

1 **H. B. 2003**

2  
3 (By Delegates Doyle, T. Campbell, Duke and Manchin)  
4 [Introduced January 12, 2011; referred to the  
5 Committee on Education then Finance.]  
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10 A BILL to repeal §18B-10-5 of the Code of West Virginia, 1931, as  
11 amended; to amend and reenact §5-6-4a of said code; to amend  
12 and reenact §5G-1-2 of said code; to amend and reenact §12-3-5  
13 and §12-3-8 of said code; to amend and reenact §18B-1-3 and  
14 §18B-1-6 of said code; to amend and reenact §18B-1B-4 of said  
15 code; to amend and reenact §18B-2A-3 and §18B-2A-4 of said  
16 code; to amend and reenact §18B-4-5, §18B-4-5a, §18B-4-6 and  
17 §18B-4-7 of said code; to amend and reenact §18B-5-4, §18B-5-7  
18 and §18B-5-9 of said code; and to amend and reenact §18B-10-1,  
19 §18B-10-6 and §18B-10-6a of said code, all relating to  
20 providing more flexibility and freedom to all publicly funded  
21 state institutions of higher education for running their  
22 respective colleges and universities.

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

24 That §18B-10-5 of the Code of West Virginia, 1931, as amended,

1 be repealed; that §5-6-4a of said code be amended and reenacted;  
 2 that §5G-1-2 of said code be amended and reenacted; that §12-3-5  
 3 and §12-3-8 of said code be amended and reenacted; that §18B-1-3  
 4 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-4  
 5 of said code be amended and reenacted; that §18B-2A-3 and §18B-2A-4  
 6 of said code be amended and reenacted; that §18B-4-5, §18B-4-5a,  
 7 §18B-4-6 and §18B-4-7 of said code be amended and reenacted; that  
 8 §18B-5-4, §18B-5-7 and §18B-5-9 of said code be amended and  
 9 reenacted; and that §18B-10-1, §18B-10-6 and §18B-10-6a of said  
 10 code be amended and reenacted, all to read as follows:

11       **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**  
 12       **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**  
 13       **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**

14       **ARTICLE 6. STATE BUILDINGS.**

15       **§5-6-4a. Review of real property contracts and agreements; master**  
 16                       **plan for office space.**

17           (a) The Secretary of Administration shall provide to the Joint  
 18 Committee on Government and Finance a copy of a contract or  
 19 agreement for real property exceeding \$1 million and a report  
 20 setting forth a detailed summary of the terms of the contract or  
 21 agreement, including the name of the owner of the property and the  
 22 agent involved in the sale, at least thirty days prior to any sale,  
 23 exchange, transfer, purchase, lease purchase, lease or rental of

1 real property, any refundings of lease purchases, leases or rental  
2 agreements, any construction of new buildings and any other  
3 acquisition or lease of buildings, office space or grounds by any  
4 state agency, but excepting the transactions of the Higher  
5 Education Policy Commission, Council for Community and Technical  
6 College Education, all publicly funded state institutions of higher  
7 education and the Division of Highways for state road purposes  
8 pursuant to article two-a, chapter seventeen of this code:  
9 *Provided*, That a contract or agreement for the lease purchase,  
10 lease or rental of real property by any state agency, where the  
11 costs of real property acquisition and improvements are to be  
12 financed, in whole or in part, with bond proceeds, may contain a  
13 preliminary schedule of rents and leases for purposes of review by  
14 the committee.

15 (b) For renewals of contracts or agreements required to be  
16 reported by this section, the Secretary of Administration shall  
17 provide a report setting forth a detailed summary of the terms of  
18 the contract or agreement, including the name of the owner of the  
19 property.

20 (c) Within thirty days after receipt of the contract,  
21 agreement or report, the committee shall meet and review the  
22 contract, agreement or report.

23 **CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER**

24 **SERVICES BY STATE AND ITS SUBDIVISIONS.**

1 **ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.**

2 **§5G-1-2. Definitions.**

3 As used in this section:

4 (a) The term "agency" means all state departments, agencies,  
5 authorities, quasipublic corporations and all political  
6 subdivisions, including cities, counties, boards of education and  
7 public service districts, except, for the purposes of this section,  
8 the term "agency" does not include ~~the~~ any of the publicly funded  
9 state institutions of higher education. ~~known as Marshall~~  
10 ~~University and West Virginia University.~~

11 (b) The term "architectural and engineering services" includes  
12 those professional services of an architectural or engineering  
13 nature as well as incidental services that members of those  
14 professions and those in their employ may logically ~~or justifiably~~  
15 perform.

16 (c) The term "director of purchasing" means any individual  
17 assigned by any agency to procure the services of architects and  
18 engineers.

19 (d) The term "firm" or "professional firm" means any  
20 individual, firm, partnership, corporation, association or other  
21 legal entity permitted by law to practice the professions of  
22 architecture and engineering.

23 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

1 **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

2 **§12-3-5. When requisition to Auditor sufficient authority for**  
3 **issuing warrant.**

4 (a) When an appropriation has been made by law, subject to the  
5 order or payable on the requisition of a particular officer, board  
6 or person, the order or written or electronic requisition is  
7 sufficient authority to the Auditor to issue a warrant for the same  
8 or any party thereof.

9 (b) The Auditor:

10 (1) Shall accept an electronic requisition from ~~Marshall~~  
11 ~~University and West Virginia University~~ all publicly funded state  
12 institutions of higher education in an unaltered format approved by  
13 the Auditor;

14 ~~(2) May accept or require an electronic requisition from any~~  
15 ~~entity other than Marshall University or West Virginia University~~  
16 ~~at his or her discretion in an unaltered format approved by the~~  
17 ~~Auditor; and~~

18 ~~(3)~~ (2) May not issue a warrant for an amount that exceeds the  
19 appropriation or for an expired appropriation.

20 **§12-3-8. Requisition on behalf of institutions to be accompanied**  
21 **by statement showing funds on hand.**

22 A requisition made upon the Auditor for any money appropriated  
23 for a state correctional facility; the West Virginia School for the

1 Deaf and Blind; state mental health facilities; state hospitals;  
 2 corrections facilities; Marshall University; West Virginia  
 3 University; or any other publicly funded state institution of  
 4 higher education; any other public institution for education,  
 5 charity or correction; or institutions under the jurisdiction of  
 6 the Higher Education Policy Commission or the West Virginia Council  
 7 for Community and Technical College Education shall be accompanied  
 8 by a written or electronic statement of a financial officer of the  
 9 institution, showing the amount of money in his or her hands to the  
 10 credit of the institution, or otherwise in its control, on the day  
 11 the requisition is forwarded for payment.

12 **CHAPTER 18B. HIGHER EDUCATION.**

13 **ARTICLE 1. GOVERNANCE.**

14 **§18B-1-3. Transfer of powers, duties, property, obligations, etc.**

15 (a) All powers, duties and authorities transferred to the  
 16 board of Regents pursuant to former provisions of chapter eighteen  
 17 of this code and transferred to the board of trustees and board of  
 18 directors which were created as the governing boards pursuant to  
 19 the former provisions of this chapter and all powers, duties and  
 20 authorities of the board of trustees and board of directors, to the  
 21 extent they are in effect on June 17, 2000, are hereby transferred  
 22 to the Interim Governing Board created in article one-c of this  
 23 chapter and shall be exercised and performed by the Interim  
 24 Governing Board until July 1, 2001, as such powers ~~duties~~ and

1 ~~authorities~~ may apply to the institutions under its jurisdiction.

2 (b) Title to all property previously transferred to ~~or vested~~  
3 ~~in~~ the board of trustees and the board of directors and property  
4 vested in either of the boards separately, formerly existing under  
5 ~~the provisions of~~ this chapter, are hereby transferred to the  
6 Interim Governing Board created in article one-c of this chapter  
7 until July 1, 2001. Property transferred to ~~or vested in~~ the board  
8 of trustees and board of directors shall include:

9 (1) All property vested in the board of Governors of West  
10 Virginia University and transferred to ~~and vested in~~ the West  
11 Virginia Board of Regents;

12 (2) All property acquired in the name of the state Board of  
13 Control or the West Virginia Board of Education and used by or for  
14 the state colleges and universities and transferred to ~~and vested~~  
15 ~~in~~ the West Virginia Board of Regents;

16 (3) All property acquired in the name of the state Commission  
17 on Higher Education and transferred to ~~and vested in~~ the West  
18 Virginia Board of Regents; and

19 (4) All property acquired in the name of the board of Regents  
20 and transferred to ~~and vested in~~ the respective board of trustees  
21 and board of directors.

22 (c) Each valid agreement ~~and obligation~~ previously transferred  
23 to ~~or vested in~~ the board of trustees and board of directors  
24 formerly existing under ~~the provisions of~~ this chapter is hereby

1 transferred to the Interim Governing Board until July 1, 2001, as  
2 those agreements ~~and obligations~~ may apply to the institutions  
3 under its jurisdiction. Valid agreements ~~and obligations~~  
4 transferred to the board of trustees and board of directors shall  
5 include:

6 (1) Each valid agreement ~~and obligation~~ of the board of  
7 Governors of West Virginia University transferred to and considered  
8 ~~deemed~~ the agreement ~~and obligation~~ of the West Virginia Board of  
9 Regents;

10 (2) Each valid agreement ~~and obligation~~ of the State Board of  
11 Education with respect to the state colleges and universities  
12 transferred to and ~~deemed~~ considered the agreement ~~and obligation~~  
13 of the West Virginia Board of Regents;

14 (3) Each valid agreement ~~and obligation~~ of the State  
15 Commission on Higher Education transferred to and ~~deemed~~ considered  
16 the agreement ~~and obligation~~ of the West Virginia Board of Regents;  
17 and

18 (4) Each valid agreement ~~and obligation~~ of the board of  
19 Regents transferred to and ~~deemed~~ considered the agreement ~~and~~  
20 ~~obligation~~ of the respective board of trustees and board of  
21 directors.

22 (d) All orders, resolutions and rules adopted or promulgated  
23 by the respective board of trustees and board of directors and in  
24 effect immediately prior to July 1, 2000, are hereby transferred to



1 the Interim Governing Board until July 1, 2001, ~~and shall continue~~  
2 ~~in effect~~ and shall be ~~deemed~~ considered the orders, resolutions  
3 and rules of the Interim Governing Board until rescinded, revised,  
4 altered or amended by the commission or the governing boards ~~in the~~  
5 ~~manner and~~ to the extent ~~authorized and~~ permitted by law. Such  
6 orders, resolutions and rules shall include:

7 (1) Those adopted or promulgated by the board of Governors of  
8 West Virginia University and in effect immediately prior to July 1,  
9 1969, unless and until rescinded, revised, altered or amended by  
10 the board of Regents ~~in the manner and~~ to the extent ~~authorized and~~  
11 permitted by law;

12 (2) Those respecting state colleges and universities adopted  
13 or promulgated by the West Virginia Board of Education and in  
14 effect immediately prior to July 1, 1969, unless and until  
15 rescinded, revised, altered or amended by the board of Regents ~~in~~  
16 ~~the manner and~~ to the extent ~~authorized and~~ permitted by law;

17 (3) Those adopted or promulgated by the State Commission on  
18 Higher Education and in effect immediately prior to July, 1, 1969,  
19 unless and until rescinded, revised, altered or amended by the  
20 board of Regents ~~in the manner and~~ to the extent ~~authorized and~~  
21 permitted by law; and

22 (4) Those adopted or promulgated by the board of Regents prior  
23 to July 1, 1989, unless and until rescinded, revised, altered or  
24 amended by the respective board of trustees or board of directors

1 ~~in the manner and to the extent authorized and permitted by law.~~

2       (e) ~~Title to all real property transferred to or vested in the~~  
3 ~~Interim Governing Board pursuant to this section of the code is~~  
4 ~~hereby transferred to the Commission effective the first day of~~  
5 ~~July, two thousand one. The board of Governors for each~~  
6 ~~institution may request that the Commission transfer title to the~~  
7 ~~board of Governors of any real property specifically identifiable~~  
8 ~~with that institution or the Commission may initiate the transfer.~~  
9 ~~Any such request must be made within two years of the effective~~  
10 ~~date of this section and be accompanied by an adequate legal~~  
11 ~~description of the property. In the case of real property that is~~  
12 ~~specifically identifiable with Marshall University or West Virginia~~  
13 ~~University a publicly funded state institution of higher education,~~  
14 the commission shall transfer title to all real property, except  
15 real property that is used jointly by institutions or for statewide  
16 programs under the jurisdiction of the commission or the council,  
17 to the board of Governors of ~~Marshall University or West Virginia~~  
18 University those state institutions of higher education to which  
19 the property is identified with, as appropriate, upon receipt of a  
20 request from the appropriate governing board accompanied by an  
21 adequate legal description of the property.

22       The title to any real property that is jointly utilized by  
23 institutions or for statewide programs under the jurisdiction of  
24 the commission or the council shall be retained by the commission.

