

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 760**

SENATOR RUCKER, *original sponsor*

[Passed March 5, 2020; in effect 90 days from passage]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §18B-1-1f; to amend and reenact §18B-1-2 of said code; to amend and  
3 reenact §18B-1B-4 and §18B-1B-6 of said code; to amend and reenact §18B-1D-7 of said  
4 code; and to amend and reenact §18B-19-4 of said code, all relating to higher education;  
5 providing findings; defining terms; allowing any state college and university to apply to the  
6 Higher Education Policy Commission for designation as an administratively exempted  
7 school; requiring Higher Education Policy Commission to propose rules for legislative  
8 approval that address loss of an administratively exempted designation; setting forth  
9 specific exemptions for a college and university designated as an administratively  
10 exempted school; requiring Higher Education Policy Commission report to the Legislative  
11 Oversight Commission on Education Accountability certain information pertaining to the  
12 administratively exempted schools eligibility criteria; updating institution names; referring  
13 to exempted schools as statutorily exempted schools; removing obsolete language;  
14 updating code to reflect removal of statewide master plan and compact requirements by  
15 prior legislation; removing requirement for Higher Education Policy Commission to advise  
16 and confirm in the appointment of presidents of the institutions of higher education under  
17 its jurisdiction; amending the powers and duties of the Higher Education Policy  
18 Commission, consistent with the specific exemptions provided for administratively  
19 exempted schools; clarifying that Higher Education Policy Commission can use certain  
20 appropriated incentive funds to influence behavior of statutorily and administratively  
21 exempted schools; amending requirements pertaining to the required report to the Joint  
22 Committee on Government and Finance and the Legislative Oversight Commission on  
23 Education Accountability that includes a recommendation for the allocation of general  
24 revenue to be appropriated to the institutions; removing requirement for Higher Education  
25 Policy Commission to confirm appointment of institutional presidents; requiring classified  
26 employees, if any are employed by the institution, be used when doing evaluations of

27 institutional presidents; updating language to be consistent with replacing institutional and  
28 statewide report cards with a data reporting system in prior legislation; removing  
29 unnecessary language; declaring that the geographic areas of responsibility for the West  
30 Virginia School of Osteopathic Medicine, Marshall University, and West Virginia University  
31 are statewide; and removing requirement for Higher Education Policy Commission  
32 confirmation of campus development plans.

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

**ARTICLE 1. GOVERNANCE.**

**§18B-1-1f. State college and university exemption status.**

1 (a) The Legislature finds that:

2 (1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling  
3 certain goals can be incentivized through the accountability and autonomy associated with  
4 exemption status for state colleges and universities based on meeting certain criteria; and

5 (2) Leading higher education authorities in the nation identify common, key performance  
6 indicators as an important measure of institutional effectiveness, including, but not limited to,  
7 enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

8 (b) The following definitions apply to terms used in this section:

9 (1) "Administratively exempted schools" means state colleges and universities:

10 (A) That achieve and maintain three out of five of the following:

11 (i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

12 (ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

13 (iii) Credit head count enrollment: A three-year credit head count enrollment increase, or  
14 a decrease of not more than five percent over the same period;

15 (iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved;

16 and

17 (v) Composite Financial Index: A Composite Financial Index of not less than one as  
18 reported in the college and university's audited financial statements; or

19 (B) Whose governing board requests a review by the chancellor of any special  
20 circumstances and the commission grants administratively exempted status based on those  
21 special circumstances as verified by the chancellor after his or her review.

