

SB 448
+ Ltn

FILED

2004 APR -7 P 3: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 448

(By Senator Plymale, et al)

PASSED March 13, 2004

In Effect From Passage

FILED

2004 APR -7 P 3: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 448

(BY SENATORS PLYMALE, EDGELL, BOLEY, BOWMAN,
CALDWELL, DEMPSEY, HARRISON, HUNTER, OLIVERIO,
SPOUSE, UNGER AND WHITE)

[Passed March 13, 2004; in effect from passage.]

AN ACT to repeal §18B-1A-8 of the code of West Virginia, 1931, as amended; to repeal §18B-1B-7 of said code; to repeal §18B-3C-7 of said code; to repeal §18B-6-2a, §18B-6-3a, §18B-6-4a and §18B-6-4b of said code; to amend and reenact §18-2-1 of said code; to amend and reenact §18B-1-1a, §18B-1-2, §18B-1-3 and §18B-1-6 of said code; to amend and reenact §18B-1A-2, §18B-1A-3, §18B-1A-4, §18B-1A-5 and §18B-1A-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code; to amend said code by adding thereto a new section, designated §18B-1B-11; to amend and reenact §18B-2A-1 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-6; to amend and reenact §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code; to amend said code by adding thereto a new section, designated §18B-2B-6a; to amend and reenact §18B-2C-3

and §18B-2C-4 of said code; to amend and reenact §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code; to amend and reenact §18B-4-1, §18B-4-2 and §18B-4-7 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-6-1 and §18B-6-1a of said code; to amend said code by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; to amend and reenact §18B-7-1 of said code; to amend said code by adding thereto a new section, designated §18B-7-12; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-10-2 of said code; and to amend said code by adding thereto a new section, designated §18B-10-1b, all relating to education generally; higher education; community and technical college education; post-secondary education; state board membership; powers and duties of higher education policy commission and council for community and technical college education; goals for post-secondary education; definitions; transferring certain rules and expanding and clarifying rule-making authority; developing and approving institutional compacts and master plans; establishing benchmarks and indicators; authorizing emergency rule; selecting peer institutions; legislative financing goals; budget authority of commission and council; provision of baccalaureate and graduate education; reducing duration of certain grants; higher education personnel; developing public policy agenda; commission membership; consistency and cooperation among commission, council and certain boards and groups; establishing priorities and distributing funds for capital projects; employment of staff; appointments to boards and commissions; transfer of certain course credits; approval of new institutions, programs and courses; employment of chancellor for higher education; powers and duties; evaluations and contracts; appointment of institutional presidents; evaluations; role of governing and advisory boards, commission and council in appointments; requiring study of certain institutions providing post-secondary education; requiring reports

to legislative oversight commission on education accountability; powers and duties of governing boards and institutional boards of advisors; authority of governing board in determining institutional status; changing status of certain baccalaureate institutions; establishing or continuing governing and advisory boards for certain institutions; membership; terms of office; legislative findings; employment of chancellor for community and technical college education; evaluations and contracts; maintenance of employee benefits; council membership and terms of office; qualifications; jurisdiction and authority of council; employment of staff; tuition and fees; certain fee transfer; developing standards for remedial and developmental courses; higher education report card; authorization to withdraw certain powers from a governing board; transfer and expansion of certain administrative, programmatic and budgetary control; establishing certain deadlines for commission and council; transferring certain fund and authorizing expenditures; employee transfer; powers and duties of chancellor; establishing and conforming structure of certain advisory groups; membership and terms of office; exceptions; meetings; development of search and screening guidelines; establishing certain advisory groups; clarifying certain expenses; modifying deadline for attaining independent accreditation; exceptions; council options; district consortia elimination; community and technical college consortia districts established; consortia powers, duties, responsibilities and operation; modifying title of certain employees; continuation in office; council authority over certain degree programs; service and fee requirement modification and limitation; employee reorganization; supervision of certain employees; essential services; employment of vice chancellor for administration; deadline for employment; modifying certain purchasing and competitive bidding requirements; certain employee seniority and displacement authority modification; duty of council regarding personnel classification system; creation, collection and use of certain fees; and eliminating certain obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18B-1A-8 of the code of West Virginia, 1931, as amended, be repealed; that §18B-1B-7 of said code be repealed; that §18B-3C-7 of said code be repealed; that §18B-6-2a, §18B-6-3a, §18B-6-4a and §18B-6-4b of said code be repealed; that §18-2-1 of said code be amended and reenacted; that §18B-1-1a, §18B-1-2, §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2, §18B-1A-3, §18B-1A-4, §18B-1A-5 and §18B-1A-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-11; that §18B-2A-1 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-6; that §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2B-6a; that §18B-2C-3 and §18B-2C-4 of said code be amended and reenacted; that §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code be amended and reenacted; that §18B-4-1, §18B-4-2 and §18B-4-7 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; that said code be amended by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; that §18B-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-7-12; that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-10-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-10-1b, all to read as follows:

CHAPTER 18. EDUCATION.**ARTICLE 2. STATE BOARD OF EDUCATION.**

§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

1 There is a state board of education, to be known as the
2 West Virginia board of education, which is a corporation
3 and as such may contract and be contracted with, plead
4 and be impleaded, sue and be sued, and have and use a
5 common seal. The state board consists of twelve members,
6 of whom one is the state superintendent of schools, ex
7 officio; one of whom is the chancellor of the higher
8 education policy commission, ex officio; and one of whom
9 is the chancellor of the West Virginia council for commu-
10 nity and technical college education, ex officio, none of
11 whom is entitled to vote. The other nine members are
12 citizens of the state, appointed by the governor, by and
13 with the advice and consent of the Senate, for overlapping
14 terms of nine years. Terms of office begin on the fifth day
15 of November of the appropriate year and end on the fourth
16 day of November of the appropriate year. At least two,
17 but not more than three, members are appointed from each
18 congressional district.

19 No more than five of the appointive members may
20 belong to the same political party and no person is eligible
21 for appointment to membership on the state board who is
22 a member of any political party executive committee or
23 holds any other public office or public employment under
24 the federal government or under the government of this
25 state or any of its political subdivisions, or who is an
26 appointee or employee of the board. Members are eligible
27 for reappointment. Any vacancy on the board shall be
28 filled by the governor by appointment for the unexpired
29 term.

30 Notwithstanding the provisions of section four, article
31 six, chapter six of this code, a member of the state board
32 may not be removed from office by the governor except for
33 official misconduct, incompetence, neglect of duty or gross
34 immorality and then only in the manner prescribed by law
35 for the removal by the governor of state elective officers.

36 Before exercising any authority or performing any duties
37 as a member of the state board, each member shall qualify
38 as such by taking and subscribing to the oath of office
39 prescribed by section five, article IV of the constitution of
40 West Virginia, the certificate whereof shall be filed with
41 the secretary of state. A suitable office in the state
42 department of education at the state capitol shall be
43 provided for use by the state board.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-1a. Goals for post-secondary education.

1 (a) *Findings.*—The Legislature finds that post-secondary
2 education is vital to the future of West Virginia. For the
3 state to realize its considerable potential in the
4 twenty-first century, it must have a system for the delivery
5 of post-secondary education which is competitive in the
6 changing national and global environment, is affordable
7 within the fiscal constraints of the state and for the state's
8 residents to participate and has the capacity to deliver the
9 programs and services necessary to meet regional and
10 statewide needs.

11 (1) West Virginia leads a national trend toward an aging
12 population wherein a declining percentage of working-age
13 adults will be expected to support a growing percentage of
14 retirees. Public school enrollments statewide have de-
15 clined and will continue to do so for the foreseeable future
16 with a few notable exceptions in growing areas of the
17 state. As the state works to expand and diversify its
18 economy, it is vitally important that young people entering
19 the work force from our education systems have the
20 knowledge and skills to succeed in the economy of the
21 twenty-first century. It is equally important, however,
22 that working-age adults who are the large majority of the
23 current and potential work force also possess the requisite
24 knowledge and skills and the ability to continue learning
25 throughout their lifetimes. The reality for West Virginia

26 is that its future rests not only on how well its youth are
27 educated, but also on how well it educates its entire
28 population of any age.

29 (2) Post-secondary education is changing throughout the
30 nation. Place-bound adults, employers and communities
31 are demanding education and student services that are
32 accessible at any time, at any place and at any pace.
33 Institutions are seizing the opportunity to provide aca-
34 demic content and support services on a global scale by
35 designing new courseware, increasing information tech-
36 nology-based delivery, increasing access to library and
37 other information resources and developing new methods
38 to assess student competency rather than "seat time" as
39 the basis for recognizing learning, allocating resources and
40 ensuring accountability. In this changing environment,
41 the state must take into account the continuing decline in
42 the public school-age population, the limits of its fiscal
43 resources and the imperative need to serve the educational
44 needs of working-age adults. West Virginia cannot afford
45 to finance quality higher education systems that aspire to
46 offer a full array of programs while competing among
47 themselves for a dwindling pool of traditional applicants.
48 The competitive position of the state and its institutions
49 will depend fundamentally on its capacity to reinforce the
50 quality and differentiation of its institutions through
51 policies that encourage focus and collaboration.

52 (3) The accountability system in West Virginia must be
53 well equipped to address cross-cutting issues such as
54 regional economic and work force development, commu-
55 nity and technical college services, collaboration with the
56 public schools to improve quality and student participa-
57 tion rates, access to graduate education and other broad
58 issues of state interest. Severe fiscal constraints require
59 West Virginia to make maximum use of existing assets to
60 meet new demands. New investments must be targeted to
61 those initiatives designed to enhance and reorient existing
62 capacity, provide incentives for collaboration and focus on

63 the new demands. It must have a single accountability
64 point for developing, building consensus around and
65 sustaining attention to the public policy agenda and for
66 allocating resources consistent with this policy agenda.

67 (4) The state should make the best use of the expertise
68 that private institutions of higher education can offer and
69 recognize the importance of their contributions to the
70 economic, social and cultural well-being of their commu-
71 nities.

72 (5) The system of public higher education should be open
73 and accessible to all persons, including persons with
74 disabilities and other persons with special needs.

75 (b) *Compact with higher education.* – In pursuance of
76 these findings, it is the intent of the Legislature to engage
77 higher education in a statewide compact for the future of
78 West Virginia, as provided in article one-a of this chapter,
79 that focuses on a public policy agenda that includes, but is
80 not limited to, the following:

81 (1) Diversifying and expanding the economy of the state;

82 (2) Increasing the competitiveness of the state's work
83 force and the availability of professional expertise by
84 increasing the number of college degrees produced to the
85 level of the national average and significantly improving
86 the level of adult functional literacy; and

87 (3) Creating a system of higher education that is
88 equipped to succeed at producing these results.

89 (c) *Elements of the compact with higher education.* – It
90 is the intent of the Legislature that the compact with
91 higher education include the following elements:

92 (1) A step-by-step process, as provided in articles one-b
93 and three-c of this chapter, which will enable the state to
94 achieve its public policy agenda through a system of
95 higher education equipped to assist in producing the
96 needed results. This process includes, but is not limited to,

97 separate institutional compacts with state institutions of
98 higher education that describe changes in institutional
99 missions in the areas of research, graduate education,
100 admission standards, community and technical college
101 education and geographical areas of responsibility to
102 accomplish the following:

103 (A) A capacity within higher education to conduct
104 research to enhance West Virginia in the eyes of the larger
105 economic and educational community and to provide a
106 basis for West Virginia's improved capacity to compete in
107 the new economy through research oriented to state needs;

108 (B) Access to stable and continuing graduate-level
109 programs in every region of the state, particularly in
110 teacher education related to teaching within a subject area
111 to improve teacher quality;

112 (C) Universities, colleges and community and technical
113 colleges that have focused missions, individual points of
114 distinction and quality and strong links with the educa-
115 tional, economic and social revitalization of their regions
116 and the state of West Virginia;

117 (D) Greater access and capacity to deliver technical
118 education, workforce development and other higher
119 education services to place-bound adults, thus improving
120 the general levels of post-secondary educational attain-
121 ment and literacy;

122 (E) Independently accredited community and technical
123 colleges in every region of the state that:

124 (i) Assess regional needs;

125 (ii) Ensure access to comprehensive community and
126 technical college and workforce development services
127 within each of their respective regions;

128 (iii) Convene and serve as a catalyst for local action in
129 collaboration with regional leaders, employers and other
130 educational institutions;

131 (iv) Provide and, as necessary, broker educational
132 services;

133 (v) Provide necessary student services;

134 (vi) Fulfill such other aspects of the community and
135 technical college mission and general provisions for
136 community and technical colleges as provided for in article
137 three-c of this chapter; and

138 (vii) Maximize use of existing infrastructure and re-
139 sources within their regions to increase access, including,
140 but not limited to, vocational technical centers, schools,
141 libraries, industrial parks and work sites.

