

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4008

BY DELEGATES ELLINGTON, STATLER, CRISS,
HOUSEHOLDER, SMITH, GEARHART, ESPINOSA, HANNA,
HORST, BRIDGES, AND ROHRBACH

[Introduced February 9, 2022; referred to the
Committee on Finance]

1 A BILL to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating
2 to powers and duties of the Higher Education Policy Commission generally; directing the
3 Higher Education Policy Commission, in conjunction with the West Virginia Council for
4 Community and Technical College Education, to propose rules to establish a funding
5 formula model governing its appropriation request to the Legislature regarding distribution
6 of general revenue to the state's institutions of higher education; setting forth parameters
7 for the formula and minimum requirements for the rule; revising and removing certain
8 related commission powers and duties; requiring interim chancellor to meet all criteria
9 required of the chancellor; clarifying the commission and council's responsibilities, in
10 conjunction with the West Virginia Network, to support systemwide technology needs;
11 revising provisions for rulemaking regarding transfers of credits and obtaining academic
12 credit or advanced placement standing based on experience; authorizing commission to
13 promulgate rules, and exercise powers and duties, governing student loans, scholarships,
14 state aid as provided in Chapter 18C of the code; removing requirements to provide
15 education about certain disease; and making non-substantive technical cleanup
16 corrections and clarifying changes.

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~~ West Virginia
3 Council for Community and Technical College Education, and the community and technical
4 colleges; undertake certain statewide and regional initiatives as specifically designated in this
5 chapter, including those related to the administration of grants and scholarships and including
6 those in conjunction with the council; to review, confirm, or approve certain actions undertaken
7 by governing boards, as delineated in this chapter; and assist in the development of policy that

8 will achieve the goals, objectives and priorities found in §18B-1-1a and §18B-1D-1 of this code.
9 The commission shall exercise its authority and carry out its responsibilities in a manner that is
10 consistent and not in conflict with the powers and duties assigned by law to the West Virginia
11 Council for Community and Technical College Education and the powers and duties assigned to
12 the governing boards. To that end, the commission has the following powers and duties relating
13 to the governing boards under its jurisdiction:

14 (1) Develop and advance the public policy agenda pursuant to §18B-1D-1 *et seq.* of this
15 code to address major challenges facing the state, including, but not limited to, the goals,
16 objectives, and priorities established in this chapter; and

17 ~~(2) Develop, oversee, and advance the promulgation and implementation of a financing~~
18 ~~rule for state institutions of higher education under its jurisdiction except the statutorily exempted~~
19 ~~schools. The rule shall meet the following criteria~~ In conjunction with the council, propose
20 emergency and legislative rules in accordance with §29A-3A-1 and §18B-1-6 of this code to
21 establish a performance-based funding formula model the commission and council shall use,
22 beginning in the fiscal year 2024 budget cycle, in developing their annual budget requests to
23 ensure the fair and equitable distribution and use of public funds among the state's institutions of
24 higher education, including the statutorily and administratively exempted schools. This funding
25 formula model shall advance the goals of the state's postsecondary education system by
26 emphasizing outcomes focused on student success and institutional mission achievement. The
27 formula shall include a range of variables that shall be weighted in a manner that corresponds to
28 each institution's mission and provides incentives for productivity improvements consistent with
29 the goal of strengthening the state's economy and workforce by developing the most competitive
30 and capable graduates in the nation. The rule shall, at a minimum:

31 (A) ~~Provide for an adequate level of educational and general funding for institutions~~
32 ~~pursuant to §18B-1A-5 of this code~~ Establish a set of objective performance metrics that reflect

33 and support the state's higher education goals and priorities and the methodology by which those
34 metrics shall be used in the allocation of state funds;

35 ~~(B) Serve to maintain institutional assets, including, but not limited to, human and physical~~
36 ~~resources and eliminating deferred maintenance~~ Ensure that a portion of each institution's base
37 appropriation is allocated based on outcomes achieved over a defined period of time; and

38 ~~(C) Invest and provide incentives for achieving the priority goals in the public policy~~
39 ~~agenda, including, but not limited to, those found in §18B-1-1a and §18B-1D-1 et seq. of this code~~
40 Incentivize postsecondary program offerings that align with the state's higher education and
41 workforce development priorities; and