22 (2) "Composite Financial Index" means the benchmarking tool used by the Higher  
23 Learning Commission as a financial indicator and developed specifically for the higher education  
24 industry and is a combination of several different ratios, each of which is comprised of data that,  
25 when analyzed further, can provide insight into an institution's financial health and inform  
26 decision-making processes;

27 (3) "Credit headcount enrollment" means the total number of unique students, but not  
28 counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall,  
29 spring, and summer terms in a given academic year at a specific institution;

30 (4) "Days of cash reserved" means the audited end of fiscal year cash balance, multiplied  
31 by 365, and then divided by the audited total expenses less depreciation, and less other post  
32 employment benefit and pension liability expenses;

33 (5) "Graduation rates" means the proportion of first time in college students who obtain a  
34 bachelor's degree within six years, as further defined by and reported to the commission;

35 (6) "Retention rates" means the proportion of first-time, fall term, full-time freshmen  
36 students who are in continuing enrollment in the fall term of the next succeeding year; and

37 (7) "State college and university" shall have the same meaning as provided in §18B-1-2  
38 of this code.

39 (c) Any state college and university may apply to the commission for designation as an  
40 administratively exempted school. The commission shall make its determination as to whether to  
41 grant or deny exemption designation based on the definition of administratively exempted school.  
42 The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this

43 code to implement the provisions of this section and that addresses loss of an administratively  
44 exempted designation. The rule shall at least include the following:

45 (1) After the first year an administratively exempted school fails to meet three of the five  
46 criteria under the definition of administratively exempted schools, the commission may advise the  
47 institution on strategies that may be implemented in order to meet three of the five criteria before  
48 the following year;

49 (2) An institution may not lose its designation as an administratively exempted school until  
50 it has failed to meet three of the five criteria under the definition of administratively exempted  
51 schools for two consecutive years;

52 (3) If an institution is administratively exempt based on special circumstances, the  
53 commission may revoke the administratively exempted status of a state college and university if  
54 it determines that the special circumstance that the state college and university's administratively  
55 exempted status is based on no longer exists; and

56 (4) The commission shall provide notice to the institution at least 30 days before revoking  
57 the institution's administratively exempted status.

58 (d) Notwithstanding any other provision of this code to the contrary:

59 (1) West Virginia University, including West Virginia University Potomac State College and  
60 West Virginia University Institute of Technology; Marshall University; and the West Virginia School  
61 of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are  
62 institutions of unique characteristics and their continuing inclusion as a statutorily exempted  
63 school is confirmed; and

64 (2) No other state institution of higher education maintains exempted school status  
65 pursuant to any other provision of this code except any exempted school status designated by  
66 the commission pursuant to this section.

67 (e) Notwithstanding any other provision of this code to the contrary, any state college and  
68 university that applies and is designated by the commission as an administratively exempted  
69 school is exempt from the following:

70 (1) The required approval of capital projects to ensure that capital projects and facility  
71 needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

72 (2) The development and approval of institutional mission definitions pursuant to §18B-  
73 1B-4(a)(34) of this code;

74 (3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

75 (4) The rules providing guidance to the governing boards in filling vacancies in the office  
76 of the president pursuant to §18B-1B-6(d) of this code;

77 (5) The commission's rule governing and controlling acquisitions and purchases pursuant  
78 to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule  
79 governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following  
80 the procedures for adoption of rules provided for in this code;

81 (6) The required approval of capital improvement projects exceeding \$3 million pursuant  
82 to §18B-19-6 of this code;

83 (7) The required approval of lease-purchase agreements for capital improvements and  
84 equipment of \$1.5 million or greater pursuant to §18B-19-11 of this code; and

85 (8) The required approval of real estate transactions, lease purchase, and new building  
86 construction exceeding \$1 million pursuant to §18B-19-13 of this code.

87 (g) Not later than the January interims of each year, the commission shall submit a report  
88 to the Legislative Oversight Commission on Education Accountability relating to the  
89 administratively exempted schools eligibility criteria established by this section, providing the data  
90 for each of the three preceding years, as available, and the three-year average thereof, for each  
91 of the state institutions of higher education under its jurisdiction. The commission shall share the  
92 report with the institutions.

