

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2815

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

[BY REQUEST OF THE EXECUTIVE]

[Originating in the Committee on the Judiciary;

March 24, 2017]

1 A BILL to repeal §18B-1-5a, 18B-1-8b, 18B-1-10 of the Code of West Virginia, 1931, as amended;
2 to repeal §18B-1A-3 of said code; to repeal §18B-1B-10 and §18B-1B-13 of said code; to
3 repeal §18B-2-5 and §18B-2-7 of said code; to repeal §18B-5-2a of said code; to amend
4 and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-1,
5 §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code; to amend and reenact §18B-1D-2,
6 §18B-1D-4, and §18B-1D-7 of said code; to amend and reenact §18B-2A-3 and §18B-2A-
7 4 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-
8 4-7 of said code; to amend and reenact §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of
9 said code; to amend and reenact §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of
10 said code; to amend and reenact §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-
11 19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of
12 said code; and to amend said code by adding thereto one new section, designated §18B-
13 19-19, all relating to public education higher education governance generally; defining
14 terms; repealing obsolete provisions of code; clarifying scope of rule-making authority of
15 higher education policy commission and certain institutions of higher education;
16 eliminating outdated language; providing for rule-making procedures; requiring
17 promulgation of rules by commission, council and certain institutions of higher education;
18 providing for shorter time period for commission and council to review and comment on
19 rules proposed by governing boards of institutions of higher education; providing
20 legislative intent; providing for composition of commission; providing for primary
21 responsibility of commission; updating and clarifying powers of commission; limiting
22 authority of commission over certain institutions of higher education; eliminating authority
23 of commission to assess institutions for payment of expenses of commission and for
24 funding of statewide higher education services, obligations, or initiatives; clarifying
25 authority of commission over review and approval of academic programs; repealing and
26 eliminating outdated language; eliminating authority of commission with respect to certain

27 financial and budget reviews and approvals; expanding authority of certain governing
28 boards over appointment of president of certain higher education institutions; eliminating
29 requirement for approval by commission of appointment of president for certain institutions
30 of higher education; eliminating jurisdiction of commission relative to the accountability
31 system over certain institutions of higher education; providing for updated responsibility of
32 commission in development and advancement of public policy agenda and collection of
33 data for certain institutions of higher education; eliminating certain reporting
34 responsibilities for certain institutions of higher education; altering authority of commission
35 over institutional compacts of certain institutions of higher education; eliminating
36 requirement for certain institutions of higher education to prepare an institutional compact
37 for submission to the commission; eliminating application of certain data-based measures
38 on certain institutions of higher education; altering timeframe for updates to institutional
39 compacts; eliminating commission approval of institutional compacts of certain institutions
40 of higher education; eliminating authority of chancellor over coordination of policies,
41 purposes and rules of governing boards of certain institutions of higher education;
42 updating powers of governing boards; eliminating requirement of commission approval of
43 master plans for certain institutions of higher education; requiring certain institutions to
44 provide copies of master plan to Legislative Oversight Commission on Educational
45 Accountability; providing that rules of commission and council related to administering a
46 system for the management of personnel matters do not apply to certain institutions of
47 higher education; authorizing governing boards to contract and pay for any supplemental
48 employee benefit; providing for legislative findings and purposes; clarifying authority of
49 certain governing boards to delegate authority to its president; clarifying authority of
50 commission and governing boards of certain institutions of higher education with respect
51 to development of rules for accreditation and determination of minimum standards for
52 conferring degrees; eliminating authority of commission to revoke an institution's authority

53 to confer degrees when governing board or chief executive officer do not provide certain
54 information to commission; eliminating applicability of certain commission and council
55 rules on certain institutions of higher education; requiring certain governing boards to
56 promulgate and adopt rules related to acquisitions and purchases; clarifying authority of
57 certain governing boards over certain purchasing activities; authorizing prepayment by
58 commission, council or governing boards in certain instance; expanding scope of
59 authorized purchasers on certain purchase contracts; updating power of Joint Committee
60 over performance audits of purchasing; updating authority of commission, council and
61 governing boards over purchase card procedures; requiring certain governing boards to
62 establish purchasing card procedures; clarifying authority for state institutions to enter into
63 design-build contracts and other commonly accepted methods of procurement and
64 financing for construction projects; providing that Design-Build Procurement Act does not
65 apply to state institutions of higher education; providing authority to donate equipment,
66 supplies and materials to not for profit entity to promote public welfare; updating certain
67 best practices applicable to ensuring fiscal integrity of institutions of higher education;
68 authorizing additional situation where emergency purchase card use is permitted;
69 authorizing different tuition and fees for online courses; updating time frame for payment
70 of fees by students; authorizing deposit of certain fees into single special revenue account
71 by certain institutions; updating applicability of rule by commission and council for tuition
72 and deferred payment plans; authorizing certain governing board to propose a rule related
73 to tuition and fee deferred payment plans; authorizing certain governing boards to
74 authorize a mandatory auxiliary fee without commission approval; updating tuition and fee
75 increase percentage that requires commission or council approval; updating conditions
76 commission or council are required to consider in determining whether to approve a tuition
77 or fee increase; revising requirements and parameters for certain revenue bonds issued
78 by certain governing boards; updating approvals required for issuance of certain revenue

79 bonds by state institutions of higher education; providing for transfer and deposit of certain
80 fees by certain governing boards into single special revenue account; requiring
81 commission and council to develop system capital development oversight policy and
82 providing content for such policy; requiring each governing board to adopt a campus
83 development plan; updating time frame for reporting to commission and council on
84 campus development plans; eliminating requirement for commission approval of campus
85 development plans of certain governing boards; providing for content of campus
86 development plans; eliminating commission approval over certain capital and
87 maintenance project lists; authorizing certain governing boards to undertake projects not
88 contained in campus development plan; eliminating certain commission approvals related
89 to capital improvements for certain institutions; authorizing capital improvements to be
90 funded through notes; updating conditions to be met for certain institutions to be
91 responsible for capital project management; updating requirements for capital project
92 management rule to be promulgated and adopted by certain governing boards; providing
93 updated applicability and functions of higher education facilities information system;
94 eliminating certain requirements related to leasing of real property by commission, council,
95 and governing boards; updating requirements for use of appraisals in connection with sale
96 of real property; updating permitted uses of proceeds from sale, conveyance or other
97 disposal of real property received by commission, council or a governing board;
98 authorizing certain governing boards to enter into lease-purchase agreements in certain
99 instances without commission approval; eliminating requirement of commission approval
100 for certain real estate and construction transactions; and requiring certain governing
101 boards to provide certain information to commission.

Be it enacted by the Legislature of West Virginia:

1 That §18B-1-5a, 18B-1-8b, 18B-1-10 of the Code of West Virginia, 1931, as amended, be
2 repealed; that §18B-1A-3 of said code be repealed; that §18B-1B-10 and §18B-1B-13 of said

3 code be repealed; that §18B-2-5 and §18B-2-7 of said code be repealed; that §18B-5-2a of said
4 code be repealed; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that
5 §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code be amended and reenacted; that
6 §18B-1D-2, §18B-1D-4, and §18B-1D-7 of said code be amended and reenacted; that §18B-2A-
7 3 and §18B-2A-4 of said code be amended and reenacted; that §18B-3-1 of said code be
8 amended and reenacted; that §18B-4-7 of said code be amended and reenacted; that §18B-5-4,
9 §18B-5-6, §18B-5-7, and §18B-5-9 of said code be amended and reenacted; that §18B-10-1,
10 §18B-10-1c, §18B-10-8, and §18B-10-16 of said code be amended and reenacted; that §18B-19-
11 1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-
12 11, §18B-19-13, and §18B-19-14 of said code be amended and reenacted; and that said code be
13 amended by adding thereto one new section, designated §18B-19-19, all to read as follows:

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

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

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

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

11 (3) "Approve" or "approval", when used in reference to action by the Commission or the
12 Council, means action in which the governance rationale of a governing board under its
13 jurisdiction is given due consideration, and the action of the Commission is to additionally

14 establish whether the proposed institutional action is consistent with law and established policy
15 and is an appropriate advancement of the public interest;

16 ~~(3)~~ (4) “Board of visitors” means the advisory board previously appointed for the West
17 Virginia Graduate College and the advisory board previously appointed for West Virginia
18 University Institute of Technology, which provide guidance to the Marshall University Graduate
19 College and West Virginia University Institute of Technology, respectively;

20 ~~(4)~~ (5) “Broker” or “brokering” means serving as an agent on behalf of students, employers,
21 communities or responsibility areas to obtain education services not offered at that institution.
22 These services include courses, degree programs or other services contracted through an
23 agreement with a provider of education services either in-state or out-of-state;

24 ~~(5)~~ (6) “Chancellor” means the Chancellor for Higher Education where the context refers
25 to a function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for
26 Community and Technical College Education where the context refers to a function of the West
27 Virginia Council for Community and Technical College Education;

28 ~~(6)~~ (7) “Chancellor for Community and Technical College Education” means the chief
29 executive officer of the West Virginia Council for Community and Technical College Education
30 employed pursuant to section three, article two-b of this chapter;

31 ~~(7)~~ (8) “Chancellor for Higher Education” means the chief executive officer of the Higher
32 Education Policy Commission employed pursuant to section five, article one-b of this chapter;

33 ~~(8)~~ (9) “Collaboration” means entering into an agreement with one or more providers of
34 education services in order to enhance the scope, quality or efficiency of education services;

35 ~~(9)~~ (10) “Community and technical college”, in the singular or plural, means the free-
36 standing community and technical colleges and other state institutions of higher education which
37 deliver community and technical college education. This definition includes Blue Ridge
38 Community and Technical College, Bridgemont Community and Technical College, Eastern West
39 Virginia Community and Technical College, Kanawha Valley Community and Technical College,

40 Mountwest Community and Technical College, New River Community and Technical College,
41 Pierpont Community and Technical College, Southern West Virginia Community and Technical
42 College, West Virginia Northern Community and Technical College and West Virginia University
43 at Parkersburg;

44 ~~(10)~~ (11) “Community and technical college education” means the programs, faculty,
45 administration and funding associated with the delivery of community and technical college
46 education programs;

47 ~~(11)~~ (12) “Community and technical college education program” means any college-level
48 course or program beyond the high school level provided through a public institution of higher
49 education resulting in or which may result in a two-year associate degree award including an
50 associate of arts, an associate of science and an associate of applied science; certificate
51 programs and skill sets; developmental education; continuing education; collegiate credit and
52 noncredit workforce development programs; and transfer and baccalaureate parallel programs.
53 All programs are under the jurisdiction of the council. Any reference to “post-secondary vocational
54 education programs” means community and technical college education programs as defined in
55 this subsection;

56 (13) “Confirm” or “confirmation”, when used in reference to action by the Commission,
57 means action in which substantial deference is allocated to the governing authority of a governing
58 board under its jurisdiction and the action of the Commission is to review whether the proposed
59 institutional action is consistent with law and established policy;

60 ~~(12)~~ (14) “Council” means the West Virginia Council for Community and Technical College
61 Education created by article two-b of this chapter;

62 ~~(13)~~ (15) “Dual credit course” or “dual enrollment course” means a credit-bearing college-
63 level course offered in a high school by a state institution of higher education for high school
64 students in which the students are concurrently enrolled and receiving credit at the secondary
65 level.

66 ~~(14)~~ (16) “Essential conditions” means those conditions which shall be met by community
67 and technical colleges as provided in section three, article three-c of this chapter;

68 (17) “Exempted schools” means West Virginia University, including West Virginia
69 University Potomac State College and West Virginia University Institute of Technology; Marshall
70 University; and the West Virginia School of Osteopathic Medicine;

71 ~~(15)~~ (18) “Free-standing community and technical colleges” means Southern West Virginia
72 Community and Technical College, West Virginia Northern Community and Technical College,
73 and Eastern West Virginia Community and Technical College, which may not be operated as
74 branches or off-campus locations of any other state institution of higher education;

75 ~~(16)~~ (19) “Governing boards” or “boards” means the institutional boards of Governors
76 created by section one, article two-a of this chapter;

77 ~~(17)~~ (20) “Higher Education Policy Commission”, “Policy Commission” or “Commission”
78 means the commission created by section one, article one-b of this chapter;

79 ~~(18)~~ (21) “Independent community and technical college” means a state institution of
80 higher education under the jurisdiction of the council which is independently accredited, is
81 governed by its own independent governing board, and may not be operated as a branch or off-
82 campus location of any other state institution of higher education. This definition includes Blue
83 Ridge Community and Technical College, Bridgemont Community and Technical College,
84 Eastern West Virginia Community and Technical College, Kanawha Valley Community and
85 Technical College, Mountwest Community and Technical College, New River Community and
86 Technical College, Pierpont Community and Technical College, Southern West Virginia
87 Community and Technical College, West Virginia Northern Community and Technical College,
88 and West Virginia University at Parkersburg;

89 ~~(19)~~ (22) “Institutional compact” means the compact ~~between the commission or council~~
90 ~~and developed by~~ a state institution of higher education ~~under its jurisdiction,~~ consistent with the

91 public policy agenda for higher education; ~~as described in section seven, article one-d of this~~
92 ~~chapter;~~

93 ~~(20)~~ (23) "Institutional operating budget" or "operating budget" means for any fiscal year
94 an institution's total unrestricted education and general funding from all sources, including, but
95 not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding
96 as approved by the commission or council based on comparisons with peer institutions or to reflect
97 consistent components of peer operating budgets;

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

101 ~~(22)~~ (24) "Rule" or "rules" means a regulation, standard, policy or interpretation of general
102 application and future effect;

103 ~~(23)~~ (25) "Sponsoring institution" means a state institution of higher education that
104 maintained an administrative link to a community and technical college providing essential
105 services prior to July 1, 2008. This definition includes institutions whose governing boards had
106 under their jurisdiction a community and technical college, regional campus or a division delivering
107 community and technical college education and programs;

108 ~~(24)~~ (26) "State college and university" means Bluefield State College, Concord University,
109 Fairmont State University, Glenville State College, Shepherd University, West Liberty University
110 or West Virginia State University;

111 ~~(25)~~ (27) "State institution of higher education" means any university, college or community
112 and technical college under the jurisdiction of a governing board as that term is defined in this
113 section;

114 ~~(26)~~ (28) "Statewide network of independently accredited community and technical
115 colleges" or "community and technical college network" means the state institutions of higher
116 education under the jurisdiction of the West Virginia Council for Community and Technical College

117 Education which are independently accredited, each governed by its own independent governing
118 board, and each having a core mission of providing affordable access to and delivering high
119 quality community and technical education in every region of the state;

120 ~~(27)~~ (29) "Vice Chancellor for Administration" means the person employed in accordance
121 with section two, article four of this chapter. Any reference in this chapter or chapter eighteen-c
122 of this code to "Senior Administrator" means Vice Chancellor for Administration; and

123 ~~(28)~~ "Vice Chancellor for Human Resources" means the person employed by the
124 commission and the council jointly pursuant to section two-a, article four of this chapter. The
125 person employed as senior director of human resources by the commission on January 1, 2011,
126 becomes the Vice Chancellor for Human Resources on the effective date of this section. and

127 ~~(29)~~ "West Virginia Consortium for Undergraduate Research and Engineering" or "West
128 Virginia CURE" means the collaborative planning group established by article one-c of this
129 chapter.

§18B-1-6. Rulemaking.

1 (a) The commission is hereby empowered to promulgate, adopt, amend or repeal rules,
2 in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of
3 this article. This grant of rule-making authority does not limit, overrule, restrict, supplant or
4 supersede the rule-making authority provided to the exempted schools.

5 (b) The council is hereby empowered to promulgate, adopt, amend or repeal rules in
6 accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this
7 article. This grant of rule-making power extends only to those areas over which the council has
8 been granted specific authority and jurisdiction by law.

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

11 (1) "Rule" means any regulation, guideline, directive, standard, statement of policy or
12 interpretation of general application which has institution-wide effect or which affects the rights,

13 privileges or interests of employees, students or citizens. Any regulation, guideline, directive,
14 standard, statement of policy or interpretation of general application that meets this definition is a
15 rule for the purposes of this section.

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

21 (3) ~~The commission and council each shall promulgate a rule to guide the development~~
22 ~~and approval of rules made by their respective~~ the governing boards, including the governing
23 ~~boards of Marshall University and West Virginia University, including a process for comment by~~
24 the commission as appropriate, except the exempted schools, who shall each promulgate their
25 own such rules. The council shall promulgate a rule to guide the development and approval of
26 rules made by the governing boards. The commission and council shall provide technical
27 assistance in rulemaking as requested. The rules promulgated by the exempted schools, the
28 commission and council shall include, but are not limited to, the following provisions which shall
29 be included in the rule on rules adopted by each governing board of a state institution of higher
30 education:

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

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

36 (C) A procedure to maximize Internet access to all proposed and approved rules,
37 guidelines and other policy statements to the extent technically and financially feasible; and

38 (D) A procedure for the governing board to follow in submitting its rules for review and
39 ~~approval~~ comment to by the commission ~~and/or~~ and approval by the council, as appropriate:
40 ~~except the following conditions apply for the governing boards of Marshall University and West~~
41 ~~Virginia University:~~

42 (i) The governing boards shall submit rules for review and comment to the commission.

43 (ii) The commission shall return to the governing board its comments and suggestions
44 within ~~thirty~~ fifteen business days of receiving the rule.

45 (iii) If a governing board receives comments or suggestions on a rule from the commission,
46 it shall record these as part of the minute record. The rule is not effective and may not be
47 implemented until the governing board holds a meeting and places on the meeting agenda the
48 comments it has received from the commission.