142 (2) Providing additional resources, subject to availability
143 and appropriation by the Legislature as provided in article
144 one-a of this chapter, to make the state institutions of
145 higher education more competitive with their peers, to
146 assist them in accomplishing the elements of the public
147 policy agenda and to ensure the continuity of academic
148 programs and services to students.

149 (3) Establishing a process for the allocation of additional
150 resources which focuses on achieving the elements of the
151 public policy agenda and streamlines accountability for
152 the step-by-step progress toward achieving these elements
153 within a reasonable time frame as provided in article
154 one-a of this chapter.

155 (4) Providing additional flexibility to the state institu-
156 tions of higher education by making permanent the
157 exceptions granted to higher education relating to travel
158 rules and vehicles pursuant to sections forty-eight through
159 fifty-three, inclusive, article three, chapter five-a of this
160 code and section eleven, article three, chapter twelve of
161 this code.

162 (5) Revising the higher education governance structure
163 to make it more responsive to state and regional needs.

164 (d) *General goals for post-secondary education.* – In
165 pursuance of the findings and the development of institu-
166 tional compacts with higher education for the future of
167 West Virginia pursuant to article one-a of this chapter, it
168 is the intent of the Legislature to establish general goals
169 for post-secondary education and to have the commission
170 and council report the progress toward achieving these
171 goals in the higher education report card required pursu-
172 ant to section eight, article one-b of this chapter and,
173 where applicable, have the goals made a part of the
174 institutional compacts. The Legislature establishes the
175 general goals as follows:

176 (1) The overall focus of education is on a lifelong process
177 which is to be as seamless as possible at all levels and is to
178 encourage citizens of all ages to increase their knowledge
179 and skills. Efforts in pursuit of this goal include, but are
180 not limited to, the following:

181 (A) Collaboration, coordination and interaction between
182 public and post-secondary education to:

183 (i) Improve the quality of public education, particularly
184 with respect to ensuring that the needs of public schools
185 for teachers and administrators are met;

186 (ii) Inform public school students, their parents and
187 teachers of the academic preparation that students need to
188 be prepared adequately to succeed in their selected fields
189 of study and career plans, including academic career fairs;
190 and

191 (iii) Improve instructional programs in the public schools
192 so that the students enrolling in post-secondary education
193 are adequately prepared;

194 (B) Collaboration, coordination and interaction among
195 public and post-secondary education, the governor's
196 council on literacy and the governor's workforce invest-
197 ment office to promote the effective and efficient utiliza-
198 tion of work force investment and other funds to:

199 (i) Provide to individuals and employers greatly im-
200 proved access to information and services on education
201 and training programs, financial assistance, labor markets
202 and job placement;

203 (ii) Increase awareness among the state's citizens of the
204 opportunities available to them to improve their basic
205 literacy, work force and post-secondary skills and creden-
206 tials; and

207 (iii) Improve citizens' motivation to take advantage of
208 available opportunities by making the system more
209 seamless and user friendly;

210 (C) Collaboration, coordination and interaction between
211 public and post-secondary education on the development
212 of seamless curriculum in technical preparation programs
213 of study between the secondary and post-secondary levels;
214 and

215 (D) Opportunities for advanced high school students to
216 obtain college credit prior to high school graduation.

217 (2) The number of degrees produced per capita by West
218 Virginia institutions of higher education is at the national
219 average. Efforts in pursuit of this goal include, but are not
220 limited to, the following:

221 (A) Collaboration, coordination and interaction between
222 public and post-secondary education, the governor's
223 council on literacy and the governor's workforce invest-
224 ment office to promote to individuals of all ages the
225 benefits of increased post-secondary educational attain-
226 ment;

227 (B) Assistance in overcoming the financial barriers to
228 post-secondary education for both traditional and nontra-
229 ditional students;

230 (C) An environment within post-secondary education
231 that is student-friendly and that encourages and assists
232 students in the completion of degree requirements within

233 a reasonable time frame. The environment also should
234 expand participation for the increasingly diverse student
235 population;

236 (D) A spirit of entrepreneurship and flexibility within
237 post-secondary education that is responsive to the needs of
238 the current workforce and other nontraditional students
239 for upgrading and retraining college-level skills; and

240 (E) The expanded use of technology for instructional
241 delivery and distance learning.

242 (3) All West Virginians, whether traditional or nontradi-
243 tional students, displaced workers or those currently
244 employed, have access to post-secondary educational
245 opportunities through their community and technical
246 colleges, colleges and universities which:

247 (A) Are relevant and affordable;

248 (B) Allow them to gain transferrable credits and associ-
249 ate or higher level degrees;

250 (C) Provide quality technical education and skill train-
251 ing; and

252 (D) Are responsive to business, industry, labor and
253 community needs.

254 (4) State institutions of higher education prepare
255 students to practice good citizenship and to compete in a
256 global economy in which good jobs require an advanced
257 level of education and skill which far surpasses former
258 requirements. Efforts in pursuit of this goal include, but
259 are not limited to, the following:

260 (A) The development of entrepreneurial skills through
261 programs such as the rural entrepreneurship through
262 action learning (REAL) program, which include practical
263 experience in market analysis, business plan development
264 and operations;

265 (B) Elements of citizenship development are included
266 across the curriculum in core areas, including practical
267 applications such as community service, civic involvement
268 and participation in charitable organizations and in the
269 many opportunities for the responsible exercise of citizen-
270 ship that higher education institutions provide;

271 (C) Students are provided opportunities for internships,
272 externships, work study and other methods to increase
273 their knowledge and skills through practical application
274 in a work environment;

275 (D) College graduates meet or exceed national and
276 international standards for skill levels in reading, oral and
277 written communications, mathematics, critical thinking,
278 science and technology, research and human relations;

279 (E) College graduates meet or exceed national and
280 international standards for performance in their fields
281 through national accreditation of programs and through
282 outcomes assessment of graduates; and

283 (F) Admission and exit standards for students, profes-
284 sional staff development, program assessment and evalua-
285 tion and other incentives are used to improve teaching and
286 learning.

287 (5) State institutions of higher education exceed peer
288 institutions in other states in measures of institutional
289 productivity and administrative efficiency. Efforts in
290 pursuit of this goal include, but are not limited to:

291 (A) The establishment of systematic ongoing mechanisms
292 for each state institution of higher education to set goals,
293 to measure the extent to which those goals are met and to
294 use the results of quantitative evaluation processes to
295 improve institutional effectiveness;

296 (B) The combination and use of resources, technology
297 and faculty to their maximum potential in a way that
298 makes West Virginia higher education more productive

299 than its peer institutions in other states while maintaining
300 educational quality; and

301 (C) The use of systemic program review to determine
302 how much duplication is necessary to maintain geographic
303 access and to eliminate unnecessary duplication.

304 (6) Post-secondary education enhances state efforts to
305 diversify and expand the economy of the state. Efforts in
306 pursuit of this goal include, but are not limited to, the
307 following:

308 (A) The focus of resources on programs and courses
309 which offer the greatest opportunities for students and the
310 greatest opportunity for job creation and retention in the
311 state;

312 (B) The focus of resources on programs supportive of
313 West Virginia employment opportunities and the emerging
314 high-technology industries;

315 (C) Closer linkages among higher education and busi-
316 ness, labor, government and community and economic
317 development organizations; and

318 (D) Clarification of institutional missions and shifting of
319 resources to programs which meet the current and future
320 work force needs of the state.

321 (7) Faculty and administrators are compensated at a
322 level competitive with peer institutions to attract and keep
323 quality personnel at state institutions of higher education.

324 (8) The tuition and fee levels for in-state students are
325 competitive with those of peer institutions and the tuition
326 and fee levels for out-of-state students are set at a level
327 which at least covers the full cost of instruction.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
2 chapter eighteen-c of this code have the meaning hereinaf-

3 ter ascribed to them unless the context clearly indicates a
4 different meaning:

5 (a) Effective the first day of July, two thousand five,
6 "regional campus" means West Virginia university at
7 Parkersburg and West Virginia university institute of
8 technology.

9 (b) "Governing boards" or "boards" means the institu-
10 tional boards of governors created pursuant to section one,
11 article two-a of this chapter;

12 (c) "Freestanding community and technical colleges"
13 means southern West Virginia community and technical
14 college, West Virginia northern community and technical
15 college and eastern West Virginia community and techni-
16 cal college which may not be operated as branches or
17 off-campus locations of any other state institution of
18 higher education;

19 (d) "Community college" or "community colleges" means
20 community and technical college or colleges as those terms
21 are defined in this section;

22 (e) "Community and technical college", in the singular or
23 plural, means the freestanding community and technical
24 colleges and other state institutions of higher education
25 which deliver community and technical college education.
26 This definition includes southern West Virginia commu-
27 nity and technical college, West Virginia northern commu-
28 nity and technical college, eastern West Virginia commu-
29 nity and technical college, New River community and
30 technical college, West Virginia university at Parkersburg,
31 the community and technical college at West Virginia
32 university institute of technology, the community and
33 technical college of Shepherd, Fairmont state community
34 and technical college, Marshall community and technical
35 college and West Virginia state community and technical
36 college;

37 (f) "Community and technical college education" means
38 the programs, faculty, administration and funding associ-
39 ated with the mission of community and technical colleges
40 as provided in article three-c of this chapter;

41 (g) "Essential conditions" means those conditions which
42 shall be met by community and technical colleges as
43 provided in section three, article three-c of this chapter;

44 (h) "Higher education institution" means any institution
45 as defined by Sections 401(f), (g) and (h) of the federal
46 Higher Education Facilities Act of 1963, as amended;

47 (i) "Higher education policy commission", "policy
48 commission" or "commission" means the commission
49 created pursuant to section one, article one-b of this
50 chapter;

51 (j) "Chancellor for higher education" means the chief
52 executive officer of the higher education policy commis-
53 sion employed pursuant to section five, article one-b of
54 this chapter;

55 (k) "Chancellor for community and technical college
56 education" means the chief executive officer of the West
57 Virginia council for community and technical college
58 education employed pursuant to section three, article
59 two-b of this chapter;

60 (l) "Chancellor" means the chancellor for higher educa-
61 tion where the context refers to a function of the higher
62 education policy commission. "Chancellor" means
63 chancellor for community and technical college education
64 where the context refers to a function of the West Virginia
65 council for community and technical college education;

66 (m) "Institutional operating budget" or "operating
67 budget" means for any fiscal year an institution's total
68 unrestricted education and general funding from all
69 sources in the prior fiscal year, including, but not limited
70 to, tuition and fees and legislative appropriation, and any

71 adjustments to that funding as approved by the commis-
72 sion or council based on comparisons with peer institu-
73 tions or to reflect consistent components of peer operating
74 budgets;

75 (n) "Community and technical college education pro-
76 gram" means any college-level course or program beyond
77 the high school level provided through a public institution
78 of higher education resulting in or which may result in a
79 two-year associate degree award including an associate of
80 arts, an associate of science and an associate of applied
81 science; certificate programs and skill sets; developmental
82 education; continuing education; collegiate credit and
83 noncredit workforce development programs; and transfer
84 and baccalaureate parallel programs. All such programs
85 are under the jurisdiction of the council. Any reference to
86 "post-secondary vocational education programs" means
87 community and technical college education programs as
88 defined in this subsection;

89 (o) "Rule" or "rules" means a regulation, standard,
90 policy or interpretation of general application and future
91 effect;

92 (p) For the purposes of this chapter and chapter eigh-
93 teen-c of this code "senior administrator" means the vice
94 chancellor for administration employed by the commission
95 with the advice and consent of the council in accordance
96 with section two, article four of this chapter;

97 (q) "State college" means Bluefield state college, Con-
98 cord college, Fairmont state college, Glenville state
99 college, Shepherd college, West Liberty state college or
100 West Virginia state college;

101 (r) "State institution of higher education" means any
102 university, college or community and technical college
103 under the jurisdiction of a governing board as that term is
104 defined in this section;

105 (s) Until the first day of July, two thousand five, "re-
106 gional campus" means West Virginia university at
107 Parkersburg, Potomac state college of West Virginia
108 university and West Virginia university institute of
109 technology;

110 (t) The advisory board previously appointed for the West
111 Virginia graduate college is known as the "board of
112 visitors" and shall provide guidance to the Marshall
113 university graduate college;

114 (u) "Institutional compact" means the compact between
115 the commission or council and a state institution of higher
116 education under its jurisdiction, as described in section
117 two, article one-a of this chapter;

118 (v) "Peer institutions", "peer group" or "peers" means
119 public institutions of higher education used for compari-
120 son purposes and selected by the commission pursuant to
121 section three, article one-a of this chapter;

122 (w) "Administratively linked community and technical
123 college" means a community and technical college created
124 pursuant to section eight, article three-c of this chapter;

125 (x) "Sponsoring institution" means a state institution of
126 higher education that maintains an administrative link to
127 a community and technical college pursuant to section
128 eight, article three-c of this chapter;

129 (y) "Collaboration" means entering into an agreement
130 with one or more providers of education services in order
131 to enhance the scope, quality or efficiency of education
132 services;

133 (z) "Broker" or "brokering" means serving as an agent
134 on behalf of students, employers, communities or responsi-
135 bility areas to obtain education services not offered at that
136 institution. These services include courses, degree pro-
137 grams or other services contracted through an agreement

138 with a provider of education services either in-state or
139 out-of-state; and

140 (aa) "Council" means the West Virginia council for
141 community and technical college education created
142 pursuant to article two-b of this chapter.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.