**§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           “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           “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           “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           “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           “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           “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 “Chancellor for Community and Technical College Education” means the chief executive  
29 officer of the West Virginia Council for Community and Technical College Education employed  
30 pursuant to §18B-2B-3 of this code;

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

35 “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, BridgeValley Community and Technical College, Eastern West Virginia  
39 Community and Technical College, Mountwest Community and Technical College, New River  
40 Community and Technical College, Pierpont Community and Technical College, Southern West  
41 Virginia Community and Technical College, West Virginia Northern Community and Technical  
42 College, and West Virginia University at Parkersburg;

43 “Community and technical college education” means the programs, faculty,  
44 administration, and funding associated with the delivery of community and technical college  
45 education programs;

46 “Community and technical college education program” means any college-level course or  
47 program beyond the high school level provided through a public institution of higher education  
48 resulting in or which may result in a two-year associate degree award including an associate of  
49 arts, an associate of science, and an associate of applied science; certificate programs and skill  
50 sets; developmental education; continuing education; collegiate credit and noncredit workforce  
51 development programs; and transfer and baccalaureate parallel programs. All programs are

52 under the jurisdiction of the council. Any reference to “post-secondary vocational education  
53 programs” means community and technical college education programs as defined in this  
54 subdivision;

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

59 “Council” means the West Virginia Council for Community and Technical College  
60 Education created by §18B-2B-1 *et seq.* of this code;

61 “Dual credit course” or “dual enrollment course” means a credit-bearing college-level  
62 course offered in a high school by a state institution of higher education for high school students  
63 in which the students are concurrently enrolled and receiving credit at the secondary level;

64 “Essential conditions” means those conditions which shall be met by community and  
65 technical colleges as provided in §18B-3C-3 of this code;

66 “Exempted schools” or “statutorily exempted schools” means West Virginia University,  
67 including West Virginia University Potomac State College and West Virginia University Institute  
68 of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine;

69 “Governing boards” or “boards” means the institutional boards of governors created by  
70 §18B-2A-1 of this code;

71 “Higher Education Policy Commission”, “policy commission” or “commission” means the  
72 commission created by §18B-1B-1 of this code;

73 “Independent community and technical college” means a state institution of higher  
74 education under the jurisdiction of the council, which is independently accredited, is governed by  
75 its own independent governing board, and may not be operated as a branch or off-campus  
76 location of any other state institution of higher education. This definition includes Blue Ridge  
77 Community and Technical College, BridgeValley Community and Technical College, Eastern

78 West Virginia Community and Technical College, Mountwest Community and Technical College,  
79 New River Community and Technical College, Pierpont Community and Technical College,  
80 Southern West Virginia Community and Technical College, West Virginia Northern Community  
81 and Technical College, and West Virginia University at Parkersburg;

82 “Institutional operating budget” or “operating budget” means for any fiscal year an  
83 institution’s total unrestricted education and general funding from all sources, including, but not  
84 limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as  
85 approved by the commission or council based on comparisons with peer institutions or to reflect  
86 consistent components of peer operating budgets;

87 “Rule” or “rules” means a regulation, standard, policy, or interpretation of general  
88 application and future effect;

89 “Sponsoring institution” means a state institution of higher education that maintained an  
90 administrative link to a community and technical college providing essential services prior to July  
91 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction  
92 a community and technical college, regional campus, or a division delivering community and  
93 technical college education and programs;

94 “State college and university” means Bluefield State College, Concord University,  
95 Fairmont State University, Glenville State College, Shepherd University, West Liberty University,  
96 or West Virginia State University;

97 “State institution of higher education” means any university, college, or community and  
98 technical college under the jurisdiction of a governing board as that term is defined in this section;

99 “Statewide network of independently accredited community and technical colleges” or  
100 “community and technical college network” means the state institutions of higher education under  
101 the jurisdiction of the West Virginia Council for Community and Technical College Education  
102 which are independently accredited, each governed by its own independent governing board, and

103 each having a core mission of providing affordable access to and delivering high quality  
104 community and technical education in every region of the state; and

105 “Vice chancellor for administration” means the person employed in accordance with §18B-  
106 4-2 of this code. Any reference in this chapter or chapter 18C of this code to “senior administrator”  
107 means vice chancellor for administration.

