternative energy sources, and may develop research  
87 parks to further the purpose of this section and to expand the  
88 economic development opportunities in the state.

89 (k) Any cost-savings realized or fee procured or retained by  
90 an institution pursuant to implementation of the provisions of  
91 this section shall be retained by the institution.

92 (l) In assuring the fiscal integrity of processes implemented  
93 under this section, at a minimum, the commission has the  
94 following responsibilities:

95 (1) To conduct a performance audit of the policies, proce-  
96 dures and results of the procurement of goods and services by  
97 the state institutions of higher education;

98 (2) To make progress reports on the implementation of this  
99 section to the legislative oversight commission on education  
100 accountability throughout the two thousand three interim  
101 meetings period;

102 (3) To make a comprehensive report to the legislative  
103 oversight commission on education accountability by the first  
104 day of December, two thousand three, on the results of the  
105 performance audit, together with any recommendations for  
106 additional actions that might be taken to improve the efficiency,  
107 effectiveness and economy of the administrative operations of  
108 the state institutions of higher education and the commission.

109 (m) The commission shall report annually to the legislative  
110 oversight commission on education accountability regarding  
111 any savings achieved by implementing the provisions of this  
112 section.

#### ARTICLE 6. ADVISORY COUNCILS.

##### **§18B-6-4b. Institutional classified employee council.**

1 (a) For the purposes of this section the following words  
2 have the specified meanings unless the context clearly indicates  
3 a different meaning:

4 (1) "Council" or "staff council" means the advisory group  
5 of classified employees formed on each campus of state

6 institutions of higher education pursuant to subsections (b) and  
7 (c) of this section; and

8 (2) "State institutions of higher education" means all  
9 institutions as defined in section two, article one of this chapter  
10 and, additionally, Potomac state college of West Virginia  
11 university, West Virginia university at Parkersburg, West  
12 Virginia university institute of technology, Robert C. Byrd  
13 health sciences Charleston division of West Virginia university,  
14 the Marshall university graduate college, new river community  
15 and technical college, the higher education policy commission  
16 and the West Virginia network for educational telecomputing.

17 (b) Effective the first day of April, two thousand three,  
18 there is established at each state institution of higher education  
19 an institutional classified employees advisory council to be  
20 known as the staff council. Current members of staff councils  
21 and their officers who have been duly elected shall continue to  
22 serve with all the rights, privileges and responsibilities pre-  
23 scribed by this section until the time that members elected as set  
24 forth in subsection (c) of this section assume office.

25 (1) During the month of April of each odd-numbered year,  
26 beginning in the year two thousand three, each president or  
27 other administrative head of a state institution of higher  
28 education, at the direction of the council, and in accordance  
29 with procedures established by the council, shall convene a  
30 meeting or otherwise institute a balloting process to elect  
31 members of the staff council as follows:

32 (A) Two classified employees from the administra-  
33 tive/managerial sector;

34 (B) Two classified employees from the professional/non-  
35 teaching sector;

36 (C) Two classified employees from the paraprofessional  
37 sector;



38 (D) Two classified employees from the secretarial/clerical  
39 sector;

40 (E) Two classified employees from the physical  
41 plant/maintenance sector; and

42 (F) The member who is elected to serve on the advisory  
43 council of classified employees pursuant to section four-a of  
44 this article. This person shall serve as an ex officio, voting  
45 member of the staff council and shall report to the council on  
46 meetings of the advisory council and the board of governors.

47 (2) Classified employees at Marshall university and West  
48 Virginia university may elect five classified employees from  
49 each of the five sectors to serve on the staff council.

50 (3) Members shall serve a term of two years which term  
51 shall begin on the first day of July of each odd-numbered year.  
52 Members of the council are eligible to succeed themselves.

53 (4) Classified employees shall select one of their members  
54 to serve as chair. All classified employees at the institution are  
55 eligible to vote for the chair by any method approved by a  
56 majority of their members. The chair is eligible to succeed  
57 himself or herself.

58 (5) The staff council shall meet at least monthly or at the  
59 call of the chair. With appropriate notification to the institu-  
60 tional president, the chair may convene staff council meetings  
61 for the purpose of sharing information and discussing issues  
62 affecting the classified employees or the efficient and effective  
63 operations of the institution.

