

H. B. 3241

(By Delegates M. Poling and Paxton)

[Introduced February 21, 2011; referred to the
Committee on Education then Finance.]

10 A BILL to repeal §18B-10-5 and §18B-10-6 of the Code of West
11 Virginia, 1931, to amend and reenact §18B-1-2 of said code; to
12 amend and reenact §18B-1B-4 of said code; to amend and
13 reenact §18B-2A-4 of said code; to amend and reenact §18B-2A-8
14 of said code; to amend and reenact §18B-10-1 of said code; to
15 amend and reenact §18B-10-6a of said code; to amend and
16 reenact §18B-12-1, §18B-12-2, §18B-12-3 and §18B-12-6 of said
17 code; and to amend and reenact §18B-19-10 of said code, all
18 relating to public higher education generally; higher
19 education governance; specifying certain powers and duties of
20 certain higher education organizations; specifying
21 applicability of certain statutes and rules and providing
22 certain exceptions; agreements with affiliated research
23 corporations; and capital facilities and authorization of the
24 higher education organizations to sell, lease or convey

1 property.

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

3 That §18B-10-5 and §18B-10-6 of the Code of West Virginia,
4 1931, as amended, be repealed; that §18B-1-2 of said code be
5 amended and reenacted; that §18B-1B-4 of said code be amended and
6 reenacted; that §18B-2A-4 of said code be amended and reenacted;
7 that §18B-2A-8 of said code be amended and reenacted; that §18B-10-
8 1 of said code be amended and reenacted; that §18B-10-6a of said
9 code be amended and reenacted; that §18B-12-1, §18B-12-2 and §18B-
10 12-3 be amended and reenacted and that §18B-19-10 of said code be
11 amended and reenacted, all to read as follows:

12 **ARTICLE 1. GOVERNANCE.**

13 **§1. Repeal of sections relating to fee waivers for undergraduates**
14 **and professional and graduate schools.**

15 §18B-10-5 and §18B-10-6 of the Code of West Virginia, 1931, as
16 amended, are hereby repealed.

17 **§18B-1-2. Definitions.**

18 The following words when used in this chapter and chapter
19 eighteen-c of this code have the meanings ascribed to them unless
20 the context clearly indicates a different meaning:

21 (a) "Governing boards" or "boards" means the institutional
22 boards of Governors created pursuant to section one, article two-a
23 of this chapter and the commission regarding the commission when

1 the context is appropriate;

2 (b) "Free-standing community and technical colleges" means
3 Southern West Virginia Community and Technical College, West
4 Virginia Northern Community and Technical College and Eastern West
5 Virginia Community and Technical College, which may not be operated
6 as branches or off-campus locations of any other state institution
7 of higher education;

8 (c) "Community and technical college", in the singular or
9 plural, means the free-standing community and technical colleges
10 and other state institutions of higher education which deliver
11 community and technical college education. This definition
12 includes Southern West Virginia Community and Technical College,
13 West Virginia Northern Community and Technical College, Eastern
14 West Virginia Community and Technical College, New River Community
15 and Technical College, West Virginia University at Parkersburg,
16 ~~The Community and Technical College at West Virginia University~~
17 ~~Institute of Technology,~~ Bridgemont Community and Technical
18 College, Blue Ridge Community and Technical College, Kanawha Valley
19 Community and Technical College, Mountwest Community and Technical
20 College, ~~Marshall Community and Technical College,~~ West Virginia
21 ~~State Community and Technical College~~ and Pierpont Community and
22 Technical College;

23 (d) "Community and technical college education" means the
24 programs, faculty, administration and funding associated with the

1 delivery of community and technical college education programs;

2 (e) "Essential conditions" means those conditions which shall
3 be met by community and technical colleges as provided in section
4 three, article three-c of this chapter;

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

8 (g) "Higher Education Policy Commission", "Policy Commission"
9 or "Commission" means the commission created pursuant to section
10 one, article one-b of this chapter;

11 (h) "Chancellor for Higher Education" means the chief
12 executive officer of the Higher Education Policy Commission
13 employed pursuant to section five, article one-b of this chapter;

14 (i) "Chancellor for Community and Technical College Education"
15 means the chief executive officer of the West Virginia Council for
16 Community and Technical College Education employed pursuant to
17 section three, article two-b of this chapter;

18 (j) "Chancellor" means the Chancellor for Higher Education
19 where the context refers to a function of the Higher Education
20 Policy Commission. "Chancellor" means Chancellor for Community and
21 Technical College Education where the context refers to a function
22 of the West Virginia Council for Community and Technical College
23 Education;

24 (k) "Institutional operating budget" or "operating budget"

1 means for any fiscal year an institution's total unrestricted
2 education and general funding from all sources in the prior fiscal
3 year, including, but not limited to, tuition and fees and
4 legislative appropriation, and any adjustments to that funding as
5 approved by the commission or council based on comparisons with
6 peer institutions or to reflect consistent components of peer
7 operating budgets;

8 (1) "Community and technical college education program" means
9 any college-level course or program beyond the high school level
10 provided through a public institution of higher education resulting
11 in or which may result in a two-year associate degree award
12 including an associate of arts, an associate of science and an
13 associate of applied science; certificate programs and skill sets;
14 developmental education; continuing education; collegiate credit
15 and noncredit workforce development programs; and transfer and
16 baccalaureate parallel programs. All programs are under the
17 jurisdiction of the council. Any reference to "post-secondary
18 vocational education programs" means community and technical
19 college education programs as defined in this subsection;

20 (m) "Rule" or "rules" means a regulation, standard, policy or
21 interpretation of general application and future effect;

22 (n) "Vice Chancellor for Administration" means the person
23 employed in accordance with section two, article four of this
24 chapter. Any reference in this chapter or chapter eighteen-c of

1 this code to "Senior Administrator" means Vice Chancellor for
2 Administration;

3 (o) "State college" means Bluefield State College, Concord
4 University, Fairmont State University, Glenville State College,
5 Shepherd University, West Liberty ~~State College~~ University or West
6 Virginia State University;

7 (p) "State institution of higher education" means any
8 university, college or community and technical college under the
9 jurisdiction of a governing board as that term is defined in this
10 section and the commission;

11 (q) "Board of visitors" means the advisory board previously
12 appointed for the West Virginia Graduate College and the advisory
13 board previously appointed for West Virginia University Institute
14 of Technology, which provide guidance to the Marshall University
15 Graduate College and West Virginia University Institute of
16 Technology, respectively;

17 (r) "Institutional compact" means the compact between the
18 commission or council and a state institution of higher education
19 under its jurisdiction as described in section six, article one-d
20 of this chapter;