1           (f) Ownership of ~~or title to~~ any other property, materials,  
2 equipment or supplies obtained ~~or purchased~~ by the Interim  
3 Governing Board or the previous governing boards on behalf of an  
4 institution is hereby transferred to the board of Governors of that  
5 institution effective July 1, 2001.

6           (g) Each valid agreement ~~and obligation~~ previously transferred  
7 to ~~or vested in~~ the Interim Governing Board ~~and which was~~  
8 ~~undertaken or agreed to~~ on behalf of an institution or institutions  
9 is hereby transferred to the board of Governors of the institution  
10 or institutions for whose benefit the agreement was entered into or  
11 the obligation undertaken effective July 1, 2001.

12           (1) The obligations contained in revenue bonds issued by the  
13 previous governing boards under ~~the provisions of~~ section eight,  
14 article ten of this chapter and article twelve-b, chapter eighteen  
15 of this code are hereby transferred to the commission and each  
16 institution shall transfer to the commission those funds the  
17 commission determines are necessary to pay that institution's share  
18 of bonded indebtedness.

19           (2) The obligations contained in revenue bonds issued on  
20 behalf of a state institution of higher education pursuant to any  
21 other section of this code is hereby transferred to the board of  
22 Governors of the institution on whose behalf the bonds were issued.

23           (h) All orders, resolutions, policies and rules:

24           (1) Adopted or promulgated by the respective board of

1 trustees, board of directors or Interim Governing Board and in  
2 effect immediately prior to July 1, 2001, are hereby transferred to  
3 the commission effective July 1, 2001, and continue in effect until  
4 rescinded, revised, altered, amended or transferred to the  
5 governing boards by the commission as provided in this section and  
6 in section six of this article.

7       (2) Adopted or promulgated by the commission relating solely  
8 to community and technical colleges or community and technical  
9 college education, or rules which the council finds necessary for  
10 the exercise of its lawful powers ~~and duties~~ pursuant to ~~the~~  
11 ~~provisions of~~ this chapter, may be adopted by the council and  
12 continue in effect until rescinded, revised, altered, amended or  
13 transferred to the governing boards under the jurisdiction of the  
14 council pursuant to section six of this article. Nothing in this  
15 section requires the initial rules of the commission that are  
16 adopted by the council to be promulgated again under the procedure  
17 set forth in article three-a, chapter twenty-nine-a of this code  
18 unless such rules are rescinded, revised, altered or amended.

19       (3) Adopted or promulgated by the commission relating to  
20 multiple types of public institutions of higher education or  
21 community and technical college education as well as baccalaureate  
22 and post-baccalaureate education are transferred to the council in  
23 part as follows:

24       (A) That portion of the rule relating solely to community and

1 technical colleges or community and technical college education is  
2 transferred to the council and continues in effect until rescinded,  
3 revised, altered, amended or transferred to the governing boards by  
4 the council as provided in this section and in section six of this  
5 article;

6 (B) That portion of the rule relating to institutions or  
7 education other than community and technical colleges is retained  
8 by the commission and continues in effect until rescinded, revised,  
9 altered, amended or transferred to the governing boards by the  
10 commission as provided in this section and in section six of this  
11 article.

12 (i) The commission may, in its sole discretion, transfer any  
13 rule, other than a legislative rule, to the jurisdiction of the  
14 governing boards of the institutions under its jurisdiction who may  
15 rescind, revise, alter or amend any rule so transferred pursuant to  
16 rules adopted by the commission pursuant to section six of this  
17 article.

18 The council may, in its sole discretion, transfer any rule,  
19 other than a legislative rule, to the jurisdiction of the governing  
20 boards of the institutions under its jurisdiction who may rescind,  
21 revise, alter or amend any rule so transferred pursuant to rules  
22 adopted by the council pursuant to section six of this article.

23 (j) As to any title, agreement, obligation, order, resolution,  
24 rule or any other matter about which there is some uncertainty,

1 ~~misunderstanding or question,~~ the matter shall be summarized in  
2 writing and sent to the commission which shall make a determination  
3 regarding such matter within thirty days of receipt thereof.

4 (k) Rules or provisions of law which refer to other provisions  
5 of law which were ~~repealed, rendered inoperative or superseded by~~  
6 ~~the provisions of~~ this section shall remain in ~~full force and~~  
7 effect to such extent as may still be applicable to higher  
8 education ~~and may be so interpreted.~~ Such references include, but  
9 are not limited to, references to sections and prior enactments of  
10 article twenty-six, chapter eighteen of this code and code  
11 provisions relating to retirement, health insurance, grievance  
12 procedures, purchasing, student loans and savings plans. Any  
13 determination which needs to be made regarding applicability of any  
14 ~~provision of~~ law shall first be made by the commission.

15 **§18B-1-6. Rulemaking.**

16 (a) The commission is hereby empowered to promulgate, adopt,  
17 amend or repeal rules, in accordance with ~~the provisions of~~ article  
18 three-a, chapter twenty-nine-a of this code, subject to ~~the~~  
19 ~~provisions of~~ section three of this article.

20 (b) The council is hereby empowered to promulgate, adopt,  
21 amend or repeal rules in accordance with ~~the provisions of~~ article  
22 three-a, chapter twenty-nine-a of this code and subject to ~~the~~  
23 ~~provisions of~~ section three of this article. This grant of  
24 rulemaking power extends only to those areas over which the council

1 has been granted specific authority ~~and jurisdiction~~ by law.

2 (c) As it relates to the authority granted to governing boards  
3 of state institutions of higher education to promulgate, adopt,  
4 amend or repeal any rule under ~~the provisions of~~ this code:

5 (1) "Rule" means any regulation, guideline, directive,  
6 standard, statement of policy or interpretation of general  
7 application which has institution wide effect or which affects the  
8 ~~rights, privileges or~~ interests of employees, students or citizens.  
9 Any regulation, guideline, directive, standard, statement of policy  
10 or interpretation of general application that meets this definition  
11 is a rule ~~for the purposes of~~ under this section.

12 (2) Regulations, guidelines or policies established for  
13 individual units, divisions, departments or schools of the  
14 institution, which deal solely with the internal management or  
15 responsibilities of a single unit, division, department or school  
16 or with academic curricular policies that do not constitute a  
17 mission change for the institution, are excluded from this  
18 subsection, except for the requirements relating to posting.

19 (3) The commission and council each shall promulgate a rule to  
20 guide the development and approval of rules made by their  
21 respective governing boards, including the governing boards of all  
22 state institutions of higher education ~~Marshall University, and~~  
23 ~~West Virginia University~~. The rules promulgated by the commission  
24 and council shall include, but are not limited to, the following

1 provisions which shall be included in the rule on rules adopted by  
2 each governing board of a state institution of higher education:

3 (A) A procedure to ensure that public notice is given and that  
4 the right of interested parties to have a fair ~~and adequate~~  
5 opportunity to respond is protected, including providing for a  
6 thirty day public comment period prior to final adoption of a rule;

7 (B) Designation of a single location where all proposed and  
8 approved rules, guidelines and other policy statements are posted  
9 and can be accessed by the public; and

10 (C) A procedure to maximize Internet access to all proposed  
11 and approved rules, guidelines and other policy statements to the  
12 extent technically and financially feasible.

13 (d) Nothing in this section requires that any rule  
14 reclassified or transferred by the commission or the council under  
15 this section be promulgated again under the procedures set out in  
16 article three-a, chapter twenty-nine-a of this code unless the rule  
17 is amended or modified.

18 (e) The commission and council each shall file with the  
19 Legislative Oversight Commission on Education Accountability any  
20 rule it proposes to promulgate, adopt, amend or repeal under ~~the~~  
21 ~~authority of~~ this article.

22 (f) The governing boards of ~~Marshall University and West~~  
23 ~~Virginia University, respectively~~ all publicly funded state  
24 institutions of higher education, shall promulgate and adopt any



1 rule which they are required to adopt by this chapter or chapter  
2 eighteen-c of this code no later than July 1, 2006. On and after  
3 this date:

4 (1) Any rule of either governing board which meets the  
5 definition set out in subsection (c) of this section and which has  
6 not been promulgated and adopted by formal vote of the appropriate  
7 governing board is void ~~and may not be enforced;~~

8 (2) Any authority granted by this code which inherently  
9 requires the governing board to promulgate and adopt a rule is void  
10 until the governing board complies with ~~the provisions of this~~  
11 section.

12 (g) Within thirty days of the adoption of a rule, including  
13 repeal or amendment of an existing rule, the governing boards ~~of~~  
14 ~~Marshall University and West Virginia University, respectively,~~ all  
15 publicly funded state institutions of higher education, shall  
16 furnish to the commission or the council, as appropriate, a copy of  
17 each rule which has been formally adopted;

18 (h) Not later than October 1, 2005, and annually thereafter,  
19 each governing board of a state institution of higher education  
20 shall file with the commission or the council, as appropriate, a  
21 list of all institutional rules that were in effect for that  
22 institution on July 1 of that year, including the most recent date  
23 on which each rule was considered and adopted, amended or repealed  
24 by the governing board. For all rules adopted, amended or repealed

1 after the effective date of this section, the list shall include a  
2 statement by the chair of the governing board certifying that the  
3 governing board has complied with ~~the provisions of~~ this section  
4 when each listed rule was adopted.

5 **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

6 **§18B-1B-4. Powers and duties of Higher Education Policy**  
7 **Commission.**

8 (a) The primary responsibility of the commission is to  
9 develop, establish and implement policy that will achieve the goals  
10 and objectives found in section one-a, article one and article one-  
11 d of this chapter. The commission shall exercise its authority ~~and~~  
12 ~~carry out its responsibilities~~ in a manner ~~that is~~ consistent ~~and~~  
13 ~~not in conflict~~ with the powers and duties assigned by law to the  
14 West Virginia Council for Community and Technical College Education  
15 and the powers and duties assigned to the governing boards of  
16 ~~Marshall University and West Virginia University, respectively~~ all  
17 publicly funded state institutions of higher education. To that  
18 end, the commission, has the following powers ~~and duties~~ relating  
19 to the institutions under its jurisdiction:

20 (1) Develop, oversee and advance the public policy agenda  
21 pursuant to section one, article one-a of this chapter to address  
22 major challenges facing the state, including, but not limited to,  
23 the goals and objectives found in section one-a, article one of  
24 this chapter and article one-d of this chapter and including

1 specifically those goals and objectives pertaining to the compacts  
2 created pursuant to section seven, article one-d of this chapter  
3 and to develop and implement the master plan described in section  
4 five, article one-d of this chapter for the purpose of  
5 accomplishing the mandates of this section;

6 (2) Develop, oversee and advance the promulgation and  
7 implementation of a financing rule for state institutions of higher  
8 education under its jurisdiction. The rule shall ~~meet the~~  
9 ~~following criteria:~~

10 (A) Provide for an adequate level of educational and general  
11 funding for institutions pursuant to section five, article one-a of  
12 this chapter;

13 (B) Serve to maintain institutional assets, including, but not  
14 limited to, human and physical resources and eliminating deferred  
15 maintenance;

16 (C) Invest and provide incentives for achieving the priority  
17 goals in the public policy agenda, including, but not limited to,  
18 those found in section one-a, article one of this chapter; and

19 (D) Evaluate institutions' requests for tuition and fee  
20 increases except Marshall University and West Virginia University  
21 which are subject to ~~the provisions of~~ section one, article ten of  
22 this chapter;

23 (3) In collaboration with the council, create a policy  
24 leadership structure capable of the following actions:

1           (A) Developing, building public consensus around and  
2 sustaining attention to a long-range public policy agenda. In  
3 developing the agenda, the commission and council shall seek input  
4 from the Legislature and the Governor and specifically from the  
5 State Board of Education and local school districts in order to  
6 create the necessary linkages to assure smooth, effective and  
7 seamless movement of students through the public education and  
8 post-secondary education systems and to ensure that the needs of  
9 public school courses and programs can be fulfilled by the  
10 graduates produced and the programs offered;

11           (B) Ensuring that the governing boards carry out their duty  
12 effectively to govern the individual institutions of higher  
13 education; and

14           (C) Holding the higher education institutions and the higher  
15 education systems as a whole accountable for accomplishing their  
16 missions and implementing ~~the provisions of~~ the compacts;

17           (4) Develop and adopt each institutional compact;

18           (5) Review and adopt the annual updates of the institutional  
19 compacts;

20           (6) Serve as the accountability point to state policymakers:

21           (A) The Governor for implementation of the public policy  
22 agenda; and

23           (B) The Legislature by maintaining a close working  
24 relationship with the legislative leadership and the Legislative

1 Oversight Commission on Education Accountability;

2       (7) Jointly with the council, promulgate legislative rules  
3 pursuant to article three-a, chapter twenty-nine-a of this code to  
4 fulfill the purposes of section five, article one-a of this  
5 chapter;

6       (8) Establish and implement a peer group for each institution  
7 as described in section three, article one-a of this chapter;

8       (9) Establish and implement ~~the benchmarks~~ and performance  
9 indicators necessary to measure institutional progress in achieving  
10 state policy priorities and institutional missions pursuant to  
11 section seven, article one-d of this chapter;