64 (6) The president of the institution shall meet at least  
65 quarterly with the staff council to discuss matters affecting  
66 classified employees.

67 (7) The governing board shall meet at least annually with  
68 the staff council to discuss matters affecting classified employ-  
69 ees and the effective and efficient management of the institu-  
70 tion.

**ARTICLE 7. PERSONNEL GENERALLY.****§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.**

1 (a) The president or other administrative head of each state  
2 institution of higher education shall give written notice to  
3 probationary faculty members concerning their retention or  
4 nonretention for the ensuing academic year: (1) Not later than  
5 the first day of March for those probationary faculty members  
6 who are in their first academic year of service; (2) not later than  
7 the fifteenth day of December for those probationary faculty  
8 members who are in their second academic year of service; and  
9 (3) at least one year before the expiration of an appointment for  
10 those probationary faculty members who have been employed  
11 two or more years with the institution. Such notice to those  
12 probationary faculty members not being retained shall be by  
13 certified mail, return receipt requested.

14 (b) For any probationary faculty member employed after  
15 the effective date of this section, the president or other adminis-  
16 trative head of each institution shall give written notice con-  
17 cerning retention or nonretention for the ensuing academic year  
18 not later than the first day of March.

19 (c) If a request is made by the probationary faculty member  
20 not retained, the president or other administrative head of the  
21 institution shall inform the probationary faculty member by  
22 certified mail within ten days of the reasons for nonretention.  
23 Any probationary faculty member who desires to appeal the  
24 decision shall use the grievance procedure established in article  
25 six-a, chapter twenty-nine of this code. If it is concluded that  
26 the reasons for nonretention are arbitrary or capricious or  
27 without a factual basis, the faculty member shall be retained for  
28 the ensuing academic year.

29 (d) The term “probationary faculty member” shall be  
30 defined according to rules promulgated by the governing  
31 boards. The rights provided to probationary faculty members by

32 this section are in addition to, and not in lieu of, other rights  
33 afforded them by other rules and other provisions of law.

**§18B-7-6. Adjunct faculty; part-time and temporary classified employees.**

1 (a) Each governing board, with the advice and assistance of  
2 the faculty senate, shall establish a policy regarding the role of  
3 adjunct faculty at state institutions of higher education and  
4 define an appropriate balance between full-time and adjunct  
5 faculty members.

6 (b) Each governing board, with the advice and assistance of  
7 the staff council shall establish a policy regarding the role of  
8 part-time classified employees. Such policy shall discourage the  
9 hiring of part-time employees solely to avoid the payment of  
10 benefits or in lieu of full-time employees and shall provide all  
11 qualified classified employees with nine-month or ten-month  
12 contracts with the opportunity to accept part-time or full-time  
13 summer employment before new persons are hired for the part-  
14 time or full-time employment.

15 (c) Each governing board shall establish the policies  
16 required by this section by the first day of July, two thousand  
17 three. The commission shall report to the legislative oversight  
18 commission on education accountability by the first day of  
19 December, two thousand three, regarding the development and  
20 implementation of these policies, including the number of  
21 adjunct faculty and part-time employees at each institution and  
22 the level of compliance with the policies. In making determina-  
23 tions regarding the development, implementation and compli-  
24 ance with the policies required by this section, the commission  
25 shall take into account the special flexibility needs of commu-  
26 nity and technical colleges and shall allow greater discretion for  
27 these institutions to make decisions regarding employing  
28 adjunct faculty.

**ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.**

**§18B-8-3. Faculty salary policies; reductions in salary prohibited; salary increase upon promotion in rank.**

1 (a) Each governing board shall establish and maintain a  
2 faculty salary policy that is competitive and which furthers the  
3 goals of attracting, retaining and rewarding high quality faculty.

4 (b) The salary of any full-time faculty member may not be  
5 reduced by the provisions of this article.

6 (c) Upon promotion in rank, each faculty member shall  
7 receive a salary increase of up to ten percent, as determined by  
8 the salary policy adopted by the governing board.