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

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

55 (f) The governing boards shall promulgate and adopt any rule which they are required to
56 adopt by this chapter or chapter eighteen-c of this code no later than July 1, 2011 unless a later
57 date is specified. On and after this date:

58 (1) Any rule of a governing board which meets the definition set out in subsection (c) of
59 this section and which has not been promulgated and adopted by formal vote of the appropriate
60 governing board is void and may not be enforced;

61 (2) Any authority granted by this code which inherently requires the governing board to
62 promulgate and adopt a rule is void until the governing board complies with this section.

63 (g) Within ~~thirty~~ fifteen business days of the adoption of a rule, including repeal or
64 amendment of an existing rule, and before the change is implemented, a governing board shall
65 furnish a copy of each rule which it has adopted to the commission or the council, respectively,
66 for review. ~~and approval, except the governing boards of Marshall University and West Virginia~~
67 ~~University are subject to subsection (c) of this section~~

68 (h) Annually, by October 1, each governing board shall file with the commission or the
69 council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that
70 year, including the most recent date on which each rule was considered and adopted, amended
71 or repealed by the governing board. For all rules adopted, amended or repealed after the effective
72 date of this section, the list shall include a statement by the chair of the governing board certifying
73 that the governing board has complied with this section when each listed rule was promulgated
74 and adopted.

75 (i) Any rule of the commission or council in effect at the time of the re-enactment of this
76 section or approved by the Legislature during its 2017 Regular Session shall remain in effect and
77 applicable to an institution of higher education under the jurisdiction of the commission or council
78 until such time as an institution exercises its authority to adopt a rule pursuant to this chapter.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

1 There is hereby created the “Higher Education Policy Commission”, hereinafter referred
2 to as the “commission”. It is the intent of the Legislature that the commission be responsible to
3 provide shared services in a cost-effective manner upon request by the state colleges and
4 universities, the council, and the community and technical colleges; undertake certain statewide
5 and regional initiatives as specifically designated in this code, including those related to the
6 administration of grants and scholarships and including those in conjunction with the council; to
7 provide, review, confirm or approve certain actions undertaken by the governing boards, as

8 ~~delineated in this chapter; and~~ develop and gain consensus around ~~and oversee~~ the public policy
9 agenda for higher education and other statewide issues pursuant to section one-a, article one of
10 this chapter under the following conditions:

11 (a) It is the responsibility of the commission to work collaboratively with the governing
12 boards and the council to develop and gain consensus around the public policy agenda for
13 ~~community and technical colleges~~ higher education.

14 (b) It is the responsibility of the council to oversee the implementation of the public policy
15 agenda for the institutions under its jurisdiction.

16 (c) All matters of governance not specifically assigned to the commission or council by law
17 are the duty and responsibility of the governing boards.

**§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies;
eligibility for reappointment; oath of office; removal from office.**

1 (a) The commission is comprised of ten members, all of whom are entitled to vote. The
2 membership of the commission is as follows:

3 (1) The Secretary of Education and the Arts, ex officio.

4 (2) The State Superintendent of Schools, ex officio;

5 (3) The chair of the West Virginia Council for Community and Technical College
6 Education, ex officio.

7 (4) ~~Seven~~ Four at-large members who are citizens of the state, appointed by the Governor,
8 by and with the advice and consent of the Senate. ~~Provided, That prior to appointment, the~~
9 ~~Governor shall interview each candidate to assure that the person selected understands and is~~
10 ~~committed to achieving the goals and objectives as set forth in the institutional compacts and in~~
11 ~~section one-a, article one of this chapter. The Governor shall invite the President of the Senate,~~
12 ~~the Speaker of the House of Delegates, the chairs of the Senate and House of Delegates~~
13 ~~Committees on Finance and Education and such other legislative leaders as the Governor may~~
14 ~~determine to participate in interviewing potential candidates~~

15 (5) Three at-large members who are designated as higher education representatives,
16 appointed by the Governor, by and with the advice and consent of the Senate; for each of the
17 higher education representatives, the Governor shall choose from recommendations made by
18 any state college and university or exempted school and the Governor may request additional
19 recommendations from state colleges and universities or exempted schools if the Governor in his
20 or her sole discretion determines that additional recommendations are necessary for
21 appointments to the commission.

22 (b) Each of the at-large members appointed by the Governor shall represent the public
23 interest and shall be committed to the legislative intent and goals set forth in state law and policy.

24 (c) The Governor may not appoint any person to be a member of the commission who is
25 an officer, employee or member of the council or an advisory board of any state college or
26 university or exempted school; an officer or member of any political party executive committee;
27 the holder of any other public office or public employment under the government of this state or
28 any of its political subdivisions; an appointee or employee of any governing board; or an
29 immediate family member of any employee under the jurisdiction of the commission, the council
30 or any governing board.

31 (d) Of the seven, at-large members appointed by the Governor:

32 (1) No more than four may belong to the same political party;

33 (2) At least two shall be appointed from each congressional district; and

34 (3) Effective July 1, 2008, no more than one member may serve from the same county.

35 (e) The at-large members appointed by the Governor serve overlapping terms of four
36 years.

37 (f) The Governor shall appoint a member to fill any vacancy among the seven at-large
38 members, by and with the advice and consent of the Senate. Any member appointed to fill a
39 vacancy serves for the unexpired term of the vacating member. The Governor shall fill the vacancy
40 within thirty days of the occurrence of the vacancy.

41 (g) ~~An at-large~~ Any member appointed by the Governor may not serve more than two
42 consecutive terms.

43 (h) Before exercising any authority or performing any duties as a member of the
44 commission, each member shall qualify as such by taking and subscribing to the oath of office
45 prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof
46 shall be filed with the Secretary of State.

47 (i) A member of the commission appointed by the Governor may not be removed from
48 office by the Governor except for official misconduct, incompetence, neglect of duty or gross
49 immorality and then only in the manner prescribed by law for the removal of the state elective
50 officers by the Governor.

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

1 (a) The primary responsibility of the commission is to ~~develop, establish and implement~~
2 provide shared services in a cost-effective manner upon request to the state colleges and
3 universities, the council, and the community and technical colleges; undertake certain statewide
4 and regional initiatives as specifically designated in this chapter, including those related to the
5 administration of grants and scholarships and including those in conjunction with the council; to
6 provide, review, confirm or approve certain actions undertaken by governing boards, as
7 delineated in this chapter; and assist in the development of policy that will achieve the goals,
8 objectives and priorities found in section one-a, article one and article one-d of this chapter. The
9 commission shall exercise its authority and carry out its responsibilities in a manner that is
10 consistent and not in conflict with the powers and duties assigned by law to the West Virginia
11 Council for Community and Technical College Education and the powers and duties assigned to
12 the governing boards. To that end, the commission has the following powers and duties relating
13 to the governing boards under its jurisdiction:

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

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

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

22 (2) Develop, oversee and advance the promulgation and implementation of a financing
23 rule for state institutions of higher education under its jurisdiction except the exempted schools.
24 The rule shall meet the following criteria:

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

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

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

32 (3) In collaboration with the council, ~~create a policy leadership structure capable of the~~
33 ~~following actions~~ and the governing boards:

34 (A) ~~Developing, building~~ Building public consensus around and sustaining attention to a
35 long-range public policy agenda. In developing the agenda, the commission and council shall
36 seek input from the Legislature ~~and the Governor,~~ the governing boards, and specifically from the
37 State Board of Education and local school districts in order to create the necessary linkages to
38 assure smooth, effective and seamless movement of students through the public education and

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

41 (B) ~~Ensuring that the governing~~ Assisting governing boards to carry out their duty
42 effectively to govern the individual institutions of higher education; ~~and~~

43 ~~(C) Holding the governing boards and the higher education systems as a whole~~
44 ~~accountable for accomplishing their missions and implementing their compacts;~~

45 (4) ~~Develop and adopt~~ Review and comment on each compact for the governing boards
46 under its jurisdiction, and final confirmation of each compact, except the exempted schools;

47 (5) Review and ~~adopt~~ confirm the ~~annual~~ bi-annual updates of the institutional compacts,
48 except the exempted schools;

49 (6) Serve as ~~the accountability~~ a point of contact to state policymakers:

50 (A) The Governor for ~~implementation of~~ the public policy agenda; and

51 (B) The Legislature by maintaining a close working relationship with the legislative
52 leadership and the Legislative Oversight Commission on Education Accountability.

53 (7) ~~Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter~~
54 ~~twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;~~ Upon
55 request, provide shared services to a state institution of higher education;

56 (8) ~~Establish and implement a peer group for each institution as described in section three,~~
57 ~~article one-a of this chapter~~ Administer scholarship and grant programs as provided for in this
58 code;

59 (9) Establish and implement the benchmarks and performance indicators for state colleges
60 and universities necessary to measure institutional progress in achieving state policy priorities
61 and institutional missions pursuant to section seven, article one-d of this chapter;

62 (10) Establish a formal process for ~~identifying~~ recommending capital investment needs
63 and for determining priorities for state colleges and universities for these investments for

64 consideration by the Governor and the Legislature as part of the appropriation request process
65 pursuant to article nineteen of this chapter;

66 (11) Except the exempted schools, develop standards and evaluate governing board
67 requests for capital project financing in accordance with article nineteen of this chapter;

68 (12) Except the exempted schools, ensure that governing boards manage capital projects
69 and facilities needs effectively, including review and approval or disapproval of capital projects, in
70 accordance with article nineteen of this chapter;

71 (13) Acquire legal services as considered necessary, including representation of the
72 commission, ~~it's~~ the governing boards, employees and officers before any court or administrative
73 body, notwithstanding any other provision of this code to the contrary. The counsel may be
74 employed either on a salaried basis or on a reasonable fee basis. In addition, the commission
75 may, but is not required to, call upon the Attorney General for legal assistance and representation
76 as provided by law;

77 (14) Employ a Chancellor for Higher Education pursuant to section five of this article;

78 (15) Employ other staff as necessary and appropriate to carry out the duties and
79 responsibilities of the commission and the council, in accordance with article four of this chapter;

80 (16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and
81 other staff;

82 (17) Advise and ~~consent~~ confirm in the appointment of the presidents of the institutions of
83 higher education under its jurisdiction pursuant to section six of this article, except the exempted
84 schools. The role of the commission in ~~approving~~ confirming an institutional president is to assure
85 through personal interview that the person selected understands and is committed to achieving
86 the goals, objectives and priorities set forth in the compact, in section one-a, article one and article
87 one-d of this chapter;

88 (18) Approve the total compensation package from all sources for presidents of institutions
89 under its jurisdiction, except the exempted schools, as proposed by the governing boards. The

90 governing boards, except the exempted schools, must obtain approval from the commission of
91 the total compensation package both when institutional presidents are employed initially and
92 afterward when any change is made in the amount of the total compensation package: *Provided*,
93 That the Commission will receive notice, but need not approve or confirm, an increase in the
94 compensation of an institutional president that is exactly in the ratio of compensation increases
95 allocated to all institutional employees and approved by the governing board to expressly include
96 the president;

97 (19) ~~Establish and~~ Assist and facilitate the work of the institutions to implement the policy
98 of the state to assure that parents and students have sufficient information at the earliest possible
99 age on which to base academic decisions about what is required for students to be successful in
100 college, other post-secondary education and careers related, as far as possible, to results from
101 current assessment tools in use in West Virginia;

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

108 (21) Jointly with the council, develop and implement an oversight plan to manage
109 systemwide technology except the exempted schools, including, but not limited to, the following:

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

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

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

117 (22) Establish and implement policies and procedures to ensure that a student may
118 transfer and apply toward the requirements for a bachelor's degree the maximum number of
119 credits earned at any regionally accredited in-state or out-of-state community and technical
120 college with as few requirements to repeat courses or to incur additional costs as are consistent
121 with sound academic policy;

122 (23) Establish and implement policies and procedures to ensure that a student may
123 transfer and apply toward the requirements for a any degree the maximum number of credits
124 earned at any regionally accredited in-state or out-of-state higher education institution with as few
125 requirements to repeat courses or to incur additional costs as are consistent with sound academic
126 policy;

127 (24) Establish and implement policies and procedures to ensure that a student may
128 transfer and apply toward the requirements for a master's degree the maximum number of credits
129 earned at any regionally accredited in-state or out-of-state higher education institution with as few
130 requirements to repeat courses or to incur additional costs as are consistent with sound academic
131 policy;

132 (25) Establish and implement policies and programs, in cooperation with the council and
133 the governing boards, through which a student who has gained knowledge and skills through
134 employment, participation in education and training at vocational schools or other education
135 institutions, or Internet-based education programs, may demonstrate by competency-based
136 assessment that he or she has the necessary knowledge and skills to be granted academic credit
137 or advanced placement standing toward the requirements of an associate's degree or a
138 bachelor's degree at a state institution of higher education;

139 (26) Seek out and attend regional, national and international meetings and forums on
140 education and workforce development-related topics as, in the commission's discretion, are
141 critical for the performance of their duties as members, for the purpose of keeping abreast of
142 education trends and policies to aid it in developing the policies for this state to meet the
143 established education goals, objectives and priorities pursuant to section one-a, article one and
144 article one-d of this chapter;

145 (27) Promulgate and implement a rule for higher education governing boards and
146 institutions, except the exempted schools, to follow when considering capital projects pursuant to
147 article nineteen of this chapter, which rule shall provide for appropriate deference to the value
148 judgments of governing boards under the jurisdiction of the commission;

149 (28) ~~Consider and submit~~ Submit to the appropriate agencies of the executive and
150 legislative branches of state government an appropriation request that reflects recommended
151 appropriations for the commission and the governing boards under its jurisdiction. The
152 commission shall submit as part of its appropriation request the separate recommended
153 appropriation request it received from the council, both for the council and for the governing
154 boards under the council's jurisdiction, including the exempted schools. The commission annually
155 shall submit the proposed allocations based on each institution's progress toward meeting the
156 goals of its compact;

157 (29) The commission may assess institutions under its jurisdiction, including ~~Marshall~~
158 ~~University and West Virginia University~~ the exempted schools, for the payment of expenses of
159 the commission or for the funding of statewide higher education services, obligations or initiatives
160 related to the goals set forth for the provision of public higher education in the state: *Provided,*
161 That the commission may not assess institutions pursuant to this subdivision on or after July 1,
162 2018;

163 (30) Promulgate rules allocating reimbursement of appropriations, if made available by the
164 Legislature, to governing boards for qualifying noncapital expenditures incurred in providing
165 services to students with physical, learning or severe sensory disabilities;

166 ~~(31) Make appointments to boards and commissions where this code requires~~
167 ~~appointments from the state College System Board of Directors or the University of West Virginia~~
168 ~~System Board of Trustees which were abolished effective June 30, 2000, except in those cases~~
169 ~~where the required appointment has a specific and direct connection to the provision of~~
170 ~~community and technical college education, the appointment shall be made by the council.~~
171 ~~Notwithstanding any provisions of this code to the contrary, the commission or the council may~~
172 ~~appoint one of its own members or any other citizen of the state as its designee. The commission~~
173 ~~and council shall appoint the total number of persons in the aggregate required to be appointed~~
174 ~~by these previous governing boards;~~

175 ~~(32)~~ (31) Pursuant to article three-a, chapter twenty-nine-a of this code and section six,
176 article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this
177 chapter ~~The commission and the council shall promulgate a uniform joint legislative rule for the~~
178 ~~purposes of standardizing, as much as possible, the administration of personnel matters among~~
179 ~~the state institutions of higher education and implementing the provisions of articles seven, eight,~~
180 ~~nine and nine-a of this chapter;~~

181 ~~(33)~~ (32) Determine when a joint rule among the governing boards under its jurisdiction is
182 necessary or required by law and, in those instances, in consultation with the governing boards
183 under its jurisdiction, promulgate the joint rule;

184 ~~(34)~~ (33) Promulgate and implement a rule jointly with the council whereby course credit
185 earned at a community and technical college transfers for program credit at any other state
186 institution of higher education and is not limited to fulfilling a general education requirement;

187 ~~(35)~~ (34) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this
188 chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the

189 commission ~~including Marshall University and West Virginia University, except the exempted~~
190 schools. The rule shall include, but is not limited to, the following:

191 ~~(A) Comparisons with peer institutions;~~

192 ~~(B)~~ (A) Differences among institutional missions;

193 ~~(C)~~ (B) Strategies for promoting student access;

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

195 ~~(E)~~ (D) Such other policies as the commission and council consider appropriate;

196 ~~(36) Implement~~ (35) Assist governing boards in actions to implement general disease
197 awareness initiatives to educate parents and students, particularly dormitory residents, about
198 meningococcal meningitis; the potentially life-threatening dangers of contracting the infection;
199 behaviors and activities that can increase risks; measures that can be taken to prevent contact or
200 infection; and potential benefits of vaccination. The commission shall encourage governing
201 boards that provide medical care to students to provide access to the vaccine for those who wish
202 to receive it; and

203 ~~(37)~~ (36) Notwithstanding any other provision of this code to the contrary sell, lease,
204 convey or otherwise dispose of all or part of any real property that it owns, in accordance with
205 article nineteen of this chapter.

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

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

211 ~~(2)~~ (37) Policy analysis and research focused on issues affecting ~~the system as a whole~~
212 institutions of higher education generally or a geographical region thereof;

213 ~~(3)~~ (38) Development and ~~implementation~~ approval of institutional mission definitions
214 except the exempted schools, including use of incentive funds to influence institutional behavior
215 in ways that are consistent with public priorities;

216 ~~(4)~~ (39) Academic program review and approval for governing boards under its jurisdiction.
217 The review and approval includes use of institutional missions as a template to judge the
218 appropriateness of both new and existing programs and the authority to implement needed
219 changes.