12       (10) Report to the Legislature and to the Legislative  
13 Oversight Commission on Education Accountability annually during  
14 the January interim meeting period on a date and at a time and  
15 location to be determined by the President of the Senate and the  
16 Speaker of the House of Delegates. The report shall address at  
17 least the following:

18       (A) The performance of its system of higher education during  
19 the previous fiscal year, including, but not limited to, progress  
20 in meeting the goals, objectives, and priorities set forth in  
21 article one and article one-d of this chapter and in the  
22 commission's master plan and institutional compacts;

23       (B) The commission's priorities for new operating and capital  
24 investments and the justification for the priority;

1 (C) Recommendations of the commission for statutory changes  
2 necessary or expedient to achieve state goals and objectives;

3 (11) Establish a formal process for identifying capital  
4 investment needs and for determining priorities for these  
5 investments for consideration by the Governor and the Legislature  
6 as part of the appropriation request process pursuant to article  
7 nineteen of this chapter;

8 (12) Develop standards and evaluate governing board requests  
9 for capital project financing in accordance with article nineteen  
10 of this chapter;

11 (13) Ensure that governing boards manage capital projects and  
12 facilities needs effectively, including review and approval or  
13 disapproval of capital projects, in accordance with article  
14 nineteen of this chapter;

15 (14) Acquire legal services that are considered necessary,  
16 including representation of the commission, its institutions,  
17 employees and officers before any court or administrative body,  
18 notwithstanding any other provision of this code to the contrary.  
19 The counsel may be employed either on a salaried basis or on a  
20 reasonable fee basis. In addition, the commission may, but is not  
21 required to, call upon the Attorney General for legal assistance  
22 and representation as provided by law;

23 (15) Employ a Chancellor for Higher Education pursuant to  
24 section five of this article;

1           (16) Employ other staff as necessary ~~and appropriate~~ to carry  
2 out the duties ~~and responsibilities~~ of the commission and the  
3 council, in accordance with article four of this chapter;

4           (17) Provide suitable offices in Charleston for the  
5 chancellor, vice chancellors and other staff;

6           (18) Advise and consent in the appointment of the presidents  
7 of the institutions of higher education under its jurisdiction  
8 pursuant to section six of this article. The role of the  
9 commission in approving an institutional president is to assure  
10 through personal interview that the person selected understands and  
11 is committed to achieving the goals and objectives as set forth in  
12 the institutional compact and in section one-a, article one of this  
13 chapter;

14           (19) Approve the total compensation package from all sources  
15 for presidents of institutions under its jurisdiction, as proposed  
16 by the governing boards. The governing boards shall obtain  
17 approval from the commission of the total compensation package both  
18 when institutional presidents are employed initially and afterward  
19 when any change is made in the amount of the total compensation  
20 package;

21           (20) Establish and implement the policy of the state to assure  
22 that parents and students have sufficient information at the  
23 earliest possible age on which to base academic decisions about  
24 what is required for students to be successful in college, other

1 post-secondary education and careers related, as far as possible,  
2 to results from current assessment tools in use in West Virginia;

3       (21) Approve and implement a uniform standard jointly with the  
4 council to determine which students shall be placed in remedial or  
5 developmental courses. The standard shall be aligned with college  
6 admission tests and assessment tools used in West Virginia and  
7 shall be applied uniformly by the governing boards throughout the  
8 public higher education system. The chancellors shall develop a  
9 clear, concise explanation of the standard which they shall  
10 communicate to the State Board of Education and the state  
11 superintendent of Schools;

12       (22) Jointly with the council, develop and implement an  
13 oversight plan to manage systemwide technology by:

14       (A) Expanding distance learning and technology networks to  
15 enhance teaching and learning, promote access to quality  
16 educational offerings with minimum duplication of effort; and

17       (B) Increasing the delivery of instruction to nontraditional  
18 students, to provide services to business and industry and increase  
19 the management capabilities of the higher education system;

20       (C) Notwithstanding any other contrary provision of law ~~or~~  
21 ~~this code to the contrary~~, the council, commission and state  
22 institutions of higher education are not subject to the  
23 jurisdiction of the Chief Technology Officer for any purpose;

24       (23) Establish and implement policies and procedures to ensure



1 that a student may transfer and apply toward the requirements for  
2 a bachelor's degree the maximum number of credits earned at any  
3 regionally accredited in-state or out-of-state community and  
4 technical college with as few requirements to repeat courses or to  
5 incur additional costs as is consistent with sound academic policy;

6       (24) Establish and implement policies and procedures to ensure  
7 that a student may transfer and apply toward the requirements for  
8 a degree the maximum number of credits earned at any regionally  
9 accredited in-state or out-of-state higher education institution  
10 with as few requirements to repeat courses or to incur additional  
11 costs as is consistent with sound academic policy;

12       (25) Establish and implement policies and procedures to ensure  
13 that a student may transfer and apply toward the requirements for  
14 a master's degree the maximum number of credits earned at any  
15 regionally accredited in-state or out-of-state higher education  
16 institution with as few requirements to repeat courses or to incur  
17 additional costs as is consistent with sound academic policy;

18       (26) Establish and implement policies and programs, in  
19 cooperation with the council and the institutions of higher  
20 education, through which a student who has gained knowledge and  
21 skills through employment, participation in education and training  
22 at vocational schools or other education institutions, or Internet-  
23 based education programs, may demonstrate by competency-based  
24 assessment that he or she has the necessary knowledge and skills to

1 be granted academic credit or advanced placement standing toward  
2 the requirements of an associate's degree or a bachelor's degree at  
3 a state institution of higher education;

4       (27) ~~Seek out and~~ Attend regional, national and international  
5 meetings and forums on education and workforce development-related  
6 topics, as in the commission's discretion is critical for the  
7 performance of their duties as members, for the purpose of keeping  
8 abreast of education trends and policies to aid it in developing  
9 the policies for this state to meet the established education goals  
10 and objectives pursuant to section one-a, article one of this  
11 chapter and article one-d of this chapter;

12       (28) Promulgate and implement a rule for higher education  
13 governing boards and institutions to follow when considering  
14 capital projects pursuant to article nineteen of this chapter;

15       (29) Consider and submit to the appropriate agencies of the  
16 executive and legislative branches of state government an  
17 appropriation request that reflects recommended appropriations for  
18 the commission and the institutions under its jurisdiction. The  
19 commission shall submit as part of its appropriation request the  
20 separate recommended appropriation request received from the  
21 council, both for the council and the institutions under the  
22 council's jurisdiction. The commission annually shall submit the  
23 proposed institutional allocations based on each institution's  
24 progress toward meeting the goals of its institutional compact;

1           (30) The commission may assess institutions under its  
2 jurisdiction, including the state institutions of higher education  
3 known as Marshall University and West Virginia University, for the  
4 payment of expenses of the commission or for the funding of  
5 statewide higher education services, obligations or initiatives  
6 related to the goals set forth for the provision of public higher  
7 education in the state;

8           (31) Promulgate rules allocating reimbursement of  
9 appropriations, if made available by the Legislature, to  
10 institutions of higher education for qualifying noncapital  
11 expenditures incurred in providing services to students with  
12 physical, learning or severe sensory disabilities;

13           (32) Make appointments to boards and commissions where this  
14 code requires appointments from the state College System Board of  
15 Directors or the University of West Virginia System Board of  
16 Trustees which were abolished effective June 30, 2000, except in  
17 those cases where the required appointment has a ~~specific~~ and  
18 direct connection to the provision of community and technical  
19 college education, the appointment shall be made by the council.  
20 Notwithstanding any contrary provisions of this code ~~to the~~  
21 ~~contrary~~, the commission or the council may appoint one of its own  
22 members or any other citizen of the state as its designee. The  
23 commission and council shall appoint the total number of persons in  
24 the aggregate required to be appointed by these previous governing

1 boards;

2       (33) Pursuant to article three-a, chapter twenty-nine-a of  
3 this code and section six, article one of this chapter, promulgate  
4 rules necessary ~~or expedient~~ to fulfill the purposes of this  
5 chapter. The commission and the council shall promulgate a uniform  
6 joint legislative rule for the purpose of standardizing, as much as  
7 possible, the administration of personnel matters among the state  
8 institutions of higher education;

9       (34) Determine when a joint rule among the governing boards of  
10 the institutions under its jurisdiction is necessary or required by  
11 law and, in those instances, in consultation with the governing  
12 boards of all the institutions under its jurisdiction, promulgate  
13 the joint rule;

14       (35) Promulgate and implement a rule jointly with the council  
15 whereby course credit earned at a community and technical college  
16 transfers for program credit at any other state institution of  
17 higher education and is not limited to fulfilling a general  
18 education requirement;

19       ~~(36) By November 1, 2010, promulgate a rule pursuant to~~  
20 ~~section one, article ten of this chapter, establishing tuition and~~  
21 ~~fee policy for all institutions of higher education under the~~  
22 ~~jurisdiction of the commission, including Marshall University and~~  
23 ~~West Virginia University. The rule shall include, but is not~~  
24 ~~limited to, the following:~~

1 ~~(A) Comparisons with peer institutions;~~  
2 ~~(B) Differences among institutional missions;~~  
3 ~~(C) Strategies for promoting student access;~~  
4 ~~(D) Consideration of charges to out-of-state students; and~~  
5 ~~(E) Such other policies as the commission and council consider~~  
6 ~~appropriate;~~

7 ~~(37)~~ (36) Implement general disease awareness initiatives to  
8 educate parents and students, particularly dormitory residents,  
9 about meningococcal meningitis; the potentially life-threatening  
10 dangers of contracting the infection; behaviors and activities that  
11 can increase risks; measures that can be taken to prevent contact  
12 or infection; and potential benefits of vaccination. The  
13 commission shall encourage institutions that provide medical care  
14 to students to provide access to the vaccine for those who wish to  
15 receive it; ~~and~~

16 ~~(38)~~ (37) Notwithstanding any other contrary provision of this  
17 code ~~to the contrary~~, sell, lease, convey or otherwise dispose of  
18 all or part of any real property that it owns, in accordance with  
19 article nineteen of this chapter; and

20 (38) All publicly funded state institutions of higher  
21 education may participate directly or indirectly with any public or  
22 private entity in any capital project which has the potential to  
23 exceed \$1 million in cost.

24 (b) In addition to the powers and duties listed in subsection

1 (a) of this section, the commission has the following general  
2 powers and duties related to its role in developing, articulating  
3 and overseeing the implementation of the public policy agenda:

4 (1) Planning and policy leadership, including a distinct and  
5 visible role in setting the state's policy agenda and in serving as  
6 an agent of change;

7 (2) Policy analysis and research focused on issues affecting  
8 the system as a whole or a geographical region of the system;

9 (3) Development and implementation of institutional mission  
10 definitions, including use of incentive funds to influence  
11 institutional behavior in ways that are consistent with public  
12 priorities;

13 ~~(4) Academic program review and approval for institutions~~  
14 ~~under its jurisdiction, including the use of institutional missions~~  
15 ~~as a template to judge the appropriateness of both new and existing~~  
16 ~~programs and the authority to implement needed changes. The~~  
17 ~~commission's authority to review and approve academic programs for~~  
18 ~~either the state institution of higher education known as Marshall~~  
19 ~~University or West Virginia University~~ publicly funded state  
20 institutions of higher education is limited to programs that are  
21 proposed to be offered at a new location not presently served by  
22 that institution;

23 (5) Distribution of funds appropriated to the commission,  
24 including incentive and performance-based funding;

1           (6) Administration of state and federal student aid programs  
2 under the supervision of the Vice Chancellor for Administration,  
3 including promulgation of any rules necessary to administer those  
4 programs;

5           (7) Serving as the agent to receive and disburse public funds  
6 when a governmental entity requires designation of a statewide  
7 higher education agency for this purpose;

8           (8) Developing, establishing and implementing information,  
9 ~~assessment and accountability~~ systems, including maintaining  
10 statewide data systems that facilitate long-term planning and  
11 accurate measurement of strategic outcomes and performance  
12 indicators;

13           (9) Jointly with the council, promulgating and implementing  
14 rules for licensing and oversight for both public and private  
15 degree-granting and nondegree-granting institutions that provide  
16 post-secondary education courses or programs in the state pursuant  
17 to the findings and policy recommendations required by section  
18 eleven of this article;

19           (10) Developing, implementing and overseeing statewide and  
20 regional projects and initiatives related to providing post-  
21 secondary education at the baccalaureate level and above such as  
22 those using funds from federal categorical programs or those using  
23 incentive and performance-based funding from any source; and

24           (11) Quality assurance that intersects with all other duties

1 of the commission particularly in the areas of research, data  
2 collection and analysis, planning, policy analysis, program review  
3 and approval, budgeting and information and accountability systems.

4 (c) In addition to the powers ~~and duties~~ provided in  
5 subsections (a) and (b) of this section and any other powers ~~and~~  
6 ~~duties~~ as may be assigned to it by law, the commission has any  
7 other powers and duties necessary ~~or expedient~~ to accomplish the  
8 purposes of this article.