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

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

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 §18B-1-1a and  
8 §18B-1D-1 of this code. The commission shall exercise its authority and carry out its  
9 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 §18B-1D-1 *et seq.* of this  
14 code to address major challenges facing the state, including, but not limited to, the goals,  
15 objectives, and priorities established in this chapter; and

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

19 (A) Provide for an adequate level of educational and general funding for institutions  
20 pursuant to §18B-1A-5 of this code;

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

23 (C) Invest and provide incentives for achieving the priority goals in the public policy  
24 agenda, including, but not limited to, those found in §18B-1-1a and §18B-1D-1 *et seq.* of this  
25 code;

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

27 (A) Building public consensus around and sustaining attention to a long-range public policy  
28 agenda. In developing the agenda, the commission and council shall seek input from the  
29 Legislature, the Governor, the governing boards, and specifically from the State Board of  
30 Education and local school districts in order to create the necessary linkages to assure smooth,  
31 effective and seamless movement of students through the public education and post-secondary  
32 education systems and to ensure that the needs of public school courses and programs can be  
33 fulfilled by the graduates produced and the programs offered;

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

36 (4) Serve as a point of contact to state policymakers:

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

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

40 (5) Upon request, provide shared services to a state institution of higher education;

41 (6) Administer scholarship and grant programs as provided for in this code;

42 (7) Establish and implement the benchmarks and performance indicators for state colleges  
43 and universities necessary to measure institutional progress in achieving state policy priorities  
44 and institutional missions pursuant to §18B-1D-7 of this code;

45           (8) Establish a formal process for recommending capital investment needs and for  
46 determining priorities for state colleges and universities for these investments for consideration  
47 by the Governor and the Legislature as part of the appropriation request process pursuant to  
48 §18B-19-1 *et seq.* of this code;

49           (9) Except the statutorily exempted schools and the administratively exempted schools,  
50 develop standards and evaluate governing board requests for capital project financing in  
51 accordance with §18B-19-1 *et seq.* of this code;

52           (10) Except the statutorily exempted schools and administratively exempted schools,  
53 ensure that governing boards manage capital projects and facilities needs effectively, including  
54 review and approval of capital projects, in accordance with §18B-19-1 *et seq.* of this code;

55           (11) Acquire legal services as considered necessary, including representation of the  
56 commission, the governing boards, employees, and officers before any court or administrative  
57 body, notwithstanding any other provision of this code to the contrary. The counsel may be  
58 employed either on a salaried basis or on a reasonable fee basis. In addition, the commission  
59 may, but is not required to, call upon the Attorney General for legal assistance and representation  
60 as provided by law;

61           (12) Employ a Chancellor for Higher Education pursuant to §18B-1B-5 of this code;

62           (13) Employ other staff as necessary and appropriate to carry out the duties and  
63 responsibilities of the commission and the council, in accordance with §18B-4-1 *et seq.* of this  
64 code;

65           (14) Provide suitable offices in Kanawha County for the chancellor, vice chancellors, and  
66 other staff;

67           (15) Approve the total compensation package from all sources for presidents of institutions  
68 under its jurisdiction, except the statutorily exempted schools, as proposed by the governing  
69 boards. The governing boards, except the governing boards of the statutorily exempted schools,  
70 must obtain approval from the commission of the total compensation package both when

71 institutional presidents are employed initially and afterward when any change is made in the  
72 amount of the total compensation package: *Provided*, That the commission will receive notice,  
73 but need not approve or confirm, an increase in the compensation of an institutional president  
74 that is exactly in the ratio of compensation increases allocated to all institutional employees and  
75 approved by the governing board to expressly include the president;

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

81 (17) Approve and implement a uniform standard jointly with the council to determine which  
82 students shall be placed in remedial or developmental courses. The standard shall be aligned  
83 with college admission tests and assessment tools used in West Virginia and shall be applied  
84 uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of  
85 the standard which they shall communicate to the State Board of Education and the state  
86 superintendent of schools;