220 (A) The commission's authority to review and approve academic programs for ~~either~~
221 ~~Marshall University or West Virginia University~~ the exempted schools is limited to programs that
222 are proposed to be offered at a new location not presently served by that institution. Provided,
223 That West Virginia University and the West Virginia University Institute of Technology are subject
224 to the commission's authority as provided in section two, article one-c of this chapter;

225 (B) In reviewing and approving academic programs, the commission shall focus on the
226 following policy concerns:

227 (1) New programs should not be implemented which change the institutional mission,
228 unless the institution also receives approval for expanding the institutional mission;

229 (2) New programs which will require significant additional expense investments for
230 implementation should not be implemented unless the institution demonstrates that:

231 (i) The expenses will be addressed by effective reallocations of existing institutional
232 resources; or

233 (ii) The expenses can be legitimately spread out over future years and will be covered by
234 reasonably anticipated additional net revenues from new enrollments;

235 (3) A new undergraduate program which is significantly similar to an existing program
236 already in the geographic service area should not be implemented unless the institution
237 requesting the new program demonstrates a compelling need in the service area that is not being
238 met by the existing program: *Provided,* That the academic programs of the exempted schools are

239 not to be taken into consideration except as it relates to academic programs offered at West
240 Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

241 ~~(B)~~ (C) The commission shall approve or disapprove proposed academic degree programs
242 in those instances where approval is required as soon as practicable. ~~but in any case not later~~
243 ~~than six months from the date the governing board makes an official request~~ The commission
244 shall maintain by rule a format model by which a new program approval shall be requested by an
245 institution. When a request for approval of a new program is submitted to the commission, the
246 chancellor shall provide notice within two weeks as to whether the submission meets the required
247 format, and if it does not the chancellor shall identify each specific deficiency and return the
248 request to the institution. The institution may re-file the request for approval with the commission
249 to address any identified deficiencies. Within thirty days after the chancellor's confirmation that
250 the request meets the required format, the commission shall either approve or disapprove the
251 request for the new program. The commission may not withhold approval unreasonably.

252 ~~(5)~~ (40) Distribution of funds appropriated to the commission, including incentive and
253 performance-based funds;

254 ~~(6)~~ (41) Administration of state and federal student aid programs under the supervision of
255 the vice chancellor for administration, including promulgation of rules necessary to administer
256 those programs;

257 ~~(7)~~ (42) Serving as the agent to receive and disburse public funds when a governmental
258 entity requires designation of a statewide higher education agency for this purpose;

259 ~~(8)~~ (43) Developing ~~establishing and implementing~~ and distributing information,
260 assessment, accountability and personnel systems for state colleges and universities, including
261 maintaining statewide data systems that facilitate long-term planning and accurate measurement
262 of strategic outcomes and performance indicators;

263 ~~(9)~~ (44) Jointly with the council, promulgating and implementing rules for licensing and
264 oversight for both public and private degree-granting and nondegree-granting institutions that

265 provide post-secondary education courses or programs in the state. The council has authority
266 and responsibility for approval of all post-secondary courses or programs providing community
267 and technical college education as defined in section two, article one of this chapter;

268 ~~(10)~~ (45) Developing, ~~implementing~~ facilitating, and overseeing statewide and regional
269 projects and initiatives related to providing post-secondary education at the baccalaureate level
270 and above such as those using funds from federal categorical programs or those using incentive
271 and performance-based funds from any source;

272 ~~(11) Quality assurance that intersects with all other duties of the commission particularly~~
273 ~~in the areas of research, data collection and analysis, personnel administration, planning, policy~~
274 ~~analysis, program review and approval, budgeting and information and accountability systems;~~
275 and

276 ~~(12) Developing budgets and allocating resources for governing boards under its~~
277 ~~jurisdiction;~~

278 (46) (A) For all governing boards under its jurisdiction, ~~except the governing boards of~~
279 ~~Marshall University and West Virginia University, except for the exempted schools,~~ the
280 commission shall review institutional operating budgets, review and approve capital budgets, and
281 distribute incentive and performance-based funds;

282 (B) For the governing boards of ~~Marshall University and West Virginia University~~ the
283 exempted schools, the commission shall distribute incentive and performance-based funds and
284 may review and comment upon the institutional operating budgets and capital budgets. The
285 commission's comments, if any, shall be made part of the governing board's minute record and
286 shall be filed with the Legislative Oversight Commission on Education Accountability;

287 (47) May provide information, research, and recommendations to state colleges and
288 universities relating to programs and vocations with employment rates greater than ninety percent
289 within six months post-graduation; and

290 (48) May provide information, research and recommendations to state colleges and
291 universities on coordinating with the West Virginia State Board of Education about complimentary
292 programs.

293 ~~(e)~~ (b) In addition to the powers and duties provided in subsections (a) and (b) of this
294 section and any other powers and duties assigned to it by law, the commission has other powers
295 and duties necessary or expedient to accomplish the purposes of this article: Provided, That the
296 provisions of this subsection shall not be construed to shift management authority from the
297 governing boards to the commission.

298 ~~(d)~~ (c) The commission may withdraw specific powers of a governing board under its
299 jurisdiction for a period not to exceed two years, if the commission determines that any of the
300 following conditions exist:

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

303 ~~(2)~~ (1) The commission has received information, substantiated by independent audit, of
304 significant mismanagement or failure to carry out the powers and duties of the governing board
305 according to state law; or

306 ~~(3)~~ (2) Other circumstances which, in the view of the commission, severely limit the
307 capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

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

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

1 (a) *Appointment of institutional presidents.* — Appointment of presidents of the state
2 institutions of higher education, except the exempted schools, shall be made as follows:

3 (1) The initial contract term for a president ~~of a state institution of higher education~~ may
4 not exceed two years. At the end of the initial contract period, and subject to the provisions of

5 subsection (c) of this section, the governing board may offer the president a contract of longer
6 duration, but not to exceed five years.

7 (2) The president of a state institution of higher education serves at the will and pleasure
8 of the appointing governing board.

9 (3) Subject to the ~~approval~~ confirmation of the commission, the governing ~~board~~ boards
10 of the ~~following institution~~ institutions, ~~appoints~~ appoint a president: ~~for~~ Bluefield State College,
11 Concord University, Fairmont State University, Glenville State College, ~~Marshall University~~
12 Shepherd University, West Liberty University, ~~West Virginia School of Osteopathic Medicine~~ West
13 Virginia State University and ~~West Virginia University~~. The exempted schools may appoint a
14 president without the confirmation or approval of the Commission.

15 (4) Subject to the approval of the council, the governing board of the community and
16 technical college appoints a president for Blue Ridge Community and Technical College, Bridge
17 Valley Community and Technical College, Eastern West Virginia Community and Technical
18 College, Mountwest Community and Technical College, New River Community and Technical
19 College, Pierpont Community and Technical College, Southern West Virginia Community and
20 Technical College, West Virginia Northern Community and Technical College and West Virginia
21 University at Parkersburg.

22 (b) *Other appointments.* — The President of West Virginia University appoints a campus
23 president to be the administrative head of Potomac State College of West Virginia University and
24 a campus president to be the administrative head of West Virginia University Institute of
25 Technology.

26 (c) *Evaluation of presidents.* —

27 (1) The appointing governing board shall conduct written performance evaluations of the
28 institution's president. Evaluations shall be done at the end of the initial contract period and in
29 every third year of employment as president thereafter, recognizing unique characteristics of the
30 institution and using institutional personnel, boards of advisors as appropriate, staff of the

31 appropriate governing board and persons knowledgeable in higher education matters who are
32 not otherwise employed by a governing board. A part of the evaluation shall be a determination
33 of the success of the institution in meeting the requirements of its institutional compact and in
34 achieving the goals, objectives and priorities established in articles one and one-d of this chapter.

35 (2) After reviewing the evaluations, the governing board shall make a determination by
36 majority vote of its members on continuing employment and the compensation level for the
37 president in accordance with subsection (a) of this section.

38 (d) The legislative rules of the commission and council promulgated in accordance with
39 section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code which
40 are in effect on January 1, 2014, continue in effect unless amended or repealed. The rules provide
41 guidance for the governing boards, but are not applicable to the exempted schools, in filling
42 vacancies in the office of president in accordance with this chapter and shall include, but are not
43 limited to, clarifying the powers, duties and roles of the governing boards, commission, council
44 and chancellors in the presidential appointment process.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-2. Definitions.

1 (a) *General.* — For the purposes of this article and section one-a, article one of this
2 chapter, terms have the meaning ascribed to them in section two, article one of this chapter,
3 unless the context in which the term is used clearly requires a different meaning or a specific
4 definition is provided in this section.

5 (b) *Definitions.* —

6 (1) “Accountability system for public higher education” or “accountability system” means
7 all research, reports, documents, data and any other materials, the collection, analysis and
8 dissemination of which are necessary or expedient to accomplish the purposes of this article or
9 section one-a, article one of this chapter. The system includes legislative goals, objectives and
10 priorities; public policy agendas; statewide master plans; state and institutional compacts;

11 implementation plans; institutional mission statements and master plans; and the statewide report
12 card.

13 (2) "Education partnership to achieve state goals and objectives" or "education
14 partnership" means the formal and informal working relationships established between and
15 among the State of West Virginia, the commission, the council, the State Board of Education and
16 State Department of Education and the state institutions of higher education for the purpose of
17 achieving state goals and objectives.

18 (3) "Functional literacy rate" means the percentage of adults over the age of seventeen
19 who are able to read beyond a fourth grade level and interpret basic information from sources
20 such as road signs, job applications, newspaper articles and food and medicine labels.

21 (4) "Goals" means those long-term public purposes which are the desired and expected
22 end result for which public higher education is established.

23 (5) "Implementation plan" means a document developed within the higher education
24 community that identifies a series of objectives, sets forth performance indicators that can be
25 used to determine if objectives are being achieved, outlines strategies for accomplishing the
26 objectives and identifies benchmarks for evaluating progress in accomplishing the objectives over
27 the life cycle of the plan.

28 ~~(6) "Institutional compact" means a formal, written contract between either the commission~~
29 ~~or council and a state institution of higher education under its jurisdiction expressing intent to~~
30 ~~accomplish state and system goals and objectives.~~

31 ~~(7)~~ (6) "Institutions under the jurisdiction of the commission" relative to the accountability
32 system established by this article and section one-a, article one of this chapter means Bluefield
33 State College, Concord University, Fairmont State University, Glenville State College, ~~Marshall~~
34 ~~University,~~ Shepherd University, West Liberty State College, ~~the West Virginia School of~~
35 ~~Osteopathic Medicine and West Virginia State University and West Virginia University, including~~

36 ~~Potomac State College of West Virginia University and the West Virginia University Institute of~~
37 ~~Technology.~~

38 ~~(8)~~ (7) "Institutions under the jurisdiction of the council" relative to the accountability
39 system established by this article and section one-a, article one of this chapter means Blue Ridge
40 Community and Technical College, the Community and Technical College at West Virginia
41 University Institute of Technology, Eastern West Virginia Community and Technical College,
42 Marshall Community and Technical College, New River Community and Technical College,
43 Pierpont Community and Technical College, Southern West Virginia Community and Technical
44 College, West Virginia Northern Community and Technical College, West Virginia State
45 Community and Technical College and West Virginia University at Parkersburg.

46 ~~(9)~~ (8) "Net college costs" means the total cost of tuition, room and board minus the
47 amount of financial aid a student receives.

48 ~~(10)~~ (9) "Objectives" means the ends to be accomplished or attained within a specified
49 period of time for the purpose of meeting the established goals.

50 ~~(11)~~ (10) "Priority" or "priorities" means the order in which objectives are to be addressed
51 for the purpose of achieving state goals.

52 ~~(12)~~ (11) "Strategy" or "strategies" means specific activities carried out by public higher
53 education which are directed toward accomplishing specific objectives.

54 ~~(13)~~ (12) "Statewide master plan" or "system master plan" means a document developed
55 by the council or commission that sets forth system goals, objectives and strategies and is aligned
56 with, but not limited to, meeting state goals, objectives and priorities.

57 ~~(14)~~ (13) "STEM courses and programs" means curricula leading to a degree or other
58 recognized credential in the science, technology, engineering and mathematics fields of study or
59 specialization.

60 ~~(15)~~ (14) "State compact" means a formal, written agreement between the council and/or
61 the commission and at least one other member of the education partnership to achieve state

62 goals and objectives where significant collaboration and commitment of resources between the
63 parties to the agreement is required in order to achieve the desired results.

**§18B-1D-4. Responsibilities of Higher Education Policy Commission and Council for
Community and Technical College Education; development of public policy agendas;
reports; institutional responsibilities.**

1 (a) It is the responsibility of the commission, in cooperation with the council, to develop, oversee
2 and advance the public policy agenda mandated by section four, article one-b of this chapter to
3 address the goals and objectives established pursuant to this article and section one-a, article
4 one of this chapter, including, but not limited to, aligning state and institutional compacts, master
5 plans, implementation plans and institutional missions for institutions of higher education except
6 the exempted schools with state goals and objectives to accomplish the purposes of this article.

7 (b) It is the responsibility of the council, in cooperation with the commission when
8 applicable, to develop, oversee and advance the public policy agenda mandated by section six,
9 article two-b of this chapter to address the goals and objectives established pursuant to this article
10 and section one-a, article one of this chapter, including, but not limited to, aligning state and
11 institutional compacts, master plans, implementation plans and institutional missions with state
12 goals and objectives to accomplish the purposes of this article.

13 (c) It is further the responsibility of the commission and council to collect the data, for
14 institutions of higher education including the exempted schools, assemble it in the appropriate
15 format and transmit all reports and any other essential documents as needed to fulfill the purposes
16 of this article. Each report shall contain a brief, concise executive summary and shall include
17 trends and recommendations in text format. Recommendations shall be ranked by order of
18 importance and shall be supported by objective data available elsewhere in the report. In addition
19 to those specifically mandated by this chapter or chapter eighteen-c of this code, reporting
20 responsibilities include, but are not limited to, the following:

21 (1) Ensuring that data systems collect the essential information state-level policymakers
22 need to answer key policy questions to fulfill the purposes of the accountability system established
23 pursuant to this article and section one-a, article one of this chapter;

24 (2) Collaborating with public education to establish policies to link existing preK, K-12,
25 higher education and teacher data systems to enable tracking of student progress and teacher
26 performance over time; and

27 (3) Ensuring that reports provide data analyses to determine if students entering the public
28 higher education systems are prepared for post-secondary education and if students obtaining
29 degrees, certificates or other credentials are prepared to pursue careers or to continue their
30 education.

31 (d) It is the responsibility of public institutions of higher education except the exempted
32 schools to report to the commission or the council, as appropriate, on plans, accomplishments
33 and recommendations to implement the goals and objectives contained in the institutional and
34 state compacts.

**§18B-1D-7. Findings; establishment of institutional compacts; compact elements;
submission date; review and approval process; rule required.**

1 (a) The Legislature finds that West Virginia long has recognized the value of education
2 and, on a per capita income basis, ranks very high among the states in its investment to support
3 public education. The Legislature further finds that a combination of state and national
4 demographic and economic factors as well as significant changes in methods of course and
5 program delivery compel both the state and public higher education to create a process that will
6 strengthen institutional capacity to provide the services so valued by the citizens of the state and
7 so essential to promoting economic vitality.

8 (b) Therefore, each state college ~~and~~ or university except the exempted schools, shall
9 prepare an institutional compact for submission to the commission and each community and
10 technical college shall prepare an institutional compact for submission to the council. When the

11 process herein provided is completed, the resulting institutional compact ~~constitutes a negotiated~~
12 ~~contract between the state institution of higher education and the commission or council,~~
13 ~~respectively, containing~~ shall contain at a minimum the following basic components:

14 (1) Institutional strategies for focusing resources on meeting the goals and objectives set
15 forth in this article and section one-a, article one of this chapter; and

16 (2) Commission or council strategies for promoting and supporting the institution in fulfilling
17 its mission and objectives, to make it more competitive with its peers and to ensure the continuity
18 of academic programs and services to its students.

19 (c) In addition to the basic contract components described in subsection (b) of this section,
20 each compact shall contain at least the following elements:

21 (1) A determination of the mission of the institution which specifically addresses changes
22 necessary or expedient to accomplish the goals and objectives articulated by the state and the
23 appropriate statewide master plan;

24 (2) A detailed statement of how the compact is aligned with and will be implemented in
25 conjunction with the master plan of the institution;

26 (3) A comprehensive assessment of education needs within the institution's geographic
27 area of responsibility;

28 (4) A strategy to ensure access to comprehensive community and technical college and
29 workforce development services within each respective region of the state consistent with the
30 mission of the institution;

31 (5) Provision for collaboration and brokering of education services as necessary or
32 expedient to carry out the institutional mission and meet its objectives;

33 (6) Provision of student services at the optimum level to support the institutional mission
34 and to achieve state goals and objectives;

35 (7) Strategies for using existing infrastructure and resources within each region, where
36 feasible, to increase student access while controlling costs and maintaining academic quality; and

37 (8) Other public policy objectives or initiatives adopted by the commission or council
38 pursuant to the intent and purposes of this article and section one-a, article one of this chapter.

39 (d) Each institutional compact shall be updated ~~annually~~ bi-annually and shall follow the
40 same general guidelines contained in this section.