1 (a) All powers, duties and authorities transferred to the
2 board of regents pursuant to former provisions of chapter
3 eighteen of this code and transferred to the board of
4 trustees and board of directors which were created as the
5 governing boards pursuant to the former provisions of this
6 chapter and all powers, duties and authorities of the board
7 of trustees and board of directors, to the extent they are in
8 effect on the seventeenth day of June, two thousand, are
9 hereby transferred to the interim governing board created
10 in article one-c of this chapter and shall be exercised and
11 performed by the interim governing board until the first
12 day of July, two thousand one, as such powers, duties and
13 authorities may apply to the institutions under its jurisdic-
14 tion.

15 (b) Title to all property previously transferred to or
16 vested in the board of trustees and the board of directors
17 and property vested in either of the boards separately,
18 formerly existing under the provisions of this chapter, are
19 hereby transferred to the interim governing board created
20 in article one-c of this chapter until the first day of July,
21 two thousand one. Property transferred to or vested in the
22 board of trustees and board of directors shall include:

23 (1) All property vested in the board of governors of West
24 Virginia university and transferred to and vested in the
25 West Virginia board of regents;

26 (2) All property acquired in the name of the state board
27 of control or the West Virginia board of education and
28 used by or for the state colleges and universities and

29 transferred to and vested in the West Virginia board of
30 regents;

31 (3) All property acquired in the name of the state com-
32 mission on higher education and transferred to and vested
33 in the West Virginia board of regents; and

34 (4) All property acquired in the name of the board of
35 regents and transferred to and vested in the respective
36 board of trustees and board of directors.

37 (c) Each valid agreement and obligation previously
38 transferred to or vested in the board of trustees and board
39 of directors formerly existing under the provisions of this
40 chapter is hereby transferred to the interim governing
41 board until the first day of July, two thousand one, as
42 those agreements and obligations may apply to the institu-
43 tions under its jurisdiction. Valid agreements and obliga-
44 tions transferred to the board of trustees and board of
45 directors shall include:

46 (1) Each valid agreement and obligation of the board of
47 governors of West Virginia university transferred to and
48 deemed the agreement and obligation of the West Virginia
49 board of regents;

50 (2) Each valid agreement and obligation of the state
51 board of education with respect to the state colleges and
52 universities transferred to and deemed the agreement and
53 obligation of the West Virginia board of regents;

54 (3) Each valid agreement and obligation of the state
55 commission on higher education transferred to and
56 deemed the agreement and obligation of the West Virginia
57 board of regents; and

58 (4) Each valid agreement and obligation of the board of
59 regents transferred to and deemed the agreement and
60 obligation of the respective board of trustees and board of
61 directors.

62 (d) All orders, resolutions and rules adopted or promul-
63 gated by the respective board of trustees and board of
64 directors and in effect immediately prior to the first day of
65 July, two thousand, are hereby transferred to the interim
66 governing board until the first day of July, two thousand
67 one, and shall continue in effect and shall be deemed the
68 orders, resolutions and rules of the interim governing
69 board until rescinded, revised, altered or amended by the
70 commission or the governing boards in the manner and to
71 the extent authorized and permitted by law. Such orders,
72 resolutions and rules shall include:

73 (1) Those adopted or promulgated by the board of
74 governors of West Virginia university and in effect imme-
75 diately prior to the first day of July, one thousand nine
76 hundred sixty-nine, unless and until rescinded, revised,
77 altered or amended by the board of regents in the manner
78 and to the extent authorized and permitted by law;

79 (2) Those respecting state colleges and universities
80 adopted or promulgated by the West Virginia board of
81 education and in effect immediately prior to the first day
82 of July, one thousand nine hundred sixty-nine, unless and
83 until rescinded, revised, altered or amended by the board
84 of regents in the manner and to the extent authorized and
85 permitted by law;

86 (3) Those adopted or promulgated by the state commis-
87 sion on higher education and in effect immediately prior
88 to the first day of July, one thousand nine hundred
89 sixty-nine, unless and until rescinded, revised, altered or
90 amended by the board of regents in the manner and to the
91 extent authorized and permitted by law; and

92 (4) Those adopted or promulgated by the board of
93 regents prior to the first day of July, one thousand nine
94 hundred eighty-nine, unless and until rescinded, revised,
95 altered or amended by the respective board of trustees or
96 board of directors in the manner and to the extent autho-
97 rized and permitted by law.

98 (e) Title to all real property transferred to or vested in
99 the interim governing board pursuant to this section of the
100 code is hereby transferred to the commission effective the
101 first day of July, two thousand one. The board of gover-
102 nors for each institution may request that the commission
103 transfer title to the board of governors of any real property
104 specifically identifiable with that institution or the
105 commission may initiate the transfer. Any such request
106 must be made within two years of the effective date of this
107 section and be accompanied by an adequate legal descrip-
108 tion of the property.

109 The title to any real property that is jointly utilized by
110 institutions or for statewide programs under the jurisdic-
111 tion of the commission shall be retained by the commis-
112 sion.

113 (f) Ownership of or title to any other property, materials,
114 equipment or supplies obtained or purchased by the
115 interim governing board or the previous governing boards
116 on behalf of an institution is hereby transferred to the
117 board of governors of that institution effective the first
118 day of July, two thousand one.

119 (g) Each valid agreement and obligation previously
120 transferred or vested in the interim governing board and
121 which was undertaken or agreed to on behalf of an institu-
122 tion or institutions is hereby transferred to the board of
123 governors of the institution or institutions for whose
124 benefit the agreement was entered into or the obligation
125 undertaken effective the first day of July, two thousand
126 one.

127 (1) The obligations contained in revenue bonds issued by
128 the previous governing boards under the provisions of
129 section eight, article ten of this chapter and article
130 twelve-b, chapter eighteen of this code are hereby trans-
131 ferred to the commission and each institution shall trans-
132 fer to the commission those funds the commission deter-

133 mines are necessary to pay that institution's share of
134 bonded indebtedness.

135 (2) The obligations contained in revenue bonds issued on
136 behalf of a state institution of higher education pursuant
137 to any other section of this code is hereby transferred to
138 the board of governors of the institution on whose behalf
139 the bonds were issued.

140 (h) All orders, resolutions, policies and rules:

141 (1) Adopted or promulgated by the respective board of
142 trustees, board of directors or interim governing board and
143 in effect immediately prior to the first day of July, two
144 thousand one, are hereby transferred to the commission
145 effective the first day of July, two thousand one, and
146 continue in effect until rescinded, revised, altered,
147 amended or transferred to the governing boards by the
148 commission as provided in this section and in section six
149 of this article.

150 (2) Adopted or promulgated by the commission relating
151 solely to community and technical colleges or community
152 and technical college education, or rules which the council
153 finds necessary for the exercise of its lawful powers and
154 duties pursuant to the provisions of this chapter, may be
155 adopted by the council and continue in effect until re-
156 scinded, revised, altered, amended or transferred to the
157 governing boards under the jurisdiction of the council
158 pursuant to section six of this article. Nothing in this
159 section requires the initial rules of the commission that are
160 adopted by the council to be promulgated again under the
161 procedure set forth in article three-a, chapter
162 twenty-nine-a of this code unless such rules are rescinded,
163 revised, altered or amended.

164 (3) Adopted or promulgated by the commission relating
165 to multiple types of public institutions of higher education
166 or community and technical college education as well as

167 baccalaureate and post-baccalaureate education are
168 transferred to the council in part as follows:

169 (A) That portion of the rule relating solely to community
170 and technical colleges or community and technical college
171 education is transferred to the council and continues in
172 effect until rescinded, revised, altered, amended or trans-
173 ferred to the governing boards by the council as provided
174 in this section and in section six of this article;

175 (B) That portion of the rule relating to institutions or
176 education other than community and technical colleges is
177 retained by the commission and continues in effect until
178 rescinded, revised, altered, amended or transferred to the
179 governing boards by the commission as provided in this
180 section and in section six of this article.

181 (i) The commission may, in its sole discretion, transfer
182 any rule, other than a legislative rule, to the jurisdiction of
183 the governing boards of the institutions under its jurisdic-
184 tion who may rescind, revise, alter or amend any rule so
185 transferred pursuant to rules adopted by the commission
186 pursuant to section six of this article.

187 The council may, in its sole discretion, transfer any rule,
188 other than a legislative rule, to the jurisdiction of the
189 governing boards of the institutions under its jurisdiction
190 who may rescind, revise, alter or amend any rule so
191 transferred pursuant to rules adopted by the council
192 pursuant to section six of this article.

193 (j) As to any title, agreement, obligation, order, resolu-
194 tion, rule or any other matter about which there is some
195 uncertainty, misunderstanding or question, the matter
196 shall be summarized in writing and sent to the commission
197 which shall make a determination regarding such matter
198 within thirty days of receipt thereof.

199 (k) Rules or provisions of law which refer to other
200 provisions of law which were repealed, rendered inopera-
201 tive or superseded by the provisions of this section shall

202 remain in full force and effect to such extent as may still
203 be applicable to higher education and may be so inter-
204 preted. Such references include, but are not limited to,
205 references to sections and prior enactments of article
206 twenty-six, chapter eighteen of this code and code provi-
207 sions relating to retirement, health insurance, grievance
208 procedures, purchasing, student loans and savings plans.
209 Any determination which needs to be made regarding
210 applicability of any provision of law shall first be made by
211 the commission.

§18B-1-6. Rulemaking.

1 (a) The commission is hereby empowered to promulgate,
2 adopt, amend or repeal rules, in accordance with the
3 provisions of article three-a, chapter twenty-nine-a of this
4 code, subject to the provisions of section three of this
5 article.

6 (b) The council is hereby empowered to promulgate,
7 adopt, amend or repeal rules, in accordance with the
8 provisions of article three-a, chapter twenty-nine-a of this
9 code and subject to the provisions of section three of this
10 article. This grant of rule-making power extends only to
11 those areas over which the council has been granted
12 specific authority and jurisdiction by law.

13 (c) The commission and council each shall promulgate a
14 rule to guide the development and approval of rules,
15 guidelines and other policy statements made by their
16 respective governing boards. The rules promulgated by
17 the commission and council shall include, but are not
18 limited to, the following provisions:

19 (1) A procedure to ensure that public notice is given and
20 that the right of interested parties to have a fair and
21 adequate opportunity to respond is protected;

22 (2) Designation of a single location where all proposed
23 and approved rules, guidelines and other policy statements
24 can be accessed by the public;

25 (3) A procedure to maximize internet access to all
26 proposed and approved rules, guidelines and other policy
27 statements to the extent technically and financially
28 feasible.

29 (d) On and after the effective date of this section, and
30 notwithstanding any other provision of this code to the
31 contrary, any rule heretofore required by law to be pro-
32 mulgated as a legislative rule prior to the first day of July,
33 two thousand one, may not be considered to be a legisla-
34 tive rule for the purposes of article three-a, chapter
35 twenty-nine-a of this code except for the following:

36 (1) The legislative rule required by subsection (c), section
37 eight of this article;

38 (2) The legislative rule required by section eight-a of this
39 article;

40 (3) The legislative rule required by section two, article
41 one-a of this chapter;

42 (4) The legislative rule required by section four, article
43 one-b of this chapter;

44 (5) The legislative rule required by section one, article
45 three, chapter eighteen-c of this code;

46 (6) The legislative rule required by section one, article
47 four, chapter eighteen-c of this code;

48 (7) The legislative rule required by section seven, article
49 five, chapter eighteen-c of this code; and

50 (8) The legislative rule required by section one, article
51 six, chapter eighteen-c of this code.

52 (e) Nothing in this section requires that any rule reclassi-
53 fied or transferred under this section be promulgated
54 again under the procedures set out in article three-a,
55 chapter twenty-nine-a of this code unless the rule is
56 amended or modified.

57 (f) The commission and council each shall file with the
58 legislative oversight commission on education account-
59 ability any rule it proposes to promulgate, adopt, amend or
60 repeal under the authority of this article.

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE
OF WEST VIRGINIA.**

**§18B-1A-2. Institutional compacts with state institutions of
higher education; establishment and review
process.**

1 (a) Each state college and university shall prepare an
2 institutional compact for submission to the commission.
3 Each community and technical college shall prepare an
4 institutional compact for submission to the council. When
5 the process herein provided is completed, the institutional
6 compacts shall form the agreements between the institu-
7 tions of higher education and the commission or council,
8 respectively, and, ultimately, between the institutions of
9 higher education and the people of West Virginia on how
10 the institutions will use their resources to address the
11 intent of the Legislature and the goals set forth in section
12 one-a, article one of this chapter. The compacts shall
13 contain the following:

14 (1) A step-by-step process to accomplish the intent of the
15 Legislature and the goals set forth in section one-a, article
16 one of this chapter as organized by the commission and
17 council. The step-by-step process shall be delineated by
18 objectives and shall set forth a time line for achieving the
19 objectives which shall, where applicable, include
20 benchmarks to measure institutional progress as defined
21 in subsection (e) of this section.