9 (d) The commission may withdraw specific powers of a governing  
10 board of an institution under its jurisdiction for a period not to  
11 exceed two years, if the commission makes a determination that any  
12 of the following conditions exist:

13 (1) The governing board has failed for two consecutive years  
14 to develop or implement an institutional compact as required in  
15 article one-d of this chapter;

16 (2) The commission has received information, substantiated by  
17 independent audit, of significant mismanagement or failure to carry  
18 out the powers and duties of the board of Governors according to  
19 state law; or

20 (3) Other circumstances which, in the view of the commission,  
21 severely limit the capacity of the board of Governors to carry out  
22 its duties and responsibilities.

23 Specific powers of a governing board may not be withdrawn for  
24 a period exceeding two years. During that time the commission may



1 take all steps necessary to restore sound, stable and responsible  
2 institutional governance.

3 **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

4 **§18B-2A-3. Promulgation of rules.**

5 ~~(a) The governing boards are subject to the supervision of the~~  
6 ~~Commission or the Council, as appropriate, except for the governing~~  
7 ~~boards of Marshall University and West Virginia University as it~~  
8 ~~relates to the state institutions of higher education known as~~  
9 ~~Marshall University and West Virginia University. The Chancellor~~  
10 ~~for Higher Education and the Chancellor for Community and Technical~~  
11 ~~College Education, under the supervision of their respective~~  
12 ~~boards, are responsible for the coordination of policies and~~  
13 ~~purposes of the governing boards and shall provide for and~~  
14 ~~facilitate sufficient interaction among the governing boards and~~  
15 ~~between the governing boards and the state Board of Education to~~  
16 ~~meet the goals and objectives provided in the compacts and in~~  
17 ~~section one-a, article one of this chapter.~~

18 ~~(b) The governing boards and the State Board of Education~~  
19 ~~shall provide any and all information requested by the commission~~  
20 ~~or the council in an appropriate format and in a timely manner.~~

21 **§18B-2A-4. Powers and duties of governing boards generally.**

22 Each governing board separately has the following powers and  
23 duties:

24 (a) Determine, control, supervise and manage the financial,

1 business and education policies and affairs of the state  
2 institution of higher education under its jurisdiction;

3 (b) Develop a master plan for the institution under its  
4 jurisdiction.

5 (1) The ultimate responsibility for developing and updating  
6 each master plan at the institutional level resides with the board  
7 of Governors, but the ultimate responsibility for approving the  
8 final version of each institutional master plan, including periodic  
9 updates, resides with the commission or council, as appropriate.

10 (2) Each institutional master plan shall include, but not be  
11 limited to, the following:

12 (A) A detailed demonstration of how the institutional master  
13 plan will be used to meet the goals and objectives of the  
14 institutional compact;

15 (B) A well-developed set of goals outlining missions, degree  
16 offerings, resource requirements, physical plant needs, personnel  
17 needs, enrollment levels and other planning determinates and  
18 projections necessary in a plan to assure that the needs of the  
19 institution's area of responsibility for a quality system of higher  
20 education are addressed;

21 (C) Documentation showing how the governing board involved the  
22 commission or council, as appropriate, institutional constituency  
23 groups, clientele of the institution and the general public in the  
24 development of all segments of the institutional master plan.

1           (3) The plan shall be established for periods of not fewer  
2 than three nor more than five years and shall be revised  
3 periodically as necessary, including adding or deleting degree  
4 programs as the governing board in its discretion determines is  
5 necessary;

6           (c) Develop a ten-year campus development plan in accordance  
7 with article nineteen of this chapter;

8           (d) Prescribe for the institution, under its jurisdiction, in  
9 accordance with its master plan and compact, specific functions and  
10 responsibilities to achieve the goals, objectives and priorities  
11 established in articles one and one-d of this chapter to meet the  
12 higher education needs of its area of responsibility and to avoid  
13 unnecessary duplication;

14           (e) Direct the preparation of an appropriation request for the  
15 institution under its jurisdiction, which relates directly to  
16 missions, goals and projections as found in the institutional  
17 master plan and the institutional compact;

18           (f) Consider, revise and submit to the commission or council,  
19 as appropriate, an appropriation request on behalf of the  
20 institution under its jurisdiction;

21           (g) Review, at least every five years, all academic programs  
22 offered at the institution under its jurisdiction. The review  
23 shall address the viability, adequacy and necessity of the programs  
24 in relation to established state goals, objectives and priorities,

1 the institutional master plan, the institutional compact and the  
2 education and workforce needs of its responsibility district. As  
3 a part of the review, each governing board shall require the  
4 institution under its jurisdiction to conduct periodic studies of  
5 its graduates and their employers to determine placement patterns  
6 and the effectiveness of the education experience. Where

7 appropriate, these studies should coincide with the studies  
8 required of many academic disciplines by their accrediting bodies;

9 (h) Ensure that the sequence and availability of academic  
10 programs and courses offered by the institution under its  
11 jurisdiction is such that students have the maximum opportunity to  
12 complete programs in the time frame normally associated with  
13 program completion. Each governing board is responsible to see  
14 that the needs of nontraditional college-age students are  
15 appropriately addressed and, to the extent it is possible for the  
16 individual governing board to control, to assure core course work  
17 completed at the institution is transferable to any other state  
18 institution of higher education for credit with the grade earned;

19 (i) Subject to article one-b of this chapter, approve the  
20 teacher education programs offered in the institution under its  
21 control. In order to permit graduates of teacher education  
22 programs to receive a degree from a nationally accredited program  
23 and in order to prevent expensive duplication of program  
24 accreditation, the commission may select and use one nationally

1 recognized teacher education program accreditation standard as the  
2 appropriate standard for program evaluation;

3 (j) Involve faculty, students and classified employees in  
4 institutional-level planning and decisionmaking when those groups  
5 are affected;

6 (k) Subject to ~~the provisions of~~ federal law and pursuant to  
7 articles seven, eight and nine of this chapter and to rules adopted  
8 by the commission and the council, administer a system for the  
9 management of personnel matters, including, but not limited to,  
10 personnel classification, compensation and discipline for employees  
11 at the institution under its jurisdiction;

12 (l) Administer a system for hearing employee grievances and  
13 appeals. Notwithstanding any other provision of this code to the  
14 contrary, the procedure established in article two, chapter six-c  
15 of this code is the exclusive mechanism for hearing prospective  
16 employee grievances and appeals;

17 (m) Solicit and use or expend voluntary support, including  
18 financial contributions and support services, for the institution  
19 under its jurisdiction;

20 (n) Appoint a president for the institution under its  
21 jurisdiction subject to section six, article one-b of this chapter;

22 (o) Conduct written performance evaluations of the president  
23 pursuant to section six, article one-b of this chapter;

24 (p) Employ all faculty and staff at the institution under its

1 jurisdiction. The employees operate under the supervision of the  
2 president, but are employees of the governing board;

3 (q) Submit to the commission or council, as appropriate, any  
4 data or reports requested by the commission or council, as  
5 appropriate, within the time frame set by the commission or  
6 council;

7 (r) Enter into contracts ~~or consortium agreements~~ with the  
8 public schools, private schools or private industry to provide  
9 technical, vocational, college preparatory, remedial and customized  
10 training courses at locations either on campuses of the state  
11 institutions of higher education or at off-campus locations in the  
12 institution's responsibility district. To accomplish this goal,  
13 the boards may share resources among the various groups in the  
14 community;

15 (s) Provide ~~and transfer~~ funding and property to certain  
16 corporations pursuant to section ten, article twelve of this  
17 chapter;

18 (t) Delegate, with prescribed standards and limitations, the  
19 part of its power and control over the business affairs of the  
20 institution to the president in any case where it considers the  
21 delegation necessary and prudent in order to enable the institution  
22 to function in a proper ~~and expeditious~~ manner and to meet the  
23 requirements of its master plan and compact. If a governing board  
24 elects to delegate any of its power ~~and control~~ under this

1 subsection, it shall enter the delegation in the minutes of the  
2 meeting when the decision was made and shall notify the commission  
3 or council, as appropriate. Any delegation of power and control  
4 may be rescinded by the appropriate governing board ~~the commission~~  
5 ~~or council, as appropriate,~~ at any time, in whole or in part;  
6 ~~except that the commission may not revoke delegations of authority~~  
7 ~~made by the governing boards of Marshall University or West~~  
8 ~~Virginia University as they relate to the state institutions of~~  
9 ~~higher education known as Marshall University and West Virginia~~  
10 ~~University;~~

11 (u) Unless changed by the commission or the council, as  
12 appropriate, continue to abide by existing rules setting forth  
13 standards for acceptance of advanced placement credit for the  
14 institution under its jurisdiction. Individual departments at a  
15 state institution of higher education may, upon approval of the  
16 institutional faculty senate, require higher scores on the advanced  
17 placement test than scores designated by the governing board when  
18 the credit is to be used toward meeting a requirement of the core  
19 curriculum for a major in that department;

20 (v) Consult and cooperate ~~and work~~ with the State Treasurer  
21 and the State Auditor to ~~update as necessary and~~ maintain an  
22 efficient and cost-effective system for the financial management  
23 and expenditure of appropriated and nonappropriated revenue at the  
24 institution under its jurisdiction that ensures that properly

1 submitted requests for payment be paid on or before the due date  
2 but, in any event, within fifteen days of receipt in the State  
3 Auditor's office;

4 (w) In consultation with the appropriate chancellor and the  
5 Secretary of the Department of Administration, develop ~~update as~~  
6 ~~necessary~~ and maintain a plan to administer a consistent method of  
7 conducting personnel transactions, including, but not limited to,  
8 hiring, dismissal, promotions and transfers at the institution  
9 under its jurisdiction. Each personnel transaction shall be  
10 accompanied by the appropriate standardized system or forms, which  
11 shall be submitted to the respective governing board and the  
12 Department of Finance and Administration;

13 (x) Notwithstanding any other contrary provision of this code  
14 ~~to the contrary~~, transfer funds from any account specifically  
15 appropriated for its use to any corresponding line item in a  
16 general revenue account at any agency or institution under its  
17 jurisdiction as long as the transferred funds are used for the  
18 purposes appropriated;

19 (y) Transfer funds from appropriated special revenue accounts  
20 for capital improvements under its jurisdiction to special revenue  
21 accounts at agencies or institutions under its jurisdiction as long  
22 as the transferred funds are used for the purposes appropriated in  
23 accordance with article nineteen of this chapter;

24 (z) Notwithstanding any other contrary provision of this code



1 to ~~the~~ contrary, acquire legal services that are necessary,  
2 including representation of the governing board, its institution,  
3 employees and officers before any court or administrative body.  
4 The counsel may be employed either on a salaried basis or on a  
5 reasonable fee basis. In addition, the governing board may, but is  
6 not required to, call upon the Attorney General for legal  
7 assistance and representation as provided by law; and

8 (aa) Contract and pay for disability insurance for a class or  
9 classes of employees at a state institution of higher education  
10 under its jurisdiction.

11 (bb) Maintain guidelines for institutions under its control to  
12 follow concerning extensive capital project management. The  
13 guidelines are to provide a process for developing capital  
14 projects, including, but not limited to, the notification by an  
15 institution to the commission of any proposed capital project which  
16 has the potential to exceed \$1 million.

17 **ARTICLE 4. GENERAL ADMINISTRATION.**

18 **§18B-4-5. Campus police officers; appointment; qualifications;**  
19 **authority; compensation and removal.**

20 (a) The governing boards may appoint bona fide residents of  
21 this state to serve as campus police officers upon any premises  
22 owned or leased by the State of West Virginia and under the  
23 jurisdiction of the governing boards, subject to the conditions ~~and~~  
24 ~~restrictions~~ established in this section.

1           (1) A person who previously was qualified for employment as a  
2 law-enforcement officer for a state agency or political subdivision  
3 of the state is considered certified for appointment as a campus  
4 police officer at all publicly funded ~~the~~ state institutions of  
5 higher education. ~~under the jurisdiction of the governing boards of~~  
6 ~~Marshall University and West Virginia University.~~

7           (2) Before performing duties as a campus police officer in any  
8 county, a person shall qualify as is required of county police  
9 officers by:

10           (A) Taking and filing an oath of office as required by article  
11 one, chapter six of this code; and

12           (B) Posting an official bond as required by article two,  
13 chapter six of this code.

14           (b) A campus police officer may carry a gun and any other  
15 dangerous weapon while on duty if the officer fulfills the  
16 certification requirement for law-enforcement officers under  
17 section five, article twenty-nine, chapter thirty of this code or  
18 meets the requirements of subsection (a) of this section.

19           (c) It is the duty of a campus police officer to preserve law  
20 and order:

21           (1) On the premises under the jurisdiction of the governing  
22 board; and

23           (2) On any street, road or thoroughfare, except controlled  
24 access and open country highways, immediately adjacent to or

1 passing through premises, to which the officer is assigned by the  
2 president of the state institution of higher education.

3 (A) For the purpose of this subdivision, the campus police  
4 officer is a law-enforcement officer pursuant to ~~the provisions of~~  
5 section one, article twenty-nine, chapter thirty of this code.