21 (s) "Peer institutions", "peer group" or "peers" means public
22 institutions of higher education used for comparison purposes and
23 selected by the commission pursuant to section three, article one-a
24 of this chapter;

1 (t) "Administratively linked community and technical college"
2 means a state institution of higher education delivering community
3 and technical college education and programs which has maintained
4 a contractual agreement to receive essential services from another
5 accredited state institution of higher education prior to July 1,
6 2008;

7 (u) "Sponsoring institution" means a state institution of
8 higher education that maintained an administrative link to a
9 community and technical college providing essential services prior
10 to July 1, 2008. This definition includes institutions whose
11 governing boards had under their jurisdiction a community and
12 technical college, regional campus or a division delivering
13 community and technical college education and programs;

14 (v) "Collaboration" means entering into an agreement with one
15 or more providers of education services in order to enhance the
16 scope, quality or efficiency of education services;

17 (w) "Broker" or "brokering" means serving as an agent on
18 behalf of students, employers, communities or responsibility areas
19 to obtain education services not offered at that institution.
20 These services include courses, degree programs or other services
21 contracted through an agreement with a provider of education
22 services either in-state or out-of-state;

23 (x) "Council" means the West Virginia Council for Community
24 and Technical College Education created pursuant to article two-b

1 of this chapter;

2 (y) "West Virginia Consortium for Undergraduate Research and
3 Engineering" or "West Virginia CURE" means the collaborative
4 planning group established pursuant to article one-c of this
5 chapter;

6 (z) "Advanced technology center" means a facility established
7 under the direction of an independent community and technical
8 college for the purpose of implementing and delivering education
9 and training programs for high-skill, high-performance twenty-first
10 century workplaces;

11 (aa) "Statewide network of independently accredited community
12 and technical colleges" or "community and technical college
13 network" means the state institutions of higher education under the
14 jurisdiction of the West Virginia Council for Community and
15 Technical College Education which are independently accredited or
16 are seeking independent accreditation by the regional accrediting
17 agency, each governed by its own independent governing board and
18 each having a core mission of providing affordable access to and
19 delivering high quality community and technical education in every
20 region of the state; ~~and~~

21 (bb) "Independent community and technical college" means a
22 state institution of higher education under the jurisdiction of the
23 council which is independently accredited or seeking independent
24 accreditation, is governed by its own independent governing board

1 and may not be operated as a branch or off-campus location of any
 2 other state institution of higher education. This definition
 3 includes Blue Ridge Community and Technical College, Bridgemont
 4 Community and Technical College, ~~The Community and Technical~~
 5 ~~College at West Virginia University Institute of Technology~~,
 6 Eastern West Virginia Community and Technical College, ~~Marshall~~
 7 ~~Community and Technical College~~, Kanawha Valley Community and
 8 Technical College, Mountwest Community and Technical College, New
 9 River Community and Technical College, Pierpont Community and
 10 Technical College, Southern West Virginia Community and Technical
 11 College, West Virginia Northern Community and Technical College,
 12 ~~West Virginia State Community and Technical College~~, and West
 13 Virginia University at Parkersburg; and

14 (cc) "Dual credit course" or "dual enrollment course" is a
 15 credit-bearing college-level course offered in a high school by a
 16 state institution of higher education for high school students in
 17 which the students are concurrently enrolled and receiving credit
 18 at the secondary level.

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

20 **§18B-1B-4. Powers and duties of Higher Education Policy**
 21 **Commission.**

22 (a) The primary responsibility of the commission is to
 23 develop, establish and implement policy that will achieve the goals
 24 and objectives found in section one-a, article one and article one-

1 d of this chapter. The commission shall exercise its authority and
2 carry out its responsibilities in a manner that is consistent and
3 not in conflict with the powers and duties assigned by law to the
4 West Virginia Council for Community and Technical College Education
5 and the powers and duties assigned to the governing boards of
6 Marshall University and West Virginia University, respectively. To
7 that end, the commission has the following powers and duties
8 relating to the institutions under its jurisdiction:

9 (1) Develop, oversee and advance the public policy agenda
10 pursuant to section one, article one-a of this chapter to address
11 major challenges facing the state including, but not limited to,
12 the goals and objectives found in section one-a, article one of
13 this chapter and article one-d of this chapter and including
14 specifically those goals and objectives pertaining to the compacts
15 created pursuant to section ~~two, article one-a~~ seven, article one-d
16 of this chapter and to develop and implement the master plan
17 described in section ~~nine of this article~~ five, article one-d of
18 this chapter for the purpose of accomplishing the mandates of this
19 section;

20 (2) Develop, oversee and advance the promulgation and
21 implementation ~~jointly with the Council~~ of a financing policy rule
22 for state institutions of higher education ~~in West Virginia~~ under
23 its jurisdiction. The policy rule shall meet the following
24 criteria:

1 (A) Provide for an adequate level of ~~education~~ educational and
2 general funding for institutions pursuant to section five, article
3 one-a of this chapter;

4 (B) Serve to maintain institutional assets including, but not
5 limited to, human and physical resources and eliminate deferred
6 maintenance;

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

10 (D) ~~Incorporate the plan for strategic funding to strengthen~~
11 ~~capacity for support of community and technical college education~~
12 ~~established by the West Virginia Council for Community and~~
13 ~~Technical College Education pursuant to the provisions of section~~
14 ~~six, article two-b of this chapter;~~ Evaluate institutions' requests
15 for tuition and fee increases.

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

18 (A) Developing, building public consensus around and
19 sustaining attention to a long-range public policy agenda. In
20 developing the agenda, the commission and council shall seek input
21 from the Legislature and the Governor and specifically from the
22 State Board of Education and local school districts in order to
23 create the necessary linkages to assure smooth, effective and
24 seamless movement of students through the public education and

1 post-secondary education systems and to ensure that the needs of
2 public school courses and programs can be fulfilled by the
3 graduates produced and the programs offered;

4 (B) Ensuring that the governing boards carry out their duty
5 effectively to govern the individual institutions of higher
6 education; and

7 (C) Holding the higher education institutions and the higher
8 education systems as a whole accountable for accomplishing their
9 missions and implementing the provisions of the compacts;

10 (4) Develop and adopt each institutional compact;

11 (5) Review and adopt the annual updates of the institutional
12 compacts;

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

14 (A) The Governor for implementation of the public policy
15 agenda; and

16 (B) The Legislature by maintaining a close working
17 relationship with the legislative leadership and the Legislative
18 Oversight Commission on Education Accountability;

19 (7) Jointly with the council, promulgate legislative rules
20 pursuant to article three-a, chapter twenty-nine-a of this code to
21 fulfill the purposes of section five, article one-a of this
22 chapter;