22 (2) A determination of the mission of the institution
23 which specifically addresses changes, as applicable, in the
24 areas of research, graduate education, baccalaureate
25 education, revised admission requirements, community
26 and technical colleges and such other areas as the commis-
27 sion or council determines appropriate. In the determina-

28 tion of mission, the institutions and the commission or
29 council shall consider the report completed by the national
30 center for higher education management systems pursuant
31 to the legislative study as provided in section seven, article
32 three of this chapter;

33 (3) A plan which is calculated to make any changes in
34 institutional mission and structure within a six-year
35 period;

36 (4) A statement of the geographic areas of responsibility,
37 where applicable, for each goal to be accomplished as
38 provided in subsection (d) of this section;

39 (5) A detailed statement of how the compact is aligned
40 with and will be implemented in conjunction with the
41 master plan of the institution;

42 (6) Such other items, requirements or initiatives, re-
43 quired by the commission or council, designed to accom-
44 plish the intent of the Legislature and the goals set forth
45 in section one-a, article one of this chapter or other public
46 policy goals established by the commission or council.

47 (b) Each institutional compact shall be updated annually
48 and shall follow the same general guidelines contained in
49 subsection (a) of this section.

50 (c) Development and updating of the institutional
51 compacts is subject to the following:

52 (1) The ultimate responsibility for developing and
53 updating the institutional compacts at the institutional
54 level resides with the institutional board of advisors or the
55 board of governors, as appropriate;

56 (2) The ultimate responsibility for developing and
57 adopting the final version of the state college and univer-
58 sity institutional compacts resides with the commission.
59 The ultimate responsibility for developing and adopting
60 the final version of the community and technical college
61 institutional compacts resides with the council;

62 (3) Each institution shall submit its compact to the
63 commission or council annually by the fifteenth day of
64 November;

65 (4) The commission and council shall review each
66 compact of the institutions under their respective jurisdic-
67 tions and either adopt the compact or return it with
68 specific comments for change or improvement. The
69 commission and council shall continue this process as long
70 as each considers advisable;

71 (5) By the first day of May annually, if the institutional
72 compact of any institution as presented by that institution
73 is not adopted by the commission or council, then the
74 commission or council is empowered and directed to
75 develop and adopt the institutional compact for the
76 institution and the institution is bound by the compact so
77 adopted; and

78 (6) As far as practicable, the commission and council
79 each shall establish uniform processes and forms for the
80 development and submission of the institutional compacts
81 by the institutions under their respective jurisdictions. As
82 a part of this function, the commission and council shall
83 organize the statements of legislative intent and goals
84 contained in section one-a, article one of this chapter in a
85 manner that facilitates the purposes of this subdivision
86 and the purposes of this section.

87 (d) The commission and council shall assign geographic
88 areas of responsibility to the state institutions of higher
89 education under their respective jurisdictions as a part of
90 their institutional compacts to ensure that all areas of the
91 state are provided necessary programs and services to
92 achieve the public policy agenda. The benchmarks estab-
93 lished in the institutional compacts shall include measures
94 of programs and services by geographic area throughout
95 the assigned geographic area of responsibility.

96 (e) The compacts shall contain benchmarks used to
97 determine progress toward meeting the goals established
98 in the compacts. The benchmarks shall meet the following
99 criteria:

100 (1) They shall be as objective as possible;

101 (2) They shall be directly linked to the goals in the
102 compacts;

103 (3) They shall be measured by the indicators described in
104 subsection (f) of this section; and

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

107 (f) The commission and council each shall establish by
108 legislative rule indicators which measure the degree to
109 which the goals and objectives set forth in section one-a,
110 article one of this chapter are being addressed and met by
111 the institutions under their respective jurisdictions. The
112 benchmarks established in subsection (e) of this section
113 shall be measured by the indicators.

114 (1) The Legislature finds that an emergency exists;
115 therefore, not later than the first day of October, two
116 thousand four, the council shall file as an emergency rule
117 a legislative rule pertaining to benchmarks and indicators
118 in accordance with the provisions of article three-a,
119 chapter twenty-nine-a of this code. The rule pertaining to
120 benchmarks and indicators in effect for the commission at
121 the time of the effective date of this section remains in
122 effect for the institutions under its jurisdiction.

123 (2) The legislative rules shall set forth at the least the
124 following as pertains to all state institutions of higher
125 education:

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

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

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

132 (D) Sufficient detail within the benchmarks and indica-
133 tors to:

134 (i) Provide measurable evidence that the pursuits of the
135 institution are targeting the educational needs of the
136 citizens of the state and the components of the compacts
137 and master plans;

138 (ii) Delineate the goals and benchmarks for an institu-
139 tion so that the commission or council can precisely
140 measure the degree to which progress is being made
141 toward achieving the goals for post-secondary education
142 provided in section one-a, article one of this chapter; and

143 (iii) Distinctly identify specific goals within the master
144 plan or compact of an institution that are not being met or
145 toward which sufficient progress is not being made.

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

150 (A) Benchmarks and indicators which are targeted to
151 identify:

152 (i) The degree to which progress is being made by
153 institutions toward meeting the goals for post-secondary
154 education and the essential conditions provided in section
155 three, article three-c of this chapter;

156 (ii) Information and data necessary to be considered by
157 the council in making the determination required by
158 section three, article two-c of this chapter;

159 (iii) The degree to which progress is being made in the
160 areas considered by the council for the purpose of making

161 the determination required by section three, article two-c
162 of this chapter; and

163 (B) Sufficient detail within the benchmarks and indica-
164 tors to provide clear evidence to support an objective
165 determination by the council that an institution's progress
166 toward achieving the goals for post-secondary education
167 and the essential conditions is so deficient that implemen-
168 tation of the provisions of section four, article two-c of
169 this chapter is warranted and necessary.

170 (g) The commission or the council, as appropriate, shall
171 approve the master plans developed by the boards of
172 governors and the institutional boards of advisors pursu-
173 ant to section four, article two-a of this chapter or section
174 one, article six of this chapter, as appropriate.

§18B-1A-3. Peer institutions.

1 (a) The commission shall select not fewer than ten peer
2 institutions for each state institution of higher education
3 in West Virginia, including, but not limited to, independ-
4 ently accredited community and technical colleges.

5 (b) When selecting peers, the commission shall abide by
6 the following conditions:

7 (1) The peer institutions shall be selected from among
8 institutions throughout the United States and not solely
9 from the states that are members of the southern regional
10 education board.

11 (2) The peer institutions for community and technical
12 colleges shall be selected in collaboration with the council.

13 (3) The peer institutions, as selected by the commission,
14 shall be used as benchmarks for comparison purposes only
15 and are not intended to reflect funding goals for West
16 Virginia institutions of higher education. Such a use is
17 inappropriate since institutions selected as peers for a
18 state institution may be located in an area of high per
19 capita income or have their funding subject to other

20 factors that make its use unrealistic for setting funding
21 goals in West Virginia. The peer institutions shall be used
22 for comparison in the following areas:

23 (A) To determine adjustments to base operating budgets
24 as described in section five of this article;

25 (B) To determine comparable levels of tuition;

26 (C) To determine comparable faculty and staff teaching
27 requirements and other workloads; and

28 (D) For such other purposes as the law may require or
29 the commission may find useful or necessary.

30 (4) The commission shall contract with a national,
31 independent education consulting firm to assist in the
32 unbiased selection of peer institutions for each West
33 Virginia institution.

34 (5) The commission shall select peer institutions for each
35 institution through an open, deliberative, objective process
36 and in consultation with the institutional boards of
37 governors or boards of advisors, as appropriate, intended
38 to achieve broad understanding of the basis for this
39 selection in the higher education community and the
40 Legislature.

41 (6) Final peer selection is subject to the approval of the
42 legislative oversight commission on education account-
43 ability.

44 (7) In selecting peer institutions, the commission shall
45 use criteria such as, but not limited to:

46 (A) Institutional mission;

47 (B) Institutional size related to full-time equivalent
48 students;

49 (C) The proportions of full-time and part-time students;

50 (D) The level of academic programs, including, but not
51 limited to, number of degrees granted at the associate,

52 baccalaureate, masters, doctoral and first-professional
53 level;

54 (E) The characteristics of academic programs such as
55 health sciences, professional, technical or liberal arts and
56 sciences; and

57 (F) The level of research funding from federal competi-
58 tive funding sources.

59 (8) Subject to the approval of the legislative oversight
60 commission on education accountability, the commission
61 shall review and make necessary adjustments to peer
62 institutions at least every six years or as necessary based
63 on changes in institutional missions as approved in
64 institutional compacts or in changes at peer institutions.
65 The commission shall review and make adjustments to
66 peer institutions for community and technical colleges in
67 collaboration with the council.

68 (9) Nothing herein prevents the commission from using
69 the same peers or peer groups for more than one institu-
70 tion of higher education.

§18B-1A-4. Legislative financing goals.

1 (a) The Legislature recognizes that the higher education
2 goals set forth in section one-a, article one of this chapter
3 are of utmost importance. The Legislature further recog-
4 nizes that meeting the goals may require the appropriation
5 of funds above the current operating budgets of the
6 institutions.

7 (b) It is, therefore, the desire of the Legislature to
8 increase funding annually for higher education at a rate
9 not less than the annual percentage increase in the overall
10 general revenue budget.

11 (c) If the commission or council, or both, determines that
12 appropriations are insufficient to fund the requirements of
13 the institutional compacts under its jurisdiction, the
14 commission or council first shall consider extending the

15 length of the compacts or otherwise modifying the com-
16 pacts to allow the institutions to achieve the benchmarks
17 in the compacts. If modifications to the institutional
18 compacts are not sufficient to allow the institutions to
19 meet their benchmarks, the commission or council, or
20 both, shall recommend to the Legislature methods of
21 making the higher education system more efficient. The
22 methods may include, but are not limited to, the following:

- 23 (1) Administrative efficiencies;
- 24 (2) Consolidation of services;
- 25 (3) Elimination of programs;
- 26 (4) Consolidating institutions; and
- 27 (5) Closing institutions.

§18B-1A-5. Financing; institutional operating budgets, additional funding.

1 (a) *Budget request and appropriations.* – The commission
2 and council each has the responsibility to develop a budget
3 for the state system of higher education under its respec-
4 tive jurisdiction. The commission submits the budget
5 request for higher education, including the budget request
6 as developed by the council, to the governor before the
7 first day of September annually. The budget requests of
8 the commission and the council specifically shall include
9 the amount of the institutional operating budgets, as
10 defined in section two, article one of this chapter, required
11 for all state institutions of higher education under their
12 respective jurisdictions. The budget appropriation for the
13 state systems of higher education under this chapter and
14 other provisions of the law shall consist of separate control
15 accounts or institutional control accounts, or some combi-
16 nation of such accounts, for appropriation of institutional
17 operating budgets and other funds. The commission and
18 council each is responsible for allocating state appropria-
19 tions to supplement institutional operating budgets in

20 accordance with this section. In addition to the institu-
21 tional operating budget and incentive funding, however,
22 the commission and council each is responsible for allocat-
23 ing funds that are appropriated to it for other purposes. In
24 order to determine institutional allocations, it is the
25 responsibility of the institutions and their respective
26 institutional boards of governors or advisors, as appropri-
27 ate to provide to the commission or council documentation
28 on institutional progress toward mission enhancement,
29 preliminary peer comparison calculations, performance of
30 increased productivity and academic quality and measur-
31 able attainment in fulfilling state priorities as set forth in
32 this article. The documentation shall be provided to the
33 commission or council no later than the first day of
34 October annually.

35 (b) *Legislative funding priorities.* —

36 (1) The Legislature recognizes the current funding model
37 has not moved all state institutions equitably towards
38 comparable peer funding levels. The model has left West
39 Virginia institutions at a competitive disadvantage to their
40 national peers.

41 (2) The Legislature acknowledges that the resource
42 allocation model used to comply with enrolled committee
43 substitute for Senate bill no. 547, passed during the
44 legislative session of one thousand nine hundred
45 ninety-five, alleviated some of the disparity that exists
46 among state institutions' operating budgets, but left
47 significant differences between the institutions and their
48 national peers.

49 (3) The Legislature recognizes that a system of independ-
50 ently accredited community and technical colleges is
51 essential to the economic vitality of the state.

52 (4) The Legislature places great importance on achieving
53 the priority goals outlined in the public policy agenda and
54 believes the state institutions of higher education should

55 play a vital role in facilitating the attainment of these
56 goals.