87 (18) Jointly with the council, develop and implement an oversight plan to manage  
88 systemwide technology except for the statutorily exempted schools, including, but not limited to,  
89 the following:

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

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

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

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

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

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

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

119           (23) Seek out and attend regional, national, and international meetings and forums on  
120 education and workforce development-related topics as, in the commission's discretion, are  
121 critical for the performance of their duties as members, for the purpose of keeping abreast of  
122 education trends and policies to aid it in developing the policies for this state to meet the



123 established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 *et*  
124 *seq.* of this code;

125 (24) Promulgate and implement a rule for higher education governing boards and  
126 institutions, except for the statutorily exempted schools and administratively exempted schools,  
127 to follow when considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule  
128 shall provide for appropriate deference to the value judgments of governing boards under the  
129 jurisdiction of the commission;

130 (25) Submit to the appropriate agencies of the executive and legislative branches of state  
131 government an appropriation request that reflects recommended appropriations for the  
132 commission and the governing boards under its jurisdiction. The commission shall submit as part  
133 of its appropriation request the separate recommended appropriation request it received from the  
134 council, both for the council and for the governing boards under the council's jurisdiction. The  
135 commission annually shall submit the proposed allocations based on subsection (d) of this  
136 section;

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

140 (27) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules necessary  
141 or expedient to fulfill the purposes of this chapter;

142 (28) Determine when a joint rule among the governing boards under its jurisdiction is  
143 necessary or required by law and, in those instances, in consultation with the governing boards  
144 under its jurisdiction, promulgate the joint rule;

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

148 (30) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee  
149 policy for all governing boards under the jurisdiction of the commission, except the exempted  
150 schools. The rule shall include, but is not limited to, the following:

151 (A) Differences among institutional missions;

152 (B) Strategies for promoting student access;

153 (C) Consideration of charges to out-of-state students; and

154 (D) Such other policies as the commission and council consider appropriate;

155 (31) Assist governing boards in actions to implement general disease awareness  
156 initiatives to educate parents and students, particularly dormitory residents, about meningococcal  
157 meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and  
158 activities that can increase risks; measures that can be taken to prevent contact or infection; and  
159 potential benefits of vaccination. The commission shall encourage governing boards that provide  
160 medical care to students to provide access to the vaccine for those who wish to receive it;

161 (32) Notwithstanding any other provision of this code to the contrary sell, lease, convey,  
162 or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-  
163 1 *et seq.* of this code;

164 (33) Policy analysis and research focused on issues affecting institutions of higher  
165 education generally or a geographical region thereof;

166 (34) Development and approval of institutional mission definitions except the statutorily  
167 exempted schools and administratively exempted schools: *Provided*, That the commission may  
168 use funds appropriated by the Legislature for incentive funds to influence institutional behavior in  
169 ways that are consistent with public priorities, including the statutorily exempted schools and  
170 administratively exempted schools;

171 (35) Academic program review and approval for governing boards under its jurisdiction.  
172 The review and approval includes use of institutional missions as a template to judge the

173 appropriateness of both new and existing programs and the authority to implement needed  
174 changes.

175 (A) The commission's authority to review and approve academic programs for the  
176 statutorily exempted and administratively exempted schools is limited to programs that are  
177 proposed to be offered at a new location not presently served by that institution: *Provided*, That  
178 West Virginia University and the West Virginia University Institute of Technology are subject to  
179 the commission's authority as provided in §18B-1C-2 of this code.

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

182 (i) New programs should not be implemented which change the institutional mission,  
183 unless the institution also receives approval for expanding the institutional mission;

184 (ii) New programs which will require significant additional expense investments for  
185 implementation should not be implemented unless the institution demonstrates that:

186 (I) The expenses will be addressed by effective reallocations of existing institutional  
187 resources; or

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

190 (iii) A new undergraduate program which is significantly similar to an existing program  
191 already in the geographic service area should not be implemented unless the institution  
192 requesting the new program demonstrates a compelling need in the service area that is not being  
193 met by the existing program: *Provided*, That the academic programs of the statutorily exempted  
194 and administratively exempted schools are not to be taken into consideration except as it relates  
195 to academic programs offered at West Virginia University in Beckley and West Virginia University  
196 Institute of Technology in Beckley.