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

1 (9) Establish and implement the benchmarks and performance
2 indicators necessary to measure institutional ~~achievement towards~~
3 progress in achieving state policy priorities and institutional
4 missions pursuant to section ~~two, article one-a~~ seven, article one-
5 d of this chapter;

6 (10) ~~Annually~~ Report to the Legislature and to the Legislative
7 Oversight Commission on Education Accountability annually during
8 the January interim ~~meetings~~ meeting period on a date and at a time
9 and location to be determined by the President of the Senate and
10 the Speaker of the House of Delegates. The report shall address at
11 least the following:

12 (A) The performance of its system of higher education during
13 the previous fiscal year including, but not limited to, progress in
14 meeting ~~goals stated in the compacts and progress of the~~
15 ~~institutions and the higher education system as a whole in meeting~~
16 the goals, ~~and objectives, and priorities~~ set forth in ~~section one-~~
17 ~~a~~ article one and article one-d of this chapter and in the
18 commission's master plan and institutional compacts;

19 ~~(B) An analysis of enrollment data collected pursuant to~~
20 ~~section one, article ten of this chapter and recommendations for~~
21 ~~any changes necessary to assure access to high-quality, high-demand~~
22 ~~education programs for West Virginia residents;~~

23 ~~(C) (B) The priorities established for capital investment~~
24 ~~needs pursuant to subdivision (11) of this subsection and the~~

1 ~~justification for such priority;~~ The commission's priorities for
2 new operating and capital investments and the justification for the
3 priority; and

4 ~~(D)~~ (C) Recommendations of the commission for statutory
5 changes ~~needed to further the~~ necessary or expedient to achieve
6 state goals and objectives; set forth in article one of this
7 chapter

8 (11) Establish a formal process for identifying ~~needs for~~
9 ~~capital investment~~ capital investment needs and for determining
10 priorities for these investments for consideration by the Governor
11 and the Legislature as part of the appropriation request process
12 pursuant to article nineteen of this chapter; ~~It is the~~
13 ~~responsibility of the Commission to assure a fair distribution of~~
14 ~~funds for capital projects between the Commission and the Council.~~
15 ~~To that end the Commission shall take the following steps:~~

16 ~~(A) Receive the list of priorities developed by the Council~~
17 ~~for capital investment for the institutions under the Council's~~
18 ~~jurisdiction pursuant to subsection (b), section six, article two-b~~
19 ~~of this chapter;~~

20 ~~(B) Place the ranked list of projects on the agenda for action~~
21 ~~within sixty days of the date on which the list was received;~~

22 ~~(C) Select a minimum of three projects from the list submitted~~
23 ~~by the Council to be included on the ranked list established by the~~
24 ~~Commission. At least one of the three projects selected must come~~

1 ~~from the top two priorities established by the Council;~~

2 ~~(12) Maintain guidelines for institutions to follow concerning~~
3 ~~extensive capital project management except the governing boards of~~
4 ~~Marshall University and West Virginia University are not subject to~~
5 ~~the provisions of this subdivision as it relates to the state~~
6 ~~institutions of higher education known as Marshall University and~~
7 ~~West Virginia University. The guidelines shall provide a process~~
8 ~~for developing capital projects, including, but not limited to, the~~
9 ~~notification by an institution to the Commission of any proposed~~
10 ~~capital project which has the potential to exceed one million~~
11 ~~dollars in cost. Such a project may not be pursued by an~~
12 ~~institution without the approval of the Commission. An institution~~
13 ~~may not participate directly or indirectly with any public or~~
14 ~~private entity in any capital project which has the potential to~~
15 ~~exceed one million dollars in cost;~~

16 (12) Develop standards and evaluate governing board requests
17 for capital project financing in accordance with article nineteen
18 of this chapter;

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

23 ~~(13)~~ (14) Acquire legal services as that are considered
24 necessary, including representation of the commission, its

1 institutions, employees and officers before any court or
2 administrative body, notwithstanding any other provision of this
3 code to the contrary. The counsel may be employed either on a
4 salaried basis or on a reasonable fee basis. In addition, the
5 commission may, but is not required to, call upon the Attorney
6 General for legal assistance and representation as provided by law;

7 ~~(14)~~ (15) Employ a Chancellor for Higher Education pursuant to
8 section five of this article;

9 ~~(15)~~ (16) Employ other staff as necessary and appropriate to
10 carry out the duties and responsibilities of the commission and the
11 council in accordance with ~~the provisions of~~ article four of this
12 chapter;

13 ~~(16)~~ (17) Provide suitable offices in Kanawha County for the
14 chancellor, vice chancellors and other staff;

15 ~~(17)~~ (18) Advise and consent in the appointment of the
16 presidents of the institutions of higher education under its
17 jurisdiction pursuant to section six of this article. The role of
18 the commission in approving an institutional president is to assure
19 through personal interview that the person selected understands and
20 is committed to achieving the goals and objectives as set forth in
21 the institutional compact and in section one-a, article one of this
22 chapter;

23 ~~(18)~~ (19) Approve the total compensation package from all
24 sources for presidents of institutions under its jurisdiction, as

1 proposed by the governing boards. The governing boards ~~must~~ shall
2 obtain approval from the commission of the total compensation
3 package both when institutional presidents are employed initially
4 and afterward when any change is made in the amount of the total
5 compensation package;

6 ~~(19)~~ (20) Establish and implement the policy of the state to
7 assure that parents and students have sufficient information at the
8 earliest possible age on which to base academic decisions about
9 what is required for students to be successful in college, other
10 post-secondary education and careers related, as far as possible,
11 to results from current assessment tools in use in West Virginia;

12 ~~(20)~~ (21) Approve and implement a uniform standard jointly
13 with the council to determine which students shall be placed in
14 remedial or developmental courses. The standard shall be aligned
15 with college admission tests and assessment tools used in West
16 Virginia and shall be applied uniformly by the governing boards
17 throughout the public higher education system. The chancellors
18 shall develop a clear, concise explanation of the standard which
19 they shall communicate to the State Board of Education and the
20 State Superintendent of Schools;

21 ~~(21) Review and approve or disapprove capital projects as~~
22 ~~described in subdivision (11) of this subsection;~~

23 (22) Jointly with the council, develop and implement an
24 oversight plan to manage systemwide technology ~~such as the~~

1 following by:

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

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

8 (C) Notwithstanding any other provision of law or this code to
9 the contrary, the council, commission and state institutions of
10 higher education are not subject to the jurisdiction of the Chief
11 Technology Officer for any purpose;

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

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

1 (25) Establish and implement policies and procedures to ensure
2 that ~~students~~ a student may transfer and apply toward the
3 requirements for a master's degree the maximum number of credits
4 earned at any regionally accredited in-state or out-of-state higher
5 education institution with as few requirements to repeat courses or
6 to incur additional costs as is consistent with sound academic
7 policy;