57 (5) The Legislature also believes it is imperative that the
58 state make progress on narrowing the peer inequity while
59 balancing the need for sustaining the quality of our
60 institutions.

61 (6) It is the charge of the commission and council to
62 allocate all funds appropriated in excess of the fiscal year
63 two thousand one general revenue appropriations in
64 alignment with the legislative funding priorities listed
65 below. The commission and council shall consider the
66 priorities and assign a percentage of the total appropria-
67 tion of new funds to each priority.

68 (A) *Peer equity.* – Funds appropriated for this purpose
69 increase the level of the institutional operating budget for
70 state institutions of higher education comparable to their
71 peer institutions. The allocation shall provide, subject to
72 the availability of funds and legislative appropriations, for
73 a systematic adjustment of the institutional operating
74 budgets to move all institutions' funding in the direction
75 of levels comparable with their peers. Institutional
76 allocations shall be calculated as follows:

77 (i) A calculation shall be made of the deficiency in per
78 student funding of each institution in comparison with the
79 mean per student funding of the peer institutions as
80 defined by the commission pursuant to section three of this
81 article;

82 (ii) For all institutions that are deficient in comparison
83 with peer institutions, the amounts of the deficiencies shall
84 be totaled;

85 (iii) A ratio of the amount of the deficiency for an
86 institution divided by the total amounts of deficiency for
87 all West Virginia institutions shall be established for each
88 institution; and

89 (iv) The allocation to each institution shall be calculated
90 by multiplying the ratio by the total amount of money in
91 the account;

92 (B) *Independently accredited community and technical*
93 *colleges development.* – Funds appropriated for this
94 purpose will ensure a smooth transition, where required,
95 from “component” community and technical colleges to
96 independently accredited community and technical
97 colleges as defined in section two, article one of this
98 chapter. Appropriations for this purpose are to be allo-
99 cated only to those institutions having approved compacts
100 with the council that expressly include the transition of
101 their component community colleges to independently
102 accredited status and have demonstrated measurable
103 progress towards this goal. By the first day of July, two
104 thousand five, or when all required community and
105 technical colleges are independently accredited, whichever
106 first occurs, funds for this purpose shall be allocated to the
107 incentives for institutional contributions to state priorities;

108 (C) *Research challenge.* – Funds appropriated for this
109 purpose shall assist public colleges and universities in
110 West Virginia to compete on a national and international
111 basis by providing incentives to increase their capacity to
112 compete successfully for research funding. The Legisla-
113 ture intends for institutions to collaborate in the develop-
114 ment and execution of research projects to the extent
115 practicable and to target research to the needs of the state
116 as established in the public policy agenda and linked to
117 the future competitiveness of this state.

118 (i) The commission shall develop criteria for awarding
119 grants to institutions under this account, which may
120 include, but are not limited to, the following:

121 (I) Grants to be used to match externally funded,
122 peer-reviewed research;

123 (II) Grants to be used to match funds for strategic
124 institutional investments in faculty and other resources to
125 increase research capacity;

126 (III) Grants to support funding for new research centers
127 and projects that will foster economic development and
128 work force investment within the state. These grants shall
129 be limited to five years and each research center or project
130 funded shall receive a decreasing award each year and
131 shall be required to be supported solely by external
132 funding within five years;

133 (ii) The commission may establish an advisory council
134 consisting of nationally prominent researchers and scien-
135 tists, including representatives from outside the state, to
136 assist in developing the criteria for awarding grants under
137 this account.

138 (iii) For the purposes of making the distributions from
139 this account, the commission shall establish the definition
140 for research, research funds and any other terms as may be
141 necessary to implement this subdivision; and

142 (D) *Incentives for institutional contributions to state*
143 *priorities.* – Funds appropriated for this purpose provide
144 incentives to institutions which demonstrate success
145 toward advancing the goals of the public policy agenda as
146 set forth in section one-a, article one of this chapter and to
147 provide incentives for mission enhancement as set forth in
148 section two of this article.

149 (E) *Sustained quality support.* – The commission and
150 council shall provide additional operating funds to institu-
151 tions under their respective jurisdictions with approved
152 compacts. The commission and council shall allocate these
153 funds on an equal percentage basis to all institutions. The
154 commission or council may delay distribution of these
155 funds to any institution which does not demonstrate
156 measurable progress towards the goals provided in its
157 compact with the commission or council.

158 (c) *Allocations to institutional operating budgets.* – For
159 the purposes of this subsection, the commission and
160 council each shall establish by rule pursuant to subsection

161 (f), section two of this article the method for measuring the
162 progress of each institution towards meeting the
163 benchmarks of its institutional compact.

164 (d) *Allocation of appropriations to the institutions.* –
165 Appropriations in this section shall be allocated to the
166 state institutions of higher education in the following
167 manner:

168 (1) Each fiscal year appropriations from the funds shall
169 be allocated only to institutions which have:

170 (A) Approved compacts, pursuant to section two of this
171 article; and

172 (B) Achieved their annual benchmarks for accomplishing
173 the goals of their compacts, as approved by the commis-
174 sion or council.

175 (2) If an institution has not achieved all of its annual
176 benchmarks, the commission or council may distribute a
177 portion of the funds to the institution based on its progress
178 as the commission or council determines appropriate. The
179 commission and council each shall establish by rule,
180 pursuant to subsection (f), section two of this article, the
181 method for measuring the progress of each institution
182 toward meeting the benchmarks of its institutional
183 compact.

184 (e) Nothing in this section limits the appropriation or
185 collection of fees necessary to effectuate the operation and
186 purpose of the commission or council.

§18B-1A-6. Graduate education.

1 (a) *Intent.* – It is the intent of the Legislature to address
2 the need for high quality graduate education programs to
3 be available throughout the state.

4 (b) *Findings.* – The Legislature makes the following
5 findings:

6 (1) Since West Virginia ranks below its competitor states
7 in graduate degree production, particularly in the areas
8 that are important to the state's competitive position in
9 the new economy of the twenty-first century, there is a
10 considerable need for greater access to graduate education,
11 especially at the master's degree level;

12 (2) There is a significant disparity in access to part-time
13 graduate degree programs among the different regions of
14 the state and part-time graduate enrollments are heavily
15 concentrated in the counties immediately surrounding
16 Marshall university and West Virginia university;

17 (3) There is a particular need for increased access to
18 graduate programs linked directly to the revitalization of
19 the regional economies of the state; and

20 (4) There is a particular need for improved quality and
21 accessibility of preservice and in-service programs for
22 teachers in subject matter fields.

23 (c) In order to meet the need for graduate education, the
24 commission shall be responsible for accomplishing the
25 following:

26 (1) Ensuring that West Virginia university and Marshall
27 university expand access to master's degree programs
28 throughout West Virginia, with a strong emphasis on
29 collaboration with the baccalaureate colleges and commu-
30 nity and technical colleges in each region;

31 (2) Ensuring that any institution providing a master's
32 degree program under the provisions of this section
33 provides a meaningful, coherent program by offering
34 courses in such a way that students, including place-bound
35 adults, have ample opportunity to complete a degree in a
36 reasonable period of time;

37 (3) Focusing on providing courses that enhance the
38 professional skills of teachers in their subject areas; and

39 (4) Ensuring that programs are offered in the most
40 cost-effective manner to expand access throughout the
41 region and the state.

42 (d) Concord college, Fairmont state college, Glenville
43 state college, Shepherd college, West Liberty state college
44 and West Virginia state college shall meet the need for
45 graduate education in their regions by following the
46 procedures outlined below.

47 (1) The institutions shall develop as graduate centers for
48 their regions to broker access to graduate programs by
49 contracting with accredited colleges and universities in
50 and out of the state. These programs shall be related
51 directly to each region's education and economic needs.

52 (2) The institutions may begin collaborative programs
53 with other institutions leading to the granting of master's
54 degrees in selected areas that are demonstrated to be
55 related directly to the needs of their regions and that draw
56 on faculty strengths. An institution may continue to offer
57 collaborative programs aimed at meeting the documented
58 needs with the approval of the commission or, if a sus-
59 tained need still exists, the institution may move to the
60 next level.

61 (3) If the graduate education needs of the region have not
62 been met through brokering and collaborative programs,
63 the institution may explore the option of beginning its own
64 graduate-level program leading to the granting of a
65 master's degree. The institution may begin its own mas-
66 ter's degree program if it can meet the following condi-
67 tions as determined by the commission:

68 (A) Demonstrate that the institution has successfully
69 completed each of the steps required before exploring
70 development of its own master's degree program;

71 (B) Provide evidence based on experience gained in the
72 brokering and collaborative arrangements that a sustained
73 demand exists for the program;

74 (C) Demonstrate that the baccalaureate institution has
75 the capacity to provide the program;

76 (D) Demonstrate that the core mission of the baccalaure-
77 ate institution will not be impaired by offering the gradu-
78 ate program;

79 (E) Provide evidence that the graduate program has a
80 reasonable expectation of being accredited;

81 (F) Demonstrate that the need documented in subdivi-
82 sion (B) of this subsection is not currently being met by
83 any other state institution of higher education; and

84 (G) The commission may designate one of the institu-
85 tions listed in subsection (d) of this section to develop and
86 implement no more than four of its own masters level
87 programs as a pilot project: *Provided*, That the selected
88 institution shall move toward and achieve regional
89 accreditation of the masters program within a reasonable
90 time as determined by the commission. The institution
91 shall be selected based on the following:

92 (i) Sufficient credentialed faculty to offer quality
93 programs in the areas selected;

94 (ii) Sufficient unmet demand for the programs; and

95 (iii) Sustainable unmet demand based on generally
96 accepted projections for population growth in the region
97 served by the institution.

98 The programs authorized by this clause may not be
99 restricted by the provisions of subdivisions (1), (2) and (3)
100 of this subsection nor by the provisions of subsection (e) of
101 this section.

102 (e) There is an urgent need for master's degree programs
103 for teachers in disciplines or subject areas, such as mathe-
104 matics, science, history, literature, foreign languages and
105 the arts. Currently, master's-level courses in education
106 that are offered in the regions served by the state universi-

107 ties are primarily in areas such as guidance and counsel-
108 ing, administration, special education and other disci-
109 plines unrelated to teaching in subject areas. If this need
110 is not being met in a region through the procedure estab-
111 lished in subsection (d) of this section, then the graduate
112 center in that region may plan a master's degree program
113 in education focused on teaching in subject area fields in
114 which the demand is not being met. No institution may
115 begin a graduate program under the provisions of this
116 section until the program has been reviewed and approved
117 by the commission. The commission shall approve only
118 those programs, as authorized by this subsection, that
119 emphasize serving the needs of teachers and schools in the
120 colleges' immediate regions. In determining whether a
121 program should be approved, the commission also shall
122 rely upon the recommendations of the statewide task force
123 on teacher quality provided for in section eight, article
124 fourteen of this chapter.

125 (f) The commission shall review all graduate programs
126 being offered under the provisions of this section and,
127 using the criteria established for program startup in
128 subsection (d) of this section, determine which programs
129 should be discontinued.

130 (g) At least annually, the governing boards shall evaluate
131 graduate programs developed pursuant to the provisions
132 of this section and report to the commission on the follow-
133 ing:

134 (1) The number of programs being offered and the
135 courses offered within each program;

136 (2) The disciplines in which programs are being offered;

137 (3) The locations and times at which courses are offered;

138 (4) The number of students enrolled in the program; and

139 (5) The number of students who have obtained master's
140 degrees through each program.

141 The governing boards shall provide the commission with
142 any additional information the commission requests in
143 order to make a determination on the viability of a pro-
144 gram.

145 (h) In developing any graduate program under the
146 provisions of this section, institutions shall consider
147 delivering courses at times and places convenient to adult
148 students who are employed full time. Institutions shall
149 place an emphasis on extended degree programs, distance
150 learning and off-campus centers which utilize the
151 cost-effective nature of extending existing university
152 capacity to serve the state rather than duplicating the core
153 university capacity and incurring the increased cost of
154 developing master's degree programs at other institutions
155 throughout the state.

156 (i) Brokering institutions shall invite proposals from
157 other public institutions of higher education for service
158 provision prior to contracting with other institutions:
159 *Provided*, That if institutions propose providing graduate
160 programs in service areas other than in their responsibility
161 district, the institution seeking to establish a program
162 shall work through the district's lead institution in provid-
163 ing those services.

164 (j) In addition to the approval required by the commis-
165 sion, authorization for any institution to offer a master's
166 degree program under the provisions of this section is
167 subject to the formal approval processes established by the
168 governing boards.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

1 There is hereby created the "higher education policy
2 commission", hereinafter referred to as the "commission".
3 It is the intent of the Legislature that the commission be
4 responsible to develop, gain consensus around and oversee

5 the public policy agenda for higher education and other
6 statewide issues pursuant to section one-a, article one of
7 this chapter under the following conditions:

8 (a) It is the responsibility of the commission to work
9 collaboratively with the council to develop and gain
10 consensus around the public policy agenda for community
11 and technical colleges;

12 (b) It is the responsibility of the council to oversee the
13 implementation of the public policy agenda for the
14 institutions under its jurisdiction.