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.**

**§18B-9-5. Classified employee salary.**

1 (a) Any classified employee may receive merit increases  
2 and salary adjustments in accordance with policies established  
3 by the board of governors: *Provided*, That merit raises may be  
4 granted only pursuant to a rule adopted by the board of gover-  
5 nors, and approved by the chancellor, which provides a fair and  
6 equitable basis for granting merit raises pursuant to regular  
7 evaluations based upon reasonable performance standards.

8 (b) The current annual salary of any classified employee  
9 may not be reduced by the provisions of this article nor by any  
10 other action inconsistent with the provisions of this article, and  
11 nothing in this article may be construed to prohibit promotion  
12 of any classified employee to a job title carrying a higher pay  
13 grade if the promotion is in accordance with the provisions of  
14 this article and the personnel classification system established  
15 by the appropriate governing board.

16 (c) The cost of providing any salary increase pursuant to the  
17 provisions of section two, article five, chapter five of this code,  
18 shall be borne by the commission or institution from its existing  
19 budget. The commission or institution may not increase tuition

20 and fee charges, increase auxiliary fee charges, or receive  
21 additional general revenue funds to recover the costs of the  
22 increase. Notwithstanding any other provision of this code or  
23 law to the contrary, if insufficient funding is available to an  
24 institution or the commission to implement the provisions of  
25 said section two, funding may be derived from reducing  
26 employee positions to any level, in the discretion of the  
27 institution or commission, that is sufficient to provide adequate  
28 funds, and without regard to seniority.

**§18B-9-10. Higher education employees' catastrophic leave bank  
and leave transfer.**

1 (a) For the purposes of this section, "employee" means:

2 (1) A classified or nonclassified employee who is employed  
3 by a higher education governing board or by the policy com-  
4 mission; or

5 (2) A faculty member, as defined in section one, article  
6 eight of this chapter, who is eligible to accrue sick leave.

7 (b) An employee may donate sick and annual leave to a  
8 leave bank established and operated in accordance with the  
9 provisions of subsection (d) of this section or directly to another  
10 employee in accordance with the provisions of subsection (e) of  
11 this section. No employee may be compelled to donate sick or  
12 annual leave. Any leave donated by an employee pursuant to  
13 this section shall be used only for the purpose of catastrophic  
14 illness or injury as defined in subsection (c) of this section and  
15 shall reduce, to the extent of such donation, the number of days  
16 of annual or sick leave to which the employee is entitled.

17 (c) For the purpose of this section, a catastrophic illness or  
18 injury is one that is expected to incapacitate the employee and  
19 create a financial hardship because the employee has exhausted  
20 all sick and annual leave and other paid time off. Catastrophic  
21 illness or injury also includes an incapacitated immediate  
22 family member as defined by a governing board or the policy  
23 commission, as appropriate, if this results in the employee

24 being required to take time off from work for an extended  
25 period of time to care for the family member and if the em-  
26 ployee has exhausted all sick and annual leave and other paid  
27 time off.

28 (d) A leave bank or banks may be established at each state  
29 institution of higher education and the policy commission to  
30 which employees may donate either sick or annual leave. The  
31 bank or banks may be established jointly by the policy commis-  
32 sion and the governing boards or may be established for the  
33 policy commission and each of the governing boards. Sick or  
34 annual leave may be deposited in the leave bank, and such  
35 deposit shall be reflected as a day-for-day deduction from the  
36 sick or annual leave balance of the depositing employee.

37 Donated leave may be withdrawn by any employee  
38 experiencing a catastrophic illness or injury when the following  
39 conditions are met:

40 (1) The president of the institution or the chancellor of the  
41 policy commission, as appropriate, verifies that the employee  
42 is unable to work due to the catastrophic illness or injury; and

43 (2) The president of the institution or the chancellor, as  
44 appropriate, approves the withdrawal and provides written  
45 notice to the personnel office.

