

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 3096**

BY DELEGATE HANSHAW (MR. SPEAKER)

[BY REQUEST]

[Introduced February 12, 2019; Referred  
to the Committee on Education then Finance.]

1 A BILL to repeal §18B-1B-6 of the Code of West Virginia, 1931, as amended; to repeal §18B-1D-  
2 3, §18B-1D-6 and §18B-1D-7 of said code; to repeal §18B-7-8 and §18B-7-16 of said  
3 code; to repeal §18B-10-4 of said code; to amend and reenact §18B-1-1a, §18B-1-2, and  
4 §18B-1-6 of said code; to amend and reenact §18B-1A-4 and §18B-1A-5 of said code; to  
5 amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-3, §18B-1B-4, and §18B-1B-5 of  
6 said code; to amend and reenact §18B-1D-1, §18B-1D-2, §18B-1D-4, §18B-1D-5, and  
7 §18B-1D-8 of said code; to amend and reenact §18B-2A-3, §18B-2A-4, §18B-2B-6, and  
8 §18B-2B-7 of said code; to amend and reenact §18B-3-3 of said code; to amend and  
9 reenact §18B-4-1, §18B-4-2, and §18B-4-7 of said code; to amend and reenact §18B-10-  
10 1 and §18B-10-2 of said code; to amend and reenact §18B-13-5 of said code; to amend  
11 and reenact §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-  
12 19-7, §18B-19-9, §18B-19-11, §18B-19-13, §18B-19-14, and §18B-19-17 of said code; all  
13 relating to four-year higher education; altering the process for the approval, evaluation,  
14 and compensation of presidents; eliminating outdated reporting requirements; eliminating  
15 provisions relating to statewide compacts; repealing outdated study, transfer, transition,  
16 and code sections; establishing legislative intent; defining terms; providing rulemaking  
17 authority for the Office of Postsecondary Education and governing boards; clarifying  
18 legislative financing and funding goals; providing a process for submission of budget  
19 requests and appropriations; establishing the Office of Postsecondary Education as the  
20 successor to the Higher Education Policy Commission; establishing the Office of  
21 Postsecondary Education board of managers; providing procedures for meetings for the  
22 Office of Postsecondary Education; establishing the authorities of the Office of  
23 Postsecondary Education; establishing the authorities of the director of the Office of  
24 Postsecondary Education; clarifying the master planning process for four-year institutions  
25 of higher education; clarifying the process of institutional and system report cards;  
26 clarifying the duties of governing boards; clarifying the authorities of the chancellor of the

27 community and technical college system; limiting the authority of institutions of higher  
28 education to increase tuition for state residents; revising the approval processes relating  
29 to capital and real estate transactions and related planning for four-year institutions of  
30 higher education; and eliminating requirements relating to higher education facilities  
31 information systems.

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

## **ARTICLE 1. GOVERNANCE.**

### **§18B-1-1a. Legislative intent; findings; establishment of state goals for higher education and education; creation of partnership to achieve state goals and objectives.**

1 (a) It is the intent of the Legislature in enacting this section to establish state goals for  
2 public higher education which benefit the citizens of the State of West Virginia.

3 (b) It is further the intent of the Legislature that this section be read and implemented in  
4 conjunction with the accountability system established in article one-d of this chapter and that any  
5 reference to this section in this code includes the provisions of that article.

6 (c) *Findings.* -- The Legislature finds that post-secondary education is vital to the future of  
7 West Virginia. For the state to realize its considerable potential in the 21st Century, it must have  
8 a system for the delivery of post-secondary education which is competitive in the changing  
9 national and global environment, is affordable for the state and its citizenry and has the capacity  
10 to deliver the programs and services necessary to meet regional and statewide needs.

11 The Legislature further finds that it is vitally important for young people entering the  
12 workforce to have the education and skills to succeed in today's high-technology, knowledge-  
13 based economy. It is equally important for working-age adults who are the majority of the current  
14 and potential workforce also to possess the requisite education and skills to compete successfully  
15 in the workplace and to have the opportunity to continue learning throughout their lives. The future  
16 of the state rests not only on how well its youth are educated, but also on how well it educates its  
17 entire population of any age.

18           The Legislature further finds that providing access to a high-quality and affordable post-  
19 secondary education is a state responsibility and, while states spent more than \$70 billion on  
20 public higher education in two thousand six, they are not maximizing that investment. The  
21 Legislature recognizes the efforts of the National Conference of State Legislatures' Blue Ribbon  
22 Commission on Higher Education in producing a report to assist the states in higher education  
23 policymaking. According to the commission report, "Transforming Higher Education: National  
24 Imperative -- State Responsibility", the United States is losing its competitive advantage in a new,  
25 high-tech, highly mobile global economy. This lack of competitiveness is a matter of the highest  
26 urgency for federal and state policymakers and higher education is at the center of this discussion.  
27 The report further states that "higher education is both the problem and the solution" because the  
28 nation has failed to focus on how higher education energizes American competitiveness and  
29 revitalizes the states. Pursuant to these findings, the commission made some specific  
30 recommendations addressed to the states which include the following:

- 31           (1) Define clear state goals;
- 32           (2) Identify your state's strengths and weaknesses;
- 33           (3) Know your state demographic trends for the next ten to thirty years;
- 34           (4) Identify a place or structure to sustain the public policy agenda;
- 35           (5) Hold institutions accountable for their performance;
- 36           (6) Rethink funding formulas and student aid;
- 37           (7) Make a commitment to access, success and innovation;
- 38           (8) Encourage partnerships;
- 39           (9) Give special attention to adult learners; and
- 40           (10) Focus on productivity.

41           All of these recommendations are useful in providing policy guidance and have been given  
42 careful consideration in the development of this section and article one-d of this chapter.

43           (d) *Establishment of state goals.* -- In recognition of its importance to the citizens of West

44 Virginia, the Legislature hereby establishes the following goals for public higher education in the  
45 state:

46 (1) The ultimate goal of public education is to enhance the quality of life for citizens of the  
47 State of West Virginia.

48 (2) The overall focus of public education is on developing and maintaining a process of  
49 lifelong learning which is as seamless as possible at all levels, encourages citizens of all ages to  
50 increase their knowledge and skills and provides ample opportunities for them to participate in  
51 public higher education.

52 (3) Higher education collaborates with public education and other providers to offer  
53 education opportunities:

54 (A) To individuals of all ages and socioeconomic backgrounds in all areas of the state;  
55 and

56 (B) To overcome financial barriers to participation for both traditional and nontraditional  
57 students.

58 (4) Higher education seeks to enhance state efforts to diversify and expand the economy  
59 by focusing available resources on programs and courses which best serve students, provide the  
60 greatest opportunity for job creation and retention and are most supportive of emerging high-  
61 technology and knowledge-based businesses and industries.

62 (5) Higher education creates a learning environment that is student-friendly and that  
63 encourages and assists students in the completion of degree requirements, certifications or skill  
64 sets within a reasonable period of time.

65 (6) The learning environment expands participation for the increasingly diverse student  
66 population and responds to the needs of the current workforce and other nontraditional students.

67 (7) Through the establishment of innovative curricula and assessment efforts, state  
68 institutions of higher education ensure that students graduate from nationally recognized and  
69 accredited programs and meet or exceed national and international standards for performance in

70 their chosen fields as evidenced through placement and professional licensure examinations.

71 (8) Higher education promotes academic research and innovation to achieve measurable  
72 growth in West Virginia's knowledge-based economic sector.

73 (9) State institutions of higher education emphasize productivity and strive to exceed the  
74 performance and productivity levels of peer institutions. In return, and within the constraints of  
75 fiscal responsibility, the state seeks to invest in institutions so that they may adequately  
76 compensate faculty, classified employees and other employees at a competitive level to attract  
77 and retain high quality personnel.

78 (10) State institutions of higher education are committed to a shared responsibility with  
79 faculty, staff, students and their communities to provide access to the knowledge and to promote  
80 acquisition of the skills and abilities necessary to establish and maintain physical fitness and  
81 wellness.

82 (A) Programs that encourage healthy lifestyles are essential for the vibrancy of the  
83 institutions of higher education, for the well-being of the communities they serve and for the state  
84 as a whole.

85 (B) Increasing the fitness levels of adults on college and university campuses is critically  
86 important for the people of West Virginia, not only for disease prevention, but also, and perhaps  
87 most importantly, to enhance the overall quality of life.

88 (C) While individuals must bear the primary responsibility for their own health, it is  
89 imperative that the institutions provide appropriate education and support focused on enriching  
90 and expanding the short- and long-term views and attitudes towards physical activity,  
91 understanding the principles of wellness and their application to a healthy lifestyle, understanding  
92 what components are a necessary part of an all-around healthy lifestyle and learning how to set  
93 and achieve realistic goals aimed at establishing healthy habits for the benefit of long-term health  
94 and well-being.

95 (e) *Education partnership to achieve state goals and objectives.* -- If public institutions of

96 higher education are to provide services that meet the needs of state citizens as outlined in this  
97 section and article one-d of this chapter, then West Virginia must create and participate in a  
98 partnership across various education organizations that recognizes the valuable contributions  
99 each member of the group can make. In addition to public education as outlined in section four,  
100 article one, chapter eighteen of this code and in addition to the State of West Virginia, key  
101 members of this partnership include the state institutions of higher education, the Council for  
102 Community and Technical College Education and the ~~Higher Education Policy Commission~~ OPE.

103 (1) *State institutions of higher education.* -- The institutions are the cornerstone of efforts  
104 to provide higher education services that meet the needs of state citizens. To varying degrees,  
105 and depending upon their missions, these institutions serve the state in three major ways:

106 (A) *Instruction.* -- By providing direct instruction to students along with the student services  
107 necessary to support the instructional mission. These services have two primary goals:

108 (i) To produce college graduates who have the knowledge, skills and desire to make  
109 valuable contributions to society; and

110 (ii) To provide opportunities for citizens to engage in life-long learning to enhance their  
111 employability and their overall quality of life.

112 (B) *Public service.* -- By providing an occupational home for experts in a variety of fields  
113 and by serving as the educational home for students. In these capacities, institutions create a  
114 large and varied pool of high quality human resources capable of making valuable contributions  
115 to business and industry, local and state governments and communities. The following are  
116 examples of the types of public service that higher education institutions have to offer:

117 (i) Workforce development, primarily through community and technical colleges, to meet  
118 the immediate and long-term needs of employers and employees;

119 (ii) Technical assistance to state and local policymakers as they work to address  
120 challenges as diverse as ensuring that West Virginia's citizens receive quality health care,  
121 assisting in the development of a solid transportation infrastructure and ensuring that public

122 school teachers have enriching professional development opportunities; and

123 (iii) Opportunities to learn and serve in local communities, to teach civic responsibility and  
124 to encourage civic engagement.

125 (C) *Research.* -- By conducting research at state institutions of higher education,  
126 particularly Marshall University and West Virginia University, to enhance the quality of life in West  
127 Virginia in the following ways:

128 (i) Targeting cutting-edge research toward solving pressing societal problems;

129 (ii) Promoting economic development by raising the level of education and specialization  
130 among the population; and

131 (iii) Creating jobs through development of new products and services.

132 (2) *The Council for Community and Technical College Education and the ~~Higher Education~~*  
133 *~~Policy Commission~~ OPE.* -- In their role as state-level coordinating boards, the council and  
134 ~~commission~~ the OPE function as important partners with state policy leaders in providing higher  
135 education that meets state needs. The council and ~~commission~~ OPE provide service to the state  
136 in the following ways:

137 (A) By developing a public policy agenda for various aspects of higher education that is  
138 aligned with state goals and objectives and the role and responsibilities of ~~each coordinating~~  
139 ~~board~~ the council;

140 (B) By ensuring that institutional missions and goals are aligned with relevant parts of the  
141 public policy agenda and that institutions maximize the resources available to them to fulfill their  
142 missions and make reasonable progress toward meeting established state goals;

143 (C) By evaluating and reporting on progress in implementing the public policy agenda;

144 (D) By promoting system efficiencies through collaboration and cooperation across  
145 institutions and through focusing institutional missions as appropriate; and

146 (E) By conducting research, collecting data and providing objective recommendations to  
147 aid elected state officials in making policy decisions.



148 (3) *State of West Virginia*. -- Elected state officials represent the citizens of West Virginia  
 149 and are critical partners in providing quality higher education. In this context, these state-level  
 150 policymakers serve the state in the following ways:

151 (A) By establishing goals, objectives and priorities for higher education based on a  
 152 thoughtful, systematic determination of state needs;

153 (B) By providing resources necessary to address state goals, objectives and priorities for  
 154 higher education; and

155 (C) By providing incentives for and removing barriers to the achievement of state goals,  
 156 objectives and priorities.

**§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~~ OPE or  
 12 the 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 (4) "Board of visitors" means the advisory board previously appointed for the West Virginia

17 Graduate College and the advisory board previously appointed for West Virginia University  
18 Institute of Technology, which provide guidance to the Marshall University Graduate College and  
19 West Virginia University Institute of Technology, respectively;

20 (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 (6) "Chancellor" means the ~~Chancellor for Higher Education~~ Director of OPE where the  
25 context refers to a function of the ~~Higher Education Policy Commission~~ OPE. "Chancellor" means  
26 the Chancellor for Community and Technical College Education where the context refers to a  
27 function of the West Virginia Council for Community and Technical College Education;

28 (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 §18B-2B-3 of this ~~chapter~~ code;

31 (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 director;

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

36 (10) "Community and technical college", in the singular or plural, means the free-standing  
37 community and technical colleges and other state institutions of higher education which deliver  
38 community and technical college education. This definition includes Blue Ridge Community and  
39 Technical College, Bridgemont Community and Technical College, Eastern West Virginia  
40 Community and Technical College, Kanawha Valley Community and Technical College,  
41 Mountwest Community and Technical College, New River Community and Technical College,  
42 Pierpont Community and Technical College, Southern West Virginia Community and Technical

43 College, West Virginia Northern Community and Technical College and West Virginia University  
44 at Parkersburg;

45 (11) "Community and technical college education" means the programs, faculty,  
46 administration and funding associated with the delivery of community and technical college  
47 education programs;

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

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

61 ~~(14)~~ (13) "Council" means the West Virginia Council for Community and Technical College  
62 Education created by article two-b of this chapter;

63 (14) "Director" means the chief executive officer of the West Virginia Office Postsecondary  
64 Education;

65 (15) "Dual credit course" or "dual enrollment course" means a credit-bearing college-level  
66 course offered in a high school by a state institution of higher education for high school students  
67 in which the students are concurrently enrolled and receiving credit at the secondary level.