15 (c) All matters of governance not specifically assigned to
16 the commission or council by law are the duty and respon-
17 sibility of the governing boards.

**§18B-1B-2. Composition of commission; terms and qualifica-
tions of members; vacancies; eligibility for reap-
pointment; oath of office; removal from office.**

1 (a) The commission is comprised of ten members. One is
2 the secretary of education and the arts, ex officio. One is
3 the state superintendent of schools, ex officio. One is the
4 chair of the West Virginia council for community and
5 technical college education who is an ex officio, nonvoting
6 member.

7 (b) The other seven members of the commission are
8 citizens of the state, appointed by the governor, by and
9 with the advice and consent of the Senate. Prior to
10 appointment, the governor shall interview each candidate
11 to assure that the person selected understands and is
12 committed to achieving the goals and objectives as set
13 forth in the institutional compacts and in section one-a,
14 article one of this chapter. The governor shall invite the
15 president of the Senate, the speaker of the House of
16 Delegates, the chairs of the Senate and House of Delegates
17 committees on finance and education and such other
18 legislative leaders as the governor may determine to
19 participate in interviewing potential candidates. Each

20 member appointed to the commission by the governor shall
21 represent the public interest and shall be committed to the
22 legislative intent and goals set forth in said section.

23 (c) The governor may not appoint any person to be a
24 member of the commission who is an officer, employee or
25 member of the council or an advisory board of any state
26 college or university; an officer or member of any political
27 party executive committee; the holder of any other public
28 office or public employment under the government of this
29 state or any of its political subdivisions; an appointee or
30 employee of any governing board; or an immediate family
31 member of any employee under the jurisdiction of the
32 commission, the council or any governing board. Of the
33 members appointed by the governor from the public at
34 large, no more than four thereof may belong to the same
35 political party and at least two shall be appointed from
36 each congressional district.

37 (d) The terms of the members appointed by the governor
38 are for overlapping terms of four years.

39 (e) The governor shall appoint a member to fill any
40 vacancy among the seven members appointed by the
41 governor, by and with the advice and consent of the
42 Senate. Any member appointed to fill a vacancy serves for
43 the unexpired term of the vacating member. The governor
44 shall fill the vacancy within thirty days of the occurrence
45 of the vacancy.

46 (f) A member appointed by the governor may not serve
47 more than two consecutive terms.

48 (g) Before exercising any authority or performing any
49 duties as a member of the commission, each member shall
50 qualify as such by taking and subscribing to the oath of
51 office prescribed by section five, article IV of the constitu-
52 tion of West Virginia and the certificate thereof shall be
53 filed with the secretary of state.

54 (h) A member of the commission appointed by the
55 governor may not be removed from office by the governor
56 except for official misconduct, incompetence, neglect of
57 duty or gross immorality and then only in the manner
58 prescribed by law for the removal of the state elective
59 officers by the governor.

§18B-1B-4. Powers and duties of higher education policy commission.

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve
3 the goals and objectives found in section one-a, article one
4 of this chapter. The commission shall exercise its author-
5 ity and carry out its responsibilities in a manner that is
6 consistent and not in conflict with the powers and duties
7 assigned by law to the West Virginia council for commu-
8 nity and technical college education. To that end, the
9 commission has the following powers and duties relating
10 to the institutions under its jurisdiction:

11 (1) Develop, oversee and advance the public policy
12 agenda pursuant to section one, article one-a of this
13 chapter to address major challenges facing the state,
14 including, but not limited to, the goals and objectives
15 found in section one-a, article one of this chapter and
16 including specifically those goals and objectives pertaining
17 to the compacts created pursuant to section two, article
18 one-a of this chapter and to develop and implement the
19 master plan described in section nine of this article for the
20 purpose of accomplishing the mandates of this section;

21 (2) Develop, oversee and advance the implementation
22 jointly with the council of a financing policy for higher
23 education in West Virginia. The policy shall meet the
24 following criteria:

25 (A) Provide an adequate level of education and general
26 funding for institutions pursuant to section five, article
27 one-a of this chapter;

28 (B) Serve to maintain institutional assets, including, but
29 not limited to, human and physical resources and deferred
30 maintenance;

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

35 (D) Incorporate the plan for strategic funding to
36 strengthen capacity for support of community and techni-
37 cal college education established by the West Virginia
38 council for community and technical college education
39 pursuant to the provisions of section six, article two-b of
40 this chapter;

41 (3) In collaboration with the council, create a policy
42 leadership structure capable of the following actions:

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

54 (B) Ensuring that the governing boards carry out their
55 duty effectively to govern the individual institutions of
56 higher education; and

57 (C) Holding the higher education institutions and the
58 higher education systems as a whole accountable for
59 accomplishing their missions and implementing the
60 provisions of the compacts;

61 (4) Develop and adopt each institutional compact;

- 62 (5) Review and adopt the annual updates of the institu-
63 tional compacts;
- 64 (6) Serve as the accountability point to:
- 65 (A) The governor for implementation of the public policy
66 agenda; and
- 67 (B) The Legislature by maintaining a close working
68 relationship with the legislative leadership and the
69 legislative oversight commission on education account-
70 ability;
- 71 (7) Jointly with the council, promulgate legislative rules
72 pursuant to article three-a, chapter twenty-nine-a of this
73 code to fulfill the purposes of section five, article one-a of
74 this chapter;
- 75 (8) Establish and implement a peer group for each
76 institution as described in section three, article one-a of
77 this chapter;
- 78 (9) Establish and implement the benchmarks and
79 performance indicators necessary to measure institutional
80 achievement towards state policy priorities and institu-
81 tional missions pursuant to section two, article one-a of
82 this chapter;
- 83 (10) Annually report to the Legislature and to the
84 legislative oversight commission on education account-
85 ability during the January interim meetings on a date and
86 at a time and location to be determined by the president of
87 the Senate and the speaker of the House of Delegates. The
88 report shall address at least the following:
- 89 (A) The performance of its system of higher education
90 during the previous fiscal year, including, but not limited
91 to, progress in meeting goals stated in the compacts and
92 progress of the institutions and the higher education
93 system as a whole in meeting the goals and objectives set
94 forth in section one-a, article one of this chapter;

95 (B) An analysis of enrollment data collected pursuant to
96 section one, article ten of this chapter and recommenda-
97 tions for any changes necessary to assure access to
98 high-quality, high-demand education programs for West
99 Virginia residents;

100 (C) The priorities established for capital investment
101 needs pursuant to subdivision (11) of this subsection and
102 the justification for such priority;

103 (D) Recommendations of the commission for statutory
104 changes needed to further the goals and objectives set
105 forth in section one-a, article one of this chapter;

106 (11) Establish a formal process for identifying needs for
107 capital investments and for determining priorities for
108 these investments. It is the responsibility of the commis-
109 sion to assure a fair distribution of funds for capital
110 projects between the commission and the council. To that
111 end the commission shall take the following steps:

112 (A) Receive the list of priorities developed by the council
113 for capital investment for the institutions under the
114 council's jurisdiction pursuant to subsection (b), section
115 six, article two-b of this chapter;

116 (B) Place the ranked list of projects on the agenda for
117 action within sixty days of the date on which the list was
118 received;

119 (C) Select a minimum of three projects from the list
120 submitted by the council to be included on the ranked list
121 established by the commission. At least one of the three
122 projects selected must come from the top two priorities
123 established by the council.

124 (12) Maintain guidelines for institutions to follow
125 concerning extensive capital projects. The guidelines shall
126 provide a process for developing capital projects, includ-
127 ing, but not limited to, the notification by an institution to
128 the commission of any proposed capital project which has

129 the potential to exceed one million dollars in cost. Such a
130 project may not be pursued by an institution without the
131 approval of the commission. An institution may not
132 participate directly or indirectly with any public or private
133 entity in any capital project which has the potential to
134 exceed one million dollars in cost;

135 (13) Acquire legal services as are considered necessary,
136 including representation of the commission, its institu-
137 tions, employees and officers before any court or adminis-
138 trative body, notwithstanding any other provision of this
139 code to the contrary. The counsel may be employed either
140 on a salaried basis or on a reasonable fee basis. In addi-
141 tion, the commission may, but is not required to, call upon
142 the attorney general for legal assistance and representa-
143 tion as provided by law;

144 (14) Employ a chancellor for higher education pursuant
145 to section five of this article;

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

150 (16) Provide suitable offices in Charleston for the
151 chancellor, vice chancellors and other staff;

152 (17) Advise and consent in the appointment of the
153 presidents of the institutions of higher education under its
154 jurisdiction pursuant to section six of this article. The role
155 of the commission in approving an institutional president
156 is to assure through personal interview that the person
157 selected understands and is committed to achieving the
158 goals and objectives as set forth in the institutional
159 compact and in section one-a, article one of this chapter;

160 (18) Approve the total compensation package from all
161 sources for presidents of institutions under its jurisdiction,
162 as proposed by the governing boards. The governing
163 boards must obtain approval from the commission of the

164 total compensation package both when institutional
165 presidents are employed initially and afterward when any
166 change is made in the amount of the total compensation
167 package;

168 (19) Establish and implement the policy of the state to
169 assure that parents and students have sufficient informa-
170 tion at the earliest possible age on which to base academic
171 decisions about what is required for students to be suc-
172 cessful in college, other post-secondary education and
173 careers related, as far as possible, to results from current
174 assessment tools in use in West Virginia;

175 (20) Approve and implement a uniform standard jointly
176 with the council to determine which students shall be
177 placed in remedial or developmental courses. The stan-
178 dard shall be aligned with college admission tests and
179 assessment tools used in West Virginia and shall be
180 applied uniformly by the governing boards throughout the
181 public higher education system. The chancellors shall
182 develop a clear, concise explanation of the standard which
183 they shall communicate to the state board of education
184 and the state superintendent of schools;

185 (21) Review and approve or disapprove capital projects
186 as described in subdivision (11) of this subsection;

187 (22) Jointly with the council, develop and implement an
188 oversight plan to manage systemwide technology such as
189 the following:

190 (A) Expanding distance learning and technology net-
191 works to enhance teaching and learning, promote access to
192 quality educational offerings with minimum duplication
193 of effort; and

194 (B) Increasing the delivery of instruction to nontradi-
195 tional students, to provide services to business and indus-
196 try and increase the management capabilities of the higher
197 education system;

198 (23) Establish and implement policies and procedures to
199 ensure that students may transfer and apply toward the
200 requirements for a bachelor's degree the maximum
201 number of credits earned at any regionally accredited
202 in-state or out-of-state community and technical college
203 with as few requirements to repeat courses or to incur
204 additional costs as is consistent with sound academic
205 policy;

206 (24) Establish and implement policies and procedures to
207 ensure that students may transfer and apply toward the
208 requirements for a degree the maximum number of credits
209 earned at any regionally accredited in-state or out-of-state
210 higher education institution with as few requirements to
211 repeat courses or to incur additional costs as is consistent
212 with sound academic policy;

213 (25) Establish and implement policies and procedures to
214 ensure that students may transfer and apply toward the
215 requirements for a master's degree the maximum number
216 of credits earned at any regionally accredited in-state or
217 out-of-state higher education institution with as few
218 requirements to repeat courses or to incur additional costs
219 as is consistent with sound academic policy;

220 (26) Establish and implement policies and programs, in
221 cooperation with the council and the institutions of higher
222 education, through which students who have gained
223 knowledge and skills through employment, participation
224 in education and training at vocational schools or other
225 education institutions, or internet-based education
226 programs, may demonstrate by competency-based assess-
227 ment that they have the necessary knowledge and skills to
228 be granted academic credit or advanced placement
229 standing toward the requirements of an associate degree
230 or a bachelor's degree at a state institution of higher
231 education;

232 (27) Seek out and attend regional, national and interna-
233 tional meetings and forums on education and work force

234 development-related topics, as in the commission's discre-
235 tion is critical for the performance of their duties as
236 members, for the purpose of keeping abreast of education
237 trends and policies to aid it in developing the policies for
238 this state to meet the established education goals and
239 objectives pursuant to section one-a, article one of this
240 chapter;

241 (28) Develop, establish and implement guidelines for
242 higher education governing boards and institutions to
243 follow when considering capital projects. The guidelines
244 shall include, but not be limited to, the following:

245 (A) That the governing boards and institutions not
246 approve or promote projects that give competitive advan-
247 tage to new private sector projects over existing West
248 Virginia businesses, unless the commission determines
249 such private sector projects are in the best interest of the
250 students, the institution and the community to be served;
251 and

252 (B) That the governing boards and institutions not
253 approve or promote projects involving private sector
254 businesses which would have the effect of reducing
255 property taxes on existing properties or avoiding, in whole
256 or in part, the full amount of taxes which would be due on
257 newly developed or future properties;