8 (26) Establish and implement policies and programs, in
9 cooperation with the council and the institutions of higher
10 education, through which ~~students~~ a student who ~~have~~ has gained
11 knowledge and skills through employment, participation in education
12 and training at vocational schools or other education institutions
13 or Internet-based education programs, may demonstrate by
14 competency-based assessment that ~~they have~~ he or she has the
15 necessary knowledge and skills to be granted academic credit or
16 advanced placement standing toward the requirements of an ~~associate~~
17 associate's degree or a bachelor's degree at a state institution of
18 higher education;

19 (27) Seek out and attend regional, national and international
20 meetings and forums on education and workforce development-related
21 topics, as in the commission's discretion is critical for the
22 performance of their duties as members, for the purpose of keeping
23 abreast of education trends and policies to aid it in developing
24 the policies for this state to meet the established education goals

1 and objectives pursuant to section one-a, article one of this
2 chapter and article one-d of this chapter;

3 (28) ~~Develop, establish~~ Promulgate and implement a rule for
4 higher education governing boards and institutions to follow when
5 considering capital projects pursuant to article nineteen of this
6 chapter; ~~The guidelines shall assure that the governing boards and~~
7 ~~institutions do not approve or promote capital projects involving~~
8 ~~private sector businesses which would have the effect of reducing~~
9 ~~property taxes on existing properties or avoiding, in whole or in~~
10 ~~part, the full amount of taxes which would be due on newly~~
11 ~~developed or future properties~~

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

23 (30) The commission ~~has the authority to~~ may assess
24 institutions under its jurisdiction, including the state

1 institutions of higher education known as Marshall University and
2 West Virginia University, for the payment of expenses of the
3 commission or for the funding of statewide higher education
4 services, obligations or initiatives related to the goals set forth
5 for the provision of public higher education in the state;

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

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

23 (33) Pursuant to ~~the provisions of~~ article three-a, chapter
24 twenty-nine-a of this code and section six, article one of this

1 chapter, promulgate rules ~~as~~ necessary or expedient to fulfill the
2 purposes of this chapter. The commission and the council shall
3 promulgate a uniform joint legislative rule for the purpose of
4 standardizing, as much as possible, the administration of personnel
5 matters among the state institutions of higher education;

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

11 (35) ~~In consultation with the governing boards of Marshall~~
12 ~~University and West Virginia University, implement a~~ Promulgate
13 and implement and policy rule jointly with the council whereby
14 course credit earned at a community and technical college transfers
15 for program credit at any other state institution of higher
16 education and is not limited to fulfilling a general education
17 requirement;

18 (36) ~~Promulgate a joint rule with the council pursuant to~~
19 ~~section one, article ten of this chapter,~~ establishing tuition and
20 fee policy for all institutions of higher education under the
21 jurisdiction of the commission, other than including state
22 institutions of higher education known as Marshall University and
23 West Virginia University which are subject to the provisions of
24 section one, article ten of this chapter. By November 1, 2011,

1 promulgate a rule pursuant to section one, article ten of this
2 chapter, establishing tuition and fee policy for all institutions
3 of higher education under the jurisdiction of the commission,
4 including Marshall University and West Virginia University. The
5 rule shall include, but is not limited to, the following:

6 (A) Comparisons with peer institutions;

7 (B) Differences among institutional missions;

8 (C) Strategies for promoting student access;

9 (D) Consideration of charges to out-of-state students; ~~and~~

10 (E) Such other policies as the commission and council consider
11 appropriate; and

12 (F) The use of tuition and fee waivers;

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

22 (38) Notwithstanding any other provision of this code to the
23 contrary, sell, lease, convey or otherwise dispose of all or part
24 of any real property ~~which it may own either by contract or at~~

1 ~~public auction, and to retain the proceeds of any such sale or~~
2 ~~lease: *Provided, That:* that it owns, in accordance with article~~
3 ~~nineteen of this chapter.~~

4 ~~(A) The Commission may not sell, lease, convey or otherwise~~
5 ~~dispose of any real property without first:~~

6 ~~(i) Providing notice to the public in the county in which the~~
7 ~~real property is located by a Class II legal advertisement pursuant~~
8 ~~to section two, article three, chapter fifty-nine of this code;~~

9 ~~(ii) Holding a public hearing on the issue in the county in~~
10 ~~which the real property is located; and~~

11 ~~(iii) Providing notice to the Joint Committee on Government~~
12 ~~and Finance; and~~

13 ~~(B) Any proceeds from the sale, lease, conveyance or other~~
14 ~~disposal of real property that is used jointly by institutions or~~
15 ~~for statewide programs under the jurisdiction of the Commission or~~
16 ~~the Council shall be transferred to the General Revenue Fund of the~~
17 ~~state.~~

18 (b) In addition to the powers and duties listed in subsection
19 (a) of this section, the commission has the following general powers
20 and duties related to its role in developing, articulating and
21 overseeing the implementation of the public policy agenda:

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

1 (2) Policy analysis and research focused on issues affecting
2 the system as a whole or a geographical region ~~thereof~~ of the
3 system;

4 (3) Development and implementation of institutional mission
5 definitions, including use of incentive funds to influence
6 institutional behavior in ways that are consistent with public
7 priorities;

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

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

19 (6) Administration of state and federal student aid programs
20 under the supervision of the Vice Chancellor for Administration
21 including promulgation of any rules necessary to administer those
22 programs;

23 (7) Serving as the agent to receive and disburse public funds
24 when a governmental entity requires designation of a statewide

1 higher education agency for this purpose;

2 (8) ~~Development, establishment and implementation of~~
3 Developing, establishing and implementing information, assessment
4 and accountability systems, including ~~maintenance of~~ maintaining
5 statewide data systems that facilitate long-term planning and
6 accurate measurement of strategic outcomes and performance
7 indicators;

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

15 (10) ~~Development, implementation and oversight of~~ Developing,
16 implementing and overseeing statewide and ~~regionwide~~ regional
17 projects and initiatives related to providing post-secondary
18 education at the baccalaureate level and above such as those using
19 funds from federal categorical programs or those using incentive
20 and performance-based funding from any source; and

21 (11) Quality assurance that intersects with all other duties
22 of the commission particularly in the areas of research, data
23 collection and analysis, planning, policy analysis, program review
24 and approval, budgeting and information and accountability systems.

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

6 (d) The commission ~~is authorized to~~ may withdraw specific
7 powers of ~~any~~ a governing board of an institution under its
8 jurisdiction for a period not to exceed two years if the commission
9 makes a determination that any of the following conditions exist:

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

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

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

20 ~~The period of withdrawal of~~ Specific powers of a governing
21 board may not ~~be withdrawn for a period exceed~~ exceeding two years.
22 During ~~which~~ that time the commission ~~is authorized to~~ may take all
23 steps necessary to ~~reestablish the conditions for restoration of~~
24 restore sound, stable and responsible institutional governance.

