

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4876

BY DELEGATES SHOTT AND ELLINGTON

[Introduced February 11, 2020; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18B-1-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §18B-2A-4 of said code, all relating to updating the definition of
 3 “exempt schools” to include institutions making such an election and updates the
 4 provisions on higher education accountability to exclude institutions making such an
 5 election.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

1 The following words when used in this chapter and chapter 18C of this code have the
 2 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 21st Century
 10 workplaces;

11 (3) “Approve” or “approval”, when used in reference to action by the commission or the
 12 council, means action in which the governance rationale of a governing board under its jurisdiction
 13 is given due consideration, and the action of the commission is to additionally establish whether
 14 the proposed institutional action is consistent with law and established policy and is an appropriate
 15 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 where the context refers to a
25 function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for
26 Community and Technical College Education where the context refers to a function of the West
27 Virginia Council for Community and Technical College Education;

28 (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 code;

31 (8) “Chancellor for Higher Education” means the chief executive officer of the Higher
32 Education Policy Commission employed pursuant to §18B-1B-5 of this code;

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

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

44 (11) “Community and technical college education” means the programs, faculty,

45 administration, and funding associated with the delivery of community and technical college
46 education programs;

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

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

60 (14) "Council" means the West Virginia Council for Community and Technical College
61 Education created by §18B-2B -1 *et seq.* of this code;

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

65 (16) "Essential conditions" means those conditions which shall be met by community and
66 technical colleges as provided in §18B-3C-3 of this code;

67 (17) "Exempted schools" means West Virginia University, including West Virginia
68 University Potomac State College and West Virginia University Institute of Technology; Marshall
69 University; and the West Virginia School of Osteopathic Medicine and any institution electing to
70 be treated, accordingly, pursuant to the authority granted to governing boards under §18B-2A-

71 4cc of this code:

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

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

78 (20) "Higher Education Policy Commission", "Policy Commission" or "Commission" means
79 the commission created by §18B-1B-1 of this code;

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

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

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

97 (24) "Rule" or "rules" means a regulation, standard, policy or interpretation of general
98 application and future effect;

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

104 (26) "State college and university" means Bluefield State College, Concord University,
105 Fairmont State University, Glenville State College, Shepherd University, West Liberty University
106 or West Virginia State University;

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

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

116 (29) "Vice Chancellor for Administration" means the person employed in accordance with
117 §18B-4-2 of this code. Any reference in this chapter or chapter 18C of this code to "Senior
118 Administrator" means Vice Chancellor for Administration.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§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 §18B-1B-4(a) (39) of this code.

25 (4) For the exempted schools, the master plan shall be updated at least bi-annually and
26 include the steps taken to meet the legislatively established policies contained in §18B-1D-1 *et*
27 *seq.* of this code and reports on each of the data elements identified in §18B-1D-1 *et seq.* of this
28 code, including progress that the exempted schools are making relating to retention and

29 graduation rates for resident students by organization and each college within the organization.
30 The exempted schools shall provide copies of their respective master plan to the Legislative
31 Oversight Commission on Education Accountability and the commission.

32 (c) Develop a 10-year campus development plan in accordance with §18B-19-1 *et seq.* of
33 this code;

34 (d) Prescribe for the institution, under its jurisdiction, in accordance with its master plan
35 and compact, specific functions and responsibilities to achieve the goals, objectives and priorities
36 established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code to meet the higher education
37 needs of its area of responsibility and to avoid unnecessary duplication;

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

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

44 (g) Review, at least every five years, all academic programs offered at the institution under
45 its jurisdiction. The review shall address the viability, adequacy, and necessity of the programs in
46 relation to established state goals, objectives and priorities, the master plan, the compact and the
47 education and workforce needs of its responsibility district. As a part of the review, each governing
48 board shall require the institution under its jurisdiction to conduct periodic studies of its graduates
49 and their employers to determine placement patterns and the effectiveness of the education
50 experience. Where appropriate, these studies should coincide with the studies required of many
51 academic disciplines by their accrediting bodies;