258 (29) Consider and submit to the appropriate agencies of
259 the executive and legislative branches of state government
260 a budget that reflects recommended appropriations from
261 the commission and the institutions under its jurisdiction.
262 The commission shall submit as part of its budget proposal
263 these separate recommended appropriations it received from
264 the council both for the council and the institutions under
265 the council's jurisdiction. The commission annually shall
266 submit the proposed institutional allocations based on
267 each institution's progress toward meeting the goals of its
268 institutional compact;

269 (30) The commission has the authority to assess institu-
270 tions under its jurisdiction for the payment of expenses of
271 the commission or for the funding of statewide higher
272 education services, obligations or initiatives related to the
273 goals set forth for the provision of public higher education
274 in the state;

275 (31) Promulgate rules allocating reimbursement of
276 appropriations, if made available by the Legislature, to
277 institutions of higher education for qualifying noncapital
278 expenditures incurred in the provision of services to
279 students with physical, learning or severe sensory disabili-
280 ties;

281 (32) Make appointments to boards and commissions
282 where this code requires appointments from the state
283 college system board of directors or the university of West
284 Virginia system board of trustees which were abolished
285 effective the thirtieth day of June, two thousand, except in
286 those cases where the required appointment has a specific
287 and direct connection to the provision of community and
288 technical college education, the appointment shall be made
289 by the council. Notwithstanding any provisions of this
290 code to the contrary, the commission or the council may
291 appoint one of its own members or any other citizen of the
292 state as its designee. The commission and council shall
293 appoint the total number of persons in the aggregate
294 required to be appointed by these previous governing
295 boards;

296 (33) Pursuant to the provisions of article three-a, chapter
297 twenty-nine-a of this code and section six, article one of
298 this chapter, promulgate rules as necessary or expedient to
299 fulfill the purposes of this chapter. The commission and
300 the council shall promulgate a uniform joint legislative
301 rule for the purpose of standardizing, as much as possible,
302 the administration of personnel matters among the
303 institutions of higher education;

304 (34) Determine when a joint rule among the governing
305 boards of the institutions under its jurisdiction is neces-
306 sary or required by law and, in those instances and in
307 consultation with the governing boards, promulgate the
308 joint rule;

309 (35) Implement a policy jointly with the council whereby
310 course credit earned at a community and technical college
311 transfers for program credit at any other state institution
312 of higher education and is not limited to fulfilling a
313 general education requirement; and

314 (36) Promulgate a joint rule with the council establishing
315 tuition and fee policy for all institutions of higher educa-
316 tion. The rule shall include, but is not limited to, the
317 following:

318 (A) Comparisons with peer institutions;

319 (B) Differences among institutional missions;

320 (C) Strategies for promoting student access;

321 (D) Consideration of charges to out-of-state students;
322 and

323 (E) Such other policies as the commission and council
324 consider appropriate.

325 (b) In addition to the powers and duties listed in subsec-
326 tion (a) of this section, the commission has the following
327 general powers and duties related to its role in developing,
328 articulating and overseeing the implementation of the
329 public policy agenda:

330 (1) Planning and policy leadership including a distinct
331 and visible role in setting the state's policy agenda and in
332 serving as an agent of change;

333 (2) Policy analysis and research focused on issues
334 affecting the system as a whole or a geographical region
335 thereof;

336 (3) Development and implementation of institutional
337 mission definitions including use of incentive funds to
338 influence institutional behavior in ways that are consistent
339 with public priorities;

340 (4) Academic program review and approval for institu-
341 tions under its jurisdiction including the use of institu-
342 tional missions as a template to judge the appropriateness
343 of both new and existing programs and the authority to
344 implement needed changes;

345 (5) Development of budget and allocation of resources,
346 including reviewing and approving institutional operating
347 and capital budgets and distributing incentive and perfor-
348 mance-based funding;

349 (6) Administration of state and federal student aid
350 programs under the supervision of the vice chancellor for
351 administration, including promulgation of any rules
352 necessary to administer those programs;

353 (7) Serving as the agent to receive and disburse public
354 funds when a governmental entity requires designation of
355 a statewide higher education agency for this purpose;

356 (8) Development, establishment and implementation of
357 information, assessment and accountability systems,
358 including maintenance of statewide data systems that
359 facilitate long-term planning and accurate measurement
360 of strategic outcomes and performance indicators;

361 (9) Jointly with the council, developing, establishing and
362 implementing policies for licensing and oversight for both
363 public and private degree-granting and nondegree-
364 granting institutions that provide post-secondary educa-
365 tion courses or programs in the state pursuant to the
366 findings and policy recommendations to be determined as
367 set forth in section eleven of this article;

368 (10) Development, implementation and oversight of
369 statewide and regionwide projects and initiatives related

370 to providing post-secondary education at the baccalaure-
371 ate level and above such as those using funds from federal
372 categorical programs or those using incentive and perfor-
373 mance-based funding from any source; and

374 (11) Quality assurance that intersects with all other
375 duties of the commission particularly in the areas of
376 planning, policy analysis, program review and approval,
377 budgeting and information and accountability systems.

378 (c) In addition to the powers and duties provided for in
379 subsections (a) and (b) of this section and any other powers
380 and duties as may be assigned to it by law, the commission
381 has such other powers and duties as may be necessary or
382 expedient to accomplish the purposes of this article.

383 (d) The commission is authorized to withdraw specific
384 powers of any governing board of an institution under its
385 jurisdiction for a period not to exceed two years if the
386 commission makes a determination that:

387 (1) The governing board has failed for two consecutive
388 years to develop an institutional compact as required in
389 article one of this chapter;

390 (2) The commission has received information, substanti-
391 ated by independent audit, of significant mismanagement
392 or failure to carry out the powers and duties of the board
393 of governors according to state law; or

394 (3) Other circumstances which, in the view of the com-
395 mission, severely limit the capacity of the board of gover-
396 nors to carry out its duties and responsibilities.

397 (4) The period of withdrawal of specific powers may not
398 exceed two years during which time the commission is
399 authorized to take steps necessary to reestablish the
400 conditions for restoration of sound, stable and responsible
401 institutional governance.

§18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.

1 (a) The commission, created pursuant to section one of
2 this article, shall employ a chancellor for higher education
3 who is the chief executive officer of the commission and
4 who serves at its will and pleasure.

5 (b) The commission shall set the qualifications for the
6 position of chancellor and shall conduct a thorough
7 nationwide search for qualified candidates. A qualified
8 candidate is one who meets at least the following criteria:

9 (1) Possesses an excellent academic and administrative
10 background;

11 (2) Demonstrates strong communication skills;

12 (3) Has significant experience and an established na-
13 tional reputation as a professional in the field of higher
14 education;

15 (4) Is free of institutional or regional biases; and

16 (5) Holds or retains no other administrative position
17 within a system of higher education while employed as
18 chancellor.

19 (c) The commission shall conduct written performance
20 evaluations of the chancellor annually and may offer the
21 chancellor a contract not to exceed three years. At the end
22 of each contract period, the commission shall review the
23 evaluations and make a determination by vote of its
24 members on continuing employment and compensation
25 level.

26 (d) When filling a vacancy in the position of chancellor,
27 the commission shall enter into an initial employment
28 contract for one year with the candidate selected. At the
29 end of the initial contract period, and each contract period
30 thereafter, the commission shall review the evaluations

31 and make a determination by vote of its members on
32 continuing employment and compensation level for the
33 chancellor.

34 (e) The chancellor shall be compensated on a basis in
35 excess of, but not to exceed twenty percent greater than,
36 the base salary of any president of a state institution of
37 higher education or the administrative head of a governing
38 board.

39 (f) The commission may employ a vice chancellor for
40 health sciences who serves at the will and pleasure of the
41 commission. The vice chancellor for health sciences shall
42 coordinate the West Virginia university school of medicine,
43 the Marshall university school of medicine and the West
44 Virginia school of osteopathic medicine and also shall
45 provide assistance to the governing boards on matters
46 related to medical education and health sciences. The vice
47 chancellor for health sciences shall perform all duties
48 assigned by the chancellor, the commission and state law.
49 In the case of a vacancy in the office of vice chancellor of
50 health sciences, the duties assigned to this office by law
51 are the responsibility of the chancellor or a designee.

52 (g) The commission shall employ a vice chancellor for
53 administration pursuant to section two, article four of this
54 chapter.

55 (h) The commission may employ a vice chancellor for
56 state colleges who serves at the will and pleasure of the
57 commission. It is the duty and responsibility of the vice
58 chancellor for state colleges to:

59 (1) Provide assistance to the commission, the chancellor
60 and the state colleges on matters related to or of interest
61 and concern to these institutions;

62 (2) Advise, assist and consult regularly with the institu-
63 tional presidents and institutional boards of governors of
64 each state college;

65 (3) Serve as an advocate and spokesperson for the state
66 colleges to represent them and to make their interests,
67 views and issues known to the chancellor, the commission
68 and governmental agencies;

69 (4) Perform all duties assigned by the chancellor, the
70 commission and state law.

71 In addition, the vice chancellor for state colleges has the
72 responsibility and the duty to provide staff assistance to
73 the institutional presidents and governing boards to the
74 extent practicable.

75 (i) On behalf of the commission, the chancellor may enter
76 into agreements with any state agency or political subdivi-
77 sion of the state, any state higher education institution or
78 any other person or entity to enlist staff assistance to
79 implement the powers and duties assigned by the commis-
80 sion or by state law.

81 (j) The chancellor is responsible for the daily operations
82 of the commission and has the following responsibilities
83 relating to the commission and the institutions under its
84 jurisdiction:

85 (1) To carry out policy and program directives of the
86 commission;

87 (2) To develop and submit annual reports on the imple-
88 mentation plan to achieve the goals and objectives set
89 forth in section one-a, article one of this chapter and in the
90 institutional compacts;

91 (3) To prepare and submit to the commission for its
92 approval the proposed budget of the commission including
93 the offices of the chancellor and the vice chancellors;

94 (4) To assist the governing boards in developing rules,
95 subject to the provisions of section six, article one of this
96 chapter. Nothing in this chapter requires the rules of the
97 governing boards to be filed pursuant to the rule-making
98 procedures provided in article three-a, chapter twenty-

99 nine-a of this code. The chancellor is responsible for
100 ensuring that any policy which is required to be uniform
101 across the institutions is applied in a uniform manner;

102 (5) To perform all other duties and responsibilities
103 assigned by the commission or by state law.

104 (k) The chancellor shall be reimbursed for all actual and
105 necessary expenses incurred in the performance of all
106 assigned duties and responsibilities.

107 (l) The chancellor, with the commission, advises the
108 Legislature on matters of higher education in West
109 Virginia. The chancellor shall work closely with the
110 legislative oversight commission on education account-
111 ability and with the elected leadership of the state to
112 ensure that they are fully informed about higher education
113 issues and that the commission fully understands the goals
114 for higher education that the Legislature has established
115 by law.

116 (m) The chancellor may design and develop for consider-
117 ation by the commission new statewide or regional initia-
118 tives in accordance with the goals set forth in section
119 one-a, article one of this chapter and the public policy
120 agenda articulated by the commission. In those instances
121 where the initiatives to be proposed have a direct and
122 specific impact or connection to community and technical
123 college education as well as to baccalaureate and graduate
124 education, the chancellor for higher education and the
125 chancellor for community and technical college education
126 shall design and develop the initiatives jointly for consid-
127 eration by the commission and the council.

128 (n) The chancellor shall work closely with members of
129 the state board of education and with the state superinten-
130 dent of schools to assure that the following goals are met:

131 (1) Development and implementation of a seamless
132 kindergarten-through-college system of education; and

133 (2) Appropriate coordination of missions and programs.
134 To further the goals of cooperation and coordination
135 between the commission and the state board of education,
136 the chancellor serves as an ex officio, nonvoting member
137 of the state board of education.

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

1 (a) *Appointment of institutional presidents.* – Appoint-
2 ment of presidents of the public institutions of higher
3 education shall be made as follows:

4 (1) Subject to the approval of the commission, the
5 governing board of the institution appoints a president for
6 Bluefield state college, Concord college, Fairmont state
7 college, Glenville state college, Marshall university,
8 Shepherd college, West Liberty state college, West Virginia
9 school of osteopathic medicine, West Virginia state college
10 and West Virginia university.

11 (2) Subject to the approval of the council and to the
12 provisions of article three-c of this chapter, the governing
13 board of West Virginia University appoints the president
14 of the regional campus known as West Virginia university
15 at Parkersburg. When selecting candidates for consider-
16 ation to fill the office of president, the governing board
17 shall use the search and screening process provided for in
18 section one, article six of this chapter.

19 Subject to the approval of the commission, the governing
20 board of West Virginia University appoints the president
21 of the regional campus known as West Virginia university
22 institute of technology. The president of each regional
23 campus serves at the will and pleasure of the appointing
24 governing board.

25 (3) Subject to the approval of the council, the governing
26 board of the community and technical college appoints a
27 president for eastern West Virginia community and
28 technical college, southern West Virginia community and

29 technical college and West Virginia northern community
30 and technical college.