68 (16) "Essential conditions" means those conditions which shall be met by community and

69 technical colleges as provided in §18B-3C-3 of this ~~chapter~~ code;

70 (17) "Exempted schools" means West Virginia University, including West Virginia  
71 University Potomac State College and West Virginia University Institute of Technology; Marshall  
72 University; and the West Virginia School of Osteopathic Medicine;

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

77 (19) "Governing boards" or "boards" means the institutional boards of Governors created  
78 by §18B-2A-1 of this ~~chapter~~ code;

79 (20) "Higher Education Policy Commission", "Policy Commission" or "Commission" means  
80 the ~~commission created by section one, article one-b of this chapter~~ OPE;

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

91 (22) "Institutional compact" means the compact developed by a state institution of higher  
92 education, consistent with the public policy agenda for higher education;

93 (23) "Institutional operating budget" or "operating budget" means for any fiscal year an  
94 institution's total unrestricted education and general funding from all sources, including, but not

95 limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as  
96 approved by the ~~commission or~~ council based on comparisons with peer institutions or to reflect  
97 consistent components of peer operating budgets;

98 (24) "Office of Postsecondary Education;" "Office;" or "OPE" means the office created by  
99 §18B-1B-1 of this code;

100 ~~(24)~~ (25) "Rule" or "rules" means a regulation, standard, policy or interpretation of general  
101 application and future effect;

102 ~~(25)~~ (26) "Sponsoring institution" means a state institution of higher education that  
103 maintained an administrative link to a community and technical college providing essential  
104 services prior to July 1, 2008. This definition includes institutions whose governing boards had  
105 under their jurisdiction a community and technical college, regional campus or a division delivering  
106 community and technical college education and programs;

107 ~~(26)~~ (27) "State college and university" means Bluefield State College, Concord University,  
108 Fairmont State University, Glenville State College, Shepherd University, West Liberty University  
109 or West Virginia State University;

110 ~~(27)~~ (28) "State institution of higher education" means any university, college or community  
111 and technical college under the jurisdiction of a governing board as that term is defined in this  
112 section;

113 ~~(28)~~ (29) "Statewide network of independently accredited community and technical  
114 colleges" or "community and technical college network" means the state institutions of higher  
115 education under the jurisdiction of the West Virginia Council for Community and Technical College  
116 Education which are independently accredited, each governed by its own independent governing  
117 board, and each having a core mission of providing affordable access to and delivering high  
118 quality community and technical education in every region of the state. ~~and~~

119 ~~(29) "Vice Chancellor for Administration" means the person employed in accordance with~~  
120 ~~section two, article four of this chapter. Any reference in this chapter or chapter eighteen-c of this~~

121 ~~code to “Senior Administrator” means Vice Chancellor for Administration~~

**§18B-1-6. Rulemaking.**

1 (a) The ~~commission~~ OPE is hereby empowered to promulgate, adopt, amend or repeal  
 2 rules, in accordance with §29A-3A-1 *et seq.* of this code, subject to §18B-1-3 of this ~~article~~ code.  
 3 This grant of rule-making authority does not limit, overrule, restrict, supplant or supersede the  
 4 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 §29A-3A-1 *et seq.* of this code, subject to §18B-1-3 of this ~~article~~ code. This  
 7 grant of rule-making power extends only to those areas over which the council has been granted  
 8 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 shall promulgate a rule to guide the development of rules made by~~  
 22 ~~the governing boards, including a process for comment by the commission as appropriate, except~~  
 23 ~~the exempted schools, who shall each promulgate their own such rules~~ The council shall  
 24 promulgate a rule to guide the development and approval of rules made by the governing boards

25 ~~of community and technical colleges. The commission and council shall provide technical~~  
26 ~~assistance in rulemaking as requested~~ The rules promulgated by the exempted schools, the  
27 ~~commission~~ OPE and council shall include, but are not limited to, the following provisions which  
28 shall be included in the rule on rules adopted by each governing board of a state institution of  
29 higher education:

30 (A) A procedure to ensure that public notice is given and that the right of interested parties  
31 to have a fair and adequate opportunity to respond is protected, including providing for a 30 day  
32 public comment period prior to final adoption of a rule;

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

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

37 ~~(D) Except for the exempted schools, a procedure for the governing board to follow in~~  
38 ~~submitting its rules for review and comment by the commission and approval by the council, as~~  
39 ~~appropriate:~~

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

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

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

47 (d) Nothing in this section requires that any rule reclassified or transferred by the  
48 ~~commission~~ OPE or the council under this section be promulgated again under the procedures  
49 set out in §29A-3A-1 *et seq.* of this code unless the rule is amended or modified.

50 (e) The ~~commission~~ OPE and council each shall file with the Legislative Oversight

51 Commission on Education Accountability any rule it proposes to promulgate, adopt, amend or  
52 repeal under the authority of this article.

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

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

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

61 (g) Within fifteen business days of the adoption of a rule, including repeal or amendment  
62 of an existing rule, and before the change is implemented, a community and technical college  
63 governing board shall furnish a copy of each rule which it has adopted to ~~the commission or the~~  
64 ~~council respectively~~ for review.

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

72 (i) Any rule of the Higher Education Policy Commission or council in effect at the time of  
73 the re-enactment of this section or approved by the Legislature during its ~~2017~~ 2019 Regular  
74 Session shall remain in effect and applicable to an institution of higher education ~~under the~~  
75 ~~jurisdiction of the commission or council~~ until such time as an institution exercises its authority to  
76 adopt a rule pursuant to this chapter.



**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.**

**§18B-1A-4. Legislative financing goals.**

1 (a) The Legislature recognizes that the higher education goals set forth in §18B-1-1a of  
2 this chapter code are of utmost importance. The Legislature further recognizes that meeting the  
3 goals may require the appropriation of funds above the current operating budgets of the  
4 institutions.

5 (b) It is, therefore, the desire of the Legislature to increase funding annually for higher  
6 education at a rate not less than the annual percentage increase in the overall general revenue  
7 budget.

8 ~~(c) If the commission or council, or both, determines that appropriations are insufficient to  
9 fund the requirements of the institutional compacts under its jurisdiction, the commission or  
10 council first shall consider extending the length of the compacts or otherwise modifying the  
11 compacts to allow the institutions to achieve the benchmarks in the compacts. If modifications to  
12 the institutional compacts are not sufficient to allow the institutions to meet their benchmarks, the  
13 commission or council, or both, shall recommend to the Legislature methods of making the higher  
14 education system more efficient. The methods may include, but are not limited to, the following:~~

- 15 ~~(1) Administrative efficiencies;~~  
16 ~~(2) Consolidation of services;~~  
17 ~~(3) Elimination of programs;~~  
18 ~~(4) Consolidating institutions; and~~  
19 ~~(5) Closing institutions~~

**§18B-1A-5. Financing; institutional operating budgets, additional funding.**

1 ~~(a) Budget request and appropriations. -- The commission and council each has the~~  
2 ~~responsibility to develop a budget for the state system of higher education under its respective~~

3 ~~jurisdiction~~ community and technical colleges. ~~The commission submits the budget request for~~  
4 ~~higher education, including the budget request as developed by the council, to the Governor~~  
5 ~~before September 1, annually~~ The budget requests of the commission and the council specifically  
6 shall include the amount of the institutional operating budgets, as defined in §18B-1-2 of this  
7 ~~chapter~~ code, required for all ~~state institutions of higher education under their respective~~  
8 ~~jurisdictions~~ community and technical colleges. The budget appropriation for the ~~state systems of~~  
9 ~~higher education~~ community and technical colleges under this chapter and other provisions of the  
10 law shall consist of separate control accounts or institutional control accounts, or some  
11 combination of such accounts, for appropriation of institutional operating budgets and other funds.  
12 ~~The commission and council each~~ is responsible for allocating state appropriations to supplement  
13 institutional operating budgets in accordance with this section. In addition to the institutional  
14 operating budget and incentive funding, however, the ~~commission and council each~~ is responsible  
15 for allocating funds that are appropriated to it for other purposes. In order to determine institutional  
16 allocations, it is the responsibility of the institutions and their respective institutional boards of  
17 Governors or advisors, as appropriate to provide to the ~~commission or council~~ documentation on  
18 institutional progress toward mission enhancement, preliminary peer comparison calculations,  
19 performance of increased productivity and academic quality and measurable attainment in  
20 fulfilling state priorities as set forth in this article. The documentation shall be provided to the  
21 ~~commission or council~~ no later than October 1, annually.

22 ~~(b) Legislative funding priorities.—~~

23 ~~(1) The Legislature recognizes the current funding model has not moved all state~~  
24 ~~institutions equitably towards comparable peer funding levels. The model has left West Virginia~~  
25 ~~institutions at a competitive disadvantage to their national peers.~~

26 ~~(2) The Legislature acknowledges that the resource allocation model used to comply with~~  
27 ~~enrolled committee substitute for Senate bill no. 547, passed during the legislative session of~~  
28 ~~1995, alleviated some of the disparity that exists among state institutions' operating budgets, but~~

29 ~~left significant differences between the institutions and their national peers.~~

30 ~~(3) The Legislature recognizes that a system of independently accredited community and~~  
31 ~~technical colleges is essential to the economic vitality of the state.~~

32 ~~(4) The Legislature places great importance on achieving the priority goals outlined in the~~  
33 ~~public policy agenda and believes the state institutions of higher education should play a vital role~~  
34 ~~in facilitating the attainment of these goals.~~

35 ~~(5) The Legislature also believes it is imperative that the state make progress on narrowing~~  
36 ~~the peer inequity while balancing the need for sustaining the quality of our institutions.~~

37 ~~(6) It is the charge of the commission and council to allocate all funds appropriated in~~  
38 ~~excess of the fiscal year 2001 general revenue appropriations in alignment with the legislative~~  
39 ~~funding priorities listed below. The commission and council shall consider the priorities and assign~~  
40 ~~a percentage of the total appropriation of new funds to each priority.~~

41 ~~(A) Peer equity. -- Funds appropriated for this purpose increase the level of the institutional~~  
42 ~~operating budget for state institutions of higher education comparable to their peer institutions.~~  
43 ~~The allocation shall provide, subject to the availability of funds and legislative appropriations, for~~  
44 ~~a systematic adjustment of the institutional operating budgets to move all institutions' funding in~~  
45 ~~the direction of levels comparable with their peers. Institutional allocations shall be calculated as~~  
46 ~~follows:~~

47 ~~(i) A calculation shall be made of the deficiency in per student funding of each institution~~  
48 ~~in comparison with the mean per student funding of the peer institutions as defined by the~~  
49 ~~commission pursuant to section three of this article;~~

50 ~~(ii) For all institutions that are deficient in comparison with peer institutions, the amounts~~  
51 ~~of the deficiencies shall be totaled;~~

52 ~~(iii) A ratio of the amount of the deficiency for an institution divided by the total amounts of~~  
53 ~~deficiency for all West Virginia institutions shall be established for each institution; and~~

54 ~~(iv) The allocation to each institution shall be calculated by multiplying the ratio by the total~~

55 amount of money in the account;

56 ~~(B) *Independently accredited community and technical colleges development.* -- Funds~~  
57 ~~appropriated for this purpose will ensure a smooth transition, where required, from "component"~~  
58 ~~community and technical colleges to independently accredited community and technical colleges~~  
59 ~~as defined in section two, article one of this chapter. Appropriations for this purpose are to be~~  
60 ~~allocated only to those institutions having approved compacts with the council that expressly~~  
61 ~~include the transition of their component community colleges to independently accredited status~~  
62 ~~and have demonstrated measurable progress towards this goal. By July 1, 2005, or when all~~  
63 ~~required community and technical colleges are independently accredited, whichever first occurs,~~  
64 ~~funds for this purpose shall be allocated to the incentives for institutional contributions to state~~  
65 ~~priorities;~~

66 ~~(C) *Research challenge.* -- Funds appropriated for this purpose shall assist public colleges~~  
67 ~~and universities in West Virginia to compete on a national and international basis by providing~~  
68 ~~incentives to increase their capacity to compete successfully for research funding. The Legislature~~  
69 ~~intends for institutions to collaborate in the development and execution of research projects to the~~  
70 ~~extent practicable and to target research to the needs of the state as established in the public~~  
71 ~~policy agenda and linked to the future competitiveness of this state.~~

72 ~~(i) The commission shall develop criteria for awarding grants to institutions under this~~  
73 ~~account, which may include, but are not limited to, the following:~~

74 ~~(I) Grants to be used to match externally funded, peer-reviewed research;~~

75 ~~(II) Grants to be used to match funds for strategic institutional investments in faculty and~~  
76 ~~other resources to increase research capacity;~~

77 ~~(III) Grants to support funding for new research centers and projects that will foster~~  
78 ~~economic development and workforce investment within the state. These grants shall be limited~~  
79 ~~to five years and each research center or project funded shall receive a decreasing award each~~  
80 ~~year and shall be required to be supported solely by external funding within five years;~~

81 ~~(ii) The commission may establish an advisory council consisting of nationally prominent~~  
82 ~~researchers and scientists, including representatives from outside the state, to assist in~~  
83 ~~developing the criteria for awarding grants under this account.~~

84 ~~(iii) For the purposes of making the distributions from this account, the commission shall~~  
85 ~~establish the definition for research, research funds and any other terms as may be necessary to~~  
86 ~~implement this subdivision; and~~

87 ~~(D) *Incentives for institutional contributions to state priorities.* --- Funds appropriated for this~~  
88 ~~purpose provide incentives to institutions which demonstrate success toward advancing the goals~~  
89 ~~of the public policy agenda as set forth in section one-a, article one of this chapter and to provide~~  
90 ~~incentives for mission enhancement as set forth in section two of this article.~~

91 ~~(E) *Sustained quality support.* --- The commission and council shall provide additional~~  
92 ~~operating funds to institutions under their respective jurisdictions with approved compacts. The~~  
93 ~~commission and council shall allocate these funds on an equal percentage basis to all institutions.~~  
94 ~~The commission or council may delay distribution of these funds to any institution which does not~~  
95 ~~demonstrate measurable progress towards the goals provided in its compact with the commission~~  
96 ~~or council.~~

97 ~~(c) *Allocations to institutional operating budgets.* --- For the purposes of this subsection,~~  
98 ~~the commission and council each shall establish by rule pursuant to subsection (f), section two of~~  
99 ~~this article the method for measuring the progress of each institution towards meeting the~~  
100 ~~benchmarks of its institutional compact.~~

101 ~~(d) *Allocation of appropriations to the institutions.* --- Appropriations in this section shall be~~  
102 ~~allocated to the state institutions of higher education in the following manner:~~

103 ~~(1) Each fiscal year appropriations from the funds shall be allocated only to institutions~~  
104 ~~which have:~~

105 ~~(A) Approved compacts, pursuant to section two of this article; and~~

106 ~~(B) Achieved their annual benchmarks for accomplishing the goals of their compacts, as~~

107 approved by the commission or council.

108 (2) If an institution has not achieved all of its annual benchmarks, the commission or  
109 council may distribute a portion of the funds to the institution based on its progress as the  
110 commission or council determines appropriate. The commission and council each shall establish  
111 by rule, pursuant to subsection (f), section two of this article, the method for measuring the  
112 progress of each institution toward meeting the benchmarks of its institutional compact.

113 (e) Nothing in this section limits the appropriation or collection of fees necessary to  
114 effectuate the operation and purpose of the commission or council

**ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION OFFICE OF  
POSTSECONDARY EDUCATION.**

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

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 review, confirm or approve certain actions undertaken by the governing boards, as delineated in  
8 this chapter; and develop and gain consensus around the public policy agenda for higher  
9 education and other statewide issues pursuant to section one-a, article one of this chapter under  
10 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 higher  
13 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~~

18 There is hereby created the "Office of Postsecondary Education," hereinafter referred to  
 19 as "OPE." It is the intent of the Legislature that the OPE (1) Enhance access for West Virginians  
 20 to high quality, low cost postsecondary educational opportunities; (2) provide maximum flexibility  
 21 for individual institutions to operate; (3) maximize the stability of the legal environment for West  
 22 Virginia higher education; (4) promote efficiency of operations for all institutions; (5) encourage  
 23 cross-campus collaboration; (6) serve as the successor organization to the Higher Education  
 24 Policy Commission; and (7) undertake the duties specified in this code.

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

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

3 ~~(1) The State Superintendent of Schools, ex officio;~~

4 ~~(2) The chair of the West Virginia Council for Community and Technical College~~  
 5 ~~Education, ex officio;~~

6 ~~(3) Four at-large members who are citizens of the state, appointed by the Governor, by~~  
 7 ~~and with the advice and consent of the Senate; and~~

8 ~~(4) Three at-large members who are designated as higher education representatives,~~  
 9 ~~appointed by the Governor, by and with the advice and consent of the Senate; for each of the~~  
 10 ~~higher education representatives, the Governor shall choose from recommendations made by~~  
 11 ~~any state college and university or exempted school and the Governor may request additional~~

12 ~~recommendations from state colleges and universities or exempted schools if in the Governor in~~  
13 ~~his or her sole discretion determines that additional recommendations are necessary for~~  
14 ~~appointments to the commission.~~

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

17 ~~(c) The Governor may not appoint any person to be a member of the commission who is~~  
18 ~~an officer, employee or member of the council or an advisory board of any state college or~~  
19 ~~university or exempted school; an officer or member of any political party executive committee;~~  
20 ~~the holder of any other public office or public employment under the government of this state or~~  
21 ~~any of its political subdivisions; an appointee or employee of any governing board; or an~~  
22 ~~immediate family member of any employee under the jurisdiction of the commission, the council~~  
23 ~~or any governing board.~~

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

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

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

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

28 ~~(e) The at-large members appointed by the Governor serve overlapping terms of four~~  
29 ~~years.~~

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

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

36 ~~(h) Before exercising any authority or performing any duties as a member of the~~  
37 ~~commission, each member shall qualify as such by taking and subscribing to the oath of office~~



38 ~~prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof~~  
39 ~~shall be filed with the Secretary of State.~~

40 ~~(i) A member of the commission appointed by the Governor may not be removed from~~  
41 ~~office by the Governor except for official misconduct, incompetence, neglect of duty or gross~~  
42 ~~immorality and then only in the manner prescribed by law for the removal of the state elective~~  
43 ~~officers by the Governor~~

44 (a) The OPE shall be overseen and operated by a board of managers comprised of nine  
45 members. The governing boards of each of West Virginia's four-year public institutions of higher  
46 education shall each appoint one member of the board of managers, none of whom shall be the  
47 president of any such institution. Each member shall serve at the pleasure of their institution's  
48 governing board, and each member may be removed by the member's board of governors at any  
49 time, for any reason or for no reason at all. Otherwise, no member shall be removed from the  
50 board except for official misconduct, incompetence, neglect of duty or gross immorality and then  
51 only in the manner prescribed by law for the removal of the state elective officers by the Governor.  
52 The three members appointed by the Exempted Schools shall be entitled to vote on all matters,  
53 other than matters pertaining to academic programs, as specified in §18B-1B-4 of this code, at  
54 any of the state colleges and universities. The seven members appointed by the State Colleges  
55 and Universities shall be entitled to vote on all matters, except that the board has no authority to  
56 make decisions related to the Exempted Schools.