6 (B) The officer has and may exercise all the ~~powers and~~  
7 authority of a law-enforcement officer as to offenses committed  
8 within the area assigned;

9 (C) The officer is subject to all the requirements and  
10 responsibilities of a law-enforcement officer;

11 (D) Authority assigned pursuant to this subdivision does not  
12 supersede in any way the authority ~~or duty~~ of other law-enforcement  
13 officers to preserve law and order on such premises.

14 (E) Campus police officers may assist a local law-enforcement  
15 agency on public highways. The assistance may be provided to  
16 control traffic in and around premises owned by the state when:

17 (i) Traffic is generated as a result of athletic or other  
18 activities conducted or sponsored by a state institution of higher  
19 education; and

20 (ii) The assistance has been requested by the local law-  
21 enforcement agency.

22 (F) Campus police officers may assist a local law-enforcement  
23 agency in any location under the agency's jurisdiction at the  
24 request of the agency.

1 (d) The salary of a campus police officer is paid by the  
2 appropriate governing board. Each state institution may furnish  
3 each campus police officer with a firearm and an official uniform  
4 to be worn while on duty. The institution shall furnish and  
5 require each officer while on duty to wear a shield with an  
6 appropriate inscription and to carry credentials certifying to the  
7 person's identity and authority as a campus police officer.

8 (e) A governing board may at its pleasure revoke the authority  
9 of any campus police officer and such officers serve at the will  
10 and pleasure of the governing board. The president of the state  
11 institution shall report the termination of employment of a campus  
12 police officer by filing a notice to that effect in the office of  
13 the clerk of each county in which the campus police officer's oath  
14 of office was filed.

15 **§18B-4-5a. Crimes committed on campus of institutions of higher**  
16 **education.**

17 (a) The president or a designee of each state institution of  
18 higher education shall on a regular and timely basis provide  
19 information to the public concerning alleged crimes occurring on  
20 the institution's property which have been reported to a campus  
21 police officer or any other officer of the institution.

22 (1) A crime is considered reported when:

23 (A) A campus police officer or other officer of the  
24 institution determines that the report is credible;

1 (B) The report is submitted in writing and attested to by the  
2 victim on forms at the institution for such purpose; or

3 (C) The institution is notified by a law-enforcement agency of  
4 the reporting of a crime alleged to have occurred on the  
5 institution's property.

6 (2) Such reports are referred within twenty-four hours to the  
7 appropriate law-enforcement agencies, as defined in section one,  
8 article twenty-nine, chapter thirty of this code, for further  
9 investigation.

10 (b) ~~For the~~ At all publicly funded state institutions of  
11 higher education ~~under the jurisdiction of the Governing Board of~~  
12 ~~Marshall University and for the state institution of higher~~  
13 ~~education known as West Virginia University only,~~ the campus police  
14 shall investigate a crime within their respective jurisdictions for  
15 up to thirty days if the county prosecuting attorney does not  
16 reassign the case to another agency sooner.

17 (c) The information required to be made available to the  
18 public regarding the crime report shall be available within ten  
19 days of the report. The information shall include the nature of  
20 the criminal offense, the date of the offense, the general location  
21 of the offense (such as a designation of a specific building or  
22 area of the campus) and the time of day when the offense occurred.

23 (1) This subsection does not require the release of any  
24 information which may disclose the identity of the victim.

1 (2) The institution shall withhold the information required to  
2 be made available to the public for a longer period upon  
3 certification of investigative need that the information be  
4 withheld from the public.

5 (A) The certification shall be filed by an officer of one of  
6 the investigating law-enforcement agencies with the president of  
7 the institution or the designee to whom the duties required by this  
8 section have been delegated.

9 (B) The required information may not be withheld after an  
10 arrest has been made in connection with the crime report.

11 (d) For purposes of this section, "crime" is defined as those  
12 offenses required to be reported under the federal Crime Awareness  
13 and Campus Security Act of 1990, as amended. "Crime" includes  
14 murder, rape, robbery, aggravated assault, burglary, motor vehicle  
15 theft and arrests for liquor, drug or weapons laws violations.

16 (e) The council and commission shall provide crime reporting  
17 forms to institutions under their respective jurisdictions and  
18 promulgate a rule pursuant to ~~the provisions of~~ article three-a,  
19 chapter twenty-nine-a of this code as necessary to implement this  
20 section.

21 **§18B-4-6. Regulation of parking, speed flow of traffic on campus**  
22 **roads and driveways; civil and criminal penalties;**  
23 **disposition of revenue.**

24 (a) Notwithstanding any other contrary motor vehicle or

1 traffic law or regulation ~~to the contrary~~, a governing board may  
2 regulate ~~and control~~ at any state institution under its  
3 jurisdiction the speed, flow and parking of vehicles on campus  
4 roads, driveways and parking facilities or areas.

5 (1) Rules for this purpose shall be promulgated by the  
6 governing boards ~~in the manner~~ as prescribed in section six,  
7 article one of this chapter.

8 (2) When so promulgated, the rules have the force ~~and effect~~  
9 of law.

10 (3) The governing board shall post in a conspicuous location  
11 in each parking facility or area, a summary of the rules governing  
12 the use of the facility or area including, but not limited to, the  
13 availability of temporary parking permits and where these permits  
14 may be obtained and the penalties which may be imposed for  
15 violations of the rules.

16 (4) The governing board shall post in a conspicuous location  
17 along each campus road and driveway notice signs pertaining to the  
18 speed of vehicles, spaces available for parking, directional flow  
19 of traffic and penalties which may be imposed for violations of the  
20 rules.

21 (b) Any person parking or operating a vehicle in violation of  
22 the rules shall be issued a citation:

23 (1) Describing the offense charged; and

24 (2) Ordering an appearance:

1 (A) Within ten days, excluding Saturdays, Sundays and holidays  
2 observed by the state institution, before a designated official of  
3 the institution;

4 (B) Before a magistrate located in the county if the person  
5 cited fails to appear within the ten days; or

6 (C) Before the judge of the municipal court, if the state  
7 institution is located within a municipality having such an  
8 official and the person cited fails to appear within the ten days.

9 (c) ~~The designated official of the state institution has~~  
10 ~~exclusive jurisdiction of the offense during the ten-day period~~  
11 ~~until the citation is forwarded to a magistrate. For the state~~  
12 ~~institutions of higher education under the jurisdiction of the~~  
13 ~~governing board of Marshall University and for the state~~  
14 ~~institution of higher education known as West Virginia University~~  
15 ~~only, the~~ designated official of the institution has exclusive  
16 jurisdiction of the offense for thirty days following the  
17 violation. After thirty days the official shall forward the  
18 citation to a magistrate. Any person cited may plead no contest to  
19 the offense and, by so pleading, is subject to a civil penalty to  
20 be determined uniformly by the designated official and commensurate  
21 with the severity of the offense. ~~For the state institutions under~~  
22 ~~the jurisdiction of the governing board of Marshall University and~~  
23 ~~for the state institution of higher education known as West~~  
24 ~~Virginia University only, For all publicly funded state~~



1 institutions of higher education the amount imposed may not exceed  
2 \$20. ~~For all other institutions the amount may not exceed \$10, for~~  
3 ~~each offense as partial reimbursement to the state institution of~~  
4 ~~higher education for the cost of regulating traffic and parking.~~  
5 ~~In the case of the state institutions under the jurisdiction of the~~  
6 ~~governing board of Marshall University and in the case of the state~~  
7 ~~institution of higher education known as West Virginia University~~  
8 ~~only, the~~ The designated official shall determine the penalty  
9 uniformly, commensurate with the severity of the offense, and may  
10 apply academic restrictions in lieu of requiring a student to  
11 appear in court and receive penalties otherwise provided in this  
12 section. Moneys derived from civil penalties imposed in this  
13 subsection shall be deposited in the institution's auxiliary and  
14 auxiliary capital fees fund.

15 (d) Upon expiration of the ten-day or thirty-day period, as  
16 applicable, or upon a pleading of not guilty before the designated  
17 official of the state institution within the applicable period, the  
18 magistrate or judge of the municipal court has jurisdiction of the  
19 offense. Any person cited under this section, upon a finding of  
20 guilty by the magistrate or municipal judge, is subject to a fine  
21 for each offense by the state institutions ~~under the jurisdiction~~  
22 ~~of the governing board of Marshall University and for the state~~  
23 ~~institution of higher education known as West Virginia University~~  
24 ~~only, of up to \$40, and at all other state institutions not less~~

1 ~~than \$10 nor more than \$20,~~ the amount to be commensurate with the  
2 severity of the offense.

3 (e) Each designated official of a state institution presiding  
4 over a case under this section shall keep a record of every  
5 citation which alleges a violation of the provisions, or the rules  
6 promulgated in accordance with this section, and shall keep a  
7 record of every official action in reference to the citation  
8 including, but not limited to, a record of every plea of no  
9 contest, conviction or acquittal, of the offense charged, and the  
10 amount of the fine or civil penalty resulting from each citation.

11 (f) Whenever a vehicle is parked on any state institution  
12 campus road, driveway or parking facility or area in a manner which  
13 violates posted rules and substantially impedes the flow of traffic  
14 or endangers the health and safety, in addition to issuing a  
15 citation and any procedures set forth in this section, the  
16 institution may remove the vehicle, by towing or otherwise, to an  
17 area owned by the institution or areas designated for this purpose.  
18 The vehicle, having been towed to the designated area or areas, may  
19 be rendered immovable by use of locking wheel blocks or other  
20 device not damaging to the vehicle. The state institution of  
21 higher education shall maintain any vehicle towed in the same  
22 condition as it was immediately prior to being towed, but is not  
23 liable for any damage to a vehicle towed to, or kept in, a  
24 designated area pursuant to this section. The state institution of

1 higher education shall pay for the cost of removing the vehicle and  
 2 has a right to reimbursement from the owner for this cost and for  
 3 the reasonable cost of keeping the vehicle in the designated area.  
 4 Until payment of these costs, the state institution of higher  
 5 education may retain possession of the vehicle and the institution  
 6 shall have a lien on the vehicle for the amount due. The state  
 7 institution of higher education may enforce this lien in the manner  
 8 provided in section fourteen, article eleven, chapter thirty-eight  
 9 of this code for the enforcement of other liens. ~~For the state~~  
 10 ~~institutions of higher education under the jurisdiction of the~~  
 11 ~~governing board of Marshall University and for the state~~  
 12 ~~institution of higher education known as West Virginia University~~  
 13 ~~only,~~ This subsection also ~~apply~~ applies when a vehicle is subject  
 14 to three or more unpaid citations.

15 (g) If, at any time, Mountwest Community and Technical College  
 16 ceases to share a physical campus location with Marshall  
 17 University, it may not be included as an institution under the  
 18 jurisdiction of the governing board of Marshall University for the  
 19 purposes of subsections (c), (d) and (f) of this section.

20 **§18B-4-7. Accreditation of institutions of higher education;**  
 21 **standards for degrees.**

22 The council shall make rules for the accreditation of  
 23 community and technical colleges in this state and shall determine  
 24 the minimum standards for conferring degrees. ~~The commission shall~~

1 ~~make rules for the accreditation of colleges and universities in~~  
2 ~~this state, except the governing boards of Marshall University and~~  
3 ~~West Virginia University shall make rules for the state~~  
4 ~~institutions of higher education known as Marshall University and~~  
5 ~~West Virginia University, and shall determine the minimum standards~~  
6 ~~for conferring degrees. The governing boards of all publicly~~  
7 ~~funded state institutions of higher education shall make rules for~~  
8 ~~their institutions and shall determine the minimum standards for~~  
9 ~~conferring degrees. The governing boards of ~~Marshall University~~~~  
10 ~~and ~~West Virginia University~~ all publicly funded state institutions~~  
11 ~~of higher education shall promulgate rules pursuant to ~~the~~~~  
12 ~~provisions of section six, article one of this chapter for the~~  
13 ~~accreditation of the state institutions of higher education. ~~known~~~~  
14 ~~as ~~Marshall University~~ and ~~West Virginia University~~. An~~  
15 ~~institution of higher education may not confer any degree on any~~  
16 ~~basis of work or merit below the minimum standards prescribed by~~  
17 ~~the council, commission or the governing boards. Nothing in this~~  
18 ~~section infringes upon the rights, including rights to award~~  
19 ~~degrees, granted to any institution by charter given according to~~  
20 ~~law, or by actions of the council or commission or their~~  
21 ~~predecessors, prior to the effective date of this section. With~~  
22 ~~the approval of the commission, governing boards of institutions~~  
23 ~~which currently offer substantial undergraduate course offerings~~  
24 ~~and a master's degree in a discipline are authorized to grant~~

1 baccalaureate degrees in that discipline.

2       Except as otherwise provided in this section, a charter or  
3 other instrument containing the right to confer degrees of higher  
4 education status may not be granted by the State of West Virginia  
5 to any institution, association or organization within the state,  
6 nor may any such degree be awarded, until the condition of  
7 conferring the degree has first been approved in writing by the  
8 council, commission or appropriate governing board.