46 The withdrawal shall be reflected as a day-for-day addition  
47 to the leave balance of the withdrawing employee.

48 (e) Sick or annual leave may be donated to any employee  
49 experiencing a catastrophic illness or injury. Such leave shall be  
50 donated at the request of the employee after appropriate  
51 verification that the employee is unable to work due to the  
52 catastrophic illness or injury as determined by the president of  
53 the institution or the chancellor. When transfer of sick or annual  
54 leave is approved by the president of the institution or the  
55 chancellor, any employee may donate sick or annual leave in  
56 one-day increments by providing written notice to the personnel  
57 office. Donations shall be reflected as a day-for-day deduction

58 from the sick or annual leave balance of the donating employee.  
59 An employee receiving the donated sick or annual leave shall  
60 have any time which is donated credited to his or her account in  
61 one-day increments and reflected as a day-for-day addition to  
62 the leave balance of the receiving employee.

63 (f) Use of donated credits may not exceed a maximum of  
64 twelve continuous calendar months for any one catastrophic  
65 illness or injury. The total amount of sick or annual leave  
66 withdrawn or received may not exceed an amount sufficient to  
67 ensure the continuance of regular compensation and may not be  
68 used to extend insurance coverage pursuant to section thirteen,  
69 article sixteen, chapter five of this code. An employee with-  
70 drawing or receiving donations of sick or annual leave pursuant  
71 to this section shall use any leave personally accrued on a  
72 monthly basis prior to receiving additional donated sick or  
73 annual leave.

74 (g) Donated sick or annual leave deposited in an institu-  
75 tional leave bank or transferred under subsection (d) of this  
76 section may be inter-institutional in accordance with the  
77 policies of the appropriate governing board. Each institution  
78 and the policy commission is responsible for the administration  
79 of the sick or annual leave deposits, withdrawals and transfers  
80 of its employees. Rules implementing the provisions of this  
81 section may be adopted jointly or separately by the governing  
82 boards and the policy commission in accordance with article  
83 three-a, chapter twenty-nine-a of this code.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE  
INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-1. Enrollment, tuition and other fees at education insti-  
tutions; refund of fees.**

1 (a) Each governing board shall fix tuition and other fees for  
2 each school term for the different classes or categories of  
3 students enrolling at each state institution of higher education  
4 under its jurisdiction and may include among such fees any one  
5 or more of the following:

6 (1) Health service fees;

7 (2) Infirmary fees;

8 (3) Student activities, recreational, athletic and extracurric-  
9 ular fees, which fees may be used to finance a students'  
10 attorney to perform legal services for students in civil matters  
11 at such institutions. Such legal services are limited to only those  
12 types of cases, programs or services approved by the adminis-  
13 trative head of the institution where the legal services are to be  
14 performed; and

15 (4) Graduate center fees and branch college fees, or either,  
16 if the establishment and operations of graduate centers or  
17 branch colleges are otherwise authorized by law.

18 (b) All fees collected at any graduate center or at any  
19 branch college shall be paid into special funds and shall be used  
20 solely for the maintenance and operation of the graduate center  
21 or branch college at which they were collected The commission  
22 shall set tuition and fee goals for residents at each institution  
23 after examining tuition and fees at the institutions' peers.  
24 Tuition and fees for nonresident, undergraduate students shall,  
25 at a minimum, cover actual instructional costs as determined in  
26 accordance with commission policy. Students enrolled in  
27 undergraduate courses offered at off-campus locations shall pay  
28 an off-campus instruction fee and may not be required to pay  
29 the athletic fee and the student activity fee.

30 (c) The off-campus instruction fee shall be used solely for  
31 the support of off-campus courses offered by the institution.  
32 Off-campus locations for each institution shall be defined by  
33 the appropriate governing board. The schedule of all fees, and  
34 any changes therein, shall be entered in the minutes of the  
35 meeting of the appropriate governing board, and the board shall  
36 file with the legislative auditor a certified copy of such schedule  
37 and changes.