57 (b) Before exercising any authority or performing any duties as a member of the board of  
58 managers, each member shall qualify as such by taking and subscribing to the oath of office  
59 prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof  
60 shall be filed with the Secretary of State.

### **§18B-1B-3. Meetings and compensation.**

1 ~~(a) The commission shall meet as needed at the time and place specified by the call of~~  
2 ~~the chairperson~~ The board of managers shall meet quarterly at a time and place specified by the

3 call of the chairperson or the director of the OPE. Otherwise, the director of the OPE or the chair  
 4 of the board of managers may call an emergency meeting of the board of managers. The board  
 5 of managers may appoint an executive committee of up to five members which may act on behalf  
 6 of the board of managers between meetings of the full board.

7 ~~(b) The commission shall hold an annual meeting at the final, regularly scheduled meeting~~  
 8 ~~of each fiscal year for the purpose of electing officers. At the annual meeting, the commission~~  
 9 ~~shall elect from its members appointed by the Governor a chairperson and other officers as it may~~  
 10 ~~consider necessary or desirable. All officers are elected from the citizen appointees. The~~  
 11 ~~chairperson and other officers are elected for a one-year term commencing on July 1, following~~  
 12 ~~the annual meeting and ending on June 30 of the following year. The chairperson of the~~  
 13 ~~commission may serve no more than four consecutive terms as chair~~

14 ~~(c) (b)~~ Members of the ~~commission~~ OPE shall be reimbursed for actual and necessary  
 15 expenses incident to the performance of their duties upon presentation of an itemized sworn  
 16 statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid  
 17 from appropriations made by the Legislature to the ~~commission~~ OPE.

18 ~~(d) (c)~~ A majority of the members constitutes a quorum for conducting the business of the  
 19 ~~commission~~ OPE.

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

1 ~~(a) The primary responsibility of the commission is to provide shared services in a cost-~~  
 2 ~~effective manner upon request to the state colleges and universities, the council, and the~~  
 3 ~~community and technical colleges; undertake certain statewide and regional initiatives as~~  
 4 ~~specifically designated in this chapter, including those related to the administration of grants and~~  
 5 ~~scholarships and including those in conjunction with the council; to review, confirm or approve~~  
 6 ~~certain actions undertaken by governing boards, as delineated in this chapter; and assist in the~~  
 7 ~~development of policy that will achieve the goals, objectives and priorities found in section one-a,~~

8 ~~article one and article one-d of this chapter. The commission shall exercise its authority and carry~~  
9 ~~out its responsibilities in a manner that is consistent and not in conflict with the powers and duties~~  
10 ~~assigned by law to the West Virginia Council for Community and Technical College Education~~  
11 ~~and the powers and duties assigned to the governing boards. To that end, the commission has~~  
12 ~~the following powers and duties relating to the governing boards under its jurisdiction:~~

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

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

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

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

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

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

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

30 ~~(3) In collaboration with the council and the governing boards:~~

31 ~~(A) Building public consensus around and sustaining attention to a long-range public policy~~  
32 ~~agenda. In developing the agenda, the commission and council shall seek input from the~~  
33 ~~Legislature, the Governor, the governing boards, and specifically from the State Board of~~

34 ~~Education and local school districts in order to create the necessary linkages to assure smooth,~~  
35 ~~effective and seamless movement of students through the public education and post-secondary~~  
36 ~~education systems and to ensure that the needs of public school courses and programs can be~~  
37 ~~fulfilled by the graduates produced and the programs offered;~~

38 ~~(B) Assisting governing boards to carry out their duty effectively to govern the individual~~  
39 ~~institutions of higher education;~~

40 ~~(4) Except the exempted schools, review and comment on each compact for the governing~~  
41 ~~boards under its jurisdiction, and final confirmation of each compact;~~

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

44 ~~(6) Serve as a point of contact to state policymakers:~~

45 ~~(A) The Governor for the public policy agenda; and~~

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

48 ~~(7) Upon request, provide shared services to a state institution of higher education;~~

49 ~~(8) Administer scholarship and grant programs as provided for in this code;~~

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

53 ~~(10) Establish a formal process for recommending capital investment needs and for~~  
54 ~~determining priorities for state colleges and universities for these investments for consideration~~  
55 ~~by the Governor and the Legislature as part of the appropriation request process pursuant to~~  
56 ~~article nineteen of this chapter;~~

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

59 ~~(12) Except the exempted schools, ensure that governing boards manage capital projects~~

60 ~~and facilities needs effectively, including review and approval of capital projects, in accordance~~  
61 ~~with article nineteen of this chapter~~

62 (a) The sole responsibilities of OPE are to (i) Develop and advance a public policy agenda  
63 for West Virginia higher education; (ii) provide shared services in a cost effective manner upon  
64 request to the state colleges and universities and the community and technical colleges; and (iii)  
65 coordinate academic programs at State Colleges and Universities. To that end, OPE has the  
66 following powers and duties relating to the governing boards under its jurisdiction:

67 (1) With input from the president and boards of governors, develop and advance the public  
68 policy agenda pursuant to §18B-1D-1 et seq. of this code to address major challenges facing the  
69 state, including, but not limited to, the goals, objectives and priorities established in this chapter  
70 including specifically those goals, objectives and priorities pertaining to the compacts created  
71 pursuant to §18B-1D-7 of this code;

72 (2) Upon request, provide shared services to the council and any state institution of higher  
73 education, including:

74 (A) Financial aid training for high school counselors and other citizens providing financial  
75 aid advice to high school students;

76 (B) Administration of reciprocity agreements with higher education institutions and  
77 agencies in other states and the academic common market;

78 (C) Support for college completion initiatives;

79 (D) Online curriculum quality improvement;

80 (E) Institutional data management and reporting, including response to legislative  
81 requests for data;

82 (F) Health science education and workforce development initiatives, including the Rural  
83 Health Initiative and the Rural Health Residency Program;

84 (G) Support for the GEAR UP initiative;

85 (H) Support for veterans education and training programs;

86           (I) Support for College Foundation of West Virginia student recruitment and support  
87 initiatives;  
88           (J) Joint purchasing initiatives;  
89           (K) Preparation of legislative fiscal notes;  
90           (L) Bond administration;  
91           (M) Preparation of budgets for the operation of OPE;  
92           (N) Preparation of audits;  
93           (O) Implementation of OASIS system;  
94           (P) Administration of employee benefits system;  
95           (Q) Software support for human resource functions;  
96           (R) Technical assistance for statutorily required classification and compensaitons  
97 systems;  
98           (S) Information technology systems;  
99           (T) Clearinghouse for external (federal and private) grants;  
100           (U) Training and development initiatives for members of the governing boards at West  
101 Virginia's four-year public institutions of higher education; and  
102           (V) Such other services as the board of managers may determine are necessary for OPE  
103 to achieve its mission as set forth in §18B-1B-1 of this code.  
104           (3) Upon request, provide any of the shared services set forth in section (a)(1)(A)-(V)  
105 above to private institutions in the State in accordance with a fee structure to be established  
106 annually by the board of managers.  
107           ~~(13)~~ (4) Acquire legal services as considered necessary, including representation of the  
108 ~~commission~~ OPE, the governing boards, employees and officers before any court or  
109 administrative body, notwithstanding any other provision of this code to the contrary. The counsel  
110 may be employed either on a salaried basis or on a reasonable fee basis. In addition, the  
111 ~~commission~~ OPE may, but is not required to, call upon the Attorney General for legal assistance

112 and representation as provided by law;

113 ~~(14)~~ (5) Employ a ~~Chancellor for Higher Education~~ Director, subject to the approval of the  
114 Governor, pursuant to §18B-1B-5 of this article code;

115 ~~(15)~~ (6) Employ other staff as necessary and appropriate to carry out the duties and  
116 responsibilities of the ~~commission and the council~~, in accordance with article four of this chapter  
117 OPE;

118 ~~(16)~~ (7) Provide suitable offices in Kanawha County for the ~~chancellor, vice chancellors~~  
119 director and other staff;

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

126 ~~(18)~~ Approve the total compensation package from all sources for presidents of institutions  
127 under its jurisdiction, except the exempted schools, as proposed by the governing boards. The  
128 governing boards, except the exempted schools, must obtain approval from the commission of  
129 the total compensation package both when institutional presidents are employed initially and  
130 afterward when any change is made in the amount of the total compensation package: *Provided*,  
131 That the Commission will receive notice, but need not approve or confirm, an increase in the  
132 compensation of an institutional president that is exactly in the ratio of compensation increases  
133 allocated to all institutional employees and approved by the governing board to expressly include  
134 the president;

135 ~~(19)~~ Assist and facilitate the work of the institutions to implement the policy of the state to  
136 assure that parents and students have sufficient information at the earliest possible age on which  
137 to base academic decisions about what is required for students to be successful in college, other

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

140 ~~(20) Approve and implement a uniform standard jointly with the council to determine which~~  
141 ~~students shall be placed in remedial or developmental courses. The standard shall be aligned~~  
142 ~~with college admission tests and assessment tools used in West Virginia and shall be applied~~  
143 ~~uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of~~  
144 ~~the standard which they shall communicate to the State Board of Education and the state~~  
145 ~~superintendent of Schools;~~

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

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

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

152 ~~(C) Notwithstanding any other provision of law or this code to the contrary, the council,~~  
153 ~~commission and governing boards are not subject to the jurisdiction of the Chief Technology~~  
154 ~~Officer for any purpose~~

155 ~~(22) (8)~~ Establish and implement policies and procedures to ensure that a student may  
156 transfer and apply toward the requirements for a bachelor's degree the maximum number of  
157 credits earned at any regionally accredited in-state or out-of-state community and technical  
158 college with as few requirements to repeat courses or to incur additional costs as are consistent  
159 with sound academic policy;

160 ~~(23) (9)~~ Establish and implement policies and procedures to ensure that a student may  
161 transfer and apply toward the requirements for any degree the maximum number of credits earned  
162 at any regionally accredited in-state or out-of-state higher education institution with as few  
163 requirements to repeat courses or to incur additional costs as are consistent with sound academic



164 policy;

165 ~~(24) (10)~~ Establish and implement policies and procedures to ensure that a student may  
166 transfer and apply toward the requirements for a master's degree the maximum number of credits  
167 earned at any regionally accredited in-state or out-of-state higher education institution with as few  
168 requirements to repeat courses or to incur additional costs as are consistent with sound academic  
169 policy;

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

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

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

187 ~~(28)~~ Submit to the appropriate agencies of the executive and legislative branches of state  
188 government an appropriation request that reflects recommended appropriations for the  
189 commission and the governing boards under its jurisdiction. The commission shall submit as part

190 of its appropriation request the separate recommended appropriation request it received from the  
191 council, both for the council and for the governing boards under the council's jurisdiction, including  
192 the exempted schools. The commission annually shall submit the proposed allocations based on  
193 each institution's progress toward meeting the goals of its compact;

194 ~~(29) The commission may assess institutions under its jurisdiction, including the exempted~~  
195 ~~schools, for the payment of expenses of the commission or for the funding of statewide higher~~  
196 ~~education services, obligations or initiatives related to the goals set forth for the provision of public~~  
197 ~~higher education in the state: *Provided*, That the commission may not assess institutions pursuant~~  
198 ~~to this subdivision on or after July 1, 2018;~~

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

202 ~~(34) (11) Pursuant to §29A-3A-1 et seq. of this code and §18B-1-6 of this chapter code,~~  
203 ~~promulgate rules necessary or expedient to fulfill the purposes of this chapter;~~

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

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

210 ~~(34) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this~~  
211 ~~chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the~~  
212 ~~commission, except the exempted schools. The rule shall include, but is not limited to, the~~  
213 ~~following:~~

214 ~~(A) Differences among institutional missions;~~

215 ~~(B) Strategies for promoting student access;~~

216 ~~(C) Consideration of charges to out-of-state students; and~~  
217 ~~(D) Such other policies as the commission and council consider appropriate;~~  
218 ~~(35) Assist governing boards in actions to implement general disease awareness~~  
219 ~~initiatives to educate parents and students, particularly dormitory residents, about meningococcal~~  
220 ~~meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and~~  
221 ~~activities that can increase risks; measures that can be taken to prevent contact or infection; and~~  
222 ~~potential benefits of vaccination. The commission shall encourage governing boards that provide~~  
223 ~~medical care to students to provide access to the vaccine for those who wish to receive it; and~~  
224 ~~(36) (12) Notwithstanding any other provision of this code to the contrary sell, lease,~~  
225 ~~convey or otherwise dispose of all or part of any real property that it owns, in accordance with~~  
226 ~~§18B-19-1 et seq. of this chapter code.~~  
227 ~~(37) (13) Policy analysis and research focused on issues affecting institutions of higher~~  
228 ~~education generally or a geographical region thereof Institutional research;~~  
229 ~~(38) Development and approval of institutional mission definitions except the exempted~~  
230 ~~schools, including use of incentive funds to influence institutional behavior in ways that are~~  
231 ~~consistent with public priorities~~  
232 ~~(39) (14) Academic program review and approval for governing boards under its~~  
233 ~~jurisdiction Review and approve academic programs for governing boards at state colleges and~~  
234 ~~universities, but not at exempt schools or Shepherd University. The review and approval includes~~  
235 ~~use of institutional missions as a template to judge the appropriateness of both new and existing~~  
236 ~~programs and the authority to implement needed changes.~~  
237 (A) The ~~commission's~~ OPE's authority to review and approve academic programs for the  
238 exempted schools and Shepherd University is limited to programs that are proposed to be offered  
239 at a new location not presently served by that institution: *Provided*, That West Virginia University  
240 and the West Virginia University Institute of Technology are subject to the ~~commission's~~ OPE's  
241 authority as provided in §18B-1C-2 of this ~~chapter~~ code;

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

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

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

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

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

252 (3) A new undergraduate program which is significantly similar to an existing program  
253 already in the geographic service area should not be implemented unless the institution  
254 requesting the new program demonstrates a compelling need in the service area that is not being  
255 met by the existing program: *Provided*, That the academic programs of the exempted schools are  
256 not to be taken into consideration except as it relates to academic programs offered at West  
257 Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

258 (C) The ~~commission~~ OPE shall approve or disapprove proposed academic degree  
259 programs in those instances where approval is required as soon as practicable. The ~~commission~~  
260 OPE shall maintain by rule a format model by which a new program approval shall be requested  
261 by an institution. When a request for approval of a new program is submitted to the ~~commission~~  
262 OPE, the ~~chancellor~~ director shall provide notice within two weeks as to whether the submission  
263 meets the required format, and if it does not the ~~chancellor~~ director shall identify each specific  
264 deficiency and return the request to the institution. The institution may re-file the request for  
265 approval with the ~~commission~~ OPE to address any identified deficiencies. Within 30 days after  
266 the ~~chancellor's~~ director's confirmation that the request meets the required format, the  
267 ~~commission~~ OPE shall either approve or disapprove the request for the new program. The

268 ~~commission~~ OPE may not withhold approval unreasonably.