42 (D) Establish safeguards to ensure stability of the funding formula model including, but
43 not limited to, providing for periodic reviews of and revision to the performance metrics and
44 funding methodology in addition to accounting for inflation;

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

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

53 (B) Assisting governing boards ~~to carry~~ in carrying out their duty effectively to govern the
54 individual institutions of higher education;

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

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

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

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

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

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

64 (8) Establish a formal process for recommending capital investment needs and for
65 determining priorities for state colleges and universities for these investments for consideration
66 by the Governor and the Legislature as part of the appropriation request process pursuant to
67 §18B-19-1 *et seq.* of this code;

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

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

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

81 (12) Employ a ~~Chancellor for Higher Education~~ chancellor, and any interim chancellor
82 employed shall meet all criteria required of the chancellor, pursuant to §18B-1B-5 of this code;

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

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

88 (15) Approve the total compensation package from all sources for presidents of institutions
89 under its jurisdiction, except the statutorily exempted schools, as proposed by the governing
90 boards. The governing boards, except the governing boards of the statutorily exempted schools,
91 must obtain approval from the commission of the total compensation package both when
92 institutional presidents are employed initially and afterward when any change is made in the
93 amount of the total compensation package: *Provided*, That the commission ~~will~~ shall receive
94 notice, but need not approve or confirm, an increase in the compensation of an institutional
95 president that is exactly in the ratio of compensation increases allocated to all institutional
96 employees and approved by the governing board to expressly include the president;

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

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

108 (18) Jointly with the council and in conjunction with the West Virginia Network, develop
109 and implement an oversight plan to manage systemwide technology except for the statutorily
110 exempted schools support systemwide technology needs through leveraged consortium
111 purchasing, software, database and networking support, and other services including, but not
112 limited to, the following:

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

116 (B) Increasing the delivery of instruction to nontraditional students, to provide providing
117 services to business and industry, and increase increasing the management capabilities of the
118 higher education system.

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

122 (19) ~~Establish and implement policies and procedures~~ Propose rules in accordance with
123 §29A-3A-1, et seq. and §18B-1-6 of this code to ensure that, within sound academic policy, a
124 student may transfer and apply toward the requirements for a bachelor's degree of any
125 postsecondary credential the maximum number of credits earned at any regionally accredited in-
126 state or out-of-state ~~community and technical college with as few requirements~~ institution of higher
127 education in a manner that minimizes the need to repeat courses or ~~to incur additional costs.~~ as
128 ~~are consistent with sound academic policy~~ This requirement applies to transfer processes for all
129 levels of postsecondary programs delivered at community and technical colleges, baccalaureate-
130 degree-granting institutions, and graduate-degree-granting institutions;

131 (20) ~~Establish and implement policies and procedures to ensure that a student may~~
132 ~~transfer and apply toward the requirements for any degree the maximum number of credits earned~~
133 ~~at any regionally accredited in-state or out-of-state higher education institution with as few~~

134 requirements to repeat courses or to incur additional costs as are consistent with sound academic
135 policy;

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

141 ~~(22) (20) Establish and implement policies and programs, in cooperation with the council~~
142 ~~and the governing boards~~ Propose rules in accordance with §29A-3A-1, et seq. and §18B-1-6 of
143 this code to develop a program through which a student who has gained knowledge and skills
144 through employment, participation in education, and training at vocational schools or other
145 education institutions, or Internet-based education programs, may demonstrate by competency-
146 based assessment that he or she has the necessary knowledge and skills to be granted academic
147 credit or advanced placement standing toward the requirements of an associate's degree or a
148 bachelor's degree at a state institution of higher education;

149 ~~(23) (21) Seek out and attend regional, national, and international meetings and forums~~
150 ~~on education and workforce development-related topics as, in the commission's discretion, are~~
151 ~~critical for the performance of their duties as members, for the purpose of keeping abreast of~~
152 ~~education trends and policies to aid it in developing the policies for this state to meet the~~
153 ~~established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 et~~
154 ~~seq. of this code;~~