38 (d) In addition to the fees mentioned in the preceding  
39 paragraph, each governing board may impose and collect a



40 student union building fee. All such building fees collected at  
41 an institution shall be paid into a special student union building  
42 fund for such institution, which is hereby created in the state  
43 treasury. Pursuant to the provisions of section ten of this article,  
44 the fees shall be used only for the following purposes:

45 (1) The construction, operation and maintenance of a  
46 student union building or a combination student union and  
47 dining hall building;

48 (2) The payment of the principal of and interest on any  
49 bond issued to finance part or all of the construction of a  
50 student union building or a combination student union and  
51 dining hall building; or

52 (3) The renovation of an existing structure for use as a  
53 student union building or a combination student union and  
54 dining hall building, all as more fully provided in section ten of  
55 this article.

56 Any moneys in such funds not needed immediately for such  
57 purposes may be invested in any such bonds or other securities  
58 as are now or hereafter authorized as proper investments for  
59 state funds.

60 (e) The boards shall establish the rates to be charged  
61 full-time students enrolled during a regular academic term.

62 (1) For fee purposes, a full-time undergraduate student is  
63 one enrolled for twelve or more credit hours in a regular term,  
64 and a full-time graduate student is one enrolled for nine or more  
65 credit hours in a regular term.

66 (2) Undergraduate students taking fewer than twelve credit  
67 hours in a regular term shall have their fees reduced pro rata  
68 based upon one twelfth of the full-time rate per credit hour, and  
69 graduate students taking fewer than nine credit hours in a  
70 regular term shall have their fees reduced pro rata based upon  
71 one ninth of the full-time rate per credit hour.

72 (3) Fees for students enrolled in summer terms or other  
73 nontraditional time periods shall be prorated based upon the  
74 number of credit hours for which the student enrolls in accor-  
75 dance with the above provisions.

76 (f) All fees are due and payable by the student upon  
77 enrollment and registration for classes except as provided for in  
78 this subsection:

79 (1) The governing boards shall permit fee payments to be  
80 made in up to three installments over the course of the aca-  
81 demic term. All fees shall be paid prior to the awarding of  
82 course credit at the end of the academic term.

83 (2) The governing boards also shall authorize the accep-  
84 tance of credit cards or other payment methods which may be  
85 generally available to students for the payment of fees. The  
86 governing boards may charge the students for the reasonable  
87 and customary charges incurred in accepting credit cards and  
88 other methods of payment.

89 (3) If a governing board determines that a student's  
90 finances are affected adversely by a legal work stoppage, it may  
91 allow the student an additional six months to pay the fees for  
92 any academic term. The governing board shall determine on a  
93 case-by-case basis if the finances of a student are affected  
94 adversely.

95 (g) The rule related to assessment, payment and refund of  
96 fees including refund of fees upon voluntary or involuntary  
97 withdrawal from classes, shall comply with all applicable state  
98 and federal laws and shall be uniformly applied throughout the  
99 system.

100 (h) In addition to the other fees provided in this section,  
101 each governing board may impose, collect and distribute a fee  
102 to be used to finance a nonprofit, student-controlled public  
103 interest research group if the students at the institution demon-  
104 strate support for the increased fee in a manner and method  
105 established by that institution's elected student government.

106 The fee may not be used to finance litigation against the  
107 institution.

108 (i) Institutions shall retain tuition and fee revenues not  
109 pledged for bonded indebtedness or other purposes in accor-  
110 dance with a revised tuition policy adopted by the respective  
111 governing boards and approved by the commission. The revised  
112 tuition policy shall:

113 (1) Provide a basis for establishing nonresident tuition and  
114 fees;

115 (2) Allow institutions to charge different tuition and fees  
116 for different programs.

117 (3) Provide that a board of governors may propose to the  
118 commission a mandatory auxiliary fee under the following  
119 conditions:

120 (A) The fee shall be approved by the commission and either  
121 the students at the institution or the Legislature before becom-  
122 ing effective.

123 (B) Increases may not exceed previous state subsidies by  
124 more than ten percent.

125 (C) The fee may be used only to replace existing state funds  
126 subsidizing auxiliary services such as athletics or bookstores.

127 (D) If the fee is approved, the amount of the state subsidy  
128 shall be reduced annually by the amount of money generated  
129 for the institution by the fees and that amount shall be returned  
130 to general revenue. All state subsidies for the auxiliary services  
131 shall cease five years from the date the mandatory auxiliary fee  
132 was implemented.