269 ~~(40) Distribution of funds appropriated to the commission, including incentive and~~  
270 ~~performance-based funds~~

271 ~~(41) (15) Administration of state and federal student aid programs, under the supervision~~  
272 ~~of the vice chancellor for administration including promulgation of rules necessary to administer~~  
273 ~~those programs;~~

274 ~~(42) (16) Serving as the agent to receive and disburse public funds when a governmental~~  
275 ~~entity requires designation of a statewide higher education agency for this purpose;~~

276 ~~(43) Developing and distributing information, assessment, accountability and personnel~~  
277 ~~systems for state colleges and universities, including maintaining statewide data systems that~~  
278 ~~facilitate long-term planning and accurate measurement of strategic outcomes and performance~~  
279 ~~indicators;~~

280 ~~(44) Jointly with the council, promulgating and implementing rules for licensing and~~  
281 ~~oversight for both public and private degree-granting and nondegree-granting institutions that~~  
282 ~~provide post-secondary education courses or programs in the state. The council has authority~~  
283 ~~and responsibility for approval of all post-secondary courses or programs providing community~~  
284 ~~and technical college education as defined in section two, article one of this chapter;~~

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

289 ~~(46) (A) For all governing boards under its jurisdiction, except for the exempted schools,~~  
290 ~~the commission shall review institutional operating budgets, review and approve capital budgets,~~  
291 ~~and distribute incentive and performance-based funds;~~

292 ~~(B) For the governing boards of, the exempted schools, the commission shall distribute~~  
293 ~~incentive and performance-based funds and may review and comment upon the institutional~~

294 ~~operating budgets and capital budgets. The commission's comments, if any, shall be made part~~  
295 ~~of the governing board's minute record and shall be filed with the Legislative Oversight~~  
296 ~~Commission on Education Accountability;~~

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

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

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

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

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

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

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

319 ~~(d) The Higher Education Policy Commission shall examine the question of general~~

320 revenue appropriations to individual higher education institutions per student, and per credit hour,  
321 and by other relevant measures at all higher education institutions, including four-year  
322 baccalaureate institutions and the community and technical colleges, and on or before January  
323 1, 2018, the commission shall deliver its report to the Joint Committee on Government and  
324 Finance and the Legislative Oversight Commission on Education Accountability. This report shall  
325 include a recommendation to the Legislature on a formula for the allocation of general revenue to  
326 be appropriated to such institutions that provides for ratable funding across all four-year  
327 institutions and community and technical colleges on a ratable basis, by enrolled student, by credit  
328 hour or by other relevant measures. On such basis, the commission shall make a  
329 recommendation to the Legislature as to the amounts that each such institution should have  
330 appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general  
331 revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal  
332 year 2018

333 (17) Collect information pertaining to the benchmarks and performance indicators for state  
334 colleges and universities necessary to measure institutional progress in achieving state policy  
335 priorities and institutional missions pursuant to §18B-1D-7 of this code;

336 (18) Maintain procedures for the approval of a designated receiver to provide for the  
337 maintenance of student records of postsecondary educational institutions which cease to operate;  
338 and

339 (19) Develop standards by which postsecondary institutions are initially licensed to  
340 operate and to provide for the periodic renewals of any such license.

341 (b) In addition to the powers and duties provided in subsection (a) of this section and any  
342 other powers and duties assigned to it by law, OPE has other powers and duties necessary or  
343 expedient to accomplish the purposes of this article: *Provided*, That the provisions of this  
344 subsection shall not be construed to shift authority from the governing boards to OPE. Unless  
345 expressly authorized by this subsection to be a responsibility of OPE, all other responsibility for

346 governance and operation of the public institutions of higher education shall remain with the  
 347 governing boards.

**~~§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors and other staff~~ Director of the OPE.**

1 (a) The ~~commission~~ OPE, created by §18B-1B-1 of this ~~article~~ code, shall employ a  
 2 ~~Chancellor for Higher Education~~ director who is the Chief Executive Officer of the ~~Commission~~  
 3 OPE and who serves at its will and pleasure: Provided, That the director's employment is subject  
 4 to the approval of the Governor.

5 (b) The ~~commission~~ board of managers shall set the qualifications for the position of  
 6 ~~Chancellor~~ director and, when a vacancy occurs, shall conduct a thorough ~~nationwide~~ search for  
 7 qualified candidates. ~~A qualified candidate is one who meets at least the following criteria:~~

8 ~~(1) Possesses an excellent academic and administrative background;~~

9 ~~(2) Demonstrates strong communication skills;~~

10 ~~(3) Has significant experience and an established national reputation as a professional in~~  
 11 ~~the field of higher education;~~

12 ~~(4) Is free of institutional or regional biases; and~~

13 ~~(5) Holds or retains no other administrative position within a system of higher education~~  
 14 ~~while employed as chancellor~~

15 (c) The ~~commission~~ OPE shall conduct written performance evaluations of the ~~chancellor~~  
 16 director annually and may offer the ~~chancellor~~ director a contract not to exceed three years. At  
 17 the end of each contract period, the ~~commission~~ board of managers shall review the evaluations  
 18 and make a determination by vote of its members on continuing employment and compensation  
 19 level.

20 ~~(d) When filling a vacancy in the position of chancellor, the commission shall enter into an~~  
 21 ~~initial employment contract for one year with the candidate selected. At the end of the initial~~  
 22 ~~contract period, and each contract period thereafter, the commission shall review the evaluations~~



23 ~~and make a determination by vote of its members on continuing employment and compensation~~  
24 ~~level for the chancellor~~

25 ~~(e) (d) The commission board of managers sets the chancellor's director's salary. The~~  
26 ~~salary may not exceed by more than twenty percent the average annual salary of chief executive~~  
27 ~~officers of state systems of higher education in the states that comprise the membership of the~~  
28 ~~Southern Regional Education Board.~~

29 ~~(f) The commission may employ a Vice Chancellor for Health Sciences who serves at the~~  
30 ~~will and pleasure of the commission. The Vice Chancellor for Health Sciences shall coordinate~~  
31 ~~the West Virginia University School of Medicine, the Marshall University School of Medicine and~~  
32 ~~the West Virginia School of Osteopathic Medicine and also shall provide assistance to the~~  
33 ~~governing boards on matters related to medical education and health sciences. The Vice~~  
34 ~~Chancellor for Health Sciences shall perform all duties assigned by the chancellor, the~~  
35 ~~commission and state law. In the case of a vacancy in the office of Vice Chancellor of Health~~  
36 ~~Sciences, the duties assigned to this office by law are the responsibility of the chancellor or a~~  
37 ~~designee.~~

38 ~~(g) The commission shall employ a Vice Chancellor for Administration pursuant to section~~  
39 ~~two, article four of this chapter.~~

40 ~~(h) The commission may employ a Vice Chancellor for State Colleges who serves at the~~  
41 ~~will and pleasure of the commission. At a minimum, the Vice Chancellor for State Colleges shall~~  
42 ~~perform the following duties:~~

43 ~~(1) Provide assistance to the commission, the chancellor and the state colleges on matters~~  
44 ~~related to or of interest and concern to these institutions;~~

45 ~~(2) Advise, assist and consult regularly with the presidents and governing boards of each~~  
46 ~~state college;~~

47 ~~(3) Serve as an advocate and spokesperson for the state colleges to represent them and~~  
48 ~~to make their interests, views and issues known to the chancellor, the commission and~~

49 governmental agencies;

50 ~~(4) Perform all duties assigned by the chancellor, the commission and state law.~~

51 ~~In addition, the Vice Chancellor for State Colleges shall provide staff assistance to the~~  
52 ~~presidents and governing boards to the extent practicable~~

53 ~~(i) (e)~~ On behalf of the ~~commission~~ OPE, the ~~chancellor~~ director may enter into  
54 agreements with any state agency or political subdivision of the state, any state institution of  
55 higher education or any other person or entity to enlist staff assistance to implement the powers  
56 and duties assigned by ~~the commission~~ OPE or by state law.

57 ~~(j) (f)~~ The ~~chancellor~~ director is responsible for the daily operations of the ~~commission~~ OPE  
58 and has the following responsibilities: ~~relating to the commission and the governing boards under~~  
59 ~~its jurisdiction~~

60 (1) To carry out policy and program directives of the ~~commission~~ OPE;

61 (2) To develop and submit annual reports on the implementation plan to achieve the goals  
62 and objectives set forth in section one-a, article one and article one-d of this chapter; ~~and in the~~  
63 ~~compacts~~

64 (3) To prepare and submit to the ~~commission~~ OPE for its approval the proposed budget  
65 of the ~~commission including the offices of the chancellor and the vice chancellors~~ OPE;

66 ~~(4) To assist the governing boards in developing rules, subject to the provisions of section~~  
67 ~~six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards~~  
68 ~~to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-~~  
69 ~~a of this code. The commission and the council, either separately or jointly as appropriate, are~~  
70 ~~responsible for ensuring that any policy which is required to be uniform across the institutions is~~  
71 ~~applied in a uniform manner;~~

72 ~~(5) To consult with institutions on human relations policies and rules~~

73 (4) To hire staff sufficient to carry out the work of the OPE;

74           ~~(6)~~ (5) To perform all other duties and responsibilities assigned by the ~~commission~~ OPE  
75 or by state law.

76           ~~(k)~~ (g) The ~~chancellor~~ director shall be reimbursed for all actual and necessary expenses  
77 incurred in the performance of all assigned duties and responsibilities.

78           ~~(l)~~ The ~~chancellor, with the commission, advises the Legislature on matters of higher~~  
79 ~~education in West Virginia. The chancellor shall work closely with the Legislative Oversight~~  
80 ~~Commission on Education Accountability and with the elected leadership of the state to ensure~~  
81 ~~that they are fully informed about higher education issues and that the commission fully~~  
82 ~~understands the goals, objectives and priorities for higher education that the Legislature has~~  
83 ~~established by law.~~

84           ~~(m)~~ The ~~chancellor may design and develop for consideration by the commission new~~  
85 ~~statewide or region-wide initiatives in accordance with the goals set forth in section one-a, article~~  
86 ~~one and article one-d of this chapter, and the public policy agenda articulated by the commission.~~  
87 ~~In those instances where the initiatives to be proposed have a direct and specific impact or~~  
88 ~~connection to community and technical college education as well as to baccalaureate and~~  
89 ~~graduate education, the Chancellor for Higher Education and the Chancellor for Community and~~  
90 ~~Technical College Education shall design and develop the initiatives jointly for consideration by~~  
91 ~~the commission and the council~~

92           ~~(n)~~ (h) To further the goals of cooperation and coordination between the ~~commission~~ OPE  
93 and the State Board of Education, the ~~chancellor~~ director serves as an ex officio, nonvoting  
94 member of the state board. The ~~chancellor~~ director shall work closely with members of the State  
95 Board of Education and with the State Superintendent of Schools to assure that the following  
96 goals are met:

97           (1) Development and implementation of a seamless kindergarten-through-college system  
98 of education; and

99           (2) Appropriate coordination of missions and programs.

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

1 [Repealed]

**ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**

**§18B-1D-1. Legislative intent and purpose; short title; rules required.**

1 (a) The intent of the Legislature in the enactment of this article is to outline and organize  
2 the elements of accountability for public higher education into an effective, coherent system to  
3 provide guidance to the state institutions of higher education, the ~~commission~~ OPE and the  
4 council and to clarify the roles, relationships and responsibilities between and among these  
5 entities, the citizens of West Virginia and elected state officials. The main purposes of the  
6 accountability system are as follows:

7 (1) To develop agreement on higher education goals, objectives and priorities through  
8 negotiation and consensus-building between elected officials acting on behalf of the citizens of  
9 the state and the ~~commission~~ OPE and the council and institutions which receive public funds  
10 and provide education services;

11 (2) To create a seamless education system and hold boards and institutions accountable  
12 for meeting state goals and objectives.

13 (3) To provide a data-driven, step-by-step process to determine the progress of public  
14 higher education in addressing established goals, objectives and priorities;

15 (4) To promote cooperation and collaboration among all entities which are involved in the  
16 delivery of public education in West Virginia; and

17 (5) To provide for generation, collection and dissemination of data on which sound state-  
18 level policy decisions can be based. Possible uses of this data include the following:

19 (A) Identifying institutions and systems that increase quality and productivity; and

20 (B) Creating a mechanism to target a portion of state appropriations to institutions and  
21 systems based on performance in meeting established state goals and objectives.

22 (b) This article, together with ~~section one-a, article one of this chapter and~~ §18-1-4 of this

23 code, shall be known as and may be cited as Vision 2020: An Education Blueprint for 2020.

24 ~~(c) By October 1, 2008, the commission and the council shall propose rules for legislative~~  
 25 ~~approval in accordance with the provisions of section six, article one of this chapter and article~~  
 26 ~~three-a, chapter twenty-nine-a of this code concerning the accountability system for higher~~  
 27 ~~education outlined in this article.~~

28 ~~(1) The commission and the council may propose rules jointly or separately and may~~  
 29 ~~choose to address all of the accountability system in a single rule or may propose additional rules~~  
 30 ~~to cover specific elements.~~

31 ~~(2) At a minimum, the rules shall address the respective responsibilities of the various~~  
 32 ~~parties, the development of statewide master plans, the process of entering into institutional and~~  
 33 ~~state compacts, performance indicators and institution and state level reporting to ensure that~~  
 34 ~~higher education is accountable to the citizens of West Virginia~~

**§18B-1D-2. Definitions.**

1 (a) *General.* — For the purposes of this article and §18B-1-1a of this ~~chapter~~ code, terms  
 2 have the meaning ascribed to them in §18B-1-2 of this ~~chapter~~ code, unless the context in which  
 3 the term is used clearly requires a different meaning or a specific definition is provided in this  
 4 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 §18B-1-1a of this ~~chapter~~ code. The system includes legislative goals, objectives and priorities;  
 10 public policy agendas; statewide master plans; state and institutional compacts; implementation  
 11 plans; institutional mission statements and master plans; and the statewide report card.

12 (2) “Education partnership to achieve state goals and objectives” or “education  
 13 partnership” means the formal and informal working relationships established between and

14 among the State of West Virginia, ~~the commission~~ the council, the State Board of Education and  
15 State Department of Education and the state institutions of higher education for the purpose of  
16 achieving state goals and objectives.

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

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

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

27 ~~(6) "Institutions under the jurisdiction of the commission" relative to the accountability~~  
28 ~~system established by this article and section one-a, article one of this chapter means Bluefield~~  
29 ~~State College, Concord University, Fairmont State University, Glenville State College, Shepherd~~  
30 ~~University, West Liberty State College, and West Virginia State University~~

31 ~~(7)~~ (6) "Institutions under the jurisdiction of the council" relative to the accountability  
32 system established by this article and §18B-1-1a of this ~~chapter~~ code means Blue Ridge  
33 Community and Technical College, the Community and Technical College at West Virginia  
34 University Institute of Technology, Eastern West Virginia Community and Technical College,  
35 Marshall Community and Technical College, New River Community and Technical College,  
36 Pierpont Community and Technical College, Southern West Virginia Community and Technical  
37 College, West Virginia Northern Community and Technical College, West Virginia State  
38 Community and Technical College and West Virginia University at Parkersburg.

39 ~~(8)~~ (7) "Net college costs" means the total cost of tuition, room and board minus the

40 amount of financial aid a student receives.

41 ~~(9)~~ (8) "Objectives" means the ends to be accomplished or attained within a specified  
42 period of time for the purpose of meeting the established goals.

43 ~~(10)~~ (9) "Priority" or "priorities" means the order in which objectives are to be addressed  
44 for the purpose of achieving state goals.

45 ~~(11)~~ (10) "Strategy" or "strategies" means specific activities carried out by public higher  
46 education which are directed toward accomplishing specific objectives.

47 ~~(12)~~ (11) "Statewide master plan" or "system master plan" means a document developed  
48 by the council ~~or commission~~ that sets forth community and technical college system goals,  
49 objectives and strategies and is aligned with, but not limited to, meeting state goals, objectives  
50 and priorities.

51 ~~(13)~~ (12) "STEM courses and programs" means curricula leading to a degree or other  
52 recognized credential in the science, technology, engineering and mathematics fields of study or  
53 specialization.

54 ~~(14)~~ (13) "State compact" means a formal, written agreement between the council and/or  
55 the commission and at least one other member of the education partnership to achieve state goals  
56 and objectives where significant collaboration and commitment of resources between the parties  
57 to the agreement is required in order to achieve the desired results.

**§18B-1D-3. State vision for public higher education; findings; establishment of objectives.**

1 [Repealed]

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

1 ~~(a) It is the responsibility of the commission, in cooperation with the council, to develop,~~  
2 ~~oversee and advance the public policy agenda mandated by section four, article one-b of this~~

3 ~~chapter to address the goals and objectives established pursuant to this article and section one-~~  
4 ~~a, article one of this chapter, including, but not limited to, aligning state and institutional compacts,~~  
5 ~~master plans, implementation plans and institutional missions for institutions of higher education~~  
6 ~~except the exempted schools with state goals and objectives to accomplish the purposes of this~~  
7 ~~article.~~

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

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

22 (4) (A) Ensuring that data systems collect the essential information state-level  
23 policymakers' need to answer key policy questions to fulfill the purposes of the accountability  
24 system established pursuant to this article and §18B-1-1a of this ~~chapter~~ code;

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

28 (3) (C) Ensuring that reports provide data analyses to determine if students entering the



29 public higher education systems are prepared for post-secondary education and if students  
30 obtaining degrees, certificates or other credentials are prepared to pursue careers or to continue  
31 their education.

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

**§18B-1D-5. Master plans; reports; approval process.**

1 (a) The ~~commission~~ OPE and the council each shall develop a master plan for public  
2 higher education in conjunction with the boards of governors and the presidents of the state  
3 colleges that is closely aligned with the goals and objectives of this article and §18B-1-1a of this  
4 ~~chapter~~ code as they relate to the missions of institutions under their respective jurisdictions.