197 (C) The commission shall approve or disapprove proposed academic degree programs in  
198 those instances where approval is required as soon as practicable. The commission shall

199 maintain by rule a format model by which a new program approval shall be requested by an  
200 institution. When a request for approval of a new program is submitted to the commission, the  
201 chancellor shall provide notice within two weeks as to whether the submission meets the required  
202 format, and if it does not the chancellor shall identify each specific deficiency and return the  
203 request to the institution. The institution may refile the request for approval with the commission  
204 to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the  
205 request meets the required format, the commission shall either approve or disapprove the request  
206 for the new program. The commission may not withhold approval unreasonably.

207 (36) Distribution of funds appropriated to the commission, including incentive and  
208 performance-based funds;

209 (37) Administration of state and federal student aid programs under the supervision of the  
210 vice chancellor for administration, including promulgation of rules necessary to administer those  
211 programs;

212 (38) Serving as the agent to receive and disburse public funds when a governmental entity  
213 requires designation of a statewide higher education agency for this purpose;

214 (39) Developing and distributing information, assessment, accountability and personnel  
215 systems for state colleges and universities, including maintaining statewide data systems that  
216 facilitate long-term planning and accurate measurement of strategic outcomes and performance  
217 indicators;

218 (40) Jointly with the council, promulgating and implementing rules for licensing and  
219 oversight for both public and private degree-granting and nondegree-granting institutions that  
220 provide post-secondary education courses or programs in the state. The council has authority  
221 and responsibility for approval of all post-secondary courses or programs providing community  
222 and technical college education as defined in §18B-1-2 of this code;

223 (41) Developing, facilitating, and overseeing statewide and regional projects and initiatives  
224 related to providing post-secondary education at the baccalaureate level and above such as those

225 using funds from federal categorical programs or those using incentive and performance-based  
226 funds from any source;

227 (42) (A) For all governing boards under its jurisdiction, except for the statutorily exempted  
228 schools, the commission shall review institutional operating budgets, review, and approve capital  
229 budgets, and distribute incentive and performance-based funds.

230 (B) For the governing boards of the statutorily exempted schools, the commission shall  
231 distribute incentive and performance-based funds and may review and comment upon the  
232 institutional operating budgets and capital budgets. The commission's comments, if any, shall be  
233 made part of the governing board's minute record and shall be filed with the Legislative Oversight  
234 Commission on Education Accountability;

235 (43) May provide information, research, and recommendations to state colleges and  
236 universities relating to programs and vocations with employment rates greater than 90 percent  
237 within six months post-graduation; and

238 (44) May provide information, research, and recommendations to state colleges and  
239 universities on coordinating with the West Virginia State Board of Education about complimentary  
240 programs.

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

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

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

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

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

257 (d) The Higher Education Policy Commission shall examine the question of general  
258 revenue appropriations to individual higher education institutions per student, and per credit hour,  
259 and by other relevant measures at state institutions of higher education under its jurisdiction and  
260 the council shall undertake the same analysis for the community and technical colleges, and on  
261 or before October 1 of each year the commission and council shall each deliver a report to the  
262 Joint Committee on Government and Finance and the Legislative Oversight Commission on  
263 Education Accountability. These reports shall include a recommendation to the Legislature on a  
264 formula or methodology for the allocation of general revenue to be appropriated to such  
265 institutions that provides for ratable funding across all four-year institutions and community and  
266 technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant  
267 measures. The commission and council shall take into consideration the needs of each institution  
268 relating to a base level of appropriation support and mission differentiation. On such basis, the  
269 commission and council shall each make a recommendation to the Legislature as to the amounts  
270 that each such institution should have appropriated to it in the general revenue budget for the  
271 next fiscal year, based upon the total general revenue appropriations that such institutions receive  
272 in aggregate in the enacted budget for the current fiscal year. The commission and council shall  
273 engage with the four-year institutions and community and technical colleges, as appropriate, to  
274 seek to develop a consensus on the formulas and methodologies underlying any

275 recommendations required by this subsection. The commission and council shall provide the  
276 four-year institutions and community and technical colleges with at least 30 days written notice to  
277 comment on any recommendations before any report contemplated by this subsection is provided  
278 to the Legislature.