155 ~~(24) (22) Promulgate and implement a rule for higher education governing boards and~~
156 ~~institutions, except for the statutorily exempted schools and administratively exempted schools,~~
157 ~~to follow when considering capital projects pursuant to §18B-19-1 et seq. of this code, which rule~~
158 ~~shall provide for appropriate deference to the value judgments of governing boards under the~~

159 ~~jurisdiction of the commission~~ and may not apply to the statutorily or administratively exempted
160 schools;

161 ~~(25)~~ (23) Submit to the appropriate agencies of the executive and legislative branches of
162 state government an appropriation request that reflects recommended appropriations for the
163 commission and the governing boards under its jurisdiction including the statutorily and
164 administratively exempted schools. The commission shall submit as part of its appropriation
165 request the separate recommended appropriation request it received from the council, both for
166 the council and for the governing boards under the council's jurisdiction. The commission annually
167 shall submit the proposed allocations based on ~~subsection (d) of this section~~ the funding formula
168 model required by subdivision (a)(2) of this section;

169 ~~(26)~~ (24) Promulgate rules allocating reimbursement of appropriations, if made available
170 by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing
171 services to students with physical, learning, or severe sensory disabilities;

172 ~~(27)~~ (25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules
173 necessary or expedient to fulfill the purposes of this chapter and Chapter 18C of this code;

174 ~~(28)~~ (26) Determine when a joint rule among the governing boards under its jurisdiction is
175 necessary or required by law and, in those instances, in consultation with the governing boards
176 under its jurisdiction, promulgate the joint rule;

177 ~~(29)~~ (27) Promulgate and implement a rule jointly with the council whereby course credit
178 earned at a community and technical college transfers for program credit at any other state
179 institution of higher education and is not limited to fulfilling a general education requirement;

180 ~~(30)~~ (28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee
181 policy for all governing boards under the jurisdiction of the commission, except the statutorily and
182 administratively exempted schools. The rule shall include, but is not limited to, the following:

183 (A) Differences among institutional missions;

184 (B) Strategies for promoting student access;

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

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

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

193 ~~(32)~~ (29) Notwithstanding any other provision of this code to the contrary sell, lease,
194 convey, or otherwise dispose of all or part of any real property that it owns, in accordance with
195 §18B-19-1 *et seq.* of this code;

196 ~~(33)~~ (30) Policy analysis and research focused on issues affecting institutions of higher
197 education generally or a geographical region thereof;

198 ~~(34)~~ (31) Development and approval of institutional mission definitions except the
199 statutorily and administratively exempted schools ~~and administratively exempted schools~~:
200 *Provided*, That the commission may use funds appropriated by the Legislature for incentive funds
201 to influence institutional behavior in ways that are consistent with public priorities, including the
202 statutorily and administratively exempted schools ~~and administratively exempted schools~~;

203 ~~(35)~~ (32) Academic program review and approval for governing boards under its
204 jurisdiction, except the statutorily and administratively exempted schools. The review and
205 approval includes use of institutional missions as a template to judge the appropriateness of both
206 new and existing programs and the authority to implement needed changes.

207 (A) The commission's authority to review and approve academic programs for the
208 statutorily and administratively exempted ~~and administratively exempted~~ schools is limited to
209 programs that are proposed to be offered at a new location not presently served by that institution:

210 *Provided*, That West Virginia University and the West Virginia University Institute of Technology
211 are subject to the commission's authority as provided in §18B-1C-2 of this code.

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

214 (i) New programs ~~should~~ may not be implemented which change the institutional mission,
215 unless the institution also receives approval for expanding the institutional mission;

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

218 (I) The expenses ~~will~~ shall be addressed by effective reallocations of existing institutional
219 resources; or

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

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

229 (C) The commission shall approve or disapprove proposed academic degree programs in
230 those instances where approval is required as soon as practicable. The commission shall
231 maintain by rule a format model by which a new program approval shall be requested by an
232 institution. When a request for approval of a new program is submitted to the commission, the
233 chancellor shall provide notice within two weeks as to whether the submission meets the required
234 format, and if it does not the chancellor shall identify each specific deficiency and return the
235 request to the institution. The institution may refile the request for approval with the commission

236 to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the
237 request meets the required format, the commission shall either approve or disapprove the request
238 for the new program. The commission may not withhold approval unreasonably.