133 (E) The commission shall certify to the Legislature by the  
134 first day of October in the fiscal year following implementation  
135 of the fee, and annually thereafter, the amount of fees collected  
136 for each of the five years.

137 (4) Establish methodology, where applicable, to ensure that,  
138 within the appropriate time period under the compact, commu-  
139 nity and technical college tuition rates for community and  
140 technical college students in all independently accredited  
141 community and technical colleges will be commensurate with  
142 the tuition and fees charged by their peer institutions.

143 (j) A penalty may not be imposed by the commission upon  
144 any institution based upon the number of nonresidents who  
145 attend the institution unless the commission determines that  
146 admission of nonresidents to any institution or program of study  
147 within the institution is impeding unreasonably the ability of the  
148 resident students to attend the institution or participate in the  
149 programs of the institution. The institutions shall report  
150 annually to the commission on the numbers of nonresidents and  
151 such other enrollment information as the commission may  
152 request.

153 (k) Tuition and fee increases of the governing boards are  
154 subject to rules adopted by the commission pursuant to subsec-  
155 tion (a), section four, article one-b of this chapter.

156 (1) A governing board may propose tuition and fee in-  
157 creases of up to nine and one-half percent for undergraduate  
158 resident students for any fiscal year except that proposed tuition  
159 and fees increases for community and technical colleges may be  
160 up to four and three quarters percent. Any proposed increase  
161 shall be approved by the commission. The commission shall  
162 examine individually each request from a governing board for  
163 an increase. Approval for any increase shall be based on a  
164 determination by the commission that the institution has met the  
165 following conditions:

166 (A) Has maximized resources available through nonresident  
167 tuition and fee charges to the satisfaction of the commission;

168 (B) Is consistently achieving the benchmarks established in  
169 the compact of the institution pursuant to the provisions of  
170 article one-a of this chapter;

171 (C) Is continuously pursuing the statewide goals for post-  
172 secondary education and the statewide compact established in  
173 articles one and one-a of this chapter;

174 (D) Is implementing the efficiency measures required by  
175 section nine, article five of this chapter;

176 (E) Has demonstrated to the satisfaction of the commission  
177 that an increase will be used to maintain high-quality programs  
178 at the institution;

179 (F) Has demonstrated to the satisfaction of the commission  
180 that the institution is making adequate progress toward achiev-  
181 ing the goals for education established by the southern regional  
182 education board; and

183 (G) To the extent authorized, will increase by up to five  
184 percent the available tuition and fee waivers provided by the  
185 institution. The increased waivers may not be used for athletics.

186 (2) In making a determination on tuition and fee proposals,  
187 the commission also may take into consideration whether the  
188 per capita income in an institution's service region exceeds the  
189 state per capita income. For the purposes of this subdivision  
190 only:

191 (A) Service region is the county in which the main campus  
192 of the institution is located and the contiguous West Virginia  
193 counties; and

194 (B) Per capita income for the service region shall be  
195 computed using the most current annual, county-level per capita  
196 income data published by the United States department of  
197 commerce, bureau of economic analysis, weighted by the  
198 compatible year population estimates published by the United  
199 States census bureau.

200 (3) This section may not be construed to require equal  
201 increases among institutions or to require any level of increase  
202 at an institution.

203 (4) The commission shall report to the legislative oversight  
204 commission on education accountability regarding the basis for  
205 each approval or denial as determined using the criteria  
206 established in subdivision (1) of this subsection.

**§18B-10-14. Bookstores.**

1 The appropriate governing board of each state institution of  
2 higher education shall have the authority to establish and  
3 operate a bookstore at the institution. The bookstore shall be  
4 operated for the use of the institution itself, including each of its  
5 schools and departments, in making purchases of books,  
6 stationery and other school and office supplies generally carried  
7 in college stores, and for the benefit of students and faculty  
8 members in purchasing such products for their own use, but no  
9 sales shall be made to the general public. The prices to be  
10 charged the institution, the students and the faculty for such  
11 products shall be fixed by the governing board, shall not be less  
12 than the prices fixed by any fair trade agreements, and shall in  
13 all cases include in addition to the purchase price paid by the  
14 bookstore a sufficient handling charge to cover all expenses  
15 incurred for personal and other services, supplies and equip-  
16 ment, storage, and other operating expenses, to the end that the  
17 prices charged shall be commensurate with the total cost to the  
18 state of operating the bookstore.