5 (b) The authority of the ~~commission~~ OPE and the council, respectively, related to  
6 developing and implementing statewide master plans is subject to the following conditions:

7 (1) The master plans shall be established for periods of not more than five years.

8 (2) The master plans in place on the effective date of this article continue in effect until the  
9 end of the five-year planning cycle unless amended or rescinded by the ~~commission~~ OPE or  
10 council, respectively, pursuant to this article.

11 (3) Any new master plan proposed by the ~~commission~~ OPE or council shall be  
12 communicated to the Legislative Oversight Commission on Education Accountability and may not  
13 be adopted or implemented without the approval of that body;

14 (4) The ~~commission~~ OPE and council each shall perform a comprehensive review of its  
15 master plan at least annually and shall revise it periodically as appropriate to meet state goals  
16 and objectives.

17 (5) The ~~commission~~ OPE and the council each shall review the progress of its higher  
18 education system in meeting the goals and objectives of the master plan and report to the

19 Legislative Oversight Commission on Education Accountability, with detailed recommendations  
 20 for amending the plan, by January 1, 2009, and annually thereafter.

21 (6) At the end of each five-year planning cycle and as an integral part of the preparation  
 22 of a new master plan, the ~~commission~~ OPE and the council, respectively, shall prepare and submit  
 23 to the Legislative Oversight Commission on Education Accountability a comprehensive report  
 24 containing at least the following:

25 (A) A detailed, data-based analysis of the progress of the system and the institutions within  
 26 the system toward meeting each goal and objective included in the current plan; and

27 (B) A strategy for using this data as a basis for developing the master plan for the next  
 28 planning cycle.

29 (c) The master plan shall include a detailed set of system objectives designed to meet the  
 30 state goals and objectives outlined in this article and §18B-1-1a of this ~~chapter~~ code, including,  
 31 but not limited to, the following:

32 (A) A well-developed analysis of missions, degree offerings, resource requirements,  
 33 physical plant needs, personnel needs, enrollment levels and other planning determinants and  
 34 projections for public higher education and other matters necessary in such a plan to assure that  
 35 the needs of the state for a quality system of higher education are addressed; and

36 (B) A strategy for cooperation and collaboration with the state Board of Education and  
 37 State Department of Education, state institutions of higher education, the counterpart state  
 38 coordinating board and other relevant education providers to assure that a comprehensive and  
 39 seamless system of education is developed and implemented for West Virginia.

**§18B-1D-6. State compacts; legislative intent; rule required; implementation plans  
 authorized.**

1 [Repealed]

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

[Repealed]

**§18B-1D-8. Institutional and system report cards.**

1           (a) The purpose of the institutional and statewide report cards is to make information  
2 available to parents, students, faculty, staff, state policymakers and the general public on the  
3 quality and performance of public higher education. The focus of the report cards is to determine  
4 annual progress of the ~~commission~~ OPE, the council and institutions under their respective  
5 jurisdictions toward achieving state goals and objectives identified in this article and §18B-1-1a of  
6 this ~~chapter~~ code and system goals and objectives contained in the statewide master plans of the  
7 ~~commission~~ OPE and council created pursuant to §18B-1D-5 of this ~~article~~ code.

8           (b) The information contained in the report cards shall be consistent and comparable  
9 between and among state institutions of higher education. If applicable, the information shall allow  
10 for easy comparison with higher education-related data collected and disseminated by the  
11 Southern Regional Education Board, the United States Department of Education and other  
12 education data-gathering and data-disseminating organizations upon which state policymakers  
13 frequently rely in setting policy.

14           (c) The rules required by §18B-1D-1(c) of this ~~article~~ code shall provide for the collection,  
15 analysis and dissemination of information on the performance of the state institutions of higher  
16 education, including health sciences education, in relation to the findings, goals and objectives  
17 set forth in this article and §18B-1-1a of this ~~chapter~~ code and those contained in the statewide  
18 master plans of the ~~commission~~ and council developed pursuant to §18B-1D-5 of this ~~article~~ code.

19           (1) The objective of this portion of the rule is to ensure that the Legislative Oversight  
20 Commission on Education Accountability and others identified in subsection (a) of this section are  
21 provided with full and accurate information while minimizing the institutional burden of  
22 recordkeeping and reporting.

23           (2) This portion of the rule shall identify various indicators of student and institutional  
24 performance that, at a minimum, must be reported annually, set forth general guidelines for the

25 collection and reporting of data and provide for the preparation, printing and distribution of report  
26 cards under this section.

27 (d) The report cards shall be analysis-driven, rather than simply data-driven, and shall  
28 present information in a format that can inform education policymaking. They shall include an  
29 executive summary which outlines significant trends, identifies major areas of concern and  
30 discusses progress toward meeting state and system goals and objectives. They shall be brief  
31 and concise, reporting required information in nontechnical language. Any technical or supporting  
32 material to be included shall be contained in a separate appendix.

33 (e) The statewide report card shall include the data for each separately listed, applicable  
34 indicator identified in the rule promulgated pursuant to subsection (c) of this section and the  
35 aggregate of the data for all public institutions of higher education.

36 (f) The statewide report card shall be prepared using actual institutional, state, regional  
37 and national data, as applicable and available, indicating the present performance of the individual  
38 institutions, the governing boards and the state systems of higher education. Statewide report  
39 cards shall be based upon information for the current school year or for the most recent school  
40 year for which the information is available, in which case the year shall be clearly noted.

41 ~~(g) The president or chief executive officer of each state institution of higher education~~  
42 ~~shall prepare and submit annually all requested data to the commission at the times established~~  
43 ~~by the commission~~

44 ~~(h) (g)~~ The higher education central office OPE staff under the direction of the Vice  
45 ~~Chancellor for Administration~~ shall provide technical assistance to each institution and governing  
46 board in data collection and reporting and is responsible for assembling the statewide report card  
47 from information submitted by each governing board.

48 ~~(i) (h)~~ The statewide report card shall be completed and disseminated with copies to the  
49 Legislative Oversight Commission on Education Accountability prior to January 1 of each year  
50 and the staff of the ~~commission~~ OPE and the council shall prepare a report highlighting specifically

51 the trends, progress toward meeting goals and objectives and major areas of concern for public  
 52 higher education, including medical education, for presentation to the Legislative Oversight  
 53 Commission on Education Accountability at the interim meetings in January, 2009, and annually  
 54 thereafter.

55 (j) (i) For a reasonable fee, the ~~Vice Chancellor for Administration~~ OPE and the council  
 56 shall make copies of the report cards, including any appendices of supporting material, available  
 57 to any individual requesting them.

## ARTICLE 2A. INSTITUTIONAL BOARD OF GOVERNORS.

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

1 (a) The governing boards of community and technical colleges are subject to the oversight  
 2 of ~~the commission or the council. as appropriate, except that the authority of the commission~~  
 3 ~~relating to the exempted schools is limited to the specific authorities granted under this chapter~~

4 (b) The ~~Chancellor for Higher Education and the Chancellor for Community and Technical~~  
 5 College Education, under the supervision of ~~their respective boards~~ the council board, ~~are is~~  
 6 responsible for the coordination of policies, purposes and rules of the governing boards ~~except~~  
 7 ~~the exempted schools~~ of community and technical colleges and shall provide for and facilitate  
 8 sufficient interaction among the governing boards and between the governing boards and the  
 9 State Board of Education to meet the goals and objectives provided in the compacts and in section  
 10 one-a, article one and article one-d of this chapter.

11 (c) The governing boards of community and technical colleges and the State Board of  
 12 Education shall provide all information requested by ~~the commission and the council~~, whether the  
 13 request is made separately or jointly, in an appropriate format and in a timely manner.

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

17 (2) WVNET, on behalf of the ~~commission~~ OPE, the or council or both, shall generate  
 18 reports from the data accessed for the purposes set forth in §18B-1A-5, §18B-1D-8 and §18B-  
 19 1D-10 of this code.

20 (3) All data accessed or received from an institution shall be treated in a manner consistent  
 21 with the privacy protections outlined in §18B-1D-10 of this code.

**§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 programs. The  
22 ~~commission may review and comment upon the master plan of an exempted school. The~~  
23 ~~commission may review, but may not approve or disapprove, additions or deletions of degree~~  
24 ~~programs, except as expressly provided for in subdivision (39), subsection (a), section four of~~  
25 ~~article one-b of this chapter~~

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

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

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

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

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

45 (g) Review, at least every five years, all academic programs offered at the institution under  
46 its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in

47 relation to established state goals, objectives and priorities, the master plan, the compact and the  
48 education and workforce needs of its responsibility district. As a part of the review, each governing  
49 board shall require the institution under its jurisdiction to conduct periodic studies of its graduates  
50 and their employers to determine placement patterns and the effectiveness of the education  
51 experience. Where appropriate, these studies should coincide with the studies required of many  
52 academic disciplines by their accrediting bodies;

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

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

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

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



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

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

79 (n) Appoint a president for the institution under its jurisdiction, subject to §18B-1B-6 of this  
80 code;

81 (o) Conduct written performance evaluations of the president, pursuant to §18B-1B-6 of  
82 this code;

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

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

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

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

94 (t) Delegate, with prescribed standards and limitations, the part of its power and control  
95 over the business affairs of the institution to the president in any case where it considers the  
96 delegation necessary and prudent in order to enable the institution to function in a proper and  
97 expeditious manner and to meet the requirements of its master plan and compact. If a governing  
98 board elects to delegate any of its power and control under this subsection, it shall enter the

99 delegation in the minutes of the meeting when the decision was made and shall notify the  
100 ~~commission or~~ council, as appropriate. Any delegation of power and control may be rescinded by  
101 the appropriate governing board, the ~~commission or~~ council, as appropriate, at any time, in whole  
102 or in part. ~~except that the commission may not revoke delegations of authority made by the~~  
103 ~~governing board of the exempted schools~~

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

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

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

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

125 transactions.

126 (2) The Secretary of the Department of Administration may suspend a governing board's  
127 participation in the standardized electronic system if he or she certifies to the Governor that the  
128 governing board has failed repeatedly and substantially to comply with the department's policies  
129 for administering the electronic system;

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

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

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

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

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

## **ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL**

## COLLEGE EDUCATION.

### §18B-2B-6. Powers and duties of the council.

1 (a) The council is the sole agency responsible for administration of vocational-technical-  
2 occupational education and community and technical college education in the state. The council  
3 has jurisdiction and authority over the community and technical colleges and the statewide  
4 network of independently accredited community and technical colleges as a whole, including  
5 community and technical college education programs as defined in section two, article one of this  
6 chapter.

7 (b) The council shall propose rules pursuant to section six, article one of this chapter and  
8 article three-a, chapter twenty-nine-a of this code to implement the provisions of this section and  
9 applicable provisions of article one-d of this chapter:

10 (1) To implement the provisions of article one-d of this chapter relevant to community and  
11 technical colleges, the council may propose rules ~~jointly with the commission, or separately,~~ and  
12 may choose to address all components of the accountability system in a single rule or may  
13 propose additional rules to cover specific components;

14 (2) The rules pertaining to financing policy and benchmarks and indicators required by this  
15 section shall be filed with the Legislative Oversight Commission on Education Accountability by  
16 October 1, 2008. Nothing in this subsection requires other rules of the council to be promulgated  
17 again under the procedure set forth in article three-a, chapter twenty-nine-a of this code unless  
18 such rules are rescinded, revised, altered or amended; and

19 (3) The Legislature finds that an emergency exists and, therefore, the council shall  
20 propose an emergency rule or rules to implement the provisions of this section relating to the  
21 financing policy and benchmarks and indicators in accordance with section six, article one of this  
22 chapter and article three-a, chapter twenty-nine-a of this code by October 1, 2008. The  
23 emergency rule or rules may not be implemented without prior approval of the Legislative  
24 Oversight Commission on Education Accountability.

25 (c) The council has the following powers and duties relating to the authority established in  
26 subsection (a) of this section:

27 (1) Develop, oversee and advance the public policy agenda for community and technical  
28 college education for the purpose of accomplishing the mandates of this section, including, but  
29 not limited to, the following:

30 (A) Achieving the goals and objectives established in articles one and one-d of this  
31 chapter;

32 (B) Addressing the goals and objectives contained in the institutional compacts created  
33 pursuant to section seven, article one-d of this chapter; and

34 (C) Developing and implementing the master plan described in section five, article one-d  
35 of this chapter;

36 (2) Propose a legislative rule pursuant to subsection (b) of this section and article three-a,  
37 chapter twenty-nine-a of this code to develop and implement a financing policy for community and  
38 technical college education in West Virginia. The rule shall meet the following criteria:

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

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

43 (C) Establish a plan for strategic funding to strengthen capacity for support of community  
44 and technical college education; and

45 (D) Establish a plan that measures progress and provides performance-based funding to  
46 institutions which make significant progress in the following specific areas:

47 (i) Achieving the objectives and priorities established in article one-d of this chapter;

48 (ii) Serving targeted populations, especially working age adults twenty-five years of age  
49 and over;

50 (iii) Providing access to high-cost, high-demand technical programs in every region of the

51 state;

52 (iv) Increasing the percentage of functionally literate adults in every region of the state;

53 and

54 (v) Providing high-quality community and technical college education services to residents  
55 of every region of the state.

56 (3) Create a policy leadership structure relating to community and technical college  
57 education capable of the following actions:

58 (A) Developing, building public consensus around and sustaining attention to a long-range  
59 public policy agenda. In developing the agenda, the council shall seek input from the Legislature  
60 and the Governor and specifically from the State Board of Education and local school districts in  
61 order to create the necessary linkages to assure smooth, effective and seamless movement of  
62 students through the public education and post-secondary education systems and to ensure that  
63 the needs of public school courses and programs can be fulfilled by the graduates produced and  
64 the programs offered;

65 (B) Ensuring that the governing boards of the institutions under the council's jurisdiction  
66 carry out their duty effectively to govern the individual institutions of higher education; and

67 (C) Holding each community and technical college and the statewide network of  
68 independently accredited community and technical colleges as a whole accountable for  
69 accomplishing their missions and achieving the goals and objectives established in articles one,  
70 one-d and three-c of this chapter;

71 (4) Develop for inclusion in the statewide public agenda, a plan for raising education  
72 attainment, increasing adult literacy, promoting workforce and economic development and  
73 ensuring access to advanced education for the citizens of West Virginia;

74 (5) Provide statewide leadership, coordination, support, and technical assistance to the  
75 community and technical colleges and to provide a focal point for visible and effective advocacy  
76 for their work and for the public policy agendas approved by the commission and council;

77 (6) Review and adopt annually all institutional compacts for the community and technical  
78 colleges pursuant to the provisions of section seven, article one-d of this chapter;

79 (7) Fulfill the mandates of the accountability system established in article one-d of this  
80 chapter and report on progress in meeting established goals, objectives, and priorities to the  
81 elected leadership of the state;

82 (8) Propose a legislative rule pursuant to subsection (b) of this section and article three-a,  
83 chapter twenty-nine-a of this code to establish benchmarks and indicators in accordance with the  
84 provisions of this subsection;

85 (9) Establish and implement the benchmarks and performance indicators necessary to  
86 measure institutional progress:

87 (A) In meeting state goals, objectives, and priorities established in articles one and one-d  
88 of this chapter;

89 (B) In carrying out institutional missions; and

90 (C) In meeting the essential conditions established in article three-c of this chapter;

91 (10) Establish a formal process for identifying needs for capital investments and for  
92 determining priorities for these investments for consideration by the Governor and the Legislature  
93 as part of the appropriation request process. ~~Notwithstanding the language in subdivision eleven,  
94 subsection a, section four, article one-b of this chapter, the commission is not a part of the process  
95 for identifying needs for capital investments for the statewide network of independently accredited  
96 community and technical colleges;~~

97 (11) Draw upon the expertise available within the Governor's Workforce Investment Office  
98 and the West Virginia Development Office as a resource in the area of workforce development  
99 and training;

100 (12) Acquire legal services that are considered necessary, including representation of the  
101 council, its institutions, employees and officers before any court or administrative body,  
102 notwithstanding any other provision of this code to the contrary. The counsel may be employed

103 either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not  
104 required to, call upon the Attorney General for legal assistance and representation as provided  
105 by law;

106 (13) Employ a chancellor for community and technical college education pursuant to  
107 section three of this article;

108 (14) Employ other staff as necessary and appropriate to carry out the duties and  
109 responsibilities of the council consistent with the provisions of section two, article four of this  
110 chapter;

