

H. B. 4608

(By Delegates Canterbury, T. Campbell and Anderson)
[Introduced February 17, 2012; referred to the
Committee on Education then Finance.]

A BILL to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of Higher Education Policy Commission; requiring that policies and procedures established by the commission ensure that credits, earned by students while attending a college or other in-state higher education institution that is accredited, shall be transferable to another state college or in-state higher education institution if the college or in-state higher education institution attended loses its accreditation; permitting reimbursement of tuition and other costs from college of in-state higher education institution that loses its accreditation; and permitting students to take professional board examinations, where applicable, if the student otherwise qualified before accreditation was lost.

Be it enacted by the Legislature of West Virginia:

1 That §18B-1B-4 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted to read as follows:

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

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

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

17 (1) Develop, oversee and advance the public policy agenda
18 pursuant to article one-d of this chapter to address major
19 challenges facing the state, including, but not limited to, the
20 following:

21 (A) The goals, objectives and priorities established in this
22 chapter including specifically those goals, objectives and
23 priorities pertaining to the compacts created pursuant to section
24 seven, article one-d of this chapter; and

1 (B) Development and implementation of the master plan
2 described in section five, article one-d of this chapter for the
3 purpose of accomplishing the mandates of this section;

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

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

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

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

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

20 (A) Developing, building public consensus around and
21 sustaining attention to a long-range public policy agenda. In
22 developing the agenda, the commission and council shall seek input
23 from the Legislature and the Governor and specifically from the
24 State Board of Education and local school districts in order to

1 create the necessary linkages to assure smooth, effective and
2 seamless movement of students through the public education and
3 post-secondary education systems and to ensure that the needs of
4 public school courses and programs can be fulfilled by the
5 graduates produced and the programs offered;

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

9 (C) Holding the governing boards and the higher education
10 systems as a whole accountable for accomplishing their missions and
11 implementing their compacts;

12 (4) Develop and adopt each compact for the governing boards
13 under its jurisdiction;

14 (5) Review and adopt the annual updates of the institutional
15 compacts;

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

17 (A) The Governor for implementation of the public policy
18 agenda; and

19 (B) The Legislature by maintaining a close working
20 relationship with the legislative leadership and the Legislative
21 Oversight Commission on Education Accountability;

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

1 chapter;

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

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

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

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

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

21 (C) Recommendations of the commission for statutory changes
22 necessary or expedient to achieve state goals, objectives and
23 priorities;

24 (11) Establish a formal process for identifying capital

1 investment needs and for determining priorities for these
2 investments for consideration by the Governor and the Legislature
3 as part of the appropriation request process pursuant to article
4 nineteen of this chapter.

5 (12) Develop standards and evaluate governing board requests
6 for capital project financing in accordance with article nineteen
7 of this chapter;

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

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

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

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

1 (17) Provide suitable offices in Kanawha County for the
2 chancellor, vice chancellors and other staff;

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

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

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

23 (21) Approve and implement a uniform standard jointly with the
24 council to determine which students shall be placed in remedial or

1 developmental courses. The standard shall be aligned with college
2 admission tests and assessment tools used in West Virginia and
3 shall be applied uniformly by the governing boards throughout the
4 public higher education system. The chancellors shall develop a
5 clear, concise explanation of the standard which they shall
6 communicate to the State Board of Education and the State
7 Superintendent of Schools;

8 (22) Jointly with the council, develop and implement an
9 oversight plan to manage systemwide technology including, but not
10 limited to, the following:

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

14 (B) Increasing the delivery of instruction to nontraditional
15 students, to provide services to business and industry and increase
16 the management capabilities of the higher education system.

17 (C) Notwithstanding any other provision of law or this code to
18 the contrary, the council, commission and governing boards are not
19 subject to the jurisdiction of the Chief Technology Officer for any
20 purpose;

21 (23) Establish and implement policies and procedures to ensure
22 that a student may transfer and apply toward the requirements for
23 a bachelor's degree the maximum number of credits earned at any
24 regionally accredited in-state or out-of-state community and

1 technical college with as few requirements to repeat courses or to
2 incur additional costs as are consistent with sound academic
3 policy; Provided, That the policies and procedures ensure that : (A)
4 Credits earned by students while attending a college that is
5 accredited shall be transferable to another state college if the
6 college attended loses it accreditation after the credits have been
7 earned; (B) if the credits earned prior to the loss of
8 accreditation are not transferable after a college loses its
9 accreditation, students shall be reimbursed for tuition, fees and
10 other expenses incurred; and (C) students, who attended a college
11 that lost its accreditation, shall be permitted to take
12 professional board examinations, where applicable, if the student
13 otherwise qualified before accreditation was lost;