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

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

3           (1) The initial contract term for a president may not exceed two years. At the end of the  
4 initial contract period, and subject to the provisions of subsection (c) of this section, the governing  
5 board may offer the president a contract of longer duration, but not to exceed five years.

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

8           (3) The governing boards of the following institutions, appoint a president: Bluefield State  
9 College, Concord University, Fairmont State University, Glenville State College, Shepherd  
10 University, West Liberty University and West Virginia State University, West Virginia University,  
11 Marshall University, and the West Virginia School of Osteopathic Medicine.

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

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

23 (c) *Evaluation of presidents.* —

24 (1) The appointing governing board shall conduct written performance evaluations of the  
25 institution's president. Evaluations shall be done at the end of the initial contract period and in  
26 every third year of employment as president thereafter, recognizing unique characteristics of the  
27 institution and using institutional personnel including classified employees if any are employed by  
28 the institution, boards of advisors as appropriate, staff of the appropriate governing board, and  
29 persons knowledgeable in higher education matters who are not otherwise employed by a  
30 governing board. A part of the evaluation shall be a determination of the success of the institution  
31 in meeting the requirements of its institutional compact and in achieving the goals, objectives, and  
32 priorities established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code.

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

36 (d) The legislative rules of the commission and council promulgated in accordance with  
37 §18B-1-6 and §29A-3A-1 *et seq.* of this code which are in effect on January 1, 2014, continue in  
38 effect unless amended or repealed. The rules provide guidance for the governing boards, but are  
39 not applicable to the statutorily exempted or the administratively exempted schools, in filling  
40 vacancies in the office of president in accordance with this chapter and shall include, but are not  
41 limited to, clarifying the powers, duties and roles of the governing boards, commission, council,  
42 and chancellors in the presidential appointment process.

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

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

1 (a) The Legislature finds that West Virginia long has recognized the value of education  
2 and, on a per capita income basis, ranks very high among the states in its investment to support  
3 public education. The Legislature further finds that a combination of state and national  
4 demographic and economic factors as well as significant changes in methods of course and



5 program delivery compel both the state and public higher education to create a process that will  
6 strengthen institutional capacity to provide the services so valued by the citizens of the state and  
7 so essential to promoting economic vitality.

8 (b) The commission and council each shall organize the statements of legislative goals  
9 and objectives contained in this article and §18B-1-1a of this code in a manner that facilitates the  
10 purposes therein.

11 (c) *Assignment of geographic areas of responsibility.* —

12 (1) The commission shall assign geographic areas of responsibility to the state institutions  
13 of higher education under its jurisdiction, except for the statutorily exempted schools. For  
14 institutions other than the statutorily exempted schools, the geographic areas of responsibility  
15 shall be assigned in such a way as to ensure that all areas of the state are provided necessary  
16 programs and services to achieve state goals and objectives. The commission and the council  
17 each shall develop data-based measures to determine the extent to which institutions, with the  
18 exception of the statutorily exempted schools, under their respective jurisdictions are providing  
19 higher education services aligned with state goals and objectives and institutional missions within  
20 their geographic areas of responsibility. This information shall be reported in the statewide data  
21 reporting system established pursuant to §18B-1D-8 of this code.

22 (2) The council shall assign geographic areas of responsibility to the state institutions of  
23 higher education under its jurisdiction.

24 (3) The geographic areas of responsibility for the state institutions of higher education  
25 known as West Virginia School of Osteopathic Medicine, Marshall University, and West Virginia  
26 University are statewide.