111 (15) Employ other staff as necessary and appropriate to carry out the duties and  
112 responsibilities of the council who are employed solely by the council;

113 (16) Provide suitable offices in Charleston for the chancellor and other staff: *Provided,*  
114 That the offices may be located outside of Charleston at a technology and research center:  
115 *Provided, however,* That the current employees of WVNET shall not be moved from Monongalia  
116 County without legislative approval;

117 (17) Approve the total compensation package from all sources for presidents of community  
118 and technical colleges, as proposed by the governing boards. The governing boards must obtain  
119 approval from the council of the total compensation package both when presidents are employed  
120 initially and subsequently when any change is made in the amount of the total compensation  
121 package;

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

126 (19) Establish and implement policies and programs, jointly with the community and  
127 technical colleges, through which students who have gained knowledge and skills through  
128 employment, participation in education and training at vocational schools or other education



129 institutions, or internet-based education programs, may demonstrate by competency-based  
130 assessment that they have the necessary knowledge and skills to be granted academic credit or  
131 advanced placement standing toward the requirements of an associate degree or a bachelor's  
132 degree at a state institution of higher education;

133 (20) Seek out and attend regional and national meetings and forums on education and  
134 workforce development-related topics, as council members consider critical for the performance  
135 of their duties. The council shall keep abreast of national and regional community and technical  
136 college education trends and policies to aid members in developing the policies for this state that  
137 meet the education goals and objectives established in articles one and one-d of this chapter;

138 (21) Assess community and technical colleges for the payment of expenses of the council  
139 or for the funding of statewide services, obligations or initiatives related specifically to the  
140 provision of community and technical college education;

141 (22) Promulgate rules allocating reimbursement of appropriations, if made available by the  
142 Legislature, to community and technical colleges for qualifying noncapital expenditures incurred  
143 in the provision of services to students with physical, learning or severe sensory disabilities;

144 (23) Assume the prior authority of the ~~commission~~ Higher Education Policy Commission  
145 in examining and approving tuition and fee increase proposals submitted by community and  
146 technical college governing boards as provided in section one, article ten of this chapter;

147 (24) Develop and submit to the ~~commission~~ Legislature, a single budget for community  
148 and technical college education that reflects recommended appropriations for community and  
149 technical colleges and that meets the following conditions:

150 (A) Incorporates the provisions of the financing rule mandated by this section to measure  
151 and provide performance funding to institutions which achieve or make significant progress  
152 toward achieving established state objectives and priorities;

153 (B) Considers the progress of each institution toward meeting the essential conditions set  
154 forth in section three, article three-c of this chapter, including independent accreditation; and

155 (C) Considers the progress of each institution toward meeting the goals, objectives, and  
156 priorities established in article one-d of this chapter and its approved institutional compact.

157 (25) Administer and distribute the independently accredited community and technical  
158 college development account;

159 (26) Establish a plan of strategic funding to strengthen capacity for support and assure  
160 delivery of high-quality community and technical college education in all regions of the state;

161 (27) Foster coordination among all state-level, regional and local entities providing post-  
162 secondary vocational education or workforce development and coordinate all public institutions  
163 and entities that have a community and technical college mission;

164 (28) Assume the principal responsibility for oversight of those community and technical  
165 colleges seeking independent accreditation and for holding governing boards accountable for  
166 meeting the essential conditions pursuant to article three-c of this chapter;

167 (29) Advise and consent in the appointment of the presidents of the community and  
168 technical colleges pursuant to section six, article one-b of this chapter. The role of the council in  
169 approving a president is to assure through personal interview that the person selected  
170 understands and is committed to achieving the goals and objectives established in the institutional  
171 compact and in articles one, one-d and three-c of this chapter;

172 (30) Provide a single, statewide link for current and prospective employers whose needs  
173 extend beyond one locality;

174 (31) Provide a mechanism capable of serving two or more institutions to facilitate joint  
175 problem-solving in areas including, but not limited to the following:

176 (A) Defining faculty roles and personnel policies;

177 (B) Delivering high-cost technical education programs across the state;

178 (C) Providing one-stop service for workforce training to be delivered by multiple  
179 institutions; and

180 (D) Providing opportunities for resource-sharing and collaborative ventures;

181 (32) Provide support and technical assistance to develop, coordinate, and deliver effective  
182 and efficient community and technical college education programs and services in all regions of  
183 the state;

184 (33) Assist the community and technical colleges in establishing and promoting links with  
185 business, industry and labor in the geographic areas for which each community and technical  
186 college is responsible;

187 (34) Develop alliances among the community and technical colleges for resource sharing,  
188 joint development of courses and courseware, and sharing of expertise and staff development;

189 (35) Serve aggressively as an advocate for development of a seamless curriculum;

190 (36) Cooperate with all providers of education services in the state to remove barriers  
191 relating to a seamless system of public and higher education and to transfer and articulate  
192 between and among community and technical colleges, state colleges and universities and public  
193 education, preschool through grade twelve;

194 (37) Encourage the most efficient use of available resources;

195 (38) Coordinate with the ~~commission~~ OPE in informing public school students, their  
196 parents and teachers of the academic preparation that students need in order to be prepared  
197 adequately to succeed in their selected fields of study and career plans, including presentation of  
198 academic career fairs;

199 (39) Jointly with the ~~commission~~ OPE, approve and implement a uniform standard, ~~as~~  
200 ~~developed by the chancellors~~, to determine which students shall be placed in remedial or  
201 developmental courses. The standard shall be aligned with college admission tests and  
202 assessment tools used in West Virginia and shall be applied uniformly by the governing boards  
203 throughout the public higher education system. The ~~chancellors~~ OPE and council shall develop a  
204 clear, concise explanation of the standard which the governing boards shall communicate to the  
205 State Board of Education and the State Superintendent of Schools;

206 (40) Develop and implement strategies and curriculum for providing developmental

207 education which shall be applied by any state institution of higher education providing  
208 developmental education;

209 (41) Develop a statewide system of community and technical college programs and  
210 services in every region of West Virginia for competency-based certification of knowledge and  
211 skills, including a statewide competency-based associate degree program;

212 (42) Review and approve all institutional master plans for the community and technical  
213 colleges pursuant to section four, article two-a of this chapter;

214 (43) Propose rules for promulgation pursuant to subsection (b) of this section and article  
215 three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and  
216 efficient performance of community and technical colleges in the state;

217 (44) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative  
218 rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule  
219 transferred pursuant to rules adopted by the council and provide technical assistance to the  
220 institutions under its jurisdiction to aid them in promulgating rules;

221 (45) Develop for inclusion in the higher education report card, as defined in section eight,  
222 article one-d of this chapter, a separate section on community and technical colleges. This section  
223 shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and  
224 indicators developed in subdivision (9) of this subsection;

225 (46) Facilitate continuation of the Advantage Valley Community College Network under  
226 the leadership and direction of Marshall Community and Technical College;

227 (47) Initiate and facilitate creation of other regional networks of affiliated community and  
228 technical colleges that the council finds to be appropriate and in the best interests of the citizens  
229 to be served;

230 (48) Develop with the State Board of Education plans for secondary and post-secondary  
231 vocational-technical-occupational and adult basic education, including, but not limited to the  
232 following:

233 (A) Policies to strengthen vocational-technical-occupational and adult basic education;  
234 and

235 (B) Programs and methods to assist in the improvement, modernization and expanded  
236 delivery of vocational-technical-occupational and adult basic education programs;

237 (49) Distribute federal vocational education funding provided under the Carl D. Perkins  
238 Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing  
239 financial assistance among secondary and post-secondary vocational-technical-occupational and  
240 adult basic education programs to help meet the public policy agenda.

241 In distributing funds the council shall use the following guidelines:

242 (A) The State Board of Education shall continue to be the fiscal agent for federal vocational  
243 education funding;

244 (B) The percentage split between the State Board of Education and the council shall be  
245 determined by rule promulgated by the council under the provisions of article three-a, chapter  
246 twenty-nine-a of this code. The council shall first obtain the approval of the State Board of  
247 Education before proposing a rule;

248 (50) Collaborate, cooperate and interact with all secondary and post-secondary  
249 vocational-technical-occupational and adult basic education programs in the state, including the  
250 programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of  
251 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of  
252 seamless curriculum and the elimination of duplicative programs;

253 (51) Coordinate the delivery of vocational-technical-occupational and adult basic  
254 education in a manner designed to make the most effective use of available public funds to  
255 increase accessibility for students;

256 (52) Analyze and report to the State Board of Education on the distribution of spending for  
257 vocational-technical-occupational and adult basic education in the state and on the availability of  
258 vocational-technical-occupational and adult basic education activities and services within the

259 state;

260 (53) Promote the delivery of vocational-technical-occupational education, adult basic  
261 education and community and technical college education programs in the state which emphasize  
262 the involvement of business, industry and labor organizations;

263 (54) Promote public participation in the provision of vocational-technical-occupational  
264 education, adult basic education and community and technical education at the local level,  
265 emphasizing programs which involve the participation of local employers and labor organizations;

266 (55) Promote equal access to quality vocational-technical-occupational education, adult  
267 basic education and community and technical college education programs to handicapped and  
268 disadvantaged individuals, adults in need of training and retraining, single parents, homemakers,  
269 participants in programs designed to eliminate sexual bias and stereotyping and criminal  
270 offenders serving in correctional institutions;

271 (56) Meet annually between the months of October and December with the Advisory  
272 Committee of Community and Technical College Presidents created pursuant to section eight of  
273 this article to discuss those matters relating to community and technical college education in which  
274 advisory committee members or the council may have an interest;

275 (57) Accept and expend any gift, grant, contribution, bequest, endowment or other money  
276 for the purposes of this article;

277 (58) Assume the powers set out in section nine of this article. The rules previously  
278 promulgated by the State College System Board of Directors pursuant to that section and  
279 transferred to the ~~commission~~ are hereby Higher Education Policy Commission were previously  
280 transferred to the council and shall continue in effect until rescinded, revised, altered or amended  
281 by the council;

282 (59) Pursuant to the provisions of subsection (b) of this section and article three-a, chapter  
283 twenty-nine-a of this code, promulgate a ~~uniform-joint~~ legislative rule ~~with the commission~~ for the  
284 purpose of standardizing, as much as possible, the administration of personnel matters among

285 ~~the institutions of higher education~~ community and technical colleges;

286 (60) Determine when a joint rule among the governing boards of the community and  
287 technical colleges is necessary or required by law and, in those instances and in consultation with  
288 the governing boards, promulgate the joint rule;

289 (61) Promulgate a joint rule ~~with the commission~~ establishing tuition and fee policy for all  
290 ~~institutions of higher education~~ community and technical colleges. The rule shall include, but is  
291 not limited to, the following:

292 (A) Comparisons with peer institutions;

293 (B) Differences among institutional missions;

294 (C) Strategies for promoting student access;

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

296 (E) Any other policies the ~~commission and council consider~~ considers appropriate;

297 (62) In cooperation with the West Virginia Division of Highways, study a method for  
298 increasing the signage signifying community and technical college locations along the state  
299 interstate highways, and report to the Legislative Oversight Commission on Education  
300 Accountability regarding any recommendations and required costs; and

301 (63) Implement a policy jointly with the ~~commission~~ OPE whereby any course credit  
302 earned at a community and technical college transfers for program credit at any other state  
303 institution of higher education and is not limited to fulfilling a general education requirement.

304 (d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this section,  
305 the council has the following general powers and duties related to its role in developing,  
306 articulating and overseeing the implementation of the public policy agenda for community and  
307 technical colleges:

308 (1) Planning and policy leadership including a distinct and visible role in setting the state's  
309 policy agenda for the delivery of community and technical college education and in serving as an  
310 agent of change;

311 (2) Policy analysis and research focused on issues affecting the community and technical  
312 college network as a whole or a geographical region thereof;

313 (3) Development and implementation of each community and technical college mission  
314 definition including use of incentive and performance funds to influence institutional behavior in  
315 ways that are consistent with achieving established state goals, objectives, and priorities;

316 (4) Academic program review and approval for the institutions under its jurisdiction,  
317 including the use of institutional missions as a template to judge the appropriateness of both new  
318 and existing programs and the authority to implement needed changes;

319 (5) Development of budget and allocation of resources for institutions delivering  
320 community and technical college education, including reviewing and approving institutional  
321 operating and capital budgets and distributing incentive and performance-based funding;

322 (6) Acting as the agent to receive and disburse public funds related to community and  
323 technical college education when a governmental entity requires designation of a statewide higher  
324 education agency for this purpose;

325 (7) Development, establishment and implementation of information, assessment and  
326 internal accountability systems, including maintenance of statewide data systems that facilitate  
327 long-term planning and accurate measurement of strategic outcomes and performance indicators  
328 for community and technical colleges;

329 (8) Jointly with the ~~commission~~ OPE, development, establishment and implementation of  
330 policies for licensing and oversight of both public and private degree-granting and nondegree-  
331 granting institutions that provide post-secondary education courses or programs;

332 (9) Development, implementation and oversight of statewide and regionwide projects and  
333 initiatives related specifically to providing community and technical college education such as  
334 those using funds from federal categorical programs or those using incentive and performance-  
335 based funding from any source; and

336 (10) Quality assurance that intersects with all other duties of the council particularly in the



337 areas of planning, policy analysis, program review and approval, budgeting and information and  
338 accountability systems.

339 (e) The council may withdraw specific powers of a governing board under its jurisdiction  
340 for a period not to exceed two years if the council makes a determination that any of the following  
341 conditions exist:

342 (1) The governing board has failed for two consecutive years to develop an institutional  
343 compact as required in section seven, article one-d of this chapter;

344 (2) The council has received information, substantiated by independent audit, of significant  
345 mismanagement or failure to carry out the powers and duties of the board of governors according  
346 to state law; or

347 (3) Other circumstances which, in the view of the council, severely limit the capacity of the  
348 board of governors to carry out its duties and responsibilities.

349 The period of withdrawal of specific powers may not exceed two years during which time  
350 the council is authorized to take steps necessary to reestablish the conditions for restoration of  
351 sound, stable and responsible institutional governance.

352 (f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of  
353 this section and any others assigned to it by law, the council has those powers and duties  
354 necessary or expedient to accomplish the purposes of this article; and

355 ~~(g) When the council and commission, each, is required to consent, cooperate, collaborate~~  
356 ~~or provide input into the actions of the other the following conditions apply:~~

357 ~~(1) The body acting first shall convey its decision in the matter to the other body with a~~  
358 ~~request for concurrence in the action;~~

359 ~~(2) The commission or the council, as the receiving body, shall place the proposal on its~~  
360 ~~agenda and shall take final action within sixty days of the date when the request for concurrence~~  
361 ~~is received; and~~

362 ~~(3) If the receiving body fails to take final action within sixty days, the original proposal~~

363 ~~stands and is binding on both the commission and the council.~~

**§18B-2B-7. Powers and duties of the chief executive officer.**

1           The chancellor for community and technical college education is the chief executive officer  
2 of the council and as such may exercise the powers and duties assigned by the council. The  
3 chancellor has the following powers and duties:

4           (1) To serve as the principal accountability point for the council for implementation of the  
5 public policy agenda as it relates to community and technical colleges;

6           (2) To assume principal responsibility for directing and assisting the work of the council;  
7 and

8           (3) To supervise and direct staff of the council as necessary and appropriate to carry out  
9 the duties and responsibilities of this article.

10           (A) ~~On the effective date of this section, all~~ All personnel employed by the ~~commission~~  
11 Higher Education Policy Commission and under the supervision of the vice chancellor for  
12 community and technical college education and workforce development on January 1, 2004, are  
13 transferred to the jurisdiction of the council and are under the direct supervision of the chancellor  
14 for community and technical college education.

15           (B) Prior to October 1, 2004, any such employee, including the chief executive officer of  
16 the council, may not be terminated or have his or her salary or benefit level reduced as the result  
17 of the governance reorganization set forth in this article.

18           (4) On behalf of the council, the chancellor may enter into agreements with any state  
19 agency or political subdivision of the state, any state higher education institution or any other  
20 person or entity to enlist staff assistance to implement the powers and duties assigned to the  
21 council by state law.

22           (5) The chancellor is responsible for the day-to-day operations of the council and has the  
23 following responsibilities:

24           (A) To carry out policy and program directives of the council;

25           (B) To develop and submit annual reports on the implementation plan to achieve the goals  
26 and objectives set forth in section one-a, article one of this chapter and in the institutional  
27 compacts;

28           (C) To prepare and submit to the council for its approval the proposed budget of the council  
29 including the office of the chancellor and necessary staff;

30           (D) To assist the governing boards in developing rules, subject to the provisions of section  
31 six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards  
32 to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-  
33 a of this code. The chancellor is responsible for ensuring that any policy which is required to be  
34 uniform across the institutions under the jurisdiction of the council is applied in a uniform manner;  
35 and

36           (E) To perform all other duties and responsibilities assigned by the council or by state law.