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

10 **§18B-5-4. Purchase or acquisition of materials, supplies,**  
11 **equipment, services and printing.**

12       (a) The council, commission and each governing board shall  
13 purchase or acquire all materials, supplies, equipment, services  
14 and printing required for that governing board or the council or  
15 commission, as appropriate, and ~~the state institutions of higher~~  
16 ~~education under their jurisdiction, except the governing boards of~~  
17 ~~Marshall University and West Virginia University, respectively, all~~  
18 publicly funded state institutions of higher education are subject  
19 to subsection (d) of this section.

20       (b) The commission and council jointly shall adopt rules  
21 governing ~~and controlling~~ acquisitions ~~and purchases~~ in accordance  
22 with this section. The rules shall ensure that the following  
23 procedures are followed:

24       (1) No person is precluded from participating and making sales

1 thereof to the council, commission or governing board except as  
2 otherwise provided in section five of this article. Providing  
3 consulting services such as strategic planning services does not  
4 preclude or inhibit the governing boards, council or commission  
5 from considering a qualified bid or response for delivery of a  
6 product or a commodity from the individual providing the services;

7       (2) Specifications are established and prescribed for  
8 materials, supplies, equipment, services and printing to be  
9 purchased;

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

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

16       (5) Bids are advertised on all purchases exceeding \$25,000,  
17 and made by means of sealed or electronically-submitted bids and  
18 competitive bidding or advantageous purchases effected through  
19 other accepted governmental methods and practices. Competitive  
20 bids are not required for purchases of \$25,000 or less.

21       (6) Notices for acquisitions and purchases for which  
22 competitive bids are being solicited are posted in the purchasing  
23 office of the specified institution involved in the purchase, at  
24 least two weeks prior to making the purchases. The rules shall

1 ensure that the notice is available to the public during business  
2 hours;

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

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

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

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

13 (1) "Form" means compliance with the Constitution and statutes  
14 of the State of West Virginia;

15 (2) The Attorney General does not have the authority to reject  
16 ~~a contract, agreement or other~~ the document based on the  
17 substantive provisions in the contract, agreement or document or  
18 any extrinsic matter as long as it complies with the Constitution  
19 and statutes of this state;

20 (3) Within fifteen days of receipt, the Attorney General shall  
21 notify the appropriate state institution of higher education in  
22 writing that the ~~contract, agreement or other~~ document is approved  
23 or disapproved as to form. If the ~~contract, agreement or other~~  
24 document is disapproved as to form, the notice of disapproval shall

1 identify each defect that supports the disapproval; and

2 (4) If the state institution elects to challenge the  
3 disapproval by filing a writ of mandamus or other action and  
4 prevails, then the Attorney General shall pay reasonable attorney  
5 fees and costs incurred.

6 (d) Pursuant to this subsection, the governing boards of  
7 ~~Marshall University and West Virginia University, respectively,~~ all  
8 publicly funded state institutions of higher education may carry  
9 out the following actions:

10 (1) ~~Purchase or~~ Acquire all materials, supplies, equipment,  
11 services and printing required for the governing board without  
12 approval from the commission or the Vice Chancellor for  
13 Administration and may issue checks in advance to cover postage as  
14 provided in subsection (f) of this section;

15 (2) Make purchases from cooperative buying groups, consortia,  
16 the federal government or from federal government contracts if the  
17 materials, supplies, services, equipment or printing to be  
18 purchased is available from these groups and if this would be the  
19 most financially advantageous manner of making the purchase;

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

24 (4) Use purchase cards under terms approved for the



1 commission, the council and governing boards of state institutions  
2 of higher education and participate in any expanded program of use  
3 ~~as provided in~~ under subsection (u) of this section.

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

10 (f) The council, commission or each governing board may issue  
11 a check in advance to a company supplying postage meters for  
12 postage used by that board, the council or commission and by the  
13 state institutions of higher education under their jurisdiction.

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

23 (h) The governing boards, council and commission shall  
24 maintain a purchase file, which shall be a public record and open

1 for public inspection.

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

5       (A) Designation as the successful bid;

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

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

9       (2) A record in the purchase file may not be destroyed without  
10 the written consent of the Legislative Auditor. Those files in  
11 which the original documentation has been held for at least one  
12 year and in which the original documents have been reproduced and  
13 archived on microfilm or other equivalent method of duplication may  
14 be destroyed without the written consent of the Legislative  
15 Auditor.

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

18       (i) The commission and council, also jointly, shall promulgate  
19 rules to prescribe qualifications to be met by any person who is to  
20 be employed as a buyer pursuant to this section. These rules shall  
21 require that a person may not be employed as a buyer unless that  
22 person, at the time of employment has one of the following  
23 qualifications:

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

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

4           (j) Any person making ~~purchases and~~ acquisitions pursuant to  
5 this section shall execute a bond in the penalty of \$50,000,  
6 payable to the State of West Virginia, with a corporate bonding or  
7 surety company authorized to do business in this state as surety  
8 thereon, in form prescribed by the Attorney General and conditioned  
9 upon the faithful performance of all duties in accordance with this  
10 section and sections five through eight, inclusive, of this article  
11 and the rules of the governing board and the council and  
12 commission. In lieu of separate bonds for these buyers, a blanket  
13 surety bond may be obtained. The bond shall be filed with the  
14 Secretary of State and the cost of the bond shall be paid from  
15 funds appropriated to the applicable governing board or the council  
16 or commission.

17           (k) All ~~purchases and~~ acquisitions shall be made in  
18 consideration and within limits of available appropriations and  
19 funds and in accordance with ~~applicable provisions of~~ article two,  
20 chapter five-a of this code relating to expenditure schedules and  
21 quarterly allotments of funds. Notwithstanding any ~~other~~ contrary  
22 provision of this code ~~to the contrary~~, only those purchases  
23 exceeding the dollar amount for competitive sealed bids in this  
24 section are required to be encumbered and they may be entered into

1 the state's centralized accounting system by the staff of the  
2 commission, council or governing boards to satisfy the requirements  
3 of article two, chapter five-a of this code to determine whether  
4 the amount of the purchase is within the quarterly allotment of the  
5 commission, council or governing board, is in accordance with the  
6 approved expenditure schedule and otherwise conforms to the  
7 article.

8       (1) The governing boards, council and commission may make  
9 requisitions upon the State Auditor for a sum to be known as an  
10 advance allowance account, not to exceed five percent of the total  
11 of the appropriations for the governing board, council or  
12 commission, and the State Auditor shall draw a warrant upon the  
13 Treasurer for those accounts. All advance allowance accounts shall  
14 be accounted for by the applicable governing board or the council  
15 or commission once every thirty days or more often if required by  
16 the State Auditor.

17       (m) Contracts entered into pursuant to this section shall be  
18 signed by the applicable governing board or the council or  
19 commission in the name of the state and shall be approved as to  
20 form by the Attorney General. A contract which requires approval  
21 as to form by the Attorney General is considered approved if the  
22 Attorney General has not responded within fifteen days of  
23 presentation of the contract. A contract or a change order for  
24 that contract and notwithstanding any other contrary provision of

1 this code ~~to the contrary~~, associated documents such as performance  
2 and labor/material payments, bonds and certificates of insurance  
3 which use terms ~~and conditions~~ or standardized forms previously  
4 approved by the Attorney General and do not make substantive  
5 changes in the terms ~~and conditions~~ of the contract do not require  
6 approval as to form by the Attorney General. The Attorney General  
7 shall make a list of those changes which he or she considers to be  
8 substantive and the list, and any changes to the list, shall be  
9 published in the State Register. A contract that exceeds the  
10 dollar amount requiring competitive sealed bids in this section  
11 shall be filed with the State Auditor. If requested to do so, the  
12 governing boards, council or commission shall make all contracts  
13 available for inspection by the State Auditor. The governing  
14 board, council or commission, as appropriate, shall prescribe the  
15 amount of deposit or bond to be submitted with a bid or contract,  
16 if any, and the amount of deposit or bond to be given for the  
17 faithful performance of a contract.

18 (n) If the governing board, council or commission purchases or  
19 contracts for materials, supplies, equipment, services and printing  
20 contrary to sections four through seven of this article or the  
21 rules pursuant to this article, the purchase or contract is void  
22 ~~and of no effect~~.

23 (o) A governing board or the council or commission, as  
24 appropriate, may request the director of purchasing to make

1 available the facilities and services of that department to the  
2 governing boards, council or commission in the purchase and  
3 acquisition of materials, supplies, equipment, services and  
4 printing. The director of purchasing shall cooperate with that  
5 governing board, council or commission, as appropriate, in all such  
6 purchases and acquisitions upon that request.

7 (p) Each governing board or the council or commission, as  
8 appropriate, may permit private institutions of higher education to  
9 join as purchasers on purchase contracts for materials, supplies,  
10 services and equipment entered into by that governing board or the  
11 council or commission. A private institution desiring to join as  
12 purchaser on purchase contracts shall file with that governing  
13 board or the council or commission, as appropriate, an affidavit  
14 signed by the president or designee of the private institution  
15 requesting that it be authorized to join as purchaser on purchase  
16 contracts of that governing board or the council or commission, as  
17 appropriate. The private institution shall agree that it is bound  
18 by such terms and conditions as that governing board or the council  
19 or commission may prescribe and that it will be responsible for  
20 payment directly to the vendor under each purchase contract.

21 (q) Notwithstanding any other provision of this code to the  
22 contrary, the governing boards, council and commission, as  
23 appropriate, may make purchases from cooperative buying groups,  
24 consortia, the federal government or from federal government

1 contracts if the materials, supplies, services, equipment or  
2 printing to be purchased is available from that source, and  
3 purchasing from that source would be the most financially  
4 advantageous manner of making the purchase.

5 (r) ~~An independent performance audit of all purchasing~~  
6 ~~functions and duties which are performed at any state institution~~  
7 ~~of higher education, except Marshall University and West Virginia~~  
8 ~~University, shall be performed each fiscal year. The Joint~~  
9 ~~Committee on Government and Finance shall conduct the performance~~  
10 ~~audit and the governing boards, council and commission, as~~  
11 ~~appropriate, are responsible for paying the cost of the audit from~~  
12 ~~funds appropriated to the governing boards, council or commission.~~

13 (1) The governing boards of ~~Marshall University and West~~  
14 ~~Virginia University, respectively,~~ all publicly funded state  
15 institutions of higher education shall provide for independent  
16 performance audits of all purchasing functions and duties on their  
17 campuses at least once in each three-year period.

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

20 (3) Copies of all appropriate documents relating to any audit  
21 performed by the governing boards of ~~Marshall University and West~~  
22 ~~Virginia University~~ all publicly funded state institutions of  
23 higher education shall be furnished to the Joint Committee on  
24 Government and Finance and the Legislative Oversight Commission on

1 Education Accountability within thirty days of the date the audit  
2 report is completed.

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

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

13 (u) Purchasing card use may be expanded by the council,  
14 commission and state institutions of higher education pursuant to  
15 this subsection.

16 (1) The council and commission jointly shall establish  
17 procedures to be implemented by the council, commission and any  
18 institution under their respective jurisdictions using purchasing  
19 cards. The procedures shall ensure that each meets the following  
20 conditions:

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

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

24 (C) Sufficient accounting and auditing procedures for all



1 purchasing card transactions.

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

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

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

12 (3) The commission and council each shall evaluate the  
13 capacity of each institution under its jurisdiction for complying  
14 with the procedures established pursuant to subdivision (2) of this  
15 subsection. The commission and council each shall authorize  
16 expanded use of purchasing cards pursuant to that subdivision for  
17 any institution it determines has the capacity to comply.

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

20 (a) The commission, the council and the governing boards shall  
21 dispose of obsolete and unusable equipment, surplus supplies and  
22 other unneeded materials, either by transfer to other governmental  
23 agencies or institutions, by exchange or trade, or by sale as junk  
24 or otherwise. The commission, the council and each governing board

1 shall adopt rules governing and controlling the disposition of all  
2 such equipment, supplies and materials.

3 (1) At least ten days prior to the disposition, the  
4 commission, the council or the governing boards, as applicable,  
5 shall advertise, by newspaper publication as a Class II legal  
6 advertisement in compliance with ~~the provisions of~~ article three,  
7 chapter fifty-nine of this code, in the county in which the  
8 equipment, supplies and materials are located, the availability or  
9 sales of such disposable equipment, supplies and materials.

10 (2) The commission, the council or governing boards, as  
11 applicable, may sell the disposable equipment, supplies and  
12 materials, in whole or in part, at public auction or by sealed bid,  
13 or may transfer, exchange or trade the same to other governmental  
14 agencies or institutions (if by transfer, exchange or trade, then  
15 without advertising), in whole or in part, as sound business  
16 practices may warrant under existing circumstances and conditions.

17 (3) The requirements set forth in subsection (a) of this  
18 section apply to ~~Marshall University and West Virginia University~~  
19 publicly funded state institutions of higher education relating  
20 only to those items of obsolete and unusable equipment, surplus  
21 supplies and other unneeded materials that exceed \$5,000 in  
22 recorded net book value. ~~Marshall University and West Virginia~~  
23 ~~University~~ These institutions may dispose of obsolete and unusable  
24 computers and computer-related equipment pursuant to ~~the provisions~~

1 of section two, article three of this chapter.