19 Each governing board shall also ensure that bookstores  
20 operated at institutions under its jurisdiction meet the additional  
21 objective of minimizing the costs to students of purchasing  
22 textbooks by adopting policies which may require the repur-  
23 chase and resale of textbooks on an institutional or a statewide  
24 basis and provide for the use of certain basic textbooks for a  
25 reasonable number of years.

26 All moneys derived from the operation of the store shall be  
27 paid into a special revenue fund as provided in section two,  
28 article two, chapter twelve of this code. Each governing board  
29 shall, subject to the approval of the governor, fix, and, from

30 time to time, change the amount of the revolving fund neces-  
31 sary for the proper and efficient operation of each bookstore.

32 Moneys derived from the operation of the bookstore shall  
33 be used first to replenish the stock of goods and to pay the costs  
34 of operating and maintaining the store. From any balance in the  
35 Marshall university bookstore fund not needed for operation  
36 and maintenance and replenishing the stock of goods, the  
37 governing board of that institution shall have authority to  
38 expend a sum not to exceed two hundred thousand dollars for  
39 the construction of quarters to house the bookstore in the  
40 university center at Marshall university. Until such quarters for  
41 housing the bookstore are completed, the governing board of  
42 Marshall university and the governor shall take this authoriza-  
43 tion into account in fixing the amount of the revolving fund for  
44 the Marshall university bookstore. Notwithstanding any other  
45 provision of this section, any institution that has contracted with  
46 a private entity for bookstore operation shall deposit into an  
47 appropriate account all revenue generated by the operation and  
48 enuring to the benefit of the institution. The institution shall use  
49 the funds for non-athletic scholarships.

#### ARTICLE 14. MISCELLANEOUS.

##### **§18B-14-11. Health insurance coverage option study.**

1 (a) Together, the commission and the public employees  
2 insurance agency shall submit to the legislative oversight  
3 commission on education accountability by the first day of  
4 December, two thousand three, draft legislation regarding  
5 benefits offered by the agency.

6 (b) The draft legislation shall provide:

7 (1) Incentives for employees insured by the agency to  
8 decline benefits from the agency. Incentives may include:

9 (A) Optional purchase of supplemental benefits;

10 (B) Payment of a percentage of the savings realized by the  
11 employer due to cancellation of insurance coverage for the  
12 employee; and

13 (C) Any other incentive determined appropriate by the  
14 agency and commission;

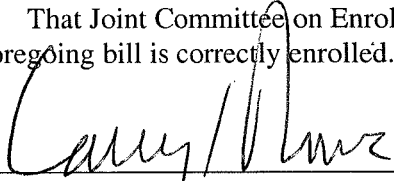
15 (2) A requirement that a public employee may decline  
16 benefits from the agency only if that employee verifies that he  
17 or she has health insurance coverage by an alternate provider;

18 (3) A procedure for verifying the alternate coverage  
19 required by subdivision (2) of this subsection at least annually;  
20 and

21 (4) A procedure whereby an employee who has declined  
22 coverage pursuant to this section will be reinstated automati-  
23 cally in the agency's program immediately following loss of the  
24 alternate coverage.



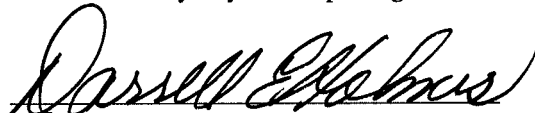
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

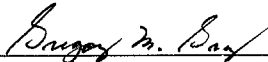
  
\_\_\_\_\_  
Chairman Senate Committee

  
\_\_\_\_\_  
Chairman House Committee


Originating in the House.

In effect ninety days from passage

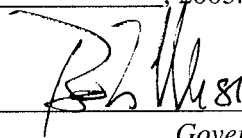
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 18  
day of March, 2003.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3-15-03

Time 10:40 AM