37           (6) The chancellor shall be reimbursed for all actual and necessary expenses incurred in  
38 the performance of all assigned duties and responsibilities.

39           (7) The council is the primary advocate for community and technical college education  
40 and, with the chancellor, advises the Legislature on matters of community and technical college  
41 education in West Virginia. The chancellor shall work closely with the Legislative Oversight  
42 commission on education accountability and with the elected leadership of the state to ensure  
43 that they are fully informed about community and technical college education issues and that the  
44 council fully understands the goals for higher education that the Legislature has established by  
45 law.

46           (8) The chancellor may design and develop for consideration by the council new statewide  
47 or regional initiatives directly related to community and technical college education and in  
48 accordance with the goals set forth in section one-a, article one of this chapter and the public  
49 policy agenda.

50           (9) The chancellor shall work closely with members of the state Board of Education and

51 with the State Superintendent of Schools to assure that the following goals are met:

52 (A) Development and implementation of a seamless kindergarten-through-college system  
53 of education; and

54 (B) Appropriate coordination of missions and programs. To further the goals of cooperation  
55 and coordination between the council and the state Board of Education, the chancellor serves as  
56 an ex officio, nonvoting member of the state Board of Education.

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

**§18B-3-3. Relationship of governing boards to the ~~commission~~ OPE and the council.**

1 (a) *Relationship between the ~~commission~~ OPE and the governing boards. --*

2 (1) The ~~commission~~ OPE functions as a state-level ~~coordinating board~~ service provider  
3 exercising its powers and duties in relation to the governing boards as prescribed by law;

4 (2) The primary ~~responsibility~~ responsibilities of the ~~commission~~ OPE ~~is~~ are to work  
5 collaboratively with the governing boards to ~~research, develop and propose policy that will achieve~~  
6 ~~the established goals, objectives, and priorities set forth in this chapter and chapter eighteen-c of~~  
7 ~~this code~~ provide services needed by public and private institutions of higher education and to  
8 perform the duties set forth in §18B-1B-4 of this code; and

9 (3) The ~~commission~~ OPE has specific powers and duties which include, but are not limited  
10 to, the following:

11 (A) Advocating for public higher education at the state level;

12 ~~(B) Jointly with the council, implementing the classification and compensation system~~  
13 ~~established by articles seven, eight, nine and nine-a of this chapter; and~~

14 ~~(C)~~ (B) Collecting and analyzing data, researching, developing recommendations, and  
15 advising the Legislature and the Governor on broad policy initiatives, use of incentive funding,  
16 national and regional trends in higher education and issues of resource allocation involving

17 multiple governing boards.

18 (b) *Relationship between the council and the governing boards.* -- (1) The council  
19 maintains all powers and duties assigned to it by law or rule relating to community and technical  
20 colleges as defined in section two, article one of this chapter;

21 (2) The council functions as a coordinating board for the institutions under its jurisdiction  
22 which make up the statewide network of independently-accredited community and technical  
23 colleges. In addition to recognizing the authority assigned by law to the council and abiding by  
24 rules duly promulgated by the council relating to the community and technical colleges, the  
25 governing boards shall exercise their authority and carry out their responsibilities in a manner that  
26 is consistent with and complementary to the powers and duties assigned by law or rule to the  
27 community and technical colleges or to the council;

28 (c) The governing boards shall work collaboratively with the ~~commission~~ OPE, the council  
29 and their staff to provide all information requested by the ~~commission~~ OPE or the council in an  
30 appropriate format and in a timely manner.

#### **ARTICLE 4. GENERAL ADMINISTRATION.**

##### **§18B-4-1. Employment of ~~chancellors~~ chancellor; designation of staff; offices.**

1 (a) The council ~~and commission each~~ shall employ a chancellor to assist in the  
2 performance of ~~their respective~~ the council's duties and responsibilities subject to the following  
3 conditions:

4 (1) ~~Each~~ The chancellor serves at the will and pleasure of the ~~hiring body~~ council.

5 (2) ~~Neither~~ The chancellor may not hold or retain any other administrative position within  
6 the system of higher education while employed as chancellor: Provided, That the chancellor may  
7 serve as the executive director of the OPS.

8 (3) ~~Each~~ The chancellor shall carry out the directives of the ~~body by whom employed~~  
9 council and shall collaborate with ~~that body~~ the council in developing policy options.

10 (4) The ~~commission~~ OPE is responsible to the council and the Chancellor for Community  
 11 and Technical College Education for providing services in areas essential to exercising the  
 12 powers and duties assigned to the council by law. The ~~commission~~ OPE may not charge the  
 13 council any fee for the provision of these essential services. The service areas include, but are  
 14 not limited to, legal services, research, technology, computing, finance and facilities, academic  
 15 affairs, telecommunications, human resources, student services and any other general areas the  
 16 council considers to be essential to the exercise of its legal authority. The services are provided  
 17 under the general supervision of the Vice Chancellor for Administration.

18 (5) For the purpose of developing or evaluating policy options, the ~~chancellors~~ chancellor  
 19 may request the assistance of the presidents and staff employed by the governing boards ~~under~~  
 20 ~~their respective jurisdictions~~ of the community and technical colleges.

21 (b) In addition to the staff positions designated in subdivision (4), subsection (a) of this  
 22 section, and section five, article one-b of this chapter, the Vice Chancellor for Administration,  
 23 employed pursuant to section two of this article, serves the offices of the ~~chancellors~~ chancellor  
 24 to discharge jointly the duties and responsibilities of the council ~~and commission~~.

25 (c) Suitable offices for the Vice Chancellor of Administration and other staff shall be  
 26 provided in Kanawha County.

**§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.**

1 (a) ~~By and with the advice and consent of the council, the commission~~ The council shall  
 2 employ a vice chancellor for administration who may not be dismissed without the consent of the  
 3 council:

4 (1) The individual serving as vice chancellor for administration on the effective date of this  
 5 section may continue to serve on an interim basis until the ~~commission and the council have~~  
 6 ~~agreed, jointly, on~~ hired a candidate to fill the position;

7 (2) The interim vice chancellor for administration may be considered as a candidate for

8 the position;

9 ~~(3) The position shall be filled on a permanent basis no later than October 1, 2004; and~~

10 ~~(4)~~ (3) Any vacancy occurring in this position shall be filled pursuant to the requirements  
11 of this section.

12 (b) Any reference in this chapter or chapter eighteen-c of this code to the senior  
13 administrator means the vice chancellor for administration.

14 (c) The vice chancellor for administration has a ministerial duty, in consultation with and  
15 under direction of the ~~chancellors~~ chancellor, to perform such functions, tasks and duties as may  
16 be necessary to carry out the policy directives of the council ~~and commission~~ and such other  
17 duties as may be prescribed by law.

18 (d) The vice chancellor for administration shall supervise such professional,  
19 administrative, clerical and other employees as may be necessary to these duties and shall  
20 delineate staff responsibilities as considered desirable and appropriate. It is the responsibility of  
21 the vice chancellor for administration, within the parameters of the total resources available, to  
22 supervise and direct the staff in such a way that the staff and resource needs of the council, ~~the~~  
23 ~~commission and the offices of the chancellors~~ are met.

24 (e) Any employee of the ~~commission or the council~~ whose job duties meet criteria listed in  
25 the system of job classifications as stated in article nine of this chapter is accorded the job title,  
26 compensation and rights established in the article as well as all other rights and privileges  
27 accorded classified employees by the provisions of this code.

28 (f) The office of the vice chancellor for administration and all personnel, except for the  
29 chancellor for community and technical college education and staff transferred to the jurisdiction  
30 of the council pursuant to subsection (a), section seven, article two-b of this chapter, who are  
31 employed on January 1, 2004, within the higher education central office ~~and the West Virginia~~  
32 ~~network for educational telecomputing~~ remain under the jurisdiction of the ~~commission~~ council.  
33 ~~Prior to October 1, 2004, any such employee may not be terminated or have his or her salary and~~

34 ~~benefit levels reduced as the result of the higher education reorganization that occurs on the~~  
35 ~~effective date of this section.~~

36 (g) The vice chancellor for administration shall follow state and national education trends  
37 and gather data on higher education needs.

38 (h) The vice chancellor for administration, in accordance with established guidelines and  
39 in consultation with and under the direction of the ~~chancellors~~ chancellor, shall administer,  
40 oversee or monitor all state and federal student assistance and support programs administered  
41 on the state level for the benefit of the community and technical colleges and their students,  
42 including those provided for in chapter eighteen-c of this code.

43 (i) The vice chancellor for administration has a fiduciary responsibility to administer the  
44 tuition and registration fee capital improvement revenue bond accounts of the governing boards.

45 (j) The vice chancellor for administration shall administer the purchasing system or  
46 systems of the council ~~and commission, the offices of the chancellors and the governing boards.~~  
47 ~~By mutual agreement, the commission and the council may delegate authority for the purchasing~~  
48 ~~systems or portions thereof to the institution presidents.~~

49 (k) ~~The vice chancellor for administration is~~ OPE and the council shall be responsible for  
50 the management of the West Virginia network for educational telecomputing (WVNET). ~~The vice~~  
51 ~~chancellor for administration~~ OPE and the council shall establish a computer advisory board,  
52 which shall be representative of higher education and other users of the West Virginia network  
53 for educational telecomputing as the ~~commission~~ OPE and council determine appropriate. It is  
54 the responsibility of the computer advisory board to recommend to the ~~commission~~ OPE and the  
55 council policies for a statewide shared computer system.

56 (l) ~~The central office, under the direction of the vice chancellor for administration,~~ The OPE  
57 shall provide necessary staff support to the ~~commission, the council and offices of the chancellors.~~

58 (m) ~~The vice chancellor for administration may administer any program or service~~  
59 ~~authorized or required to be performed by the board of trustees or the board of directors on June~~



60 ~~30, 2000, and not specifically assigned to another agency. In addition, the vice chancellor for~~  
61 ~~administration may administer any program or service authorized or required to be performed by~~  
62 ~~the commission, council or chancellors, but not assigned specifically to the commission, council~~  
63 ~~or chancellors. Any such program or service may include, but is not limited to, including, but not~~  
64 ~~limited to, telecommunications activities and other programs and services provided for under~~  
65 grants and contracts from federal and other external funding sources.

**§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 OPE shall make rules for the accreditation of colleges in this state except the governing boards  
4 of the exempted schools shall make rules for their respective institutions, and each shall  
5 determine the minimum standards for conferring degrees. The governing boards of the exempted  
6 schools shall promulgate rules pursuant to the provisions of section six, article one of this chapter  
7 for the accreditation of their respective institutions.

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

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

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

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

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

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

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

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

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

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

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

41 (2) Willfully provided false, misleading or incomplete information to the ~~commission~~OPE  
42 or council.

43 (h) The ~~commission~~OPE and council each shall compile the information collected  
44 pursuant to subdivisions (e), (f) and (g) of this section and submit a report on the information to  
45 the Legislative Oversight Commission on Education Accountability, but only after allowing the

46 institutions and opportunity to review the information prior to its submission to the Legislative  
 47 Oversight Commission on Education Accountability, annually beginning December 1, 2012. The  
 48 ~~commission~~OPE and council each shall make the information and report available to the public  
 49 in a form and manner that is accessible to the general public, including, but not limited to, posting  
 50 on its website.

**ARTICLE 7. PERSONNEL GENERALLY.**

**§18B-7-8. Reporting.**

1 [Repealed]

**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  
 2 different classes or categories of students enrolling at the state institution of higher education  
 3 under its jurisdiction, including the fixing of different tuition and fees for online course delivery,  
 4 and may include among the tuition and fees any one or more of the following as defined in section  
 5 one-b 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~~OPE or council, or both, as appropriate, and the Legislative Auditor a certified copy  
36 of the 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.

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

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

62 (4) A governing board may charge interest or fees for any deferred or installment payment  
63 plans.

64 (h) In addition to the other fees provided in this section, each governing board may impose,  
65 collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest  
66 research group if the students at the institution demonstrate support for the increased fee in a

67 manner and method established by that institution's elected student government. The fee may  
68 not be used to finance litigation against the institution.

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

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

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

74 (3) Authorizing a governing board to propose ~~to the commission, council or both, as~~  
75 ~~appropriate, a mandatory auxiliary fee under the following conditions: *Provided*, That the~~  
76 governing boards for the exempted schools may authorize a mandatory auxiliary fee without  
77 seeking approval of the ~~commission~~ OPE; and

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

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

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

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

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

91 ~~(j) A penalty may not be imposed by the commission or council upon any governing board~~  
92 ~~based upon the number of nonresidents who attend the institution unless the commission or~~

93 ~~council determines that admission of nonresidents to any institution or program of study within~~  
94 ~~the institution is impeding unreasonably the ability of resident students to attend the institution or~~  
95 ~~participate in the programs of the institution. The governing boards shall report annually to the~~  
96 ~~commission or council on the numbers of nonresidents and any other enrollment information the~~  
97 ~~commission or council may request.~~

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

103 ~~(1) (k) A tuition and fee increase No governing board, including governing Boards of the~~  
104 ~~Exempted Schools, may increase tuition and fees for resident students ~~proposed by a governing~~~~  
105 ~~board requires the approval of the commission or council, as appropriate, for any tuition and fee~~  
106 ~~increase greater than ten percent in any one year or where the increase would be more than~~  
107 ~~seven percent per year, averaged over a rolling three year period calculated by averaging the~~  
108 ~~proposed increase with the increase for the immediate two previous years;~~

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

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

117 ~~(B) Consistently achieves the benchmarks established in the compact pursuant to article~~  
118 ~~one-d of this chapter or the master plan for exempted schools in article two-a of this chapter,~~

119 ~~including the provisions of article one-d required in the master plan;~~

120 ~~(C) Continuously pursues the statewide goals for post-secondary education;~~

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

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

126 ~~(F) Demonstrates to the satisfaction of the commission or council that the governing board~~  
 127 ~~has considered the average per capita income of West Virginia families and their ability to pay for~~  
 128 ~~any increases; and~~

129 ~~(G) Demonstrates to the satisfaction of the commission or council that base appropriation~~  
 130 ~~increases have not kept pace with recognized nationwide inflationary benchmarks.~~

131 ~~(3) This section does not require equal increases among governing boards nor does it~~  
 132 ~~require any level of increase by a governing board.~~

133 ~~(4) (5) The commission OPE and council shall report to the Legislative Oversight~~  
 134 ~~Commission on Education Accountability regarding the basis for approving or denying each~~  
 135 ~~request as determined using the criteria established in this subsection.~~

**§18B-10-2. Higher education Community and technical college resource assessment.**

1 (a) Pursuant to the authority granted by section four, article one-b of this chapter, and  
 2 section six, article two-b of this chapter, the ~~commission and council jointly~~ shall establish a higher  
 3 community and technical college education resource assessment per student for each state  
 4 ~~institution of higher education under their respective jurisdictions~~ community and technical  
 5 college. Community and technical colleges shall transfer all funds collected pursuant to this  
 6 section to the council. ~~All other institutions shall transfer all funds collected pursuant to this section~~  
 7 ~~to the commission.~~ Any reference in this code to higher education community and technical  
 8 college resource fee means this higher education community and technical college resource



9 assessment.

10 (b) The ~~commission and council jointly~~ shall fix the assessment for the various institutions  
 11 and classes of students and may periodically change these assessments. ~~The amount of the~~  
 12 ~~assessment for each institution shall be prorated for part-time students.~~

13 (c) Each ~~institution~~ community and technical college shall maintain a level of support for  
 14 libraries and library supplies, including books, periodicals, subscriptions and audiovisual  
 15 materials, instructional equipment and materials; and for the improvement in quality and scope of  
 16 student services comparable to that level supported by the higher education resource fee  
 17 previously authorized by this section.

18 (d) The assessment shall be expended or allocated by the ~~commission or council~~ to meet  
 19 its general operating expenses or to fund statewide programs. To the maximum extent  
 20 practicable, the ~~commission and council~~ shall offset the impact, if any, on financially needy  
 21 students of any potential assessment increase under this section by allocating an appropriate  
 22 amount of the revenue to the state scholarship program to be expended in accordance with the  
 23 provisions of article five, chapter eighteen-c of this code.