1 **ARTICLE 2A. BOARDS OF GOVERNORS.**

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

3 Each governing board separately has the following powers and
4 duties:

5 (a) Determine, control, supervise and manage the financial,
6 business and education policies and affairs of the state
7 institution of higher education under its jurisdiction;

8 (b) Develop a master plan for the institution under its
9 jurisdiction.

10 (1) The ultimate responsibility for developing and updating
11 each master plan at the institutional level resides with the board
12 of Governors but the ultimate responsibility for approving the
13 final version of each institutional master plan, including periodic
14 updates, resides with the commission or council, as appropriate.

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

17 (A) A detailed demonstration of how the institutional master
18 plan will be used to meet the goals and objectives of the
19 institutional compact;

20 (B) A well-developed set of goals outlining missions, degree
21 offerings, resource requirements, physical plant needs, personnel
22 needs, enrollment levels and other planning determinates and
23 projections necessary in a plan to assure that the needs of the
24 institution's area of responsibility for a quality system of higher

1 education are addressed;

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

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

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

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

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

23 (f) Consider, revise and submit to the commission or council,
24 as appropriate, an appropriation request on behalf of the

1 institution under its jurisdiction;

2 (g) Review, at least every five years, all academic programs
3 offered at the institution under its jurisdiction. The review
4 shall address the viability, adequacy and necessity of the programs
5 in relation to established state goals, objectives and priorities,
6 the institutional master plan, the institutional compact and the
7 education and workforce needs of its responsibility district. As
8 a part of the review, each governing board shall require the
9 institution under its jurisdiction to conduct periodic studies of
10 its graduates and their employers to determine placement patterns
11 and the effectiveness of the education experience. Where
12 appropriate, these studies should coincide with the studies
13 required of many academic disciplines by their accrediting bodies;

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

24 (i) Subject to article one-b of this chapter, approve the

1 teacher education programs offered in the institution under its
2 control. In order to permit graduates of teacher education
3 programs to receive a degree from a nationally accredited program
4 and in order to prevent expensive duplication of program
5 accreditation, the commission may select and use one nationally
6 recognized teacher education program accreditation standard as the
7 appropriate standard for program evaluation;

8 (j) Involve faculty, students and classified employees in
9 institutional-level planning and decision-making when those groups
10 are affected;

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

17 (l) Administer a system for hearing employee grievances and
18 appeals. Notwithstanding any other provision of this code to the
19 contrary, the procedure established in article two, chapter six-c
20 of this code is the exclusive mechanism for hearing prospective
21 employee grievances and appeals;

22 (m) Solicit and use or expend voluntary support, including
23 financial contributions and support services, for the institution
24 under its jurisdiction;

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

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

5 (p) Employ all faculty and staff at the institution under its
6 jurisdiction. The employees operate under the supervision of the
7 president, but are employees of the governing board;

8 (q) Submit to the commission or council, as appropriate, any
9 data or reports requested by the commission or council, as
10 appropriate, within the time frame set by the commission or
11 council;

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

20 (s) Provide and transfer funding and property to certain
21 corporations pursuant to section ten, article twelve of this
22 chapter;

23 (t) Delegate, with prescribed standards and limitations, the
24 part of its power and control over the business affairs of the

1 institution to the president in any case where it considers the
2 delegation necessary and prudent in order to enable the institution
3 to function in a proper and expeditious manner and to meet the
4 requirements of its master plan and compact. If a governing board
5 elects to delegate any of its power and control under this
6 subsection, it shall enter the delegation in the minutes of the
7 meeting when the decision was made and shall notify the commission
8 or council, as appropriate. Any delegation of power and control
9 may be rescinded by the appropriate governing board, the commission
10 or council, as appropriate, at any time, in whole or in part,
11 except that the commission may not revoke delegations of authority
12 made by the governing boards of Marshall University or West
13 Virginia University as they relate to the state institutions of
14 higher education known as Marshall University and West Virginia
15 University;

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

1 (v) Consult, cooperate and work with the State Treasurer and
2 the State Auditor to update as necessary and maintain an efficient
3 and cost-effective system for the financial management and
4 expenditure of appropriated and nonappropriated revenue at the
5 institution under its jurisdiction that ensures that properly
6 submitted requests for payment be paid on or before the due date
7 but, in any event, within fifteen days of receipt in the State
8 Auditor's Office;

9 (w) In consultation with the appropriate chancellor and the
10 Secretary of the Department of Administration, develop, update as
11 necessary and maintain a plan to administer a consistent method of
12 conducting personnel transactions, including, but not limited to,
13 hiring, dismissal, promotions, changes in salary or compensation
14 and transfers at the institution under its jurisdiction. Each
15 personnel transaction shall be accompanied by the appropriate
16 standardized system or forms, as appropriate, which shall be
17 submitted to the respective governing board and the Department of
18 ~~Finance~~ and Administration:

19 (1) Not later than July 1, 2012, the Department of
20 Administration shall make available to each governing board the
21 option of using a standardized electronic system for these
22 personnel transactions.

23 (2) The Secretary of the Department of Administration may
24 suspend a governing board's participation in the standardized

1 electronic system if he or she certifies to the Governor that the
2 governing board has failed repeatedly and substantially to comply
3 with the department's policies for administering the electronic
4 system;

5 (x) Notwithstanding any other provision of this code to the
6 contrary, transfer funds from any account specifically appropriated
7 for its use to any corresponding line item in a general revenue
8 account at any agency or institution under its jurisdiction as long
9 as the transferred funds are used for the purposes appropriated;

10 (y) Transfer funds from appropriated special revenue accounts
11 for capital improvements under its jurisdiction to special revenue
12 accounts at agencies or institutions under its jurisdiction as long
13 as the transferred funds are used for the purposes appropriated in
14 accordance with article nineteen of this chapter;

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

23 (aa) Contract and pay for disability insurance for a class or
24 classes of employees at a state institution of higher education

1 under its jurisdiction.

2 **§18B-2A-8. Additional powers and duties of governing boards.**

3 (a) The governing board of a state institution of higher
4 education is granted the additional powers and assigned the
5 associated duties and authorities pursuant to this section
6 previously granted and assigned to the state institutions of higher
7 education known as the governing boards of Marshall University and
8 West Virginia University ~~subject to the following:~~

9 (1) ~~The institutional operating budgets of all institutions to~~
10 ~~which this section applies have achieved a level of funding~~
11 ~~comparable with, but not less than ninety percent of, their~~
12 ~~respective peers, as established pursuant to section three, article~~
13 ~~one-a of this chapter; (2) the commission approves granting the~~
14 ~~powers the duties and authorities to that institution and if the~~
15 commission or council, as appropriate, approves granting the powers
16 and assigning the duties to that governing board.