239 ~~(36)~~ (33) Distribution of funds appropriated to the commission, including incentive and
240 performance-based funds;

241 ~~(37)~~ (34) Administration of state and federal student aid programs under the supervision
242 of the vice chancellor for administration, including promulgation of rules necessary to administer
243 those programs;

244 ~~(38)~~ (35) Serving as the agent to receive and disburse public funds when a governmental
245 entity requires designation of a statewide higher education agency for this purpose;

246 ~~(39)~~ (36) Developing and distributing information, assessment, accountability and
247 personnel systems for state colleges and universities, including maintaining statewide data
248 systems that facilitate long-term planning and accurate measurement of strategic outcomes and
249 performance indicators;

250 ~~(40)~~ (37) Jointly with the council, promulgating and implementing rules for licensing and
251 oversight for both public and private degree-granting and nondegree-granting institutions that
252 provide post-secondary education courses or programs in the state. The council has authority
253 and responsibility for approval of all post-secondary courses or programs providing community
254 and technical college education as defined in §18B-1-2 of this code;

255 ~~(41)~~ (38) Developing, facilitating, and overseeing statewide and regional projects and
256 initiatives related to providing post-secondary education at the baccalaureate level and above
257 such as those using funds from federal categorical programs or those using incentive and
258 performance-based funds from any source;

259 ~~(42)~~ (39) (A) For all governing boards under its jurisdiction, except for the statutorily
260 exempted schools, the commission shall review institutional operating budgets, review, and
261 approve capital budgets, and distribute incentive and performance-based funds.

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

267 ~~(43)~~ (40) May provide information, research, and recommendations to state colleges and
268 universities relating to programs and vocations with employment rates greater than 90 percent
269 within six months post-graduation; and

270 ~~(44)~~ (41) May provide information, research, and recommendations to state colleges and
271 universities on coordinating with the West Virginia State Board of Education about complimentary
272 programs.

273 (b) In addition to the powers and duties provided in ~~subsections (a) and (c)~~ of this section
274 and any other powers and duties assigned to it by law, the commission has other powers and
275 duties necessary or expedient to accomplish the purposes of this ~~article~~ chapter and Chapter 18C
276 of this code: *Provided*, That the provisions of this subsection ~~shall~~ may not be construed to shift
277 management authority from the governing boards to the commission.

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

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

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

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

289 ~~(d) The Higher Education Policy Commission shall examine the question of general~~
290 ~~revenue appropriations to individual higher education institutions per student, and per credit hour,~~
291 ~~and by other relevant measures at state institutions of higher education under its jurisdiction and~~
292 ~~the council shall undertake the same analysis for the community and technical colleges, and on~~
293 ~~or before October 1 of each year the commission and council shall each deliver a report to the~~
294 ~~Joint Committee on Government and Finance and the Legislative Oversight Commission on~~
295 ~~Education Accountability. These reports shall include a recommendation to the Legislature on a~~
296 ~~formula or methodology for the allocation of general revenue to be appropriated to such~~
297 ~~institutions that provides for ratable funding across all four-year institutions and community and~~
298 ~~technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant~~
299 ~~measures. The commission and council shall take into consideration the needs of each institution~~
300 ~~relating to a base level of appropriation support and mission differentiation. On such basis, the~~
301 ~~commission and council shall each make a recommendation to the Legislature as to the amounts~~
302 ~~that each such institution should have appropriated to it in the general revenue budget for the~~
303 ~~next fiscal year, based upon the total general revenue appropriations that such institutions receive~~
304 ~~in aggregate in the enacted budget for the current fiscal year. The commission and council shall~~
305 ~~engage with the four-year institutions and community and technical colleges, as appropriate, to~~
306 ~~seek to develop a consensus on the formulas and methodologies underlying any~~
307 ~~recommendations required by this subsection. The commission and council shall provide the~~
308 ~~four-year institutions and community and technical colleges with at least 30 days written notice to~~
309 ~~comment on any recommendations before any report contemplated by this subsection is provided~~
310 ~~to the Legislature.~~