41 (e) Development and updating of the institutional compacts is subject to the following
42 conditions:

43 (1) The ultimate responsibility for developing and updating the compacts at the institutional
44 level resides with the board of advisors or the board of Governors, as appropriate. It is the
45 responsibility of the commission or council to provide technical assistance as requested and to
46 ~~negotiate with~~ assist the institution, with the exception of the exempted schools, in development
47 of the strategies to promote and support the institution pursuant to subsection (b) of this section;

48 (2) The commission and the council each shall establish a date by which institutions, with
49 the exception of the exempted schools, under their respective jurisdictions shall submit their
50 compacts to the commission or council pursuant to the provisions of this article. The date
51 established by each state-level coordinating board shall apply uniformly to all institutions under
52 the jurisdiction of that coordinating board and shall meet the following additional conditions:

53 (A) Allow sufficient time for careful analysis of the compacts by the central office staff and
54 for review by members of the commission or the council, as appropriate; and

55 (B) Allow sufficient time for the institutions to make necessary revisions to the compacts
56 as provided in this section.

57 (3) The commission ~~and council~~ shall review each compact from the institutions under
58 their respective jurisdictions and either ~~adopt~~ confirm the compact or return it with specific
59 comments for change or improvement. The council shall review each compact from the
60 institutions under their respective jurisdictions and either adopt the compact or return it with
61 specific comments for change or improvement. The commission and council, respectively, shall
62 continue this process as long as each considers advisable;

63 (4) By May 1 ~~annually~~ bi-annually, if the institutional compact of any institution as
64 presented by that institution is not ~~adopted~~ confirmed by the ~~respective~~ commission or adopted
65 by the council, then the commission or council is empowered and directed to develop and adopt
66 the institutional compact for the institution and the institution is bound by the compact so adopted;
67 and

68 (5) As far as practicable, the commission and council each shall establish uniform
69 processes and forms for the development and submission of the institutional compacts by the
70 institutions under their respective jurisdictions, taking into consideration the differences in
71 institutional missions and objectives. As a part of this function, the commission and council each
72 shall organize the statements of legislative goals and objectives contained in this article and
73 section one-a, article one of this chapter in a manner that facilitates the purposes therein.

74 (f) *Assignment of geographic areas of responsibility.* --

75 (1) The commission shall assign geographic areas of responsibility to the state institutions
76 of higher education under its jurisdiction, except for the ~~state institutions of higher education~~
77 ~~known as West Virginia School of Osteopathic Medicine, Marshall University and West Virginia~~
78 ~~University.~~ the exempted schools. For institutions other than ~~the state institutions of higher~~
79 ~~education known as West Virginia School of Osteopathic Medicine, Marshall University and West~~
80 ~~Virginia University,~~ the exempted schools, the geographic areas of responsibility are made a part
81 of their institutional compacts to ensure that all areas of the state are provided necessary
82 programs and services to achieve state goals and objectives. The commission and the council
83 each shall develop data-based measures to determine the extent to which institutions, with the
84 exception of the exempted schools, under their respective jurisdictions are providing higher
85 education services aligned with state goals and objectives and institutional missions within their
86 geographic areas of responsibility. This information shall be reported in the statewide report card
87 established pursuant to section eight of this article.

88 (2) The council shall assign geographic areas of responsibility to the state institutions of
89 higher education under its jurisdiction, including the administratively linked institution known as
90 Marshall Community and Technical College, the administratively linked institution known as the
91 Community and Technical College at West Virginia University Institute of Technology and the
92 regional campus known as West Virginia University at Parkersburg.

93 (3) The geographic areas of responsibility for the state institutions of higher education
94 known as West Virginia School of Osteopathic Medicine, Marshall University and West Virginia
95 University are assigned by the Legislature.

96 (4) The benchmarks established in the institutional compacts include measures of
97 programs and services by geographic area throughout the assigned geographic area of
98 responsibility.

99 (g) The compacts shall contain benchmarks to be used to determine progress toward
100 meeting the objectives established in the compacts. The benchmarks shall meet the following
101 criteria:

102 (1) They shall be objective;

103 (2) They shall be directly linked to the objectives in the compacts;

104 (3) They shall be measured by the indicators described in subsection (h) of this section;

105 and

106 (4) Where applicable, they shall be used to measure progress in geographic areas of
107 responsibility.

108 (h) The rules required by subsection (c), section one of this article shall include indicators
109 which measure the degree to which the goals and objectives set forth in this article and section
110 one-a, article one of this chapter are being met by the institutions under the jurisdiction of the
111 commission and the council, respectively.

112 (1) The rules pertaining to benchmarks and indicators in effect for the commission and the
113 council on the effective date of this section remain in effect for the institutions under their

114 respective jurisdictions until amended, modified, repealed or replaced by the commission or the
115 council, respectively, pursuant to the provisions of this article, section six, article one of this
116 chapter and article three-a, chapter twenty-nine-a of this code.

117 (2) The rules shall set forth at least the following as pertains to all state institutions of
118 higher education, except the exempted schools:

119 (A) The indicators used to measure the degree to which the goals and objectives are being
120 met;

121 (B) Uniform definitions for the various data elements to be used in establishing the
122 indicators;

123 (C) Guidelines for the collection and reporting of data; and

124 (D) Sufficient detail within the benchmarks and indicators to provide the following
125 information:

126 (i) Measurable evidence that the pursuits of the institution are focused on the education
127 needs of the citizens of the state and are aligned with the objectives of the institutional compacts
128 and statewide master plans;

129 (ii) Delineation of the objectives and benchmarks for an institution so that the commission
130 or council can precisely measure the degree to which progress is being made toward achieving
131 the goals and objectives provided in this article and section one-a, article one of this chapter:

132 Provided, That the commission has no authority regarding the objectives and benchmarks for
133 exempted schools; and

134 (iii) Identification of specific objectives within the master plan or compact of an institution
135 that are not being met or toward which sufficient progress is not being made.

136 (3) In addition to any other requirement, the rule established by the council shall set forth
137 at least the following as pertains to community and technical college education:

138 (A) Benchmarks and indicators which are targeted to identify the following:

139 (i) The degree to which progress is being made by institutions toward meeting state goals
140 and objectives and the essential conditions for community and technical college education
141 pursuant to section three, article three-c of this chapter;

142 (ii) Information and data necessary to be considered by the council in making the
143 determination required by section three, article two-c of this chapter; and

144 (B) Sufficient detail within the benchmarks and indicators to provide clear evidence to
145 support an objective determination by the council that an institution's progress toward achieving
146 state goals and objectives and the essential conditions for community and technical college
147 education is so deficient that implementation of the provisions of section four, article two-c of this
148 chapter is warranted and necessary.

149 (i) The commission ~~and the council, respectively,~~ shall ~~approve~~ confirm the compacts
150 developed for the institutions under their respective jurisdictions, with the exception of the
151 exempted schools, by the boards of Governors or the boards of advisors pursuant to this section
152 and consistent with the powers and duties prescribed in section four, article two-a of this chapter
153 and section one, article six of this chapter.

154 (ii) The council shall approve the compacts developed for the institutions under their
155 respective jurisdictions, by the boards of Governors or the boards of advisors pursuant to this
156 section and consistent with the powers and duties prescribed in section four, article two-a of this
157 chapter and section one, article six of this chapter.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-3. ~~Supervision~~ Oversight of governing boards; promulgation of rules; data collection and dissemination.

1 (a) The governing boards are subject to the ~~supervision~~ oversight of the commission or
2 the council, as appropriate, ~~except in those instances where specific statutory exceptions are~~
3 ~~granted by law to the governing boards of Marshall University and West Virginia University that~~

4 the authority of the commission relating to the exempted schools is limited to the specific
5 authorities granted under this chapter.

6 ~~(b) The governing boards of all state institutions of higher education are subject to the~~
7 ~~provisions of law that relate to the administration of personnel matters including, specifically,~~
8 ~~articles seven, eight, nine and nine-a of this chapter and to rules promulgated and adopted in~~
9 ~~accordance with these provisions.~~

10 (e)(b) The Chancellor for Higher Education and the Chancellor for Community and
11 Technical College Education, under the supervision of their respective boards, are responsible
12 for the coordination of policies, purposes and rules of the governing boards except the exempted
13 schools and shall provide for and facilitate sufficient interaction among the governing boards and
14 between the governing boards and the State Board of Education to meet the goals and objectives
15 provided in the compacts and in section one-a, article one and article one-d of this chapter.

16 (d)(c) The governing boards and the State Board of Education shall provide all information
17 requested by the commission and the council, whether the request is made separately or jointly,
18 in an appropriate format and in a timely manner.

19 (d)(1) Each governing board shall cooperate with the West Virginia Network for
20 Educational Telecomputing (WVNET) in designing appropriate interfaces with the databases of
21 institutions under its jurisdiction and shall grant WVNET direct access to these databases.

22 (2) WVNET, on behalf of the commission or council or both, shall generate reports from
23 the data accessed for the purposes set forth in section five, article one-a and sections eight and
24 ten, article one-d of this chapter.

25 (3) All data accessed or received from an institution shall be treated in a manner consistent
26 with the privacy protections outlined in section ten, article one-d of this chapter.

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

1 Each governing board separately has the following powers and duties:

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

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

5 (1) The ultimate responsibility for developing and updating each master plan at the
6 institution resides with the governing board, but the ultimate responsibility for approving the final
7 version of each master plan, including periodic updates, resides with the commission or council,
8 as appropriate: Provided, That commission approval is not required for master plans of exempted
9 schools.

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

11 (A) A detailed demonstration of how the master plan will be used to meet the goals,
12 objectives and priorities of the compact;

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

17 (C) Documentation showing how the governing board involved the commission or council,
18 as appropriate, constituency groups, clientele of the institution and the general public in the
19 development of all segments of the master plan.

20 (3) The plan shall be established for periods of not fewer than three nor more than five
21 years and shall be revised periodically as necessary, including adding or deleting ~~bachelor's,~~
22 ~~master's and doctoral degree programs.~~ ~~for all governing boards as approved by the commission~~
23 ~~or council, respectively, except for the governing boards of Marshall University and West Virginia~~
24 ~~University only.~~ The commission may review and comment upon the master plan of an exempted
25 school. The commission may review, but may not approve or disapprove, additions or deletions
26 of degree programs, except as expressly provided for in subdivision (39), subsection (a), section
27 four of article one-b of this chapter.

28 (4) For the exempted schools, the master plan shall be updated at least bi-annually and
29 include the steps taken to meet the legislatively established policies contained in article one-d of
30 this chapter and reports on each of the data elements identified in article one-d of this chapter,
31 including progress that the exempted schools is making relating to retention and graduation rates
32 for resident students by organization and each college within the organization. The exempted
33 schools shall provide copies of its master plan to the Legislative Oversight Commission on
34 Education Accountability and the commission.

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

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

41 (e) Direct the preparation of an appropriation request for the institution under its
42 jurisdiction, which relates directly to missions, goals and projections found in the master plan and
43 the compact;

44 (f) Consider, revise and submit for review and approval to the commission or council, as
45 appropriate, an appropriation request on behalf of the institution under its jurisdiction, including
46 the exempted schools;

47 (g) Review, at least every five years, all academic programs offered at the institution under
48 its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in
49 relation to established state goals, objectives and priorities, the master plan, the compact and the
50 education and workforce needs of its responsibility district. As a part of the review, each governing
51 board shall require the institution under its jurisdiction to conduct periodic studies of its graduates
52 and their employers to determine placement patterns and the effectiveness of the education

53 experience. Where appropriate, these studies should coincide with the studies required of many
54 academic disciplines by their accrediting bodies;

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

62 (i) Subject to article one-b of this chapter, approve the teacher education programs offered
63 in the institution under its control. In order to permit graduates of teacher education programs to
64 receive a degree from a nationally accredited program and in order to prevent expensive
65 duplication of program accreditation, the commission may select and use one nationally
66 recognized teacher education program accreditation standard as the appropriate standard for
67 program evaluation;

68 (j) Involve faculty, students and classified employees in institution-level planning and
69 decision making when those groups are affected;

70 (k) Subject to federal law and pursuant to articles seven, eight, nine and nine-a of this
71 chapter and to rules adopted by the commission and the council, administer a system for the
72 management of personnel matters, including, but not limited to, discipline for employees at the
73 institution under its jurisdiction: Provided, That any rules adopted by the commission and the
74 council do not apply to exempted schools;

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

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

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

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

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

87 (q) Submit to the commission or council, as appropriate, any data or reports requested by
88 the commission or council within the time frame set by the commission or council;

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

94 (s) Provide and transfer funds and property to certain corporations pursuant to section ten,
95 article twelve of this chapter;

96 (t) Delegate, with prescribed standards and limitations, the part of its power and control
97 over the business affairs of the institution to the president in any case where it considers the
98 delegation necessary and prudent in order to enable the institution to function in a proper and
99 expeditious manner and to meet the requirements of its master plan and compact. If a governing
100 board elects to delegate any of its power and control under this subsection, it shall enter the
101 delegation in the minutes of the meeting when the decision was made and shall notify the
102 commission or council, as appropriate. Any delegation of power and control may be rescinded by
103 the appropriate governing board, the commission or council, as appropriate, at any time, in whole

104 or in part, except that the commission may not revoke delegations of authority made by the
105 governing board of ~~Marshall University or West Virginia University~~ the exempted schools.

106 (u) Unless changed by the commission or the council, as appropriate, continue to abide
107 by existing rules setting forth standards for accepting advanced placement credit for the institution
108 under its jurisdiction. Individual departments at a state institution of higher education, with
109 approval of the faculty senate, may require higher scores on the advanced placement test than
110 scores designated by the governing board when the credit is to be used toward meeting a
111 requirement of the core curriculum for a major in that department;

112 (v) Consult, cooperate and coordinate with the State Treasurer and the State Auditor to
113 update as necessary and maintain an efficient and cost-effective system for the financial
114 management and expenditure of appropriated and nonappropriated revenue at the institution
115 under its jurisdiction. The system shall ensure that properly submitted requests for payment are
116 paid on or before the due date but, in any event, within fifteen days of receipt in the State Auditor's
117 Office;

118 (w) In consultation with the appropriate chancellor and the Secretary of the Department of
119 Administration, develop, update as necessary and maintain a plan to administer a consistent
120 method of conducting personnel transactions, including, but not limited to, hiring, dismissal,
121 promotions, changes in salary or compensation and transfers at the institution under its
122 jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized
123 system or forms, as appropriate, which shall be submitted to the respective governing board and
124 the Department of Administration:

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

128 (2) The Secretary of the Department of Administration may suspend a governing board's
129 participation in the standardized electronic system if he or she certifies to the Governor that the

130 governing board has failed repeatedly and substantially to comply with the department's policies
131 for administering the electronic system;

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

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

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

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

148 (bb) A governing board under the jurisdiction of the commission may contract and pay for
149 any supplemental employee benefit, at the governing board's discretion: *Provided*, That if such
150 supplemental benefit program incurs institutional expense, then the board may not delegate the
151 approval of such supplemental employee benefit program.

**ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH DOCTORAL-GRANTING
PUBLIC UNIVERSITIES EXEMPTED SCHOOLS.**

§18B-3-1. Legislative findings, purpose; intent; definition.

1 (a) The Legislature finds that an effective and efficient system of doctoral-level education
2 is vital to providing for the economic well-being of the citizens of West Virginia and for
3 accomplishing established state goals and objectives. As the ~~only~~ institutions that focus on one
4 or more of the following activities: research, ~~and~~ masters-degree granting, doctoral-granting,
5 medical doctoral-granting, or doctor of osteopathy doctor-granting; doctoral-granting medical
6 doctoral-granting, or doctor of osteopathy doctor-granting public universities in the state, Marshall
7 University, ~~and~~ West Virginia University and the School of Osteopathy are major assets to the
8 citizens of West Virginia and must be an integral part of any plan to strengthen and expand the
9 economy and improve health outcomes for the citizenry.

10 (b) The Legislature further finds that these ~~two~~ three institutions must compete in both a
11 national and global environment that is rapidly changing, while they continue to provide high
12 quality education that is both affordable and accessible and remain accountable to the people of
13 West Virginia for the most efficient and effective use of scarce resources.

14 (c) The Legislature further finds that ~~Marshall University and West Virginia University~~ the
15 exempted schools, under the direction of their respective governing boards, may manage
16 operational governance of their institutions in an efficient and accountable manner and may best
17 fulfill their public missions when their governing boards are given flexibility and autonomy
18 sufficient to meet state goals, objectives and priorities established in this article, and in section
19 one-a, article one and article one-d of this chapter.

20 (d) Therefore, the purposes of this article include, but are not limited to, the following:

21 (1) Enhancing the competitive position of ~~Marshall University and West Virginia University~~
22 the exempted schools in the current environment for research and medical professional
23 development;

24 (2) Providing the governing boards of these institutions with operational flexibility and
25 autonomy in certain areas, including tools to promote economic development and healthcare in
26 West Virginia;

27 (3) Encouraging the development of research and medical expertise in areas directly
28 beneficial to the state;

29 (4) Focusing the attention and resources of the governing boards on state goals,
30 objectives and priorities to enhance the competitive position of the state and the economic, social,
31 health, and cultural well-being of its citizens; and

32 (5) Providing additional autonomy and operational flexibility and assigning certain
33 additional responsibilities to governing boards of other state institutions of higher education.

34 (e) The governing boards of ~~Marshall University and West Virginia University~~ the
35 exempted schools each have the power and the obligation to perform functions, tasks and duties
36 as prescribed by law. ~~and to exercise their authority and carry out their responsibilities in a manner~~
37 ~~that is consistent with and not in conflict with the powers and duties assigned by law to the council~~
38 ~~and the commission.~~

39 (f) While the governing boards may choose to delegate powers and duties to their
40 respective presidents pursuant to subsection(s), section four, article two-a of this chapter,
41 ultimately, it is they who are accountable to the Legislature, the Governor and the citizens of West
42 Virginia for meeting the established state goals, objectives and priorities set forth in this article,
43 and in section one-a, article one and article one-d of this chapter. Therefore, grants of operational
44 flexibility and autonomy are made directly to the governing boards and are not grants of
45 operational flexibility and autonomy to the president of an institution.