52 (h) Ensure that the sequence and availability of academic programs and courses offered
53 by the institution under its jurisdiction is such that students have the maximum opportunity to
54 complete programs in the time frame normally associated with program completion. Each

55 governing board is responsible to see that the needs of nontraditional college-age students are
56 appropriately addressed and, to the extent it is possible for the individual governing board to
57 control, to assure core course work completed at the institution is transferable to any other state
58 institution of higher education for credit with the grade earned;

59 (i) Subject to §18B-1B-1 *et seq.* of this code, approve the teacher education programs
60 offered in the institution under its control. In order to permit graduates of teacher education
61 programs to receive a degree from a nationally accredited program and in order to prevent
62 expensive duplication of program accreditation, the commission may select and use one
63 nationally recognized teacher education program accreditation standard as the appropriate
64 standard for program evaluation;

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

67 (k) Subject to federal law and pursuant to §18B-7-1 *et seq.*, §18B-7-8 *et seq.*, §18B-9-1 *et*
68 *seq.* and §18B-7-9A-1 *et seq.* of this code and to rules adopted by the commission and the council,
69 administer a system for the management of personnel matters, including, but not limited to,
70 discipline for employees at the institution under its jurisdiction: *Provided*, That any rules adopted
71 by the commission and the council do not apply to exempted schools;

72 (l) Administer a system for hearing employee grievances and appeals. Notwithstanding
73 any other provision of this code to the contrary, the procedure established in §6C-2-1 *et seq.* of
74 this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

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

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

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

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

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

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

90 (s) Provide and transfer funds and property to certain corporations pursuant to §18B-12-
91 10 of this code;

92 (t) Delegate, with prescribed standards and limitations, the part of its power and control
93 over the business affairs of the institution to the president in any case where it considers the
94 delegation necessary and prudent in order to enable the institution to function in a proper and
95 expeditious manner and to meet the requirements of its master plan and compact. If a governing
96 board elects to delegate any of its power and control under this subsection, it shall enter the
97 delegation in the minutes of the meeting when the decision was made and shall notify the
98 commission or council, as appropriate. Any delegation of power and control may be rescinded by
99 the appropriate governing board, the commission or council, as appropriate, at any time, in whole
100 or in part, except that the commission may not revoke delegations of authority made by the
101 governing board of the exempted schools.

102 (u) Unless changed by the commission or the council, as appropriate, continue to abide
103 by existing rules setting forth standards for accepting advanced placement credit for the institution
104 under its jurisdiction. Individual departments at a state institution of higher education, with
105 approval of the faculty senate, may require higher scores on the advanced placement test than
106 scores designated by the governing board when the credit is to be used toward meeting a

107 requirement of the core curriculum for a major in that department;

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

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

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

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

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

132 (y) Transfer funds from appropriated special revenue accounts for capital improvements

133 under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction
134 as long as the transferred funds are used for the purposes appropriated in accordance with §18B-
135 19-1 *et seq.* of this code;

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

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

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

148 (cc) Notwithstanding any other provision of this code to the contrary, a governing board
149 may elect for its institution to be an "exempt school" as defined in §18B-1-2(17) of this code and
150 treated, accordingly, for the purposes of this chapter and chapter 18C of this code. The effective
151 date of such treatment shall be upon receipt of notification by the commission of such election.

NOTE: The purpose of this bill is to provide institutions currently under the jurisdiction of the Higher Education Policy Commission to have the same degree of autonomy as West Virginia University, Marshall University, the West Virginia School of Osteopathic Medicine, Potomac State College and West Virginia University Institute of Technology. The bill grants the governing boards the power to make such an election. The bill updates the definition of "exempt schools" to include institutions making such an election and updates the provisions on higher education accountability to exclude institutions making such an election.

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