**§18B-10-4. Medical education.**

1 [Repealed]

**ARTICLE 13. HIGHER EDUCATION -- INDUSTRY PARTNERSHIPS.**

**§18B-13-5. Use of state property and equipment; faculty.**

1 (a) The governing boards are authorized to provide for the low cost and economical use  
 2 and sharing of state property and equipment, including computers, research labs and other  
 3 scientific and necessary equipment to assist any qualified business within an approved research  
 4 park or zone or technology center. ~~The commission shall approve a schedule of nominal or~~  
 5 ~~reduced-cost reimbursements to the state for such use.~~

6 (b) The governing boards shall develop and provide for a program of release time,  
 7 sabbaticals or other forms of faculty involvement or participation with any qualifying business.

8           ~~(c) The Legislature finds that cooperation, communication and coordination are integral~~  
9 ~~components of higher education's involvement in economic development. In order to proceed in~~  
10 ~~a manner that is cost effective and time efficient, it is the duty of the commission to review and~~  
11 ~~coordinate such aspects of the programs administered by the governing boards. The review and~~  
12 ~~coordination may not operate to affect adversely sources of funding or any statutory~~  
13 ~~characterization of any program as an independent entity.~~

## **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 sometimes deserve greater consideration for state  
25 funding than new construction. However, new construction may deserve greater consideration  
26 than renovation when a state or system goal, objective or priority is implicated, as well as when  
27 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~~ OPE and council should scrutinize carefully all requests from  
34 institutions to incur additional debt in order to determine their effect on institution debt capacity  
35 and the impact 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~~ Council staff should participate in managing capital projects  
49 at smaller ~~institutions~~ community and technical colleges if the smaller ~~institution~~ community and  
50 technical colleges lacks the expertise necessary to plan, design and complete projects at or under  
51 budget.

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

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

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

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

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

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

**§18B-19-2. Definitions.**

1 As used in this article, the following terms have the meanings ascribed to them.

2 (a) "ADA" means the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

3 (b) "Auxiliary enterprise" means an entity that exists to furnish goods or services to  
4 students, faculty, staff or others; charges a fee directly related to, although not necessarily equal  
5 to, the cost of the goods or services; and is managed as essentially self-supporting.

6 (c) "Auxiliary facility" means a building or structure that is used for an auxiliary enterprise  
7 including, but not limited to, residence halls, food services, parking, intercollegiate athletics,  
8 faculty and staff housing, student unions, bookstores and other service centers.

9 (d) "Auxiliary fees" means funds derived from, but not limited to, the following sources:

10 (1) Parking fees received from any source;

11 (2) Revenues received from athletic events, including ticket sales, television revenues and  
12 skybox fees;

13 (3) Bookstore revenues;

14 (4) Student union vendor and user fees;

15 (5) Donations or grants from any external source;

16 (6) Facility rental fees; and

17 (7) Fees assessed to students to support auxiliary enterprises.

18 (e) "Capital planning" means a purposeful activity that focuses attention on long term  
19 physical plant objectives which should be accomplished in a logical sequence over time as  
20 opportunities arise and resources become available.

21 (f) "Capital project management" means planning, designing, bidding and providing  
22 construction administration and oversight of architectural, engineering and construction contracts  
23 and projects.

24 (g) "Deferred maintenance" means repair, maintenance and renewal of capital facilities  
25 which should be part of normal maintenance management, but which have been postponed to a

26 future budget cycle or until funds become available.

27 (h) "Educational and general capital fees" means the fees collected from students to pay  
 28 debt service for capital improvement bonds issued in the past by the Higher Education Policy  
 29 Commission or in the future by the ~~commission~~ OPE and or by governing boards for educational  
 30 and general facilities, for the maintenance of those facilities and to fund capital improvements in  
 31 those facilities on a cash basis.

32 (i) "Educational and general facility" means a building or structure used for instruction and  
 33 instructional support purposes, and includes classroom, laboratory, library, computer laboratory,  
 34 faculty and administrative office and other academic support spaces.

35 (j) "Extraordinary circumstance" or "extraordinary circumstances" means, a situation  
 36 involving life-safety issues, issues that would result in extensive damage to a facility if not  
 37 addressed immediately, any unforeseen opportunity to use external funds and any other situation  
 38 the ~~commission~~ OPE or council determines should warrant special consideration.

39 (k) "Life-safety" means a condition existing on a campus that, if not corrected immediately,  
 40 would jeopardize the safety and property of students, faculty, staff and the visiting public.

41 (l) "Maintenance" means the work necessary within a budget cycle to realize the originally  
 42 anticipated life of a fixed asset, including buildings, fixed equipment and infrastructure.

43 (m) "Governing board", and "state institution of higher education" ~~and "institution under~~  
 44 ~~the jurisdiction of the commission"~~ means all state institutions of higher education including  
 45 Marshall University and West Virginia University and their respective governing boards.

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

1 (a) ~~By December 31, 2017, the commission and council, jointly or separately, shall develop~~  
 2 a The system capital development oversight policy for approval was approved by the Legislative  
 3 Oversight Commission on Education Accountability. ~~At a minimum the initial~~ The oversight policy  
 4 shall from the date of this section, be limited in application to only those portions which are  
 5 specifically applicable to community and technical colleges. In the future, the oversight policy shall

6 be limited to community and technical colleges and shall continue to include the following:

7 (1) System goals for capital development;

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

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

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

18 (5) A process for governing boards at community and technical colleges to follow in  
19 developing and submitting campus development plans to the commission or council, as  
20 appropriate, for approval by the council or for confirmation by the commission, as appropriate;  
21 and

22 (6) A process for community and technical college governing boards to follow to ensure  
23 that sufficient revenue is generated for and applied toward facilities maintenance.

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

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

**§18B-19-4. Campus development plans.**

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

- 7 (1) The system capital development 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) An analysis as to all buildings and facilities as to the need for renovations, additions,  
24 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) An analysis of telecommunications, utilities and other infrastructure improvements that  
28 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) Not later than the next regularly scheduled meeting of the ~~commission or~~ council, as  
45 ~~applicable~~, following the fifth anniversary date after the ~~commission confirms~~ or council approves,  
46 as appropriate, the development plan of a governing board the governing board shall report on  
47 the progress made in the first five years to implement the campus development plan for each  
48 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 ~~confirmation of the commission or approved~~  
52 approval by the council. ~~as appropriate~~

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

**§18B-19-5. Capital appropriation requests.**

1 (a) The ~~commission~~ governing boards of all state institutions of higher education, other  
 2 than community or technical colleges, OPE, and the council each shall submit a prioritized capital  
 3 appropriation request annually to the state budget office as required by article two, chapter  
 4 eleven-b of this code consisting of major capital projects and maintenance projects.

5 (b) The ~~commission~~ governing boards of all state institutions of higher education, other  
 6 than community or technical colleges, OPE, and the council each shall develop a process for  
 7 governing boards to follow in submitting a list of major educational and general capital projects  
 8 so that a prioritized major capital project list, prepared by the ~~commission or council, as~~  
 9 ~~appropriate~~ governing boards of all state institutions of higher education, other than community  
 10 or technical colleges, OPE, and the council, as appropriate, may be submitted to the state budget  
 11 office by the applicable deadline.

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

13 (A) Projects identified in the governing board's campus development plan or plans. A  
 14 project on any community or technical college campus may not be included which is not contained  
 15 in the plan confirmed by the ~~commission~~ OPE or approved by the council, as appropriate, except  
 16 when extraordinary circumstances otherwise warrant;

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

21 (C) Any additional information required to be provided by the ~~commission,~~ OPE, the  
 22 council or state budget office.

23           (2) The ~~commission~~ OPE and council each shall rank the major capital projects submitted  
24 by the governing boards on any community or technical college campus according to priority  
25 consistent with the criteria outlined in the system capital development plan. The council and  
26 ~~commission~~ OPE may not submit to the state budget office a request for an institution which the  
27 ~~commission~~ OPE or council determines reasonably could not secure funding through the  
28 appropriation process during the following fiscal year.

29           (c) The ~~commission~~ OPE and council each shall develop a process for governing boards  
30 on any community or technical college campus to follow in submitting a list of major maintenance  
31 projects so that a prioritized maintenance project list, prepared by the ~~commission~~ OPE or council,  
32 as appropriate, may be submitted to the state budget office by the applicable deadline.

33           (1) Annually, the ~~commission~~ OPE and council, as appropriate, shall provide each  
34 governing board on any community or technical college campus a recommended building renewal  
35 calculation that identifies the funds that should be collected and invested in its buildings and  
36 facilities during the next fiscal year to maintain them and minimize deferred maintenance.

37           (2) As soon as it receives the building renewal calculation, each governing board on each  
38 community or technical college campus shall make realistic revenue estimates of the funds  
39 available for maintenance projects from educational and general capital fees, from auxiliary and  
40 auxiliary capital fees and from any other revenue that may be used for maintenance projects, as  
41 well as any anticipated reserves. The governing boards on each community or technical college  
42 campus then shall identify and submit proposed major maintenance projects, consistent with its  
43 campus development plan or plans, to be funded from these revenues.

44           (3) The ~~commission~~ OPE and council each shall report to the Legislative Oversight  
45 Commission on Education Accountability on the revenue available to governing boards on each  
46 community or technical college campus for educational and general and auxiliary maintenance  
47 projects, as well as any shortfalls based on building renewal formula calculation, and major  
48 maintenance projects that institutions propose to undertake during the upcoming fiscal year.

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

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

**§18B-19-6. Capital project financing.**

1           (a) The ~~commission and governing boards~~ of all state institutions of higher education,  
 2 other than community and technical colleges, jointly or singly, may issue revenue bonds for capital  
 3 project financing in accordance with section eight, article ten of this chapter.

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

8           ~~(c)~~ A governing board at any state institutions of higher education, other than community  
 9 and technical colleges may fund capital improvements on a cash basis, through bonding or  
 10 through notes or another financing method ~~that is approved by the commission and by the council,~~  
 11 ~~if appropriate. *Provided*, That the exempted schools shall not be required to get the approval of~~  
 12 ~~the commission.~~

13           (c) A governing board at any community and technical college may fund capital  
 14 improvements on a cash basis, through bonding or through notes or another financing method  
 15 that is approved by the council.

16           (1) If the cost of an improvement project for any institution under the jurisdiction of the

17 council, exceeds \$1 million, the governing board first shall obtain the approval of the council, as  
 18 appropriate. ~~If the cost of an improvement project at an institution under the jurisdiction of the~~  
 19 ~~commission, other than the exempted schools, exceeds \$3 million, the governing board shall first~~  
 20 ~~obtain the approval of the commission.~~

21 (2) Prior to approving bonding or any alternative financing method for any ~~institution other~~  
 22 ~~than the exempted schools, the commission, and~~ community or technical college, the council if  
 23 appropriate, shall evaluate the following issues:

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

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

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

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

29 (E) Any other factor considered appropriate.

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

33 (e) The ~~commission~~ OPE may not pledge all or part of the fees of any or all state  
 34 institutions of higher education as part of a system bond issue unless it gets the consent of those  
 35 institutions subject to the bond issue.

36 (f) Any fee or revenue source pledged prior to the effective date of this section for payment  
 37 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~~ OPE, council and governing boards, as responsibility is otherwise  
 2 assigned herein, shall ensure that capital funds are spent appropriately and that capital projects  
 3 are managed effectively. Project management shall be conducted in all respects according to  
 4 sound business practices and applicable laws, and rules.

5 (b) The ~~commission~~ OPE 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~~ OPE 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 (d) An institution that has entered into construction contracts averaging more than \$50  
20 million over the most recent rolling five-year period is responsible for capital project management  
21 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. The capital project management rule shall  
28 include at least the following items:

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

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

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

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

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

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

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

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

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

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

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

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

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

56 (B) Promulgates and adopts a capital project management rule in accordance with section

57 six, article one of this chapter that is approved by the ~~commission~~ OPE. The capital project  
58 management rule may be amended at the discretion of the governing board, but amendments  
59 shall be submitted to the ~~commission~~ OPE for review and approval before becoming effective.

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

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

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

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

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

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

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

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

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

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

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



83 OPE staff may assume management of all projects.

84 (f) For institutions that have entered into construction contracts averaging less than \$20  
85 million over the most recent rolling five-year period and for all community and technical colleges,  
86 the ~~commission~~ OPE and council shall manage capital projects exceeding \$1 million. In the rule  
87 required by section seventeen of this article, the ~~commission~~ OPE and council, as appropriate,  
88 shall adopt procedures to afford participation by the governing boards and staff in the planning,  
89 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 community and technical college facilities information system, ~~except for the exempt schools~~. The  
3 ~~higher education~~ community and technical college facilities information system shall serve as a  
4 vehicle for carrying out the following functions:

- 5 (1) Acquisition of statewide data;
- 6 (2) Analysis of space use and classification based on nationally recognized standards and  
7 measurements to facilitate comparisons among post-secondary education institutions within the  
8 state and in the region and nation; and
- 9 (3) Other purposes as determined by the commission and council consistent with  
10 facilitating policy analysis without burdening or interfering unnecessarily with the governance  
11 responsibilities which are placed upon the governing boards.

12 (b) At a minimum the ~~higher education~~ community and technical college facilities  
13 information system shall serve the following purposes:

- 14 (1) Develop and maintain a statewide inventory of ~~higher education~~ community and  
15 technical college facilities, including those acquired by long-term lease, lease-purchase or other  
16 arrangement whereby the institution has long-term beneficial use. The inventory shall include, but  
17 is not limited to, the institution and campus location of the facility, the construction date, the  
18 original cost, square footage, floor plans, type of construction, ownership status, the purposes for

19 which it is used, the current replacement cost and any other data the ~~commission and council~~  
20 ~~consider~~ considers appropriate, consistent with the provisions of the foregoing subsection (a);

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

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

27 (4) Provide information on major institutional capital projects, including major maintenance  
28 and 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-19-11. 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~~ community and technical college 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 the exempted schools and the state colleges and universities  
8 may enter into lease-purchase agreements without seeking the approval of the ~~commission~~ OPE.  
9 ~~The governing boards, subject to the jurisdiction of the commission, may enter into lease-~~  
10 ~~purchase agreements of less than \$1.5 million, without obtaining approval of the commission.~~

11 (d) A lease-purchase agreement constitutes a special obligation of the State of West  
12 Virginia. The obligation may be met from any funds legally available to the ~~commission~~ OPE,  
13 council or the institution and shall be cancelable at the option of the ~~commission~~ OPE, council, or  
14 governing board at the end of any fiscal year. The obligation, or any assignment or securitization  
15 of the obligation, never constitutes an indebtedness of the State of West Virginia or any  
16 department, agency or political subdivision of the state, within the meaning of any constitutional  
17 provision or statutory limitation, and may not be a charge against the general credit or taxing  
18 powers of the state or any political subdivision of the state. The facts shall be plainly stated in any  
19 lease-purchase agreement.

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

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

31 as a bank-qualified obligation.

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

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

8 (b) Notwithstanding any provision of this code to the contrary, any acquisition, bequest,  
9 donation or construction of new buildings, office space or grounds exceeding \$1 million in  
10 appraised value or requiring \$1 million in repairs and renovation or lease payments over the  
11 lifetime of the lease, made or accepted by an institution's research corporation established by  
12 article twelve of this chapter or an affiliated foundation of an institution under the jurisdiction of  
13 the council, shall be approved by the council.

14 (c) The ~~commission~~, council and each governing board shall provide the following to the  
15 Joint Committee on Government and Finance:

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

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

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

24 (e) A contract or agreement that is for the lease purchase, lease or rental of real property,

25 where the costs of real property acquisition and improvements are to be financed, in whole or in  
26 part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of  
27 review by the committee.

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

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

33 (h) Each governing board of a community or technical college shall provide to the  
34 ~~commission or council~~ or council, as appropriate, a copy of any contract or agreement submitted to the Joint  
35 Committee on Government and Finance 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: Provided, that a community and technical college shall obtain  
4 ~~if the governing board obtains~~ approval of the council or confirmation by the commission, as  
5 appropriate, before incurring any obligation: ~~Provided, That the exempted schools shall not be~~  
6 ~~required to obtain such approval or confirmation of the commission.~~ The board shall deposit the  
7 net proceeds of the transaction into a special revenue account in the State Treasury to be  
8 appropriated by the Legislature for the use of the institution at which the real property is located.  
9 Prior to such action, the board shall take the 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;

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           (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-19-17. Legislative rule.**

1           The ~~commission~~ OPE and council jointly shall propose a rule or rules for legislative  
 2 approval in accordance with article three-a, chapter twenty-nine-a of this code, to implement this  
 3 article.

NOTE: The purpose of this bill is to amend statutes pertaining to the Higher Education Policy Commission to (a) eliminate the Higher Education Policy Commission; (b) create the Office of Postsecondary Education; and (c) provide for the transfer of certain administrative and service functions heretofore performed by the Higher Education Policy Commission to the Office of Postsecondary Education.

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