ARTICLE 4. GENERAL ADMINISTRATION.

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

1 (a) The council shall make rules for the accreditation of community and technical colleges
2 in this state and shall determine the minimum standards for conferring degrees. The commission
3 shall make rules for the accreditation of state colleges and universities in this state ~~except and~~
4 the governing boards of ~~Marshall University and West Virginia University~~ the exempted schools
5 shall make rules for their respective institutions, and each shall determine the minimum standards

6 for conferring degrees. The governing boards of ~~Marshall University and West Virginia University~~
7 the exempted schools shall promulgate rules pursuant to the provisions of section six, article one
8 of this chapter for the accreditation of their respective institutions.

9 (b) An institution of higher education may not confer a degree on any basis of work or
10 merit below the minimum standards prescribed by the council or commission.

11 (c) With the approval of the commission and subject to subsections (e), (f) and (g) of this
12 section, governing boards of institutions which currently offer substantial undergraduate course
13 offerings and a master's degree in a discipline are authorized to grant baccalaureate degrees in
14 that discipline.

15 (d) Except as otherwise provided in this section, a charter or other instrument containing
16 the right to confer degrees of higher education status may not be granted by the State of West
17 Virginia to an institution, association or organization within the state, nor may a degree be
18 awarded, until the condition of conferring the degree first has been approved in writing by the
19 council or commission, as appropriate, or by the institution's governing board in the case of
20 ~~Marshall University or West Virginia University~~ the exempted schools.

21 (e) To retain the authority to confer degrees pursuant to this section, each institution shall
22 provide annually to the commission or council, as requested, all information the commission or
23 council considers necessary to assess the performance of the institution and to determine
24 whether the institution continues to meet the minimum standards for conferring degrees. This
25 information includes, but is not limited to, the following data:

26 (1) All information current and future federal or state laws and regulations require the
27 institution to report to the public, to students, to employees or to federal or state agencies;

28 (2) Other consumer information the commission or council considers necessary, including,
29 but not limited to, graduation and retention rates, transfers, post-graduation placements, loan
30 defaults and numbers and types of student complaints;

31 (3) A detailed explanation of financial operations including, but not limited to, policies,
32 formulas and procedures related to calculation, payment and refund for all tuition and fees; and

33 (4) An assessment of the adequacy of the institution's curriculum, personnel, facilities,
34 materials and equipment to meet the minimum standards for conferring degrees.

35 (f) The commission and council may conduct on-site reviews to evaluate an institution's
36 academic standards, may conduct financial audits, or may require the institution to perform these
37 audits and provide detailed data to the commission or council.

38 (g) The commission or council shall revoke an institution's authority to confer degrees
39 when the institution's governing body, chief executive officer, or both, have done any one or more
40 of the following:

41 (1) Failed to maintain the minimum standards for conferring degrees; or

42 ~~(2) Refused or willfully failed to provide information to the commission or council pursuant~~
43 ~~to this subsection in a manner and within a reasonable time frame as established by the~~
44 ~~commission or council, as appropriate; or~~

45 ~~(3) (2)~~ Willfully provided false, misleading or incomplete information to the commission or
46 council.

47 (h) The commission and council each shall compile the information collected pursuant to
48 subdivisions (e), (f) and (g) of this section and submit a report on the information to the Legislative
49 Oversight Commission on Education Accountability annually beginning December 1, 2012. The
50 commission and council each shall make the information and report available to the public in a
51 form and manner that is accessible to the general public, including, but not limited to, posting on
52 its website.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

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

1 (a) The council, commission and each governing board shall purchase or acquire all
2 materials, supplies, equipment, services and printing required for their respective needs ~~for that~~

3 ~~governing board or the council or commission, as appropriate, and the state institutions of higher~~
4 ~~education under their jurisdiction, except the governing boards of Marshall University and West~~
5 ~~Virginia University, respectively. Provided, That the governing boards under the jurisdiction of the~~
6 ~~commission, including the exempted schools,~~ are subject to subsection (d) of this section.

7 (b) The commission and council jointly shall adopt rules governing and controlling
8 acquisitions and purchases in accordance with this section: Provided, That these rules do not
9 apply to the exempted schools and the governing boards of the exempted schools shall adopt
10 their own rules consistent with this section: *Provided, however,* That the joint rules shall provide
11 for appropriate deference to the value judgments of governing boards under the jurisdiction of the
12 commission. The rules shall ensure that the following procedures are followed:

13 (1) No person is precluded from participating and making sales thereof to the council,
14 commission or governing board except as otherwise provided in section five of this article.
15 Providing consulting services such as strategic planning services does not preclude or inhibit the
16 governing boards, council or commission from considering a qualified bid or response for delivery
17 of a product or a commodity from the individual providing the services;

18 (2) Specifications are established and prescribed for materials, supplies, equipment,
19 services and printing to be purchased;

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

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

25 (5) Bids are advertised on all purchases exceeding \$50,000 and made by means of sealed
26 or electronically submitted bids and competitive bidding or advantageous purchases effected
27 through other accepted governmental methods and practices. Competitive bids are not required
28 for purchases of \$50,000 or less.

29 (6) Notices for acquisitions and purchases for which competitive bids are being solicited
30 are posted either in the purchasing office of the specified institution involved in the purchase or
31 by electronic means available to the public at least five days prior to making the purchases. The
32 rules shall ensure that the notice is available to the public during business hours;

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

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

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

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

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

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

45 (3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state
46 institution of higher education in writing that the contract, agreement or other document is
47 approved or disapproved as to form. If the contract, agreement or other document is disapproved
48 as to form, the notice of disapproval shall identify each defect that supports the disapproval; and

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

52 (d) Pursuant to this subsection, the governing boards of ~~Marshall University and West~~
53 Virginia University under the jurisdiction of the commission, including the exempted schools,
54 respectively, may carry out the following actions:

55 (1) Purchase or acquire all materials, supplies, equipment, services and printing required
56 for the governing board without approval from the commission or the Vice Chancellor for
57 Administration and may issue checks in advance to cover postage as provided in subsection (f)
58 of this section;

59 (2) Purchase from cooperative buying groups, consortia, the federal government or from
60 federal government contracts, or from West Virginia public institution of higher education
61 contracts, if the materials, supplies, services, equipment or printing to be purchased is available
62 from these groups and if this would be the most financially advantageous manner of making the
63 purchase;

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

67 (4) Use purchase cards. ~~under terms approved for the commission, the council and~~
68 ~~governing boards of state institutions of higher education and participate in any expanded~~
69 ~~program of use as provided in subsection (u) of this section~~

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

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

77 (g) When a purchase is to be made by bid, any or all bids may be rejected. However, all
78 purchases based on advertised bid requests shall be awarded to the lowest responsible bidder
79 taking into consideration the qualities of the articles to be supplied, their conformity with
80 specifications, their suitability to the requirements of the governing boards, council or commission

81 and delivery terms. The preference for resident vendors as provided in section thirty-seven, article
82 three, chapter five-a of this code applies to the competitive bids made pursuant to this section.

83 (h) The council, commission or each governing board may issue a check in advance to a
84 company with which it has agreed to prepayment terms.

85 ~~(h)~~ (i) The governing boards, council and commission shall maintain a purchase file, which
86 shall be a public record and open for public inspection.

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

89 (A) Designation as the successful bid;

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

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

93 (2) A record in the purchase file may not be destroyed without the written consent of the
94 Legislative Auditor. Those files in which the original documentation has been held for at least one
95 year and in which the original documents have been reproduced and archived on microfilm or
96 other equivalent method of duplication may be destroyed without the written consent of the
97 Legislative Auditor.

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

100 ~~(h)~~ (j) The commission and council, also jointly, shall promulgate rules to prescribe
101 qualifications to be met by any person who is to be employed as a buyer at a state college and
102 university or community and technical college pursuant to this section. These rules shall require
103 that a person may not be employed as a buyer unless that person, at the time of employment,
104 has one of the following qualifications:

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

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

108 ~~(j)~~ (k) Any person making purchases and acquisitions pursuant to this section shall
109 execute a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate
110 bonding or surety company authorized to do business in this state as surety thereon, in form
111 prescribed by the Attorney General and conditioned upon the faithful performance of all duties in
112 accordance with this section and sections five through eight, inclusive, of this article and the rules
113 of the governing board and the council and commission. In lieu of separate bonds for these
114 buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State
115 and the cost of the bond shall be paid from funds appropriated to the applicable governing board
116 or the council or commission.

117 ~~(k)~~ (l) All purchases and acquisitions shall be made in consideration and within limits of
118 available appropriations and funds and in accordance with applicable provisions of article two,
119 chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds.
120 Notwithstanding any other provision of this code to the contrary, only those purchases exceeding
121 the dollar amount for competitive sealed bids in this section are required to be encumbered. Such
122 purchases may be entered into the state's centralized accounting system by the staff of the
123 commission, council or governing boards to satisfy the requirements of article two, chapter five-a
124 of this code to determine whether the amount of the purchase is within the quarterly allotment of
125 the commission, council or governing board, is in accordance with the approved expenditure
126 schedule and otherwise conforms to the article: *Provided*, That, notwithstanding the foregoing
127 provisions of this subsection or any other provision of this code to the contrary, purchases by
128 ~~Marshall University or West Virginia University~~ exempted schools are not required to be
129 encumbered.

130 ~~(l)~~ (m) The governing boards, council ~~and~~ or commission may make requisitions upon the
131 State Auditor for a sum to be known as an advance allowance account, not to exceed five percent

132 of the total of the appropriations for the governing board, council or commission, and the State
133 Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance
134 accounts shall be accounted for by the applicable governing board or the council or commission
135 once every thirty days or more often if required by the State Auditor.

136 ~~(m)~~ (n) Contracts entered into pursuant to this section shall be signed by the applicable
137 governing board or the council or commission in the name of the state and shall be approved as
138 to form by the Attorney General. A contract which requires approval as to form by the Attorney
139 General is considered approved if the Attorney General has not responded within fifteen days of
140 presentation of the contract. A contract or a change order for that contract and notwithstanding
141 any other provision of this code to the contrary, associated documents such as performance and
142 labor/material payments, bonds and certificates of insurance which use terms and conditions or
143 standardized forms previously approved by the Attorney General and do not make substantive
144 changes in the terms and conditions of the contract do not require approval as to form by the
145 Attorney General. The Attorney General shall make a list of those changes which he or she
146 considers to be substantive and the list, and any changes to the list, shall be published in the
147 State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this
148 section shall be filed with the State Auditor. If requested to do so, the governing boards, council
149 or commission shall make all contracts available for inspection by the State Auditor. The
150 governing board, council or commission, as appropriate, shall prescribe the amount of deposit or
151 bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given
152 for the faithful performance of a contract.

153 ~~(n)~~ (o) If the governing board, council or commission purchases or contracts for materials,
154 supplies, equipment, services and printing contrary to sections four through seven, inclusive, of
155 this article or the rules pursuant to this article, the purchase or contract is void and of no effect.

156 ~~(o)~~ (p) A governing board or the council or commission, as appropriate, may request the
157 director of purchasing to make available the facilities and services of that department to the

158 governing boards, council or commission in the purchase and acquisition of materials, supplies,
159 equipment, services and printing. The director of purchasing shall cooperate with that governing
160 board, council or commission, as appropriate, in all such purchases and acquisitions upon that
161 request.

162 ~~(p)~~ (q) Each governing board or the council or commission, as appropriate, may permit
163 affiliated organizations, state institutions of higher education, or private institutions of higher
164 education to join as purchasers on purchase contracts for materials, supplies, services and
165 equipment entered into by that governing board or the council or commission. ~~a~~ An affiliated
166 organization, state institution of higher education or private institution desiring to join as purchaser
167 on purchase contracts shall file with that governing board or the council or commission, as
168 appropriate, an affidavit signed by the president or designee of the affiliated organization, state
169 institution of higher education, or private institution requesting that it be authorized to join as
170 purchaser on purchase contracts of that governing board or the council or commission, as
171 appropriate. The affiliated organization, state institution of higher education or private institution
172 shall agree that it is bound by such terms and conditions as that governing board or the council
173 or commission may prescribe and that it will be responsible for payment directly to the vendor
174 under each purchase contract.

175 ~~(q)~~ (r) Notwithstanding any other provision of this code to the contrary, the governing
176 boards, council and commission, as appropriate, may make purchases from cooperative buying
177 groups, consortia, the federal government or from federal government contracts if the materials,
178 supplies, services, equipment or printing to be purchased is available from that source, and
179 purchasing from that source would be the most financially advantageous manner of making the
180 purchase.

181 ~~(r)~~ (s) An independent performance audit of all purchasing functions and duties which are
182 performed at any state institution of higher education shall be performed at least once in each
183 three-year period. The Joint Committee on Government and Finance shall ~~conduct the~~ require a

184 performance audit and the governing boards, council and commission, as appropriate, are
185 responsible for paying the cost of the audit from funds appropriated to the governing boards,
186 council or commission.

187 (1) The governing board shall provide for independent performance audits of all
188 purchasing functions and duties on its campus at least once in each three-year period.

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

191 (3) Copies of all appropriate documents relating to any audit performed by a governing
192 board shall be furnished to the Joint Committee on Government and Finance and the Legislative
193 Oversight Commission on Education Accountability within thirty days of the date the audit report
194 is completed.

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

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

201 ~~(u)~~ (v) Purchasing card use may be expanded by the council, commission and state
202 institutions of higher education pursuant to this subsection.

203 (1) The council and commission jointly shall establish procedures to be implemented by
204 the council, commission and any ~~institution under their respective jurisdictions~~ state college and
205 university or community and technical college using purchasing cards. The governing boards of
206 the exempted schools shall establish procedures to be implemented by their respective
207 institutions. The procedures shall ensure that each meets the following conditions:

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

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

211 (C) Sufficient accounting and auditing procedures for all purchasing card transactions.

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

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

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

219 (3) The commission and council each shall evaluate the capacity of each ~~institution~~ state
220 college and university and community and technical college under its jurisdiction for complying
221 with the procedures established pursuant to subdivision (2) of this subsection. The commission
222 and council each shall authorize expanded use of purchasing cards pursuant to that subdivision
223 for any ~~institution~~ state college and university and community and technical college it determines
224 has the capacity to comply.

**§18B-5-6. Other code provisions relating to purchasing and design-build procurement not
controlling; exceptions; criminal provisions and penalties; financial interest of
governing boards, etc.; receiving anything of value from interested party and penalties
therefor; application of bribery statute.**

1 (a) The provisions of article three, chapter five-a of this code and ~~section five,~~ article
2 twenty-two-a, chapter five of this code do not control or govern design-build procurement or the
3 purchase, acquisition or other disposition of any equipment, materials, supplies, services or
4 printing by the commission or the governing boards, except as provided in sections four through
5 seven, inclusive, of this article. Sections twenty-nine, thirty and thirty-one, article three, chapter
6 five-a of this code apply to all purchasing activities of the commission and the governing boards.

7 (b) Notwithstanding any provision of this code to the contrary, state institutions of higher
8 education, through their governing boards, may enter into design-build contracts and are not
9 subject to the provisions of article twenty-two-a, chapter five of this code and may also utilize
10 other commonly accepted methods of procurement and contracting for construction projects:
11 Provided, That such state institution of higher education meets the following criteria:

12 (1) Employs at least one Leadership in Energy and Environmental Design (LEED) certified
13 administrator; or

14 (2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the
15 International Facility Management Association, or employs at least one Project Management
16 Professional (PMP) as certified by the Project Management Institute.

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

27 A person who violates any of the provisions of this section is guilty of a misdemeanor and,
28 upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one
29 year, or fined not less than \$50 nor more than \$1,000, or both imprisoned and fined, in the
30 discretion of the court. Any person who violates any provisions of this section by receiving money
31 or other thing of value under circumstances constituting the crime of bribery under the provisions

32 of section three, article five-a, chapter sixty-one of this code shall, upon conviction of bribery, be
33 punished as provided in section nine of said article.

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

1 (a) The commission, the council and the governing boards shall dispose of obsolete and
2 unusable equipment, surplus supplies and other unneeded materials, either by transfer to other
3 governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The
4 commission, the council and each governing board shall adopt rules governing and controlling
5 the disposition of all such equipment, supplies and materials. The rules shall provide for
6 disposition of the equipment, supplies and materials as sound business practices warrant under
7 existing circumstances and conditions and for adequate prior notice to the public of the
8 disposition.

9 (b) The commission, council or governing board, as appropriate, shall report biannually to
10 the Legislative Auditor all sales of commodities made during the preceding biennium. The report
11 shall include a description of the commodities sold, the name of the buyer to whom each
12 commodity was sold, the price paid by the buyer.

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

19 (d) Notwithstanding the provisions of this section, the commission, council or a governing
20 board may donate equipment, supplies and materials with the approval of the commission, council
21 or governing board or their designee, as appropriate to any not for profit entity to promote public
22 welfare.

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

1 (a) The governing boards shall ensure the fiscal integrity of their operations using best
2 business and management practices.

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

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

7 (B) Operating without material weakness in internal controls as defined by GAAP, GAGAS
8 and, where applicable, the Office of Management and Budget (OMB) ~~Circular A-133~~ Uniform
9 Guidance Audit requirements;

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

11 (D) Preparing annual audited financial statements as coordinated and directed by the
12 commission and council, respectively, and as the commission requires to complete the higher
13 education fund audit;

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

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

18 (2) Each governing board and any affiliated research corporation shall comply with the
19 ~~OMB Circular A-133 annual grant award audit requirements~~ Uniform Guidance Audit
20 requirements and are exempt from section fourteen, article four, chapter twelve of this code.