17 (3) ~~The powers, duties and authorities may not be granted to~~
18 ~~any institution prior to the first day of July, two thousand~~
19 ~~twelve.~~

20 (b) The powers and duties ~~and authorities~~ that may be granted
21 and assigned pursuant to this section are ~~those provided in the~~
22 following:

23 (1) ~~Section four-a, article six, chapter five of this code;~~

24 (2) ~~Section two, article one, chapter five-g of this code;~~

1 ~~(3) Section twelve b, article one, chapter twelve of this~~
2 ~~code;~~

3 ~~(4)~~ (1) Sections five, six, and seven, ~~and eight,~~ article
4 three, chapter twelve of this code;

5 ~~(5) Sections three and six, article one of this chapter;~~

6 ~~(6) Section two, article one-a of this chapter;~~

7 ~~(7) Section four, article one b of this chapter;~~

8 ~~(8) Sections three and four of this article;~~

9 ~~(9)~~ (2) Sections Section two ~~and three,~~ article three of this
10 chapter;

11 ~~(10)~~ (3) Sections five, ~~five-a,~~ six and seven, article four of
12 this chapter;

13 ~~(11)~~ (4) Sections ~~three, four,~~ Sections seven and nine,
14 article five of this chapter; and

15 ~~(12)~~ (5) Sections ~~one and~~ Section six-a, article ten of this
16 chapter.

17 ~~(c) This section does not apply to any community and technical~~
18 ~~college.~~

19 (c) Additional powers and duties related to purchasing. --

20 The powers and duties granted and assigned to the governing
21 boards of Marshall University and West Virginia University by
22 section four, article five of this chapter are extended to the
23 governing boards of all other state institutions of higher
24 education under the following conditions:

1 (1) The commission and council shall conduct a study to
2 determine the capacity of each governing board under their
3 respective jurisdictions to implement the additional powers and
4 carry out the additional assigned duties related to purchasing;

5 (2) Based upon the findings of the study, the commission and
6 council shall approve the governing boards under their respective
7 jurisdictions that they determine have the capacity to exercise the
8 powers and carry out the assigned duties pursuant to section four,
9 article five of this chapter; and

10 (3) The commission and council shall report their findings
11 together with a list of the governing boards they each have
12 approved to the Legislative Oversight Commission on Education
13 Accountability by December 1, 2011.

14 (d) The commission and council have the power and the duty to
15 monitor participation and provide technical assistance, as
16 requested or required, to governing boards under their respective
17 jurisdictions and to limit or rescind exercise of the powers, in
18 whole or in part, granted by this section to a governing board if,
19 in the sole determination of the commission or council, as
20 appropriate, that action is warranted.

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

23 **§18B-10-1. Enrollment, tuition and other fees at education**

1 **institutions; refund of fees.**

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

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

9 (2) Auxiliary and auxiliary capital fees; and

10 (3) Required educational and general capital fees.

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

13 (1) All tuition and required educational and general fees
14 collected;

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

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

21 (4) Subject to any covenants or restrictions imposed with
22 respect to revenue bonds payable from the accounts, an institution
23 may expend funds from each special revenue account for any purpose
24 for which funds were collected within that account regardless of

1 the original purpose for which the funds were collected.

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

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

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

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

23 (1) Undergraduate students taking fewer than twelve credit
24 hours in a regular term shall have their fees reduced pro rata

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

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

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

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

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

22 (3) If a governing board determines that a student's finances
23 are affected adversely by a legal work stoppage, it may allow the
24 student an additional six months to pay the fees for any academic

1 term. The governing board shall determine on a case-by-case basis
2 if the finances of a student are affected adversely.

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

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

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

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

21 (1) Provide a basis for establishing nonresident tuition and
22 fees;

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

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

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

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

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

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

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

20 (4) Establish methodology, where applicable, to ensure that,
21 within the appropriate time period under the compact, community and
22 technical college tuition rates for community and technical college
23 students in all independently accredited community and technical
24 colleges will be commensurate with the tuition and fees charged by

1 their peer institutions.

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

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

18 ~~(1) Subject to the provisions of subdivisions (4) and (8) of~~
19 ~~this subsection, a governing board of an institution under the~~
20 ~~jurisdiction of the commission may propose tuition and fee~~
21 ~~increases of up to nine and one-half percent for undergraduate~~
22 ~~resident students for any fiscal year. The nine and one-half~~
23 ~~percent total includes the amount of increase over existing tuition~~
24 ~~and fees, combined with the amount of any newly established~~

1 ~~specialized fee which may be proposed by a governing board.~~

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

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

15 ~~(4) Subject to the provisions of subdivision (8) of this~~
16 ~~subsection, the governing boards of Marshall University and West~~
17 ~~Virginia University, as these provisions relate to the state~~
18 ~~institutions of higher education known as Marshall University and~~
19 ~~West Virginia University, each may annually:~~

20 ~~(A) Increase tuition and fees for undergraduate resident~~
21 ~~students to the maximum allowed by this section without seeking~~
22 ~~approval from the commission; and~~

23 ~~(B) Set tuition and fee rates for post-baccalaureate resident~~
24 ~~students and for all nonresident students, including establishing~~

1 ~~regional tuition and fee rates, reciprocity agreements or both.~~

2 ~~(C) The provisions of this subdivision do not apply to tuition~~
3 ~~and fee rates of the administratively linked institution known as~~
4 ~~Marshall Community and Technical College, the administratively~~
5 ~~linked institution known as the Community and Technical College at~~
6 ~~West Virginia University Institute of Technology, the regional~~
7 ~~campus known as West Virginia University at Parkersburg and, until~~
8 ~~the first day of July, two thousand seven, the regional campus~~
9 ~~known as West Virginia University Institute of Technology.~~

10 ~~(5)~~ (1) Any proposed tuition and fee increase for state
11 institutions of higher education, ~~other than the state institutions~~
12 ~~of higher education known as~~ including Marshall University and West
13 Virginia University, requires the approval of the commission or
14 council, as appropriate. In determining whether to approve or deny
15 the governing board's request, the commission or council shall
16 determine the progress the institution has made toward meeting the
17 conditions outlined in this ~~subdivision~~ subsection and shall make
18 this determination the predominate factor in its decision. The
19 commission or council shall consider the degree to which each
20 institution has met the following conditions:

21 ~~(A)~~ (1) Has maximized resources available through nonresident
22 tuition and fee charges to the satisfaction of the commission or
23 council;

24 ~~(B)~~ (2) Is consistently achieving the benchmarks established

1 in the compact of the institution pursuant to the provisions of
2 article ~~one-a~~ one-d of this chapter;

3 ~~(C)~~ (3) Is continuously pursuing the statewide goals for post-
4 secondary education and the statewide compact established in
5 articles one and ~~one-a~~ one-d of this chapter;

6 ~~(D)~~ (4) Has demonstrated to the satisfaction of the commission
7 or council that an increase will be used to maintain high-quality
8 programs at the institution; and

9 ~~(E)~~ (5) Has demonstrated to the satisfaction of the commission
10 or council that the institution is making adequate progress toward
11 achieving the goals for education established by the southern
12 regional education board;

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

16 ~~(6)~~ (m) This section does not require equal increases among
17 institutions or require any level of increase at an institution.