14 (24) Establish and implement policies and procedures to ensure
15 that a student may transfer and apply toward the requirements for
16 a degree the maximum number of credits earned at any regionally
17 accredited in-state or out-of-state higher education institution
18 with as few requirements to repeat courses or to incur additional
19 costs as are consistent with sound academic policy: Provided, That
20 the policies and procedures ensure that: (A) Credits earned by
21 students while attending an in-state higher education institution
22 that is accredited shall be transferable to another in-state higher
23 education institution if the in-state higher education institution
24 attended loses it accreditation after the credits have been earned;

1 (B) if the credits earned prior to the loss of accreditation are
2 not transferable after an in-state higher education institution
3 loses its accreditation, students shall be reimbursed for tuition,
4 fees and other expenses incurred; and (C) students, who attended an
5 in-state higher education institution that lost its accreditation,
6 shall be permitted to take professional board examinations, where
7 applicable, if the student otherwise qualified before accreditation
8 was lost;

9 (25) Establish and implement policies and procedures to ensure
10 that a student may transfer and apply toward the requirements for
11 a master's degree the maximum number of credits earned at any
12 regionally accredited in-state or out-of-state higher education
13 institution with as few requirements to repeat courses or to incur
14 additional costs as are consistent with sound academic policy:
15 Provided, That the policies and procedures ensure that (A) Credits
16 earned by students while attending an in-state higher education
17 institution that is accredited shall be transferable to another in-
18 state higher education institution if the in-state higher education
19 institution attended loses its accreditation after the credits have
20 been earned; (B) if the credits earned prior to the loss of
21 accreditation are not transferable after an in-state higher
22 education institution loses its accreditation, students shall be
23 reimbursed for tuition, fees and other expenses incurred; and (C)
24 students, who attended an in-state higher education institution

1 that lost its accreditation, shall be permitted to take
2 professional board examinations, where applicable, if the student
3 otherwise qualified before accreditation was lost;

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

14 (27) Seek out and attend regional, national and international
15 meetings and forums on education and workforce development-related
16 topics as, in the commission's discretion, are critical for the
17 performance of their duties as members, for the purpose of keeping
18 abreast of education trends and policies to aid it in developing
19 the policies for this state to meet the established education
20 goals, objectives and priorities pursuant to section one-a, article
21 one and article one-d of this chapter;

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

1 (29) Consider and submit to the appropriate agencies of the
2 executive and legislative branches of state government an
3 appropriation request that reflects recommended appropriations for
4 the commission and the governing boards under its jurisdiction. The
5 commission shall submit as part of its appropriation request the
6 separate recommended appropriation request it received from the
7 council, both for the council and for the governing boards under
8 the council's jurisdiction. The commission annually shall submit
9 the proposed allocations based on each institution's progress
10 toward meeting the goals of its compact;

11 (30) The commission may assess institutions under its
12 jurisdiction, including Marshall University and West Virginia
13 University, for the payment of expenses of the commission or for
14 the funding of statewide higher education services, obligations or
15 initiatives related to the goals set forth for the provision of
16 public higher education in the state;

17 (31) Promulgate rules allocating reimbursement of
18 appropriations, if made available by the Legislature, to governing
19 boards for qualifying noncapital expenditures incurred in providing
20 services to students with physical, learning or severe sensory
21 disabilities;

22 (32) Make appointments to boards and commissions where this
23 code requires appointments from the State College System Board of
24 Directors or the University of West Virginia System Board of

1 Trustees which were abolished effective June 30, 2000, except in
2 those cases where the required appointment has a specific and
3 direct connection to the provision of community and technical
4 college education, the appointment shall be made by the council.
5 Notwithstanding any provisions of this code to the contrary, the
6 commission or the council may appoint one of its own members or any
7 other citizen of the state as its designee. The commission and
8 council shall appoint the total number of persons in the aggregate
9 required to be appointed by these previous governing boards;

10 (33) Pursuant to article three-a, chapter twenty-nine-a of
11 this code and section six, article one of this chapter, promulgate
12 rules necessary or expedient to fulfill the purposes of this
13 chapter. The commission and the council shall promulgate a uniform
14 joint legislative rule for the purposes of standardizing, as much
15 as possible, the administration of personnel matters among the
16 state institutions of higher education and implementing the
17 provisions of articles seven, eight, nine and nine-a of this
18 chapter;