21 (3) Within thirty days of the completion of the financial audit report, the governing boards
22 shall furnish to the commission or council, respectively, copies of the annual audited financial
23 statements.

24 (b) The commission and council, each, shall ensure the fiscal integrity of any electronic
25 process conducted at its offices and by the governing boards under its respective jurisdiction by
26 applying best business and management practices.

27 (c) To the maximum extent practicable, each higher education organization shall provide
28 for its employees to receive their wages via electronic transfer or direct deposit.

29 (d) Notwithstanding any other provision of this code to the contrary, a purchasing card
30 may be used by the council, the commission or a governing board of a state institution of higher
31 education to make any payment authorized by the Auditor, including regular routine payments
32 and travel and emergency payments. Payments are set at an amount to be determined by the
33 Auditor.

34 (1) Subject to approval of the Auditor, an emergency payment and a routine, regularly
35 scheduled payment, including, but not limited to, utility payments, contracts and real property
36 rental fees, may exceed this limit by an amount to be determined by the Auditor.

37 (2) The council, commission and a governing board of a state institution of higher
38 education may use a purchasing card for travel expenses directly related to the job duties of the
39 traveling employee. Where approved by the Auditor, the expenses may exceed \$5,000 by an
40 amount to be determined by the Auditor. Traveling expenses may include registration fees and
41 airline and other transportation reservations, if approved by the president of the institution.
42 Traveling expenses may include purchases of fuel and food.

43 (3) The commission, council, and governing boards each shall maintain one purchasing
44 card for use only in a situation declared an emergency by the appropriate chancellor or the
45 institution's president. Emergencies may include, but are not limited to, partial or total destruction
46 of a facility; loss of a critical component of utility infrastructure; heating, ventilation or air condition
47 failure in an essential academic building; loss of campus road, parking lot or campus entrance; a
48 technology breach; or a local, regional, or national emergency situation that has a direct impact
49 on the campus.

50 (e) Notwithstanding section ten-f, article three, chapter twelve of this code, or any other
51 provision of this code or law to the contrary, the Auditor shall accept any receiving report submitted
52 in a format utilizing electronic media. The Auditor shall conduct any audit or investigation of the
53 council, commission or governing board at its own expense and at no cost to the council,
54 commission or governing board.

55 (f) The council and the commission each shall maintain a rule in accordance with article
56 three-a, chapter twenty-nine-a of this code. The rule shall provide for governing boards
57 individually or cooperatively to maximize their use of any of the following purchasing practices
58 that are determined to provide a financial advantage:

- 59 (1) Bulk purchasing;
- 60 (2) Reverse bidding;
- 61 (3) Electronic marketplaces; and
- 62 (4) Electronic remitting.

63 (g) Each governing board may establish a consortium with at least one other governing
64 board, in the most cost-efficient manner feasible, to consolidate the following operations and
65 student services:

- 66 (1) Payroll operations;
- 67 (2) Human resources operations;
- 68 (3) Warehousing operations;
- 69 (4) Financial transactions;
- 70 (5) Student financial aid application, processing and disbursement;
- 71 (6) Standard and bulk purchasing; and
- 72 (7) Any other operation or service appropriate for consolidation as determined by the
73 council or commission.

74 (h) A governing board may charge a fee to the governing board of each institution for
75 which it provides a service or performs an operation. The fee rate shall be in the best interest of
76 both the institution being served and the governing board providing the service.

77 (i) A governing board may provide the services authorized by this section for the benefit
78 of any governmental body or public or private institution.

79 (j) Each governing board shall strive to minimize its number of low-enrollment sections of
80 introductory courses. To the maximum extent practicable, governing boards shall use distance
81 learning to consolidate the course sections. The council and commission shall report the progress
82 of reductions as requested by the Legislative Oversight Commission on Education Accountability.

83 (k) A governing board shall use its natural resources and alternative fuel resources to the
84 maximum extent feasible. The governing board:

85 (1) May supply the resources for its own use and for use by the governing board of any
86 other institution;

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

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

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

92 (l) Any cost-savings realized or fee procured or retained by a governing board pursuant to
93 this section is retained by the governing board.

94 (m) Each governing board is authorized, but not required, to implement subsections (f),
95 (g) and (h) of this section.

96 If a governing board elects to implement subsection (g) of this section, the following
97 conditions apply:

98 (1) The governing board makes the determination regarding any additional operation or
99 service which is appropriate for consolidation without input from the council or commission;

100 (2) The governing board sets the fee charged to the governing board of the institution for
101 which it provides a service or performs an operation. The fee rate shall be in the best interest of
102 both the institution being served and the governing board providing the service and is not subject
103 to approval by the council or commission; and

104 (3) The governing board may not implement this subdivision in a manner which
105 ~~supercedes~~ supersedes the requirements established in section twelve, article three-c of this
106 chapter.

107 (n) The governing boards of ~~Marshall University and West Virginia University~~ the
108 exempted schools, respectively, each shall promulgate a rule on purchasing procedures in
109 accordance with section six, article one of this chapter.

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

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

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

- 6 (1) Tuition and required educational and general fees;
- 7 (2) Auxiliary and auxiliary capital fees; and
- 8 (3) Required educational and general capital fees.

9 (b) A governing board may establish a single special revenue account for each or all of
10 the following classifications of fees:

- 11 (1) All tuition and required educational and general fees collected;
- 12 (2) All auxiliary and auxiliary capital fees collected; and

13 (3) All required educational and general capital fees collected to support existing
14 systemwide and institutional debt service and future systemwide and institutional debt service,
15 capital projects and campus renewal for educational and general facilities.

16 (4) Subject to any covenants or restrictions imposed with respect to revenue bonds
17 payable from the accounts, a governing board may expend funds from each special revenue
18 account for any purpose for which funds were collected within that account regardless of the
19 original purpose for which the funds were collected.

20 (5) If a governing board of an Exempted School establishes a single special revenue
21 account for all the foregoing classifications of fees in this subsection, the governing board must
22 account for each classification of fee separately in their internal accounting system.

23 (c) The purposes for which tuition and fees may be expended include, but are not limited
24 to, health services, student activities, recreational, athletic and extracurricular activities.
25 Additionally, tuition and fees may be used to finance a student's attorney to perform legal services
26 for students in civil matters at the institutions. The legal services are limited to those types of
27 cases, programs or services approved by the president of the institution where the legal services
28 are to be performed.

29 (d) By October 1, 2011, the commission and council each shall propose a rule for
30 legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to
31 govern the fixing, collection and expenditure of tuition and other fees by the governing boards
32 under their respective jurisdictions.

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

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

39 governing board shall require by rule all fees be due not later than the end of the academic term,
40 and shall provide for appropriate measures to provide for collections of fees past due.

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

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

48 (3) The governing boards may establish rates applicable to tuition and fees for online
49 course delivery without regard to the limitations contained in this subsection.

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

52 (1) The governing boards shall permit fee payments to be made in installments over the
53 course of the academic term. ~~All fees shall be paid prior to awarding course credit at the end of~~
54 ~~the academic term.~~

55 (2) The governing boards also shall authorize the acceptance of credit cards or other
56 payment methods which may be generally available to students for the payment of fees. The
57 governing boards may charge the students for the reasonable and customary charges incurred in
58 accepting credit cards and other methods of payment.

59 (3) If a governing board determines that a student's finances are affected adversely by a
60 legal work stoppage, it may allow the student an additional six months to pay the fees for any
61 academic term. The governing board shall determine on a case-by-case basis whether the
62 finances of a student are affected adversely.

63 ~~(4) The commission and council jointly shall propose a rule in accordance with article~~
64 ~~three-a, chapter twenty-nine-a of this code defining conditions under which a governing board~~
65 ~~may offer tuition and fee deferred payment plans itself or through third parties.~~

66 ~~(5)~~ (4) A governing board may charge interest or fees for any deferred or installment
67 payment plans.

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

73 (i) Governing boards shall retain tuition and fee revenues not pledged for bonded
74 indebtedness or other purposes in accordance with the tuition rules proposed by the commission
75 and council pursuant to this section. The tuition rules shall address the following areas:

76 (1) Providing a basis for establishing nonresident tuition and fees;

77 (2) Allowing governing boards to charge different tuition and fees for different programs;

78 (3) Authorizing a governing board to propose to the commission, council or both, as
79 appropriate, a mandatory auxiliary fee under the following conditions: Provided, That the
80 governing boards for the exempted schools may authorize a mandatory auxiliary fee without
81 seeking approval of the commission:

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

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

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

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

91 (4) Establishing methodology, where applicable, to ensure that, within the appropriate time
92 period under the compact, community and technical college tuition rates for students in all
93 community and technical colleges will be commensurate with the tuition and fees charged by their
94 peer institutions.

95 (j) A penalty may not be imposed by the commission or council upon any governing board
96 based upon the number of nonresidents who attend the institution unless the commission or
97 council determines that admission of nonresidents to any institution or program of study within
98 the institution is impeding unreasonably the ability of resident students to attend the institution or
99 participate in the programs of the institution. The governing boards shall report annually to the
100 commission or council on the numbers of nonresidents and any other enrollment information the
101 commission or council may request.

102 (k) Tuition and fee increases of the governing boards, ~~including the governing boards of~~
103 ~~Marshall University and West Virginia University~~ except the exempted schools, are subject to
104 rules adopted by the commission and council pursuant to this section and in accordance with
105 article three-a, chapter twenty-nine-a of this code. The commission or council, as appropriate,
106 shall examine individually each request from a governing board, including the exempted schools,
107 for an increase and make its determinations as follows:

108 (1) A tuition and fee increase ~~greater than five percent~~ for resident students proposed by
109 a governing board requires the approval of the commission or council, as appropriate, for any
110 tuition and fee increase greater than ten percent in any one year or where the increase would be
111 more than seven percent per year, averaged over a rolling three year period calculated by
112 averaging the proposed increase with the increase for the immediate two previous years;

113 ~~(2) A fee used solely for the purpose of complying with the athletic provisions of 20 U. S.~~
114 ~~C. §1681, et seq., known as Title IX of the Education Amendment of 1972, is exempt from the~~
115 ~~limitations on fee increases set forth in this subsection for three years from the effective date of~~
116 ~~the section.~~

117 ~~(3)~~ (2) In determining whether to approve or deny a governing board's request for a tuition
118 and/or fee increase for resident students greater than the increases granted pursuant to
119 subdivision (1) of this subsection, the commission or council shall determine the progress the
120 governing board has made toward meeting the conditions outlined in this subsection and shall
121 make this determination the predominate factor in its decision. The commission or council shall
122 consider the degree to which each governing board has met the following conditions:

123 (A) Maximizes resources available through nonresident tuition and fee charges to the
124 satisfaction of the commission or council;

125 (B) Consistently achieves the benchmarks established in the compact pursuant to article
126 one-d of this chapter or the master plan for exempted schools in article two-a of this chapter,
127 including the provisions of article one-d required in the master plan;

128 ~~(C)~~ (B) Continuously pursues the statewide goals for post-secondary education; ~~and the~~
129 ~~statewide compact established in this chapter;~~

130 ~~(D)~~ (C) Demonstrates to the satisfaction of the commission or council that an increase will
131 be used to maintain high-quality programs at the institution;

132 ~~(E)~~ (D) Demonstrates to the satisfaction of the commission or council that the governing
133 board is making adequate progress toward achieving the goals for education established by the
134 Southern Regional Education Board;

135 (F) (E) Demonstrates to the satisfaction of the commission or council that the governing
136 board has considered the average per capita income of West Virginia families and their ability to
137 pay for any increases; and

138 (G) (E) Demonstrates to the satisfaction of the commission or council that base
139 appropriation increases have not kept pace with recognized nation-wide inflationary benchmarks.

140 (4) This section does not require equal increases among governing boards nor does it
141 require any level of increase by a governing board.

142 (5) The commission and council shall report to the Legislative Oversight Commission on
143 Education Accountability regarding the basis for approving or denying each request as
144 determined using the criteria established in this subsection.

§18B-10-1c. Definitions.

1 For the purposes of this article, the following words have the meanings specified unless
2 the context clearly indicates a different meaning:

3 (a) “Auxiliary capital fees” means charges levied on students to support debt service,
4 capital projects and campus maintenance and renewal for the auxiliary facilities of the institutions;

5 (b) “Auxiliary fees” means charges levied on all students to support auxiliary enterprises
6 or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales
7 and service revenue from entities that exist predominately to furnish goods or services to
8 students, faculty or staff such as residence halls, faculty and staff housing, food services,
9 intercollegiate athletics, student unions, bookstores, parking and other service centers;

10 (c) “Full-time graduate student” means a graduate student who is enrolled for nine or more
11 credit hours in a regular term;

12 (d) “Full-time undergraduate student” means an undergraduate student who is enrolled for
13 twelve or more credit hours in a regular term;

14 (e) “Required educational and general capital fees” means:

15 (1) Charges levied on all students to support debt service of systemwide bond issues; and

16 (2) Charges levied on all students to support debt service, capital projects and campus
17 maintenance and renewal for an institution’s educational and general educational facilities; and

18 (f) “Tuition and required educational and general fees” means:

19 (1) Charges levied on all students of that class or category to support educational and
20 general program services; and

21 (2) Optional charges levied for education and general services collected only from
22 students using the service or from students for whom the services are made available.
23 ~~Educational and general expenditures are categorized as instruction, research, academic~~
24 ~~support, student services, institutional support, operation and maintenance of plant and~~
25 ~~scholarships and fellowships. Education and general expenditures do not include expenditures~~
26 ~~for auxiliary enterprises, hospitals or independent operations~~

**§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of
special capital and auxiliary capital improvements funds; revenue bonds.**

1 (a) This section and any rules adopted by the commission, council or both, in accordance
2 with this section and article three-a, chapter twenty-nine-a of this code, govern the collection,
3 disposition and use of the capital and auxiliary capital fees authorized by section one of this article.
4 The statutory provisions governing collection and disposition of capital funds in place prior to the
5 enactment of this section remain in effect.

6 (b) *Fees for full-time students.* — The governing boards shall fix capital and auxiliary
7 capital fees for full-time students at each state institution of higher education per semester. For
8 institutions under its jurisdiction, a governing board may fix the fees at higher rates for students
9 who are not residents of this state.

10 (c) *Fees for part-time students.* — For all part-time students and for all summer school
11 students, the governing boards shall impose and collect the fees in proportion to, but not
12 exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same
13 manner as any other fee collected at state institutions of higher education.

14 (d) There is continued in the State Treasury a special capital improvements fund and
15 special auxiliary capital improvements fund for each state institution of higher education and the
16 commission into which shall be paid all proceeds, respectively, of the following:

17 (1) The capital and auxiliary capital fees collected from students at all state institutions of
18 higher education pursuant to this section; and

19 (2) The fees collected from the students pursuant to section one of this article. The fees
20 shall be expended by the commission and governing boards for the payment of the principal of or
21 interest on any revenue bonds issued by the board of regents or the succeeding governing boards
22 for which the fees were pledged prior to the enactment of this section.

23 (e) The governing boards may make expenditures from any of the special capital
24 improvements funds or special auxiliary capital improvement funds established in this section to
25 finance or fund on a cash basis, in whole or in part, in combination with any federal, state or other
26 grants or contributions, for any one or more of the following projects:

27 (1) The acquisition of land or any rights or interest in land;

28 (2) The construction or acquisition of new buildings;

29 (3) The renovation or construction of additions to existing buildings;

30 (4) The acquisition of furnishings and equipment for the buildings; and

31 (5) The construction or acquisition of any other capital improvements or capital education
32 facilities at the state institutions of higher education, including any roads, utilities or other
33 properties, real or personal, or for other purposes necessary, appurtenant or incidental to the
34 construction, acquisition, financing and placing in operation of the buildings, capital improvements
35 or capital education facilities, including student unions, dormitories, housing facilities, food service
36 facilities, motor vehicle parking facilities and athletic facilities.

37 (f) The commission, when singly or jointly requested by the council or governing boards,
38 periodically may issue revenue bonds of the state as provided in this section to finance all or part
39 of the purposes and pledge all or any part of the moneys in the special funds for the payment of
40 the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any
41 pledge of the special funds for the revenue bonds shall be a prior and superior charge on the
42 special funds over the use of any of the moneys in the funds to pay for the cost of any of the

43 purposes on a cash basis. Any expenditures from the special funds, other than for the retirement
44 of revenue bonds, may be made by the commission or governing boards only to meet the cost of
45 a predetermined capital improvements program for one or more of the state institutions of higher
46 education, in the order of priority agreed upon by the governing board or boards and the
47 commission and for which the aggregate revenue collections projected are presented to the
48 Governor for inclusion in the annual budget bill, and are approved by the Legislature for
49 expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the
50 ten-year campus development plan approved by the governing board pursuant to section three,
51 article nineteen of this chapter.

52 (g) The revenue bonds periodically may be authorized and issued by the commission or
53 governing boards to finance, in whole or in part, the purposes provided in this section in an
54 aggregate principal amount not exceeding the amount which the commission determines can be
55 paid as to both principal and interest and reasonable margins for a reserve therefor from the
56 moneys in the special funds.