2 (b) The commission, council ~~or governing board~~, as  
3 appropriate, ~~except for Marshall University and West Virginia~~  
4 ~~University~~, shall report annually to the Legislative Auditor, all  
5 sales of commodities made during the preceding six months.

6 (1) The report shall include a description of the commodities  
7 sold, the name of the buyer to whom each commodity was sold, and  
8 the price paid by the buyer.

9 (2) ~~Marshall University and West Virginia University shall~~  
10 Publicly funded state institutions of higher education must report  
11 biennially to the Legislative Auditor the total sales of  
12 commodities made during the preceding biennium along with the total  
13 recorded net book value of such commodities.

14 (c) The proceeds of sales or transfers shall be deposited in  
15 the State Treasury to the credit on a pro rata basis of the fund or  
16 funds from which the purchase of the particular commodities or  
17 expendable commodities was made. The commission, council or  
18 governing board, as appropriate, may charge ~~and assess~~ fees  
19 reasonably related to the costs of care and handling with respect  
20 to the transfer, warehousing, sale and distribution of state  
21 property that is disposed of or sold pursuant to ~~the provisions of~~  
22 this section.

23 **§18B-5-9. Higher education fiscal responsibility.**

24 (a) The institutions of governing boards of ~~Marshall~~

1 ~~University and West Virginia University~~ publicly funded state  
2 institutions of higher education each shall ensure the fiscal  
3 integrity of its operations using best business and management  
4 practices.

5 (1) The practices include at least the following:

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

10 (B) Operating without material weakness in internal controls  
11 as defined by GAAP, GAGAS and, where applicable, the Office of  
12 Management and Budget (OMB) Circular A-133;

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

15 (D) Presenting annual audited financial statements to the  
16 respective governing board;

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

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

21 (2) Marshall University, West Virginia University and the  
22 research corporation of each:

23 (A) Shall comply with the OMB Circular A-133 annual grant  
24 award audit requirements; and

1 (B) Is exempt from ~~the provisions of~~ section fourteen, article  
2 four, chapter twelve of this code.

3 (3) Within thirty days of the completion of the financial  
4 audit report, the governing boards of Marshall University and West  
5 Virginia University each shall furnish to the commission, the  
6 Legislative Oversight Commission on Education Accountability and  
7 the Joint Committee on Government and Finance copies of the annual  
8 audited financial statements.

9 (b) The commission or council, as appropriate, shall ensure  
10 the fiscal integrity of any electronic process conducted at its  
11 offices and at all other institutions using best business and  
12 management practices.

13 (c) ~~Marshall University, West Virginia University~~ Regarding  
14 all publicly funded state institutions of higher education, the  
15 council and the commission each shall implement a process whereby,  
16 to the maximum extent practicable, employees of ~~Marshall~~  
17 ~~University, West Virginia University~~ publicly funded higher  
18 education institutions, the council, commission and all other state  
19 institutions of higher education receive their wages via electronic  
20 transfer or direct deposit.

21 (d) Notwithstanding ~~the provisions of~~ section ten-a, article  
22 three, chapter twelve of this code, and except as otherwise  
23 provided in this subsection, the amount of any purchase made with  
24 a purchasing card used by the council, the commission or any other

1 state institution of higher education may not exceed \$5,000.

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

7 (2) The council, commission and any state institution of  
8 higher education may use a purchasing card for travel expenses  
9 directly related to the job duties of the traveling employee.  
10 Where approved by the Auditor, such expenses may exceed \$5,000 by  
11 an amount to be determined by the Auditor. Traveling expenses may  
12 include registration fees and airline and other transportation  
13 reservations, if approved by the president of the institution.  
14 Traveling expenses may ~~not~~ include fuel or food purchases. ~~except,~~  
15 ~~the state institutions of higher education known as Marshall~~  
16 ~~University and West Virginia University may include in traveling~~  
17 ~~expenses the purchase of fuel and food.~~

18 (3) ~~The~~ All state institutions of higher education ~~known as~~  
19 ~~Marshall University and West Virginia University~~ each shall  
20 maintain one purchasing card for use only in a situation declared  
21 an emergency by the institution's president. The council and  
22 ~~commission and all other institutions~~ shall maintain one purchase  
23 card for use only in a situation declared an emergency by the  
24 president of the institution and approved by the appropriate

1 chancellor. Emergencies may include, but are not limited to,  
2 partial or total destruction of a campus facility; loss of a  
3 critical component of utility infrastructure; heating, ventilation  
4 or air condition failure in an essential academic building; loss of  
5 campus road, parking lot or campus entrance; or a local, regional,  
6 or national emergency situation that has a direct impact on the  
7 campus.

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

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

- 21 (1) Bulk purchasing;
- 22 (2) Reverse bidding;
- 23 (3) Electronic marketplaces; and
- 24 (4) Electronic remitting.

1 (g) Each institution shall establish a consortium with at  
2 least one other institution, in the most cost-efficient manner  
3 feasible, to consolidate the following operations and student  
4 services:

5 (1) Payroll operations;

6 (2) Human resources operations;

7 (3) Warehousing operations;

8 (4) Financial transactions;

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

11 (6) Standard and bulk purchasing; and

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

14 (h) An institution may charge a fee to each institution for  
15 which it provides a service or performs an operation. The fee rate  
16 shall be in the best interest of both the institution being served  
17 and the providing institution, as approved by the council and  
18 commission.

19 (i) Any community and technical college, college and  
20 university may provide the services authorized by this section for  
21 the benefit of any governmental body or public or private  
22 institution.

23 (j) Each institution shall strive to minimize its number of  
24 low-enrollment sections of introductory courses. To the maximum



1 extent practicable, institutions shall use distance learning to  
2 consolidate the course sections. Marshall University, West  
3 Virginia University, the council and commission shall report the  
4 progress of reductions as requested by the Legislative Oversight  
5 Commission on Education Accountability.

6 (k) An institution shall use its natural resources and  
7 alternative fuel resources to the maximum extent feasible. The  
8 institution:

9 (1) May supply the resources for its own use and for use by  
10 any other institution;

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

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

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

18 (1) Any cost-savings realized or fee procured or retained by  
19 an institution pursuant to implementation ~~of the provisions~~ of this  
20 section is retained by the institution.

21 (m) ~~The provisions of Subsection (b) of this section do~~ does  
22 not apply to ~~the state institutions known as Marshall University~~  
23 ~~and West Virginia University.~~ Each is publicly funded state  
24 institutions of higher education. All are authorized, but not

1 required, to comply with ~~the provisions of~~ subsections (f), (g) and  
2 (h) of this section.

3 (1) The governing boards of ~~Marshall University and West~~  
4 ~~Virginia University, respectively, each~~ publicly funded state  
5 institutions of higher education shall promulgate a rule on  
6 purchasing procedures pursuant to ~~the provisions of~~ section six,  
7 article one of this chapter. ~~Neither institution is~~ All  
8 institutions are subject to the rules required by subsection (f) of  
9 this section.

10 (2) If ~~either~~ the governing board elects to implement ~~the~~  
11 ~~provisions of~~ said subsection (g) of this section, the following  
12 conditions apply:

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

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

21 (C) The governing board may not implement ~~the provisions of~~  
22 this subdivision in a manner which supercedes the requirements  
23 established in section twelve, article three-c of this chapter.

24 **ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS**

1                   **OF HIGHER EDUCATION.**2 **§18B-10-1. Enrollment, tuition and other fees at education**  
3                   **institutions; refund of fees.**

4           (a) Each governing board shall fix tuition and other fees for  
5 each school term for the different classes or categories of  
6 students enrolling at each state institution of higher education  
7 under its jurisdiction and may include among the tuition and fees  
8 any one or more of the following as defined in section one-b of  
9 this article:

10           (1) Tuition and required educational and general fees;

11           (2) Auxiliary and auxiliary capital fees; and

12           (3) Required educational and general capital fees.

13           (b) An institution may establish a single special revenue  
14 account for each of the following classifications of fees:

15           (1) All tuition and required educational and general fees  
16 collected;

17           (2) All auxiliary and auxiliary capital fees collected; and

18           (3) All required educational and general capital fees  
19 collected to support existing systemwide and institutional debt  
20 service and future systemwide and institutional debt service,  
21 capital projects and campus renewal for educational and general  
22 facilities.

23           (4) Subject to any covenants ~~or restrictions~~ imposed with  
24 respect to revenue bonds payable from the accounts, an institution

1 may expend funds from each special revenue account for any purpose  
2 for which funds were collected within that account regardless of  
3 the original purpose for which the funds were collected.

4 (c) The purposes for which tuition and fees may be expended  
5 include, but are not limited to, health services, student  
6 activities, recreational, athletic and extracurricular activities.  
7 Additionally, tuition and fees may be used to finance a student's  
8 attorney to perform legal services for students in civil matters at  
9 the institutions, ~~Provided, That~~ If the legal services are limited  
10 only to those types of cases, programs or services approved by the  
11 administrative head of the institution where the legal services are  
12 to be performed.

13 (d) The commission and council jointly shall propose a rule  
14 for legislative approval in accordance with ~~the provisions of~~  
15 article three-a, chapter twenty-nine-a of this code to govern the  
16 fixing, collection and expenditure of tuition and other fees.

17 (e) The schedule of all tuition and fees, and any changes in  
18 the schedule, shall be entered in the minutes of the meeting of the  
19 appropriate governing board and the board shall file with the  
20 commission or council, or both, as appropriate, and the Legislative  
21 Auditor a certified copy of the schedule and changes.

22 (f) The boards shall establish the rates to be charged full-  
23 time students, as defined in section one-b of this article, who are  
24 enrolled during a regular academic term.

1           (1) Undergraduate students taking fewer than twelve credit  
2 hours in a regular term shall have their fees reduced pro rata  
3 based upon one twelfth of the full-time rate per credit hour and  
4 graduate students taking fewer than nine credit hours in a regular  
5 term shall have their fees reduced pro rata based upon one ninth of  
6 the full-time rate per credit hour.

7           (2) Fees for students enrolled in summer terms or other  
8 nontraditional time periods shall be prorated based upon the number  
9 of credit hours for which the student enrolls in accordance with  
10 ~~the provisions of~~ this subsection.

11           (g) All fees are due and payable by the student upon  
12 enrollment and registration for classes except as provided in this  
13 subsection:

14           (1) The governing boards shall permit fee payments to be made  
15 in installments over the course of the academic term. All fees  
16 shall be paid prior to the awarding of course credit at the end of  
17 the academic term.

18           (2) The governing boards also shall authorize the acceptance  
19 of credit cards or other payment methods which may be generally  
20 available to students for the payment of fees. The governing  
21 boards may charge the students for the reasonable and customary  
22 charges incurred in accepting credit cards and other methods of  
23 payment.

24           (3) If a governing board determines that a student's finances

1 are affected adversely by a legal work stoppage, it may allow the  
2 student an additional six months to pay the fees for any academic  
3 term. The governing board shall determine on a case-by-case basis  
4 if the finances of a student are affected adversely.

5 (4) The commission and council jointly shall propose a rule in  
6 accordance with ~~the provisions of~~ article three-a, chapter twenty-  
7 nine-a of this code defining conditions under which an institution  
8 may offer tuition and fee deferred payment plans through the  
9 institution or through third parties.

10 (5) An institution may charge interest or fees for any  
11 deferred or installment payment plans.

12 (h) In addition to the other fees provided in this section,  
13 each governing board may impose, collect and distribute a fee to be  
14 used to finance a nonprofit, student-controlled public interest  
15 research group if the students at the institution demonstrate  
16 support for the increased fee in a manner and method established by  
17 that institution's elected student government. The fee may not be  
18 used to finance litigation against the institution.

19 (i) Institutions shall retain tuition and fee revenues not  
20 pledged for bonded indebtedness or other purposes in accordance  
21 with the tuition rule proposed by the commission and council  
22 jointly pursuant to this section. The tuition rule shall:

23 (1) Provide a basis for establishing nonresident tuition and  
24 fees;

1           (2) Allow institutions to charge different tuition and fees  
2 for different programs;

3           (3) Provide that a board of Governors may propose to the  
4 commission, council or both, as appropriate, a mandatory auxiliary  
5 fee under the following conditions:

6           (A) The fee shall be approved by the commission, council or  
7 both, as appropriate, and either the students below the senior  
8 level at the institution or the Legislature before becoming  
9 effective;

10          (B) Increases may not exceed previous state subsidies by more  
11 than ten percent;

12          (C) The fee may be used only to replace existing state funds  
13 subsidizing auxiliary services such as athletics or bookstores;

14          (D) If the fee is approved, the amount of the state subsidy  
15 shall be reduced annually by the amount of money generated for the  
16 institution by the fees. All state subsidies for the auxiliary  
17 services shall cease five years from the date the mandatory  
18 auxiliary fee is implemented;

19          (E) The commission, council or both, as appropriate, shall  
20 certify to the Legislature annually by October 1, the amount of  
21 fees collected for each of the five years;

22          (4) Establish methodology, where applicable, to ensure that,  
23 within the appropriate time period under the compact, community and  
24 technical college tuition rates for community and technical college

1 students in all independently accredited community and technical  
2 colleges will be commensurate with the tuition and fees charged by  
3 their peer institutions.

