

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3125

**FISCAL
NOTE**

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BROWN, N.

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

1 A BILL to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating
 2 to directing the Higher Education Policy Commission to coordinate a plan to provide the
 3 first two years of post-secondary education for free tuition to state high school graduates.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

20 (2) Develop, oversee and advance the promulgation and implementation of a financing

21 rule for state institutions of higher education under its jurisdiction except the exempted schools.

22 The rule shall meet the following criteria:

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

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

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

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

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

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

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

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

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

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

46 (B) The Legislature by maintaining a close working relationship with the legislative

47 leadership and the Legislative Oversight Commission on Education Accountability.

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

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

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

53 (10) Establish a formal process for recommending capital investment needs and for
54 determining priorities for state colleges and universities for these investments for consideration
55 by the Governor and the Legislature as part of the appropriation request process pursuant to
56 §18B-19-1-*et seq.* of this code;

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

59 (12) Except the exempted schools, ensure that governing boards manage capital projects
60 and facilities needs effectively, including review and approval of capital projects, in accordance
61 with article nineteen of this chapter;

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

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

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

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

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

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

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

93 (20) Approve and implement a uniform standard jointly with the council to determine which
94 students shall be placed in remedial or developmental courses. The standard shall be aligned
95 with college admission tests and assessment tools used in West Virginia and shall be applied
96 uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of
97 the standard which they shall communicate to the State Board of Education and the State
98 Superintendent of Schools;

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

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

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

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

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

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

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

123 (25) Establish and implement policies and programs, in cooperation with the council and
124 the governing boards, through which a student who has gained knowledge and skills through

125 employment, participation in education and training at vocational schools or other education
126 institutions, or Internet-based education programs, may demonstrate by competency-based
127 assessment that he or she has the necessary knowledge and skills to be granted academic credit
128 or advanced placement standing toward the requirements of an associate's degree or a
129 bachelor's degree at a state institution of higher education;

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

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

140 (28) Submit to the appropriate agencies of the executive and legislative branches of state
141 government an appropriation request that reflects recommended appropriations for the
142 commission and the governing boards under its jurisdiction. The commission shall submit as part
143 of its appropriation request the separate recommended appropriation request it received from the
144 council, both for the council and for the governing boards under the council's jurisdiction, including
145 the exempted schools. The commission annually shall submit the proposed allocations based on
146 each institution's progress toward meeting the goals of its compact;

147 (29) The commission may assess institutions under its jurisdiction, including the exempted
148 schools, for the payment of expenses of the commission or for the funding of statewide higher
149 education services, obligations or initiatives related to the goals set forth for the provision of public
150 higher education in the state: *Provided*, That the commission may not assess institutions pursuant

151 to this subdivision on or after July 1, 2018;

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

155 (31) Pursuant to §29A-3-1 *et seq.* of this code and section six, article one of this chapter,
156 promulgate rules necessary or expedient to fulfill the purposes of this chapter;

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

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

163 (34) By October 1, 2011, promulgate a rule pursuant to §18B-10-1 of this code,
164 establishing tuition and fee policy for all governing boards under the jurisdiction of the
165 commission, except the exempted schools. The rule shall include, but is not limited to, the
166 following:

167 (A) Differences among institutional missions;

168 (B) Strategies for promoting student access;

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

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

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

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

180 (37) Policy analysis and research focused on issues affecting institutions of higher
181 education generally or a geographical region thereof;

182 (38) Development and approval of institutional mission definitions except the exempted
183 schools, including use of incentive funds to influence institutional behavior in ways that are
184 consistent with public priorities;

185 (39) Academic program review and approval for governing boards under its jurisdiction.
186 The review and approval includes use of institutional missions as a template to judge the
187 appropriateness of both new and existing programs and the authority to implement needed
188 changes.

189 (A) The commission's authority to review and approve academic programs for the
190 exempted schools is limited to programs that are proposed to be offered at a new location not
191 presently served by that institution: *Provided*, That West Virginia University and the West Virginia
192 University Institute of Technology are subject to the commission's authority as provided in §18B-
193 1C-2 of this code;

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

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

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

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

202 (ii) The expenses can be legitimately spread out over future years and will be covered by

203 reasonably anticipated additional net revenues from new enrollments;

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

210 (C) The commission shall approve or disapprove proposed academic degree programs in
211 those instances where approval is required as soon as practicable. The commission shall
212 maintain by rule a format model by which a new program approval shall be requested by an
213 institution. When a request for approval of a new program is submitted to the commission, the
214 chancellor shall provide notice within two weeks as to whether the submission meets the required
215 format, and if it does not the chancellor shall identify each specific deficiency and return the
216 request to the institution. The institution may refile the request for approval with the commission
217 to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the
218 request meets the required format, the commission shall either approve or disapprove the request
219 for the new program. The commission may not withhold approval unreasonably.

220 (40) Distribution of funds appropriated to the commission, including incentive and
221 performance-based funds;

222 (41) Administration of state and federal student aid programs under the supervision of the
223 vice chancellor for administration, including promulgation of rules necessary to administer those
224 programs;

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

227 (43) Developing and distributing information, assessment, accountability and personnel
228 systems for state colleges and universities, including maintaining statewide data systems that

229 facilitate long-term planning and accurate measurement of strategic outcomes and performance
230 indicators;

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

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

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

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

248 (47) May provide information, research, and recommendations to state colleges and
249 universities relating to programs and vocations with employment rates greater than 90 percent
250 within six months post-graduation; and

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

254 (49) Work closely with the State Department of Education and the Council for Community

255 and Technical College Education to produce a proposal to submit to the Legislature by October
256 1, 2019, for a method to provide two years of free tuition for post-secondary education to all high
257 school graduates in the state which may be used in a college, university, community college or a
258 vocational school.

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

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

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

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

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

275 (d) The Higher Education Policy Commission shall examine the question of general
276 revenue appropriations to individual higher education institutions per student, and per credit hour,
277 and by other relevant measures at all higher education institutions, including four-year
278 baccalaureate institutions and the community and technical colleges, and on or before January
279 1, 2018, the commission shall deliver its report to the Joint Committee on Government and
280 Finance and the Legislative Oversight Commission on Education Accountability. This report shall

281 include a recommendation to the Legislature on a formula for the allocation of general revenue to
282 be appropriated to such institutions that provides for ratable funding across all four-year
283 institutions and community and technical colleges on a ratable basis, by enrolled student, by credit
284 hour or by other relevant measures. On such basis, the commission shall make a
285 recommendation to the Legislature as to the amounts that each such institution should have
286 appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general
287 revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal
288 year 2018.

NOTE: The purpose of this bill is to increase the quality of the state's workforce by increasing access to college, community college and career education through providing the first two years of free tuition.

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