57 (h) The issuance of the revenue bonds by schools under the jurisdiction of the commission
58 other than the exempted schools shall be authorized by a resolution adopted by the governing
59 board receiving the proceeds and the commission, and the revenue bonds shall bear the date or
60 dates; mature at such time or times not exceeding forty years from their respective dates; be in
61 such form either coupon or registered, with such exchangeability and interchangeability privileges;
62 be payable in such medium of payment and at such place or places, within or without the state;
63 be subject to such terms of prior redemption at such prices not exceeding one hundred five per
64 centum of the principal amount thereof; and have the other terms and provisions determined by
65 the governing board receiving the proceeds and by the commission. The revenue bonds issued
66 by schools under the jurisdiction of the commission other than the exempted schools shall be
67 signed by the Governor and by the chancellor of the commission or the chair of the governing
68 boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested

69 by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile
70 signature of the chancellor of the commission or the chair of the appropriate governing boards.
71 The revenue bonds shall be sold in the manner the commission or governing board determines
72 is in the best interests of the state.

73 (i) The issuance of the revenue bonds by exempted schools shall be authorized by a
74 resolution adopted by the governing board receiving the proceeds, and the revenue bonds shall
75 bear the date or dates; mature at such time or times not exceeding one hundred years from their
76 respective dates; be in such form either coupon or registered, with such exchangeability and
77 interchangeability privileges; be payable in such medium of payment and at such place or places,
78 within or without the state; be subject to such terms of prior redemption at such prices not
79 exceeding one hundred five per centum of the principal amount thereof; and have the other terms
80 and provisions determined by the governing board receiving the proceeds. The revenue bonds
81 shall be signed by the Governor and the chair of the governing boards authorizing the issuance
82 of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and
83 the coupons attached to the revenue bonds shall bear the facsimile signature of the chair of the
84 appropriate governing boards. The revenue bonds shall be sold in the manner the governing
85 board determines is in the best interests of the state.

86 ~~(†)~~ (j) The commission or governing boards may enter into trust agreements with banks or
87 trust companies, within or without the state, and in the trust agreements or the resolutions
88 authorizing the issuance of the bonds may enter into valid and legally binding covenants with the
89 holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of
90 the revenue bonds, the moneys in the special funds, sinking funds, reserve funds or any other
91 moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the
92 commission or governing boards under this section; as to the maintenance or revision of the
93 amounts of the fees; as to the extent to which swap agreements, as defined in subsection (h),
94 section two, article two-g, chapter thirteen of this code shall be used in connection with the

95 revenue bonds, including such provisions as payment, term, security, default and remedy
96 provisions as the commission considers necessary or desirable, if any, under which the fees may
97 be reduced; and as to any other matters or provisions which are considered necessary and
98 advisable by the commission or governing boards in the best interests of the state and to enhance
99 the marketability of the revenue bonds.

100 ~~(j)~~ (k) After the issuance of any revenue bonds, the fees at the state institutions of higher
101 education pledged to the payment of the revenue bonds may not be reduced as long as any of
102 the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions
103 contained in the resolution, trust agreement or other proceedings under which the revenue bonds
104 were issued. The revenue bonds are and constitute negotiable instruments under the Uniform
105 Commercial Code of this state; together with the interest thereon, be exempt from all taxation by
106 the State of West Virginia, or by any county, school district, municipality or political subdivision
107 thereof; and the revenue bonds may not be considered to be obligations or debts of the state and
108 the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall
109 be payable only from the revenue pledged therefor as provided in this section.

110 ~~(k)~~ (l) Additional revenue bonds may be issued by the commission or governing boards
111 pursuant to this section and financed by additional revenues or funds dedicated from other
112 sources. The special revenue fund in the State Treasury known as the Community and Technical
113 College Capital Improvement Fund into which shall be deposited the amounts specified in
114 subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code is continued.
115 All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and
116 redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by the
117 commission for community and technical college capital improvements or used by the council on
118 a cash basis as provided under subdivision (4), subsection (j), section eighteen, article twenty-
119 two, chapter twenty-nine of this code for community and technical college capital improvements
120 or capital projects.

121 ~~(t)~~ (m) Funding of systemwide and campus-specific revenue bonds under any other
122 section of this code is continued and authorized pursuant to the terms of this section. Revenues
123 of any state institution of higher education pledged to the repayment of any revenue bonds issued
124 pursuant to this code shall remain pledged.

125 ~~(m)~~ (n) Any revenue bonds for state institutions of higher education-proposed to be issued
126 under this section or other sections of this code first must be approved by the ~~commission~~
127 Governor and:

128 (1) Approved by the governing board for revenue bonds issued by the exempted schools;

129 (2) Confirmed by the commission, for revenue bonds issued by institutions under the
130 jurisdiction of the commission, or

131 (3) Approved by the council and the commission, for revenue bonds issued by institutions
132 under the jurisdiction of the council.

133 ~~(n)~~ (o) Revenue bonds issued pursuant to this code may be issued by the commission or
134 governing boards, either singly or jointly.

135 ~~(o)~~ (p) Fees pledged for repayment of revenue bonds issued under this section or article
136 twelve-b, chapter eighteen prior to or after the effective date of this section shall be transferred to
137 the commission in a manner prescribed by the commission. The commission may transfer funds
138 from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the
139 effective date of this section or issued subsequently by the commission upon the request of
140 institutions, if an institution fails to transfer the pledged revenues to the commission in a timely
141 manner.

142 ~~(p)~~ (q) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this
143 section and section one of this article are in lieu of any other fees set out in this code for capital
144 and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any
145 other provisions of this code to the contrary, in the event any capital, tuition, registration or
146 auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general

147 bond resolutions of the commission, any of its predecessors or any institution, adopted prior to
148 the effective date of this section, the fees shall remain in effect in amounts not less than the
149 amounts in effect as of that date, until the revenue bonds payable from any of the fees have been
150 paid or the pledge of the fees is otherwise legally discharged.

§18B-10-16. Disposition of funds in State Treasury.

1 Except as may be provided for in any bond resolution in effect, funds in the State Treasury
2 heretofore collected from any of the sources defined in the foregoing sections shall remain in the
3 State Treasury for use by the institution where collected. Any interest revenue generated by a
4 special student fee account shall only be expended at or for the institution where such fee was
5 collected. Exempted schools may transfer and deposit all fees and funds collected under this
6 article into a single special revenue account: *Provided*, That if the governing board of an exempted
7 school does transfer and deposit all such fees and funds into a single special revenue account,
8 the governing board shall account for each classification of fees and funds separately in their
9 internal accounting system.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-1. Legislative findings and intent.

- 1 (a) The Legislature makes the following findings:
- 2 (1) State institutions of higher education vary widely in the conditions of their facilities
3 infrastructure.
- 4 (2) State institutions of higher education vary widely in their ability to incur debt for capital
5 improvements. It is nearly impossible for community and technical colleges and some smaller
6 baccalaureate institutions to fund significant capital improvements in the absence of state funding.
- 7 (3) A student enrolled at a community and technical college that previously was
8 administratively linked to another state institution of higher education pays substantially higher
9 tuition and mandatory fees than a student enrolled at a freestanding community and technical

10 college. This cost discrepancy is due in large part to the significantly higher capital fees charged
11 to these students to pay debt service for capital improvements.

12 (4) The substantial amount of capital fees that students must pay at the institution level
13 contributes significantly to the poor grade the state receives in the category of “Affordability” in
14 *Measuring Up: The National Report Card on Higher Education*.

15 (5) It is beneficial for the state to provide additional ongoing capital funding to reduce the
16 obligation of students and parents to bear the cost of higher education capital improvements and
17 facilities maintenance.

18 (6) West Virginia is one of only a few states that does not address higher education capital
19 improvements and facilities maintenance needs through a statewide plan.

20 (7) State funding for capital improvements should align with state and system higher
21 education goals, objectives and priorities as set forth in article one-d of this chapter.

22 (8) State capital funding should focus primarily on educational and general capital
23 improvements, not auxiliary capital improvements.

24 (9) Renovations of existing buildings ~~generally~~ sometimes deserve greater consideration
25 for state funding than new construction. However, new construction may deserve greater
26 consideration than renovation when a state or system goal, objective or priority is implicated, as
27 well as when renovation would be financially inefficient.

28 (10) As the Legislature increases funding for new educational and general capital
29 improvements and major renovations, and supplants existing educational and general debt,
30 institutions should target funds for maintenance and deferred maintenance needs.

31 (11) If community and technical colleges are to keep the cost of education affordable, they
32 cannot be expected to fund maintenance obligations entirely from student capital fees.

33 (12) The commission and council should scrutinize carefully all requests from institutions
34 to incur additional debt in order to determine their effect on institution debt capacity and the impact
35 that incurring additional debt will have on students.

36 (13) State institutions of higher education ultimately should target adequate state capital
37 contributions and capital fees to address maintenance and deferred maintenance needs.

38 (14) Until institutions are able to generate sufficient revenue to address maintenance and
39 deferred maintenance needs, the Legislature should provide periodic funding to assist institutions
40 in addressing these needs. Funding priority should be given to projects that address building code
41 requirements and critical maintenance needs.

42 (15) In supporting future high priority capital needs, the Legislature, commission and
43 council should not reward institutions with state funding if they neglect to address facilities
44 maintenance needs or do not prudently manage their capital resources.

45 (16) Once an institution's capital development plan has been approved by the governing
46 board and confirmed by the commission or approved by the council, as appropriate, project
47 priorities should not change significantly from year to year.

48 (17) Commission and council staff should participate ~~to a greater extent~~ in managing
49 capital projects at smaller institutions ~~than at larger institutions since~~ if the smaller institutions
50 ~~often lacks~~ the expertise necessary to plan, design and complete projects at or under budget.

51 (b) The intent of the Legislature relating to this article includes, but is not limited to, the
52 following:

53 (1) Dedicated state funding sources shall be designated to finance construction and
54 renovation of educational and general facilities at state institutions of higher education from time
55 to time;

56 (2) Capital project lists submitted by institutions to the commission or council, as
57 appropriate, and capital project lists submitted by the commission and council to the state budget
58 office, Legislative Oversight Commission on Education Accountability, and Joint Committee on
59 Government and Finance for consideration for state funding shall be reasonable requests that
60 align with state and system goals, objectives and priorities and ones which reasonably could be
61 funded if approved;

62 (3) As the Legislature increases its responsibility for financing new educational and
63 general facilities and major renovations, the commission, council and institutions shall ensure that
64 sufficient capital revenues are available for maintenance and that the facilities are maintained
65 adequately;

66 (4) Ongoing state funding shall be dedicated to supplement capital fees available for
67 maintenance at community and technical colleges; and

68 (5) Once a system capital plan is in place, institutions shall set aside adequate funding
69 annually to ensure that ongoing facilities maintenance needs are met.

§18B-19-3. System capital development planning.

1 (a) By December 31, 201~~7~~⁴, the commission and council, jointly or separately, shall
2 develop a system capital development ~~plan~~ oversight policy for approval by the Legislative
3 Oversight Commission on Education Accountability. At a minimum the initial ~~plan~~ oversight
4 policy shall include the following:

5 (1) System goals for capital development;

6 (2) An explanation of how system capital development goals align with state goals,
7 objectives and priorities established in articles one and one-d of this chapter and with system
8 master plans;

9 (3) A ~~process for prioritizing~~ description of how the commission and council will prioritize
10 their recommendations for capital projects for state funding based on their ability to further state
11 goals, objectives and priorities and system capital development goals;

12 (4) A building renewal formula to calculate a dollar benchmark that shall be collected
13 annually and invested in facilities to minimize deferred maintenance and to provide the
14 commission and council objective information to determine if the investments in maintenance are
15 occurring;

16 (5) A process for governing boards to follow in developing and submitting campus
17 development plans to the commission or council, as appropriate, for approval by the council or
18 for confirmation by the commission, as appropriate; and

19 (6) A process for governing boards to follow to ensure that sufficient revenue is generated
20 for and applied toward facilities maintenance; ~~and~~

21 ~~(7) A discussion addressing how capital fees dedicated to debt service for the bond issue~~
22 ~~to be paid off in 2012 will be used after the payoff date.~~

23 (b) The system capital development plan shall be developed in consultation with governing
24 boards and appropriate institution staff. Before approving the capital development plan, the
25 commission and council shall afford interested parties an opportunity to comment on the plan
26 through a notice-and-comment period of at least thirty days.

27 (c) The commission and council shall update its system capital development plan at
28 least once in each ten-year period.

§18B-19-4. Campus development plans.

1 (a) Each governing board shall update its current campus development plan and submit
2 the updated plan to the commission or council, as appropriate, for approval by ~~June 30, 2013~~ the
3 council or confirmation by the commission, as appropriate, except that confirmation is not required
4 by the commission for the exempted schools. A campus development plan shall be developed
5 adopted by each governing board for a ten-year period and shall align with criteria specified in
6 the following sources:

- 7 (1) The system capital development plan ~~plan~~ oversight policy;
8 (2) The institution's approved master plan and compact; and
9 (3) The current campus development plan objectives.

10 (b) Campus development plans are intended to be aspirational; however, an institution's
11 plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints within

12 which the institution operates. At a minimum the campus development plan shall include the
13 following:

14 (1) The governing board's development strategy;

15 (2) An assessment of the general condition and suitability of buildings and facilities,
16 including deferred maintenance, life-safety and building code issues, ADA requirements and
17 energy efficiency;

18 (3) An assessment of the impact of projected enrollment and demographic changes on
19 building and facility needs;

20 (4) A comprehensive list of major deferred maintenance projects, individually exceeding
21 \$75,000 in cost, that need to be addressed for each campus by building or facility including an
22 estimated cost for each;

23 (5) ~~A list of existing~~ An analysis as to all buildings and facilities ~~in~~ as to the need of for
24 renovations, additions, demolition or any combination thereof;

25 (6) A list of major site improvements that are needed, including vehicular and pedestrian
26 circulation, parking and landscaping;

27 (7) ~~A list~~ An analysis of telecommunications, utilities and other infrastructure
28 improvements that are needed;

29 (8) A delineation of clear property acquisition boundaries that are reasonably appropriate
30 for campus expansion;

31 (9) A list of proposed new facilities and building sites;

32 (10) A list of capital projects in priority order;

33 (11) Estimates of the timing, phasing and projected costs associated with individual
34 projects;

35 (12) If an institution has multiple campuses in close proximity, a delineation of how the
36 campuses should interact and support each other to minimize duplication of facilities, improve
37 efficiency and be aesthetically compatible;

38 (13) A statement of the impact of the plan upon the local community and the input afforded
39 local and regional government entities and the public with respect to its implementation; and

40 (14) Any other requirement established by the commission and council in the rules
41 required by section seventeen of this article.

42 (c) Campus development plans shall incorporate all current and proposed facilities,
43 including educational and general and auxiliary facilities.

44 (d) At Not later than the next regularly scheduled meeting of the commission or council,
45 as applicable, following the fifth anniversary date after the commission confirms or council
46 approves, as appropriate, the development plan of a governing board the governing board shall
47 report on the progress made in the first five years to implement the campus development plan for
48 each campus under its jurisdiction. In addition, the governing board shall report on its plans to
49 implement the remaining five-year period of its campus development plan.

50 (e) Each governing board shall update its campus development plan at least once during
51 each ten-year period and any update is subject to the ~~approval~~ confirmation of the commission or
52 approved by the council, as appropriate.

53 (f) A Except for the governing boards of the exempted schools, a governing board may
54 not implement a campus development plan or plan update that has not been ~~approved~~ confirmed
55 by the commission or approved by the council, as appropriate.

18B-19-5. Capital appropriation requests.

1 (a) The commission and council each shall submit a prioritized capital appropriation
2 request annually to the state budget office as required by article two, chapter eleven-b of this code
3 consisting of major capital projects and maintenance projects.

4 (b) The commission and council each shall develop a process for governing boards to
5 follow in submitting a list of major educational and general capital projects so that a prioritized
6 major capital project list, ~~approved~~ prepared by the commission or council, as appropriate, may
7 be submitted to the state budget office by the applicable deadline.

8 (1) The governing board's major capital project list shall include the following items:

9 (A) Projects identified in the governing board's ~~approved~~ campus development plan or
10 plans. A project may not be included which is not contained in the ~~approved~~ plan confirmed by
11 the commission or approved by the council, as appropriate, except when extraordinary
12 circumstances otherwise warrant;

13 (B) A current estimate of each project's estimated cost accounting for inflation since
14 completion of the campus development plan. The size and scope of the project may not change
15 unless the campus development plan has been updated and approved by the council or confirmed
16 by the commission, as appropriate, as provided in section three of this article; and

17 (C) Any additional information required to be provided by the commission, council or state
18 budget office.

19 (2) The commission and council each shall rank the major capital projects submitted by
20 the governing boards according to priority consistent with the criteria outlined in the system capital
21 development plan. The council and commission may not submit to the state budget office a
22 request for an institution which the commission or council determines reasonably could not secure
23 funding through the appropriation process during the following fiscal year.

24 (c) The commission and council each shall develop a process for governing boards to
25 follow in submitting a list of major maintenance projects so that a prioritized maintenance project
26 list, ~~approved~~ prepared by the commission or council, as appropriate, may be submitted to the
27 state budget office by the applicable deadline.

28 (1) ~~No later than April 1, 2011, and annually thereafter,~~ Annually, the commission and
29 council, as appropriate, shall provide each governing board a recommended building renewal
30 calculation that identifies the funds that should be collected and invested in its buildings and
31 facilities during the next fiscal year to maintain them and minimize deferred maintenance.

32 (2) As soon as it receives the building renewal calculation, each governing board shall
33 make realistic revenue estimates of the funds available for maintenance projects from educational

34 and general capital fees, from auxiliary and auxiliary capital fees and from any other revenue that
35 may be used for maintenance projects, as well as any anticipated reserves. The governing boards
36 then shall identify and submit proposed major maintenance projects, consistent with its campus
37 development plan or plans, to be funded from these revenues.