18 ~~(7)~~ (n) The commission and council shall report to the
19 Legislative Oversight Commission on Education Accountability
20 regarding the basis for each approval or denial as determined using
21 the criteria established in ~~subdivision (5) of this subsection~~ (1).

22 ~~(8) Notwithstanding the provisions of subdivisions (1) and (4)~~
23 ~~of this subsection, tuition and fee increases at state institutions~~
24 ~~of higher education which are under the jurisdiction of the~~

1 ~~commission, including the state institutions of higher education~~
2 ~~known as Marshall University and West Virginia University, are~~
3 ~~subject to the following conditions:~~

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

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

14 ~~(C) A new capital fee or an increase in an existing capital~~
15 ~~fee is excluded from the tuition and fee increase calculation in~~
16 ~~this subdivision:~~

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

21 ~~(ii) If the following conditions are met:~~

22 ~~(I) The new fee or fee increase was approved by an~~
23 ~~institutional governing board or by a referendum of an~~
24 ~~institution's undergraduate students, or both, on or before July 1,~~

1 ~~2006;~~

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

6 ~~(III) The institutional board of Governors previously oversaw~~
 7 ~~a community and technical college that achieved independent~~
 8 ~~accreditation and consequently acquired its own board of Governors;~~

9 ~~(D)~~ (o) Institutions shall provide, in a timely manner, any
 10 data on tuition and fee increases requested by the staff of the
 11 commission or council. The commission shall:

12 ~~(i)~~ (1) Collect the data from any institution under its
 13 jurisdiction; and

14 ~~(ii)~~ (2) Annually by July 1, provide a detailed analysis of the
 15 institutions' compliance with the provisions of this subdivision to
 16 the Legislative Oversight Commission on Education Accountability.

17 **§18B-10-6a. Undergraduate, graduate and professional fee waivers.**

18 ~~**Marshall University and West Virginia University.**~~

19 (1) The governing boards ~~of Marshall University and West~~
 20 ~~Virginia University, respectively,~~ may establish fee waivers for
 21 students in undergraduate studies at institutions under their
 22 jurisdiction which entitle recipients to waiver of tuition, capital
 23 and other fees, in whole or in part.

24 (2) Each undergraduate fee waiver is for a period of time not

1 to exceed eight semesters of undergraduate study.

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

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

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

18 (b) Graduate and professional school fee waivers.

19 (1) In addition to the fee waivers authorized for
20 undergraduate study by subsection (a) of this section, the
21 governing boards of ~~Marshall University and West Virginia
22 University, respectively,~~ each may establish fee waivers for study
23 in the graduate and professional schools under ~~its~~ their
24 jurisdiction ~~including medicine and dentistry,~~ which entitle the

1 recipients to waiver of tuition, capital and other fees, in whole
2 or in part.

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

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

16 (4) The awarding of graduate and professional school fee
17 waivers shall be entered in the minutes of the meeting of each
18 governing board.

19 **ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS FOR STATE**
20 **INSTITUTIONS OF HIGHER EDUCATION.**

21 **§18B-12-1. Legislative findings and purpose.**

22 (a) The Legislature makes the following findings:

23 (1) Economic development in the state depends in part upon
24 research developed at the state institutions of higher education

1 and enhancing research opportunities for these institutions
2 promotes the general economic welfare of the citizens of the state.

3 (2) Expenditures for equipment and material for research
4 projects must be handled in an expeditious fashion in order to
5 enhance the competitive positions of institutions in the current
6 environment for research and development.

7 (3) The acquisition and implementation of research grants can
8 be simplified and expedited through development and operation of
9 private corporations.

10 (4) Faculty and staff who conduct research need and deserve
11 administrative and financial support in securing and managing
12 research grants, managing and administering the personnel needed to
13 support research and in all areas of grant management.

14 (5) The interest of the citizens of the state will be served
15 best if the governing boards enter into and carry out agreements
16 with corporations to provide research assistance for the
17 institutions under their jurisdictions.

18 (b) Therefore, the purpose of the Legislature in enacting this
19 article is to enhance the competitive positions of institutions,
20 provide administrative and financial support to faculty and staff
21 who conduct research and facilitate research and development grants
22 and opportunities for institutions by authorizing the governing
23 boards to contract with private corporations organized for the
24 purpose of providing these services.

1 **§18B-12-2. Definitions.**

2 The following words when used in this article have the
3 meanings ascribed to them unless the context clearly indicates a
4 different meaning:

5 (a) "Agreement" means any agreement being entered into between
6 a governing board and a corporation pursuant to section four of
7 this article.

8 (b) "Affiliated corporation" or "corporation" means a
9 corporation which meets the essential criteria prescribed in
10 sections three and four of this article.

11 (c) "Affiliated governing board" or "governing board" means
12 the governing board of a state institution of higher education
13 which is a party to the agreement required in section four of this
14 article.

15 (d) "Affiliated institution" or "institution" means the state
16 institution of higher education under the jurisdiction of an
17 affiliated governing board.

18 (e) "Affiliated member" means a director of an affiliated
19 corporation who is an employee of the affiliated governing board or
20 of any entity bearing a direct or indirect relationship to the
21 affiliated governing board or the institution under its
22 jurisdiction.

23 (f) "Key employee" means a person essential to the operation
24 of a corporation who exerts a significant influence on the

1 organization's finances or activities as defined by the Internal
2 Revenue Service relative to the preparation of IRS Form 990, or any
3 successor form.

4 (g) "Potential membership" means the total number of associate
5 and private sector members who comprise a board of directors when
6 all membership seats are filled.

7 (h) "Private sector member" means a director of an affiliated
8 corporation who is not an employee of the affiliated governing
9 board nor of any entity bearing a direct or indirect relationship
10 to the affiliated governing board or to the institution under its
11 jurisdiction.

12 (i) For the purposes of this article the Higher Education
13 Policy Commission is considered a "governing board for a state
14 institution of higher education" and its chancellor is considered
15 to be a "president" of a state institution of higher education.