27 (4) Each state institution of higher education shall establish benchmarks in collaboration  
28 with the commission or council, as applicable, which include measures of programs and services  
29 by geographic area throughout the assigned geographic area of responsibility.

30 (d) The benchmarks shall be used to determine progress toward meeting the state's higher  
31 education objectives. The benchmarks shall meet the following criteria:

32 (1) They shall be objective;

33 (2) They shall be directly linked to the established objectives;

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

35 and

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

38 (e) The rules required by §18B-1D-1(c) of this code shall include indicators which measure  
39 the degree to which the goals and objectives set forth in this article and §18B-1-1a of this code  
40 are being met by the institutions under the jurisdiction of the commission and the council,  
41 respectively.

42 (1) The rules pertaining to benchmarks and indicators in effect for the commission and the  
43 council on the effective date of this section remain in effect for the institutions under their  
44 respective jurisdictions until amended, modified, repealed, or replaced by the commission or the  
45 council, respectively, pursuant to the provisions of this article, §18B-1-6 of this code, and §29A-  
46 3A-1 *et seq.* of this code.

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

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

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

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

54 (D) Sufficient detail within the benchmarks and indicators to provide the following  
55 information:

56 (i) Measurable evidence that the pursuits of the institution are focused on the education  
57 needs of the citizens of the state and are aligned with the objectives required pursuant to this  
58 section;

59 (ii) Delineation of the objectives and benchmarks for an institution so that the commission  
60 or council can precisely measure the degree to which progress is being made toward achieving  
61 the goals and objectives provided in this article and §18B-1-1a of this code: *Provided*, That the  
62 commission has no authority regarding the objectives and benchmarks for statutorily exempted  
63 schools; and

64 (iii) Identification of specific objectives that are not being met or toward which sufficient  
65 progress is not being made.

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

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

69 (i) The degree to which progress is being made by institutions toward meeting state goals  
70 and objectives and the essential conditions for community and technical college education  
71 pursuant to §18B-3C-3 of this code;

72 (ii) Information and data necessary to be considered by the council in making the  
73 determination required by §18B-2C-3 of this code; and

74 (B) Sufficient detail within the benchmarks and indicators to provide clear evidence to  
75 support an objective determination by the council that an institution's progress toward achieving  
76 state goals and objectives and the essential conditions for community and technical college  
77 education is so deficient that implementation of the provisions of §18B-2C-4 of this code is  
78 warranted and necessary.

## **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

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

1 (a) Each governing board shall update its current campus development plan and submit  
2 the updated plan to the commission or council, as appropriate. The submission of a plan or  
3 updated plan to the council is for approval. A campus development plan shall be adopted by each  
4 governing board for a 10-year period and shall align with criteria specified in the following sources:

5 (1) The system capital development oversight policy;

6 (2) The institution's approved master plan; and

7 (3) The current campus development plan objectives.

8 (b) Campus development plans are intended to be aspirational; however, an institution's  
9 plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints within  
10 which the institution operates. At a minimum the campus development plan shall include the  
11 following:

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

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

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

18 (4) A comprehensive list of major deferred maintenance projects, individually exceeding  
19 \$75,000 in cost, that need to be addressed for each campus by building or facility including an  
20 estimated cost for each;

21 (5) An analysis as to all buildings and facilities as to the need for renovations, additions,  
22 demolition, or any combination thereof;

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

25 (7) An analysis of telecommunications, utilities, and other infrastructure improvements that  
26 are needed;

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

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

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

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

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

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

38 (14) Any other requirement established by the commission and council in the rules  
39 required by §18B-19-17 of this code.

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

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

48 (e) Each governing board shall update its campus development plan at least once during  
49 each 10-year period and any update shall be submitted to the commission or council, as  
50 appropriate and those submitted to the council are subject to the approval of the council.

51 (f) A governing board may not implement a campus development plan or plan update that  
52 has not been submitted to the commission or submitted to and approved by the council, as  
53 appropriate.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, Senate Committee*

.....  
*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2020.

.....  
*Governor*