38 (3) The commission and council each shall report to the Legislative Oversight Commission
39 on Education Accountability on the revenue available to governing boards for educational and
40 general and auxiliary maintenance projects, as well as any shortfalls based on building renewal
41 formula calculation, and major maintenance projects that institutions propose to undertake during
42 the upcoming fiscal year.

43 (4) The commission shall work with institutions under its jurisdiction to ensure that
44 adequate funds are generated to fund maintenance and build adequate reserves from educational
45 and general and auxiliary capital fees and other revenue consistent with the building renewal
46 formula. The Legislature recognizes that it may take several years for this to be accomplished
47 fully.

48 (5) The council shall work with the Legislature and institutions under its jurisdiction to
49 ensure that a combination of appropriated and nonappropriated revenue is available to fund
50 maintenance and build adequate reserves at community and technical colleges consistent with
51 the building renewal formula.

§18B-19-6. Capital project financing.

1 (a) The commission and governing boards, jointly or singly, may issue revenue bonds for
2 capital project financing in accordance with section eight, article ten of this chapter.

3 (b) A governing board may seek funding for and initiate construction or renovation work
4 ~~only for major projects only if~~ contained in an ~~approved~~ a campus development plan approved by
5 the council or confirmed by the Commission: *Provided, That this subsection (b) shall not apply to*
6 the governing boards of the exempted schools.

7 (c) A governing board may fund capital improvements on a cash basis, through bonding
8 or through notes or another financing method that is approved by the commission and by the
9 council, if appropriate: Provided, That the exempted schools shall not be required to get the
10 approval of the commission.

11 (1) If the cost of an improvement project for any institution ~~except Marshall University or~~
12 ~~West Virginia University~~ under the jurisdiction of the council, exceeds \$1 million, the governing
13 board first shall obtain the approval of the ~~commission or~~ council, as appropriate. ~~If the cost of an~~
14 ~~improvement project for Marshall University or West Virginia University exceeds \$15 million, the~~
15 ~~governing board first shall obtain the approval of the commission.~~ If the cost of an improvement
16 project at an institution under the jurisdiction of the commission, other than the exempted schools,
17 exceeds \$3 million, the governing board shall first obtain the approval of the commission.

18 (2) Prior to approving bonding or any alternative financing method for any institution other
19 than the exempted schools, the commission, and council if appropriate, shall evaluate the
20 following issues:

21 (A) The institution's debt capacity and ability to meet the debt service payments for the full
22 term of the financing;

23 (B) The institution's capacity to generate revenue sufficient to complete the project;

24 (C) The institution's ability to fund ongoing operations and maintenance;

25 (D) The impact of the financing arrangement on students; and

26 (E) Any other factor considered appropriate.

27 (d) A governing board shall notify the Joint Committee on Government and Finance at
28 least thirty days before beginning construction or renovation work on any capital project in excess
29 of \$1 million.

30 (e) The commission may pledge all or part of the fees of any or all state institutions of
31 higher education as part of a system bond issue.

32 (f) Any fee or revenue source pledged prior to the effective date of this section for payment
33 of any outstanding debt remains in effect until the debt is fully repaid or refunded.

§18B-19-7. Capital project management.

1 (a) The commission, council and governing boards, as responsibility is otherwise assigned
2 herein, shall ensure that capital funds are spent appropriately and that capital projects are
3 managed effectively. Project management shall be conducted in all respects according to sound
4 business practices and applicable laws, and rules.

5 (b) The commission shall employ a sufficient number of competent facilities staff
6 experienced in capital project development and management that is suitable for the number, size
7 and complexity of the capital projects being managed. By December 31, 2011, and continuing
8 thereafter, at least one employee shall be Leadership in Energy and Environmental Design
9 (LEED) certified.

10 (c) A governing board under the jurisdiction of the commission is exempt from the
11 provisions of subsections (e) and (f) of this section seven of this article, and its capital projects
12 management shall be governed by the provisions of subsection (d) of this section regardless of
13 the rolling five year construction expenditures, if it meets each of the following criteria:

14 (1) Employs at least one Leadership in Energy and Environmental Design (LEED) certified
15 administrator; and

16 (2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the
17 International Facility Management Association or employs at least one Project Management
18 Professional (PMP) as certified by the Project Management Institute.

19 ~~(e)~~ (d) An institution that has entered into construction contracts averaging more than
20 \$50 million over the most recent rolling five-year period is responsible for capital project
21 management at that institution if it meets the following additional conditions:

22 (1) The governing board shall employ a facilities staff experienced in capital project
23 development and management that is suitable for the number, size and complexity of the capital

24 projects being managed and, by December 31, 2011, and continuing thereafter, at least one of
25 these employees shall be Leadership in Energy and Environmental Design (LEED) certified;

26 (2) The governing board shall promulgate and adopt a capital project management rule in
27 accordance with section six, article one of this chapter. ~~which is consistent with the capital~~
28 ~~management rules of the commission and council.~~ The capital project management rule shall
29 include at least the following items:

30 (A) Delineation of the governing board's responsibilities with respect to capital project
31 management and the responsibilities delegated to the institution's president;

32 (B) A requirement for the use of ~~the state's~~ standard contract documents for architectural,
33 engineering, construction, construction management and design-build services as appropriate to
34 a particular project;

35 (C) The governing board's requirements for the following procedures:

36 (i) Monitoring and approving project designs to ensure conformance with the state and
37 system goals, objectives and priorities and the governing board's master plan, compact and
38 campus development plan;

39 (ii) Approving project budgets, including a reasonable contingency reserve for unknown
40 or unexpected expenses and for bidding;

41 (iii) Approving architectural, engineering and construction contracts exceeding an amount
42 to be determined by the governing board;

43 (iv) Approving contract modifications and construction change orders; and

44 (v) Providing a method for project closeout and final acceptance of the project by the
45 governing board.

46 (3) The institutional capital project management rule shall be filed with the commission no
47 later than one hundred eighty days following the effective date of the rule required of the
48 commission and council in section seventeen of this article.

49 (4) The commission may review or audit projects greater than \$5 million periodically to
50 ascertain that appropriate capital project management practices are being employed.

51 ~~(d)~~ (e) For institutions that have entered into construction contracts averaging at least \$20
52 million, but not more than \$50 million, over the most recent rolling five-year period:

53 (1) The governing board, with assistance as requested from the commission, shall
54 manage all capital projects if the governing board meets the following conditions:

55 (A) Employs at least one individual experienced in capital project development and
56 management; and

57 (B) Promulgates and adopts a capital project management rule in accordance with section
58 six, article one of this chapter that is approved by the commission. The capital project
59 management rule may be amended at the discretion of the governing board, but amendments
60 shall be submitted to the commission for review and approval before becoming effective.

61 (2) The capital project management rule of the governing board shall include at least the
62 following items:

63 (A) Delineation of the governing board's responsibilities with respect to capital project
64 management and the responsibilities delegated to the institution's president;

65 (B) A requirement for the use of the state's standard contract documents for architectural,
66 engineering, construction, construction management and design-build services as appropriate to
67 a particular project; and

68 (C) The governing board's requirements for the following procedures:

69 (i) Monitoring and approving project designs to ensure conformance with the state and
70 system goals, objectives and priorities and the governing board's master plan, compact and
71 campus development plan;

72 (ii) Approving project budgets, including a reasonable contingency reserve for unknown
73 or unexpected expenses and for bidding;

74 (iii) Approving architectural, engineering, construction and other capital contracts
75 exceeding an amount to be determined by the governing board;

76 (iv) Approving contract modifications and construction change orders; and

77 (v) Providing a method for project closeout and final acceptance of the project by the
78 governing board.

79 (3) If an institution does not meet the provisions of this subsection, the commission shall
80 manage all capital projects exceeding \$1 million.

81 (4) The commission staff shall review and audit periodically all projects greater than \$1
82 million to ascertain that appropriate project management practices are being employed. If serious
83 deficiencies are identified and not addressed sufficiently within ninety days, commission staff may
84 assume management of all projects.

85 ~~(e)~~ (f) For institutions that have entered into construction contracts averaging less than
86 \$20 million over the most recent rolling five-year period and for all community and technical
87 colleges, the commission and council shall manage capital projects exceeding \$1 million. In the
88 rule required by section seventeen of this article, the commission and council, as appropriate,
89 shall adopt procedures to afford participation by the governing boards and staff in the planning,
90 development and execution of capital projects.

§18B-19-9. Higher education facilities information system.

1 (a) The commission and council jointly shall develop and maintain a higher education
2 facilities information system, except for the exempt schools. The higher education facilities
3 information system shall serve as a vehicle for carrying out the following functions:

4 (1) Acquisition of statewide data;

5 (2) ~~Statewide standardization~~ Analysis of space use and classification based on nationally
6 recognized standards and measurements to facilitate comparisons among post-secondary
7 education institutions within the state and in the region and nation; and

8 (3) Other purposes as determined by the commission and council consistent with
9 facilitating policy analysis without burdening or interfering unnecessarily with the governance
10 responsibilities which are placed upon the governing boards.

11 (b) At a minimum the higher education facilities information system shall serve the
12 following purposes:

13 (1) Develop and maintain a statewide inventory of higher education facilities, including
14 those acquired by long-term lease, lease-purchase or other arrangement whereby the institution
15 has long-term beneficial use. The inventory shall include, but is not limited to, the institution and
16 campus location of the facility, the construction date, the original cost, square footage, floor plans,
17 type of construction, ownership status, the purposes for which it is used, the current replacement
18 cost and any other data the commission and council consider appropriate, consistent with the
19 provisions of the foregoing subsection (a);

20 (2) Develop and maintain an inventory of all rooms within each facility, which includes, but
21 is not limited to, the room number, the square footage, room usage, number of student stations
22 and any other data the commission and council consider appropriate, consistent with the
23 provisions of the foregoing subsection (a);

24 (3) Provide a vehicle for institutions to submit capital appropriation requests to the
25 commission and council;

26 (4) Provide ~~a vehicle to track the status and cost of institution~~ information on major
27 institutional capital projects ~~from inception to completion~~, including major maintenance and
28 deferred maintenance projects; and

29 (5) Provide information on facilities needed to calculate the building renewal formula.

30 (c) The commission and council shall establish benchmarks for classroom and class
31 laboratory use including an analysis of utilization for the fall and spring semesters of each
32 academic year. The efficient use of classrooms and class laboratories is a factor in determining
33 whether an institution needs additional classroom and laboratory facilities.

34 (d) Each governing board and any institution under its jurisdiction shall participate and
35 cooperate with the commission and council in all respects in the development and maintenance
36 of the higher education facilities information system.

37 (e) The higher education facilities information system may be used for other purposes set
38 forth by the commission and council in the rules required by section seventeen of this article,
39 consistent with the provisions of the foregoing subsection (a).

§18B-19-10. Authorization to sell and transfer property; use of proceeds.

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

5 The commission, council and governing boards may not sell, ~~lease~~, convey or otherwise
6 dispose of any real property without first performing the following steps:

7 (1) Providing for property appraisal by two independent licensed appraisers. The property
8 may not be sold for less than the average of the two appraisals;

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

11 (3) Holding a public hearing on the issue in the county in which the real property is located;
12 ~~and~~

13 (4) For real property with a proposed sale price of \$50,000 or greater, ten days prior to the
14 placement of the Class II legal advertisement, providing written notice to the county commission
15 and municipalities in the county in which the real estate property is located and all members of
16 the legislature, and

17 ~~(4)~~ (5) In the case of the commission, notifying the Joint Committee on Government and
18 Finance.

19 (b) The commission, council or a governing board may not lease real property for an
20 annual amount of greater than \$50,000 without satisfying the obligations of subdivisions (2) to (4)
21 of subsection (a) of this section.

22 ~~(b)~~ (c) The commission, council or a governing board shall deposit the net proceeds from
23 the sale, ~~lease~~, conveyance or other disposal of real property into a special revenue account in
24 the State Treasury ~~to be appropriated by the Legislature in the annual budget bill for the purchase~~
25 ~~of additional real property, equipment or technology, or for capital improvements or maintenance~~
26 ~~at the institution that sold the surplus real property~~ to the credit of the commission, council, or
27 governing board that sold, conveyed or otherwise disposed of the real property.

18B-19-11. Authorization to lease-purchase.

1 (a) The commission or council may enter into lease-purchase agreements for capital
2 improvements, including equipment, on behalf of, or for the benefit of, a state institution of higher
3 education, the commission or council.

4 (b) After the commission or council, as appropriate, has granted approval for a lease-
5 purchase agreement by a governing board, the board may enter into a lease-purchase agreement
6 for capital improvements, including equipment.

7 (c) The governing boards of ~~Marshall University and West Virginia University~~ the
8 exempted schools may enter into lease-purchase agreements without seeking the approval of the
9 commission. The governing boards, subject to the jurisdiction of the commission, may enter into
10 lease-purchase agreements of less than \$1.5 million, without obtaining approval of the
11 commission.

12 (d) A lease-purchase agreement constitutes a special obligation of the State of West
13 Virginia. The obligation may be met from any funds legally available to the commission, council
14 or the institution and shall be cancelable at the option of the commission, council, or governing
15 board at the end of any fiscal year. The obligation, or any assignment or securitization of the
16 obligation, never constitutes an indebtedness of the State of West Virginia or any department,

17 agency or political subdivision of the state, within the meaning of any constitutional provision or
18 statutory limitation, and may not be a charge against the general credit or taxing powers of the
19 state or any political subdivision of the state. The facts shall be plainly stated in any lease-
20 purchase agreement.

21 (e) A lease-purchase agreement shall prohibit assignment or securitization without
22 consent of the lessee and the approval of the agreement as to form by the Attorney General.
23 Proposals for any agreement shall be requested in accordance with the requirements of this
24 section and rules of the commission and council. In addition, any lease-purchase agreement that
25 exceeds \$100,000 total shall be approved as to form by the Attorney General.

26 (f) The interest component of any lease-purchase obligation is exempt from all taxation of
27 the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the
28 Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended,
29 and any regulations promulgated pursuant thereto are met, the interest component of any lease-
30 purchase obligation also is exempt from the gross income of the recipient for purposes of federal
31 income taxation and may be designated by the governing board or the president of the institution
32 as a bank-qualified obligation.

§18B-19-13. Real property contracts and agreements.

1 (a) ~~Except as provided elsewhere in this article,~~ In addition to the requirements otherwise
2 provided in this article, any purchase of real estate, any lease-purchase agreement and any
3 construction of new buildings or other acquisition of buildings, office space or grounds resulting
4 from these transactions, shall be approved by the commission or council, as appropriate, and
5 provided to the Joint Committee on Government and Finance for prior review, if the transaction
6 exceeds \$1 million: Provided, That the exempted schools shall not be required to get the approval
7 of the commission.

8 (b) The commission, council and each governing board shall provide the following to the
9 Joint Committee on Government and Finance:

10 (1) A copy of any contract or agreement to which it is a party for real property if the contract
11 or agreement exceeds \$1 million; and

12 (2) A report setting forth a detailed summary of the terms of the contract or agreement,
13 including the name of the property owner and the agent involved in the sale.

14 (c) The copy and report required by subsection (b) of this section shall be provided at least
15 thirty days before any sale, exchange, transfer, purchase, lease-purchase, lease or rental of real
16 property, refundings of lease-purchases, leases or rental agreements, construction of new
17 buildings, and any other acquisition or lease of buildings, office space or grounds.

18 (d) A contract or agreement that is for the lease purchase, lease or rental of real property,
19 where the costs of real property acquisition and improvements are to be financed, in whole or in
20 part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of
21 review by the committee.

22 (e) For renewals of contracts or agreements required by this section to be reported, the
23 commission, council or governing board shall provide a report setting forth a detailed summary of
24 the terms of the contract or agreement, including the name of the property owner.

25 (f) The Joint Committee on Government and Finance shall meet and review any contract,
26 agreement or report within thirty days of receipt.

27 (g) Each governing board shall provide to the commission or council, as appropriate, a
28 copy of any contract or agreement submitted to the Joint Committee on Government and Finance
29 pursuant to this section.

§18B-19-14. Authorization for sale lease-back.

1 (a) Notwithstanding any other provision of this code to the contrary, a governing board
2 may sell any building that is on unencumbered real property to which the board holds title and
3 may lease back the same building if the governing board obtains approval of the council or
4 confirmation by the commission ~~or council~~, as appropriate, before incurring any obligation:
5 Provided, That the exempted schools shall not be required to obtain such approval or confirmation
6 of the commission. The board shall deposit the net proceeds of the transaction into a special

7 revenue account in the State Treasury to be appropriated by the Legislature for the use of the
8 institution at which the real property is located. Prior to such action, the board shall take the
9 following steps:

10 (1) Provide for the property to be appraised by two licensed appraisers. The board may
11 not sell the property for less than the average of the two appraisals; ~~and~~

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

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

15 (4) For real property with a proposed sale price of \$50,000 or greater, ten days prior to the
16 placement of the Class II legal advertisement, providing written notice to the county commission
17 and municipalities in the county in which the real estate property is located and all members of
18 the legislature, and

19 ~~(2)~~ (5) Retain independent financial and legal services to examine fully all aspects of the
20 transaction.

21 (b) The sale may be made only to a special purpose entity that exists primarily for the
22 purpose of supporting the institution at which the building is located.

§18B-19-19. Applicability to certain institutions.

1 The governing boards of the exempted schools each may, without obtaining approval of
2 the commission, take any action described or set forth in this article that otherwise would require
3 the approval or confirmation of the commission. The respective governing board shall provide
4 notice of the action to the commission. If the commission requests additional information relevant
5 to the action from the respective governing board, the governing board shall provide information
6 regarding the action to the commission.

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