19 (34) Determine when a joint rule among the governing boards
20 under its jurisdiction is necessary or required by law and, in
21 those instances, in consultation with the governing boards under
22 its jurisdiction, promulgate the joint rule;

23 (35) Promulgate and implement a rule jointly with the council
24 whereby course credit earned at a community and technical college

1 transfers for program credit at any other state institution of
2 higher education and is not limited to fulfilling a general
3 education requirement;

4 (36) By October 1, 2011, promulgate a rule pursuant to section
5 one, article ten of this chapter, establishing tuition and fee
6 policy for all governing boards under the jurisdiction of the
7 commission, including Marshall University and West Virginia
8 University. The rule shall include, but is not limited to, the
9 following:

10 (A) Comparisons with peer institutions;

11 (B) Differences among institutional missions;

12 (C) Strategies for promoting student access;

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

14 (E) Such other policies as the commission and council consider
15 appropriate;

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

1 (38) Notwithstanding any other provision of this code to the
2 contrary sell, lease, convey or otherwise dispose of all or part of
3 any real property that it owns, in accordance with article nineteen
4 of this chapter.

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

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

12 (2) Policy analysis and research focused on issues affecting
13 the system as a whole or a geographical region thereof;

14 (3) Development and implementation of institutional mission
15 definitions, including use of incentive funds to influence
16 institutional behavior in ways that are consistent with public
17 priorities;

18 (4) Academic program review and approval for governing boards
19 under its jurisdiction. The review and approval includes use of
20 institutional missions as a template to judge the appropriateness
21 of both new and existing programs and the authority to implement
22 needed changes.

23 (A) The commission's authority to review and approve academic
24 programs for either Marshall University or West Virginia University

1 is limited to programs that are proposed to be offered at a new
2 location not presently served by that institution;

3 (B) The commission shall approve or disapprove proposed
4 academic degree programs in those instances where approval is
5 required as soon as practicable, but in any case not later than six
6 months from the date the governing board makes an official request.
7 The commission may not withhold approval unreasonably.

8 (5) Distribution of funds appropriated to the commission,
9 including incentive and performance-based funds;

10 (6) Administration of state and federal student aid programs
11 under the supervision of the vice chancellor for administration,
12 including promulgation of rules necessary to administer those
13 programs;

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

17 (8) Developing, establishing and implementing information,
18 assessment, accountability and personnel systems, including
19 maintaining statewide data systems that facilitate long-term
20 planning and accurate measurement of strategic outcomes and
21 performance indicators;

22 (9) Jointly with the council, promulgating and implementing
23 rules for licensing and oversight for both public and private
24 degree-granting and nondegree-granting institutions that provide

1 post-secondary education courses or programs in the state. The
2 council has authority and responsibility for approval of all post-
3 secondary courses or programs providing community and technical
4 college education as defined in section two, article one of this
5 chapter.

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

11 (11) Quality assurance that intersects with all other duties
12 of the commission particularly in the areas of research, data
13 collection and analysis, personnel administration, planning, policy
14 analysis, program review and approval, budgeting and information
15 and accountability systems; and

16 (12) Developing budgets and allocating resources for governing
17 boards under its jurisdiction:

18 (A) For all governing boards under its jurisdiction, except
19 the governing boards of Marshall University and West Virginia
20 University, the commission shall review institutional operating
21 budgets, review and approve capital budgets, and distribute
22 incentive and performance-based funds;

23 (B) For the governing boards of Marshall University and West
24 Virginia University, the commission shall distribute incentive and

1 performance-based funds and may review and comment upon the
2 institutional operating budgets and capital budgets. The
3 commission's comments, if any, shall be made part of the governing
4 board's minute record.

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

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

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

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

21 (3) Other circumstances which, in the view of the commission,
22 severely limit the capacity of the governing board to exercise its
23 powers or carry out its duties and responsibilities.

24

1 The commission may not withdraw specific powers for a period
2 exceeding two years. During the withdrawal period, the commission
3 shall take all steps necessary to reestablish sound, stable and
4 responsible institutional governance.

NOTE: The purpose of this bill is to require that the policies and procedures established by the Higher Education Policy Commission ensure that credits, earned by students while attending a college or other in-state higher education institution that is accredited, shall be transferable to another state college or in-state higher education institution if the college or in-state higher education institution attended loses its accreditation. The bill permits students to be reimbursed for tuition and other costs from college of in-state higher education institution that loses its accreditation. And, the bill permits students to take professional board examinations, where applicable, if the student otherwise qualified before accreditation was lost.

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