

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 127

FISCAL
NOTE

BY SENATORS TRUMP AND CLINE

[Introduced January 8, 2020; referred
to the Committee on Education; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §18B-2A-4 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §18B-3C-9 of said code, all relating to authorizing a governing
3 board of a state institution of higher education to eliminate tenure for faculty at the
4 institution under its jurisdiction; and removing prior exemptions.

Be it enacted by the Legislature of West Virginia:

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 ~~article one-d of this chapter~~
28 that article, 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-8-1 *et seq.*, §18B-9-1 *et*
68 *seq.*, and §18B-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: *Provided, however, That a*

72 governing board is authorized, notwithstanding any state statute or rule to the contrary, to
73 eliminate faculty tenure and any system of tenure previously established for the institution under
74 its jurisdiction;

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

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

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

82 (o) Conduct written performance evaluations of the president, §18B-1B-6 of 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 §18B-12-
93 10 of this code;

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 appropriate, continue to abide
105 by existing rules setting forth standards for accepting advanced placement credit for the institution
106 under its jurisdiction. Individual departments at a state institution of higher education, with
107 approval of the faculty senate, may require higher scores on the advanced placement test than
108 scores designated by the governing board when the credit is to be used toward meeting a
109 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 15 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 §18B-
137 19-1 *et seq.* of this code;

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,
140 and 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 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**§18B-3C-9. Increasing flexibility for community and technical colleges.**

1 (a) Notwithstanding any rules or procedures of the governing boards to the contrary, the
2 community and technical colleges have the authority and the duty to:

3 (1) Incorporate the most effective and efficient use of technology in accessing and
4 delivering courses and programs in order to make the best use of available resources and to
5 control costs;

6 (2) Incorporate a model to offer occupational program curricula in smaller modules to
7 accommodate specific student and employer needs and to gain sufficient flexibility in formatting
8 courses;

9 (3) Serve as a facilitator for education programs from outside delivery sources to meet the
10 needs of the residents and employers of the district; and

11 (4) Employ faculty in the most effective manner to serve the core mission of the community
12 and technical college.

13 (A) To that end, the freestanding community and technical colleges may employ faculty
14 for an indefinite period without a grant of tenure and shall work toward a staffing goal of no more
15 than 20 percent of the faculty holding tenure or being tenure track employees. ~~Tenured faculty~~
16 ~~employed by the freestanding community and technical colleges before July 1, 1999, are not~~
17 ~~affected by this provision~~

18 (B) All community and technical colleges, other than those set forth in §18B-3C-9(a)(4)(A)
19 of this code, may employ faculty for an indefinite period without a grant of tenure. The immediate
20 goal is to use this provision as a tool to assist the community and technical colleges in meeting
21 the essential conditions provided for in §18B-3C-3 of this code and in gaining independent
22 accreditation status. The ultimate goal is to provide the flexibility community and technical
23 colleges need to meet the needs of the state by working toward having no more than 20 percent
24 of the core faculty holding tenure or being tenure track employees. ~~Tenured faculty employed by~~

25 ~~community and technical colleges other than freestanding community and technical colleges on~~
26 ~~June 30, 2000, may not be affected by this provision. Tenure may not be denied to a faculty~~
27 ~~member solely as a result of change in employing institution necessitated by the change to~~
28 ~~independently accredited community and technical colleges~~

29 (b) The governing boards shall adopt a model of program approval for the community and
30 technical colleges that permits occupational programs to be customized to meet needs without
31 requiring approval by any governing board or other agency of government. The model shall
32 incorporate a post-audit review of such programs on a three-year cycle to determine the
33 effectiveness of the programs in meeting district needs.

34 (c) The council shall promulgate rules to implement the provisions of this section and shall
35 file these rules for review and approval with the chancellor no later than December 1, 2004.

NOTE: The purpose of this bill is to authorize the governing board of a state higher education institution to eliminate tenure at that institution.

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