16 **§18B-12-3. Governing boards authorized to contract with**
17 **corporations; corporations to meet essential**
18 **criteria; corporation membership and organization;**
19 **financial requirements.**

20 (a) Each governing board is authorized to enter into
21 agreements and any other contractual relationships with one or more
22 affiliated corporations formed with respect to the state
23 institution of higher education under its jurisdiction.

1 (b) Each affiliated corporation shall meet the following
2 essential criteria:

3 (1) Corporation status. The corporation is organized as a
4 nonprofit, nonstock corporation under the general corporation laws
5 of the state exclusively for charitable, educational or scientific
6 purposes within the meaning of section 501(c) of the Internal
7 Revenue Code of 1986, as amended, to foster and support research at
8 the affiliated institution and to provide evaluation, development,
9 patenting, management and marketing services for inventions of its
10 faculty, staff and students.

11 (2) Corporation membership, meetings, officers.

12 (A) Members of the board of directors of the affiliated
13 corporation serve terms as prescribed in the bylaws of the
14 corporation and are selected as follows:

15 (i) Affiliated members are selected by the affiliated
16 governing board after consultation with the president of the
17 institution;

18 (ii) Private sector members are selected by the affiliated
19 governing board;

20 (iii) The affiliated governing board shall make all
21 appointments to the board of directors of the affiliated
22 corporation by majority vote of its members.

23 (B) Private sector members shall constitute at least fifty per
24 cent of the potential membership of the corporate directors.

1 Individuals who are directly involved in research at the affiliated
2 institution shall constitute a majority of the potential affiliated
3 membership. Vacancies shall be filled in such a way that the
4 majority status of private sector membership is maintained.

5 (C) By September 1, 2011, and at least biennially thereafter,
6 the corporate directors shall elect a chair from among their
7 members.

8 (D) The affiliated governing board shall select an executive
9 director who may have dual appointment with the affiliated
10 governing board. The affiliated governing board shall appoint the
11 executive director by majority vote of its members and shall
12 include the vote as a part of the minute record. The executive
13 director shall inform the corporate directors and the affiliated
14 governing board annually of his or her employment status with any
15 other institution, agency or organization.

16 (E) The meetings of the corporate directors are subject to
17 section three, article nine-a, chapter six of this code.

18 (3) *Financial requirements.* --

19 (A) The corporation shall develop and implement a systematic
20 program for investing corporation assets. The program may include
21 creation of an investment committee or corporate directors may
22 function as a committee of the whole. The investment committee or,
23 in the absence of an investment committee, the corporation staff
24 shall prepare an annual report on the status of investments and

1 other financial information the corporate directors may request and
2 present to the corporate directors for discussion and approval.
3 The corporation also shall share the report with the affiliated
4 governing board within sixty days after the report is completed.

5 (B) The financial statements of the corporation shall be
6 audited annually by an independent certified public accountant or
7 firm. Within thirty days of completion, the financial audit report
8 shall be presented to the corporate directors for approval, after
9 which a copy of the financial audit and required statements shall
10 be submitted to the affiliated governing board.

11 (C) If the corporation is dissolved, its assets shall be
12 transferred to an entity designated by the affiliated governing
13 board for the benefit of the affiliated institution. The recipient
14 shall be an organization operated exclusively for charitable,
15 educational or scientific purposes and shall qualify as an exempt
16 organization under section 501(c)(3) of the Internal Revenue Code
17 of 1986, as amended.

18 **§18B-12-6. Conflicts of interest; reports required.**

19 (a) The corporation shall develop and implement a written
20 policy addressing conflicts of interest.

21 (b) Annually, officers, directors and key employees shall
22 disclose interests that may give rise to conflicts.

23 (c) Notwithstanding any other provision of this code to the
24 contrary, officers and employees of a ~~an~~ affiliated governing board

1 ~~and the affected state institution of higher education~~ may hold
 2 appointments to offices of the corporation and be corporate
 3 directors or officers or employees of other entities contracting
 4 with either the corporation or a governing board. ~~of a state~~
 5 ~~institution of higher education. The executive director of the~~
 6 ~~corporation shall have dual appointment with the state institution~~
 7 ~~of higher education. The governing board of a state institution of~~
 8 ~~higher education and the corporate directors must be informed of~~
 9 ~~such appointments annually.~~

10 **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS**

11 **§18B-19-10. Authorization to sell property; use of proceeds.**

12 (a) Notwithstanding any other provision of law or this code to
 13 the contrary, the commission, council and governing boards each may
 14 ~~sell lease, convey or otherwise dispose of~~ all or part of any real
 15 property that it owns, either by contract or at public auction and
 16 retain the proceeds of the transaction.

17 (1) The commission, council and governing boards may not sell
 18 ~~lease, convey or otherwise dispose of~~ any real property without
 19 first performing the following steps:

20 (A) Providing for property appraisal by two independent
 21 licensed appraisers. The property may not be sold for less than
 22 the average of the two appraisals;

23 (B) Providing notice to the public in the county in which the
 24 real property is located by a Class II legal advertisement pursuant

1 to section two, article three, chapter fifty-nine of this code;

2 (C) Holding a public hearing on the issue in the county in
3 which the real property is located; and

4 (D) In the case of the commission, notifying the Joint
5 Committee on Government and Finance.

6 ~~(2) Any proceeds from the sale, lease, conveyance or other
7 disposal of real property that is used jointly by institutions or
8 for statewide programs under the jurisdiction of the commission or
9 the council shall be transferred to the General Revenue Fund of the
10 state.~~

11 ~~(b)~~ (2) The commission, council or a governing board shall
12 deposit the net proceeds from the sale ~~lease, conveyance or other
13 disposal~~ of real property into a special revenue account in the
14 State Treasury to be appropriated by the Legislature in the annual
15 budget bill for the purchase of additional real property, equipment
16 or technology, or for capital improvements or maintenance at the
17 institution that sold the surplus real property.

18 (b) Notwithstanding any other provision of law or this code to
19 the contrary, the commission, council and governing boards each may
20 lease, as lessor, for purposes that further the state goals,
21 objectives and priorities for higher education set out in this
22 code, particularly section one-a, article one and article one-d of
23 this chapter, any real property that it owns, either by contract or
24 at public auction, and retain the proceeds of the lease.

1 (c) Notwithstanding any other provision of law or this code to
2 the contrary, the commission, council and governing boards may
3 convey, transfer or exchange any real property it owns to any other
4 public body.

NOTE: The purpose of this bill is to clarify powers and duties of certain public higher education organizations and oversight of higher education capital facilities and authorize those higher education organizations to sell, lease or convey property.

§18B-12-1 through §18B-12-3 have been completely rewritten; therefore, have been completely underscored.

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