4 (j) A penalty may not be imposed by the commission or council  
5 upon any institution based upon the number of nonresidents who  
6 attend the institution unless the commission or council determines  
7 that admission of nonresidents to any institution or program of  
8 study within the institution is impeding unreasonably the ability  
9 of resident students to attend the institution or participate in  
10 the programs of the institution. The institutions shall report  
11 annually to the commission or council on the numbers of  
12 nonresidents and such other enrollment information as the  
13 commission or council may request.

14 ~~(k) Tuition and fee increases of the governing boards, except~~  
15 ~~for the governing boards of the state institutions of higher~~  
16 ~~education known as Marshall University and West Virginia~~  
17 ~~University, are subject to rules adopted by the commission and~~  
18 ~~council jointly pursuant to this section and in accordance with the~~  
19 ~~provisions of article three-a, chapter twenty-nine-a of this code.~~

20 ~~(1) Subject to the provisions of subdivisions (4) and (8) of~~  
21 ~~this subsection, a governing board of an institution under the~~  
22 ~~jurisdiction of the commission may propose tuition and fee~~  
23 ~~increases of up to nine and one-half percent for undergraduate~~  
24 ~~resident students for any fiscal year. The nine and one-half~~



1 ~~percent total includes the amount of increase over existing tuition~~  
2 ~~and fees, combined with the amount of any newly established~~  
3 ~~specialized fee which may be proposed by a governing board.~~

4 ~~(2) A governing board of an institution under the jurisdiction~~  
5 ~~of the council may propose tuition and fee increases of up to four~~  
6 ~~and three-quarters percent for undergraduate resident students for~~  
7 ~~any fiscal year, except a governing board may propose increases in~~  
8 ~~excess of four and three-quarters percent if existing tuition and~~  
9 ~~fee rates at the institution are below the state average for~~  
10 ~~tuition and fees at institutions under the jurisdiction of the~~  
11 ~~council. The four and three-quarters percent total includes the~~  
12 ~~amount of increase over existing tuition and fees, combined with~~  
13 ~~the amount of any newly established, specialized fee which may be~~  
14 ~~proposed by a governing board.~~

15 ~~(3) The commission or council, as appropriate, shall examine~~  
16 ~~individually each request from a governing board for an increase.~~

17 ~~(4) (1) Subject to the provisions of subdivision (8) of this~~  
18 ~~subsection, the institutions or governing boards of Marshall~~  
19 ~~University and West Virginia University, as these provisions relate~~  
20 ~~to the state institutions of higher education known as Marshall~~  
21 ~~University and West Virginia University, each all publicly funded~~  
22 ~~state institutions of higher education may annually:~~

23 (A) Increase tuition and fees for undergraduate resident  
24 students to the maximum allowed by this section without seeking

1 approval from the commission; and

2 (B) Set tuition and fee rates for post-baccalaureate resident  
3 students and for all nonresident students, including establishing  
4 regional tuition and fee rates, reciprocity agreements or both.

5 (C) ~~The provisions of~~ This subdivision ~~do~~ does not apply to  
6 tuition and fee rates of the administratively linked institution  
7 known as Marshall Community and Technical College, the  
8 administratively linked institution known as the Community and  
9 Technical College at West Virginia University Institute of  
10 Technology, the regional campus known as West Virginia University  
11 at Parkersburg and, until July 1, 2007, the regional campus known  
12 as West Virginia University Institute of Technology.

13 ~~(5) Any proposed tuition and fee increase for state~~  
14 ~~institutions of higher education other than the state institutions~~  
15 ~~of higher education known as Marshall University and West Virginia~~  
16 ~~University requires the approval of the commission or council, as~~  
17 ~~appropriate. In determining whether to approve or deny the~~  
18 ~~governing board's request, the commission or council shall~~  
19 ~~determine the progress the institution has made toward meeting the~~  
20 ~~conditions outlined in this subdivision and shall make this~~  
21 ~~determination the predominate factor in its decision. The~~  
22 ~~commission or council shall consider the degree to which each~~  
23 ~~institution has met the following conditions:~~

24 ~~(A) Has maximized resources available through nonresident~~

1 ~~tuition and fee charges to the satisfaction of the commission or~~  
2 ~~council;~~

3 ~~(B) Is consistently achieving the benchmarks established in~~  
4 ~~the compact of the institution pursuant to the provisions of~~  
5 ~~article one-a of this chapter;~~

6 ~~(C) Is continuously pursuing the statewide goals for post-~~  
7 ~~secondary education and the statewide compact established in~~  
8 ~~articles one and one-a of this chapter;~~

9 ~~(D) Has demonstrated to the satisfaction of the commission or~~  
10 ~~council that an increase will be used to maintain high-quality~~  
11 ~~programs at the institution;~~

12 ~~(E) Has demonstrated to the satisfaction of the commission or~~  
13 ~~council that the institution is making adequate progress toward~~  
14 ~~achieving the goals for education established by the southern~~  
15 ~~regional education board; and~~

16 ~~(F) To the extent authorized, will increase by up to five~~  
17 ~~percent the available tuition and fee waivers provided by the~~  
18 ~~institution. The increased waivers may not be used for athletics.~~

19 ~~(6) (2) This section does not require equal increases among~~  
20 ~~institutions or require any level of increase at an institution.~~

21 ~~(7) The commission and council shall report to the Legislative~~  
22 ~~Oversight Commission on Education Accountability regarding the~~  
23 ~~basis for each approval or denial as determined using the criteria~~  
24 ~~established in subdivision (5) of this subsection.~~

1       ~~(8)~~ (3) Notwithstanding ~~the provisions of subdivisions (1) and~~  
2 ~~(4)~~ subdivision (1) of this subsection, tuition and fee increases  
3 at state institutions of higher education which are under the  
4 jurisdiction of the commission, including the state institutions of  
5 higher education known as Marshall University and West Virginia  
6 University, are subject to the following conditions:

7       (A) Institutions may increase tuition and fees for resident,  
8 undergraduate students by no more than an average of seven and one-  
9 half percent per year during any period covering four consecutive  
10 fiscal years, with the first fiscal year of the first four fiscal-  
11 year cycle beginning on July 1, 2007;

12       (B) The seven and one-half percent average cap does not apply  
13 to an institution for any fiscal year in which the total state base  
14 operating budget appropriations to that institution are less than  
15 the total state base operating budget appropriations in the fiscal  
16 year immediately preceding;

17       (C) A new capital fee or an increase in an existing capital  
18 fee is excluded from the tuition and fee increase calculation in  
19 this subdivision:

20       (i) If the new fee or fee increase is approved by an  
21 institutional governing board or by a referendum of an  
22 institution's undergraduate students, or both, on or before  
23 February 1, 2006; or

24       (ii) If the following conditions are met:

1 (I) The new fee or fee increase was approved by an  
2 institutional governing board or by a referendum of an  
3 institution's undergraduate students, or both, on or before July 1,  
4 2006;

5 (II) The institution for which the capital fee is approved has  
6 been designated a university pursuant to ~~the provisions of~~ section  
7 six, article two-a of this chapter by the effective date of this  
8 section; and

9 (III) The institutional board of Governors previously oversaw  
10 a community and technical college that achieved independent  
11 accreditation and consequently acquired its own board of Governors;

12 (D) Institutions shall provide, in a timely manner, any data  
13 on tuition and fee increases requested by the staff of the  
14 commission. The commission shall:

15 (i) Collect the data from any institution under its  
16 jurisdiction; and

17 (ii) Annually by July 1, provide a detailed analysis of the  
18 institutions' compliance with ~~the provisions of~~ this subdivision to  
19 the Legislative Oversight Commission on Education Accountability.

20 **18B-10-6. Fee waivers - Professional and graduate schools.**

21 ~~In addition to the fee waivers authorized for undergraduate~~  
22 ~~study by the provisions of section five of this article, each Each~~  
23 governing board periodically may establish fee waivers for study in  
24 graduate and professional schools under its jurisdiction, including

1 medicine and dentistry, entitling the recipients to waiver of  
2 tuition, capital and other fees subject to the following conditions  
3 and limitations:

4 (a) Graduate and professional fee waivers established by the  
5 governing boards of Marshall University and West Virginia  
6 University, respectively, are subject to ~~the provisions of~~ section  
7 six-a of this article;

8 (b) For the governing boards of state institutions of higher  
9 education other than the state institutions of higher education  
10 known as Marshall University and West Virginia University, the  
11 following conditions apply:

12 (1) An institution may not have in effect at any time graduate  
13 and professional school fee waivers totaling more in value than  
14 five percent of the tuition and required fees assessed for all  
15 full-time equivalent graduate and professional students registered  
16 during the corresponding fall semester, spring semester and summer  
17 term of the immediately preceding academic year. In addition to  
18 the five percent in this subdivision, all graduate assistants  
19 employed by these institutions shall be granted a fee waiver.

20 (2) Each graduate or professional school fee waiver entitles  
21 the recipient to waiver of the tuition, capital and other fees as  
22 may be prescribed by the governing boards and is for a period of  
23 time not to exceed the number of semesters normally required in the  
24 recipient's academic discipline.

1           (3) The governing boards shall make rules pursuant to ~~the~~  
2 ~~provisions of~~ section six, article one of this chapter governing  
3 the award of graduate and professional school fee waivers; the  
4 issuance and cancellation of certificates entitling the recipients  
5 to the benefits of the waivers; the use of the fee waivers by the  
6 recipients; and the rights and duties of the recipients with  
7 respect to the fee waivers. These rules may not be inconsistent  
8 with ~~the provisions of~~ this section.

9           (4) The awarding of graduate and professional school fee  
10 waivers shall be entered in the minutes of the meeting of each  
11 governing board.

12           (5) An institution may grant fee waivers to its employees,  
13 their spouses and dependents, and these waivers are not counted  
14 when determining the maximum percentage of waivers permitted by  
15 this section.

16           (6) Any fee waivers mandated by this article or by section  
17 three, article nineteen, chapter eighteen of this code are not  
18 counted when determining the maximum percentage of waivers  
19 permitted by this section.

20 **§18B-10-6a. Undergraduate, graduate and professional fee waivers.**

21           (a) *Undergraduate fee waivers.* --

22           (1) The governing boards ~~of Marshall University and West~~  
23 ~~Virginia University, respectively~~ state institutions of higher  
24 education, may establish fee waivers for students in undergraduate

1 studies at institutions under their jurisdiction which entitle  
2 recipients to waiver of tuition, capital and other fees, in whole  
3 or in part.

4 (2) Each undergraduate fee waiver is for a period of time not  
5 to exceed eight semesters of undergraduate study.

6 (3) Each governing board shall promulgate rules pursuant to  
7 ~~the provisions of~~ section six, article one of this chapter to  
8 govern the award of undergraduate fee waivers; the issuance and  
9 cancellation of certificates entitling the recipients to the  
10 benefits thereof; the use of the fee waivers by the recipients; and  
11 the rights and duties of the recipients with respect to the fee  
12 waivers. These rules may not be inconsistent with ~~the provisions~~  
13 ~~of~~ this section.

14 (4) The awarding of undergraduate fee waivers shall be entered  
15 in the minutes of the meetings of the governing board.

16 (5) Students enrolled in an administratively linked community  
17 and technical college shall be awarded a proportionate share of the  
18 total number of undergraduate fee waivers awarded by a governing  
19 board. The number to be awarded to students of the community and  
20 technical college is based upon the full-time equivalent enrollment  
21 of that institution.

22 (b) *Graduate and professional school fee waivers.* --

23 (1) In addition to the fee waivers authorized for  
24 undergraduate study by subsection (a) of this section, the



1 governing boards of Marshall University and West Virginia  
2 University, respectively, each may establish fee waivers for study  
3 in the graduate and professional schools under its jurisdiction,  
4 including medicine and dentistry, which entitle the recipients to  
5 waiver of tuition, capital and other fees, in whole or in part.

6 (2) Each graduate or professional school fee waiver entitles  
7 the recipient to waiver of the tuition, capital and other fees, in  
8 whole or in part, as may be prescribed by the governing board and  
9 is for a period of time not to exceed the number of semesters  
10 normally required in the recipient's academic discipline.

11 (3) The governing boards each shall promulgate a rule pursuant  
12 to ~~the provisions of~~ section six, article one of this chapter,  
13 governing the award of graduate and professional school fee  
14 waivers; the issuance and cancellation of certificates entitling  
15 the recipients to the benefits thereof; the use of the fee waivers  
16 by the recipients; and the rights and duties of the recipients with  
17 respect to the fee waivers. These rules may not be inconsistent  
18 with ~~the provisions of~~ this section.

19 (4) The awarding of graduate and professional school fee  
20 waivers shall be entered in the minutes of the meeting of each  
21 governing board.

NOTE: The purpose of this bill is to give state institutions  
of higher education more flexibility in the planning and operation  
of their schools.

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