31 (4) Subject to the approval of the council, the governing
32 board of the sponsoring institution appoints a president
33 for each administratively linked community and technical
34 colleges which shares a physical campus location with the
35 sponsoring institution, including Fairmont state commu-
36 nity and technical college, Marshall community and
37 technical college, the community and technical college at
38 West Virginia university institute of technology and West
39 Virginia state community and technical college.

40 (5) Subject to the approval of the council, the governing
41 board of the community and technical college appoints a
42 president for each administratively linked community and
43 technical college which does not share a physical campus
44 location with the sponsoring institution, including New
45 River community and technical college and the community
46 and technical college of Shepherd.

47 Subject to the approval of the council, the governing
48 board of the sponsoring institution appoints a president
49 for each of these two community and technical colleges
50 until the institution gains independent accreditation.

51 (b) *Other appointments.* – Effective the first day of July,
52 two thousand five, the institutional president shall appoint
53 a provost to be the administrative head of the Potomac
54 campus of West Virginia university.

55 (c) *Evaluation of presidents.* – The appointing governing
56 board shall conduct written performance evaluations of
57 each institution's president, including the presidents of
58 administratively linked community and technical colleges.
59 Evaluations shall be done in every fourth year of employ-
60 ment as president, recognizing unique characteristics of
61 the institution and utilizing institutional personnel,
62 institutional boards of advisors as appropriate, staff of the
63 appropriate governing board and persons knowledgeable

64 in higher education matters who are not otherwise em-
65 ployed by a governing board. A part of the evaluation
66 shall be a determination of the success of the institution in
67 meeting the requirements of its institutional compact.

**§18B-1B-11. Study of licensing and oversight of certain institu-
tions providing post-secondary education.**

1 (a) The commission and the council shall conduct a joint
2 study of current policies relating to licensing and oversight
3 of both public and private degree-granting and
4 nondegree-granting entities providing post-secondary
5 education programs or courses within the state or from
6 locations outside this state through distance learning or
7 any technology methods.

8 (b) The study shall include, but is not limited to, the
9 following:

10 (1) The strengths and weaknesses of current state and
11 higher education policies including a determination of how
12 well the policies protect consumers and whether such
13 protection should be expanded;

14 (2) The appropriate entity within public higher educa-
15 tion to assume licensing and oversight of each type of
16 institution;

17 (3) The standards to be used for program approval or a
18 method to develop such standards; and

19 (4) The requirements for fees and bonding.

20 The commission and the council shall report their
21 findings, conclusions and recommendations, together with
22 drafts of any legislation necessary to effectuate the
23 recommendations, to the legislative oversight commission
24 on education accountability by the first day of December,
25 two thousand four.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) A board of governors is continued at each of the
2 following institutions: Bluefield state college, Concord
3 college, eastern West Virginia community and technical
4 college, Fairmont state college, Glenville state college,
5 Marshall university, Shepherd college, southern West
6 Virginia community and technical college, West Liberty
7 state college, West Virginia northern community and
8 technical college, the West Virginia school of osteopathic
9 medicine, West Virginia state college and West Virginia
10 university.

11 (b) For the community and technical college of Shepherd
12 and New River community and technical college the
13 institutional board of advisors remains in place until the
14 institution achieves independent accreditation as provided
15 in section eight, article three-c of this chapter.

16 (1) As long as the institutional board of advisors remains
17 in place, the chairperson of the board of advisors serves as
18 an ex officio, voting member of the board of governors of
19 the sponsoring institution;

20 (2) When the community and technical college achieves
21 independent accreditation, the board of advisors is abol-
22 ished and a board of governors is established with mem-
23 bers appointed pursuant to this section;

24 (3) When a board of governors is established for the
25 community and technical college:

26 (A) The chairperson of the governing board of the
27 sponsoring institution serves as an ex officio, nonvoting
28 member of the governing board of the community and
29 technical college board of governors; and

30 (B) The chairperson of the governing board of the
31 community and technical college serves as an ex officio,

32 nonvoting member of the governing board of the sponsor-
33 ing institution.

34 (4) In making the initial appointments to these boards of
35 governors, the governor shall appoint those persons who
36 are lay members of the institutional boards of advisors,
37 except in the case of death, resignation or failure to be
38 confirmed by the Senate.

39 (c) The institutional board of governors for Marshall
40 university consists of sixteen persons and the institutional
41 board of governors for West Virginia university consists of
42 seventeen persons. Each other board of governors consists
43 of twelve persons.

44 (d) Each board of governors includes the following
45 members:

46 (1) A full-time member of the faculty with the rank of
47 instructor or above duly elected by the faculty of the
48 respective institution;

49 (2) A member of the student body in good academic
50 standing, enrolled for college credit work and duly elected
51 by the student body of the respective institution;

52 (3) A member from the institutional classified employees
53 duly elected by the classified employees of the respective
54 institution; and

55 (4) For the institutional board of governors at Marshall
56 university, twelve lay members appointed by the governor,
57 by and with the advice and consent of the Senate, pursu-
58 ant to this section and, additionally, the chairperson of the
59 institutional board of advisors of Marshall community and
60 technical college serving as an ex officio, voting member.

61 (5) For the institutional board of governors at West
62 Virginia university, twelve lay members appointed by the
63 governor by and with the advice and consent of the senate
64 pursuant to this section and, additionally, the chairperson
65 of the institutional board of advisors of the community

66 and technical college at West Virginia university institute
67 of technology and West Virginia university at Parkersburg.

68 (6) For each institutional board of governors of an
69 institution that does not have an administratively linked
70 community and technical college under its jurisdiction,
71 nine lay members appointed by the governor, by and with
72 the advice and consent of the Senate, pursuant to this
73 section.

74 (7) For each institutional board of governors which has
75 an administratively linked community and technical
76 college under its jurisdiction:

77 (A) Eight lay members appointed by the governor, by
78 and with the advice and consent of the Senate, pursuant to
79 this section and, additionally, the chairperson of the
80 institutional board of advisors of the administratively
81 linked community and technical college; and

82 (B) Of the eight lay members appointed by the governor,
83 one shall be the superintendent of a county board of
84 education from the area served by the institution.

85 (e) Of the eight or nine members appointed by the
86 governor, no more than five may be of the same political
87 party. Of the twelve members appointed by the governor
88 to the governing boards of Marshall university and West
89 Virginia university, no more than seven may be of the same
90 political party. Of the eight or nine members appointed by
91 the governor, at least six shall be residents of the state. Of
92 the twelve members appointed by the governor to the
93 governing boards of Marshall university and West Virginia
94 university, at least eight shall be residents of the state.

95 (f) The student member serves for a term of one year.
96 Each term begins on the first day of July.

97 (g) The faculty member serves for a term of two years.
98 Each term begins on the first day of July. Faculty mem-

99 bers are eligible to succeed themselves for three additional
100 terms, not to exceed a total of eight consecutive years.

101 (h) The member representing classified employees serves
102 for a term of two years. Each term begins on the first day
103 of July. Members representing classified employees are
104 eligible to succeed themselves for three additional terms,
105 not to exceed a total of eight consecutive years.

106 (i) The appointed lay citizen members serve terms of four
107 years each and are eligible to succeed themselves for no
108 more than one additional term.

109 (j) A vacancy in an unexpired term of a member shall be
110 filled for the unexpired term within thirty days of the
111 occurrence of the vacancy in the same manner as the
112 original appointment or election. Except in the case of a
113 vacancy, all elections shall be held and all appointments
114 shall be made no later than the thirtieth day of June
115 preceding the commencement of the term. Each board of
116 governors shall elect one of its appointed lay members to
117 be chairperson in June of each year. A member may not
118 serve as chairperson for more than two consecutive years.

119 (k) The appointed members of the institutional boards of
120 governors serve staggered terms of four years.

121 (l) A person is ineligible for appointment to membership
122 on a board of governors of a state institution of higher
123 education under the following conditions:

124 (1) For a baccalaureate institution or university, a person
125 is ineligible for appointment who is an officer, employee or
126 member of any other board of governors, a member of an
127 institutional board of advisors of any public institution of
128 higher education, an employee of any institution of higher
129 education, an officer or member of any political party
130 executive committee, the holder of any other public office
131 or public employment under the government of this state
132 or any of its political subdivisions or a member of the
133 council or commission. This subsection does not prevent

134 the representative from the faculty, classified employees,
135 students or chairpersons of the boards of advisors or the
136 superintendent of a county board of education from being
137 members of the governing boards.

138 (2) For a community and technical college, a person is
139 ineligible for appointment who is an officer, employee or
140 member of any other board of governors; a member of an
141 institutional board of advisors of any public institution of
142 higher education; an employee of any institution of higher
143 education; an officer or member of any political party
144 executive committee; the holder of any other public office,
145 other than an elected county office, or public employment,
146 other than employment by the county board of education,
147 under the government of this state or any of its political
148 subdivisions; or a member of the council or commission.
149 This subsection does not prevent the representative from
150 the faculty, classified employees, students or chairpersons
151 of the boards of advisors from being members of the
152 governing boards.

153 (m) Before exercising any authority or performing any
154 duties as a member of a governing board, each member
155 shall qualify as such by taking and subscribing to the oath
156 of office prescribed by section five, article IV of the
157 constitution of West Virginia and the certificate thereof
158 shall be filed with the secretary of state.

159 (n) A member of a governing board appointed by the
160 governor may not be removed from office by the governor
161 except for official misconduct, incompetence, neglect of
162 duty or gross immorality and then only in the manner
163 prescribed by law for the removal of the state elective
164 officers by the governor.

165 (o) The president of the institution shall make available
166 resources of the institution for conducting the business of
167 its board of governors. The members of the board of
168 governors serve without compensation, but are reimbursed
169 for all reasonable and necessary expenses actually in-

170 curred in the performance of official duties under this
171 article upon presentation of an itemized sworn statement
172 of expenses. All expenses incurred by the board of gover-
173 nors and the institution under this section are paid from
174 funds allocated to the institution for that purpose.

§18B-2A-4. Powers and duties of governing boards generally.

1 Each governing board separately has the following
2 powers and duties:

3 (a) Determine, control, supervise and manage the
4 financial, business and education policies and affairs of
5 the state institutions of higher education under its juris-
6 diction;

7 (b) Develop a master plan for the institutions under its
8 jurisdiction except the administratively linked community
9 and technical colleges which retain an institutional board
10 of advisors shall develop their master plans subject to the
11 provisions of section one, article six of this chapter. The
12 ultimate responsibility for developing and updating the
13 master plans at the institutional level resides with the
14 board of governors, or board of advisors, as applicable, but
15 the ultimate responsibility for approving the final version
16 of the institutional master plans, including periodic
17 updates, resides with the commission or council, as
18 appropriate. Each master plan shall include, but not be
19 limited to, the following:

20 (1) A detailed demonstration of how the master plan will
21 be used to meet the goals and objectives of the institu-
22 tional compact;

23 (2) A well-developed set of goals outlining missions,
24 degree offerings, resource requirements, physical plant
25 needs, personnel needs, enrollment levels and other
26 planning determinates and projections necessary in such
27 a plan to assure that the needs of the institution's area of
28 responsibility for a quality system of higher education are
29 addressed;

30 (3) Documentation of the involvement of the commission
31 or council, as appropriate, institutional constituency
32 groups, clientele of the institution and the general public
33 in the development of all segments of the institutional
34 master plan.

35 The plan shall be established for periods of not less than
36 three nor more than six years and shall be revised periodi-
37 cally as necessary, including the addition or deletion of
38 degree programs as, in the discretion of the appropriate
39 governing board, may be necessary;

40 (c) Prescribe for the institutions under its jurisdiction, in
41 accordance with its master plan and the compact for each
42 institution, specific functions and responsibilities to meet
43 the higher education needs of its area of responsibility and
44 to avoid unnecessary duplication;

45 (d) Direct the preparation of a budget request for the
46 institutions under its jurisdiction, such request to relate
47 directly to missions, goals and projections as found in the
48 institutional master plans and the institutional compacts;

49 (e) Consider, revise and submit to the commission or
50 council, as appropriate, a budget request on behalf of the
51 institutions under its jurisdiction;

52 (f) Review, at least every five years, all academic pro-
53 grams offered at the institutions under its jurisdiction.
54 The review shall address the viability, adequacy and
55 necessity of the programs in relation to its institutional
56 master plan, the institutional compact and the education
57 and work force needs of its responsibility district. As a
58 part of the review, each governing board shall require the
59 institutions under its jurisdiction to conduct periodic
60 studies of its graduates and their employers to determine
61 placement patterns and the effectiveness of the education
62 experience. Where appropriate, these studies should
63 coincide with the studies required of many academic
64 disciplines by their accrediting bodies;

- 65 (g) The governing boards shall ensure that the sequence
66 and availability of academic programs and courses offered
67 by the institutions under their jurisdiction is such that
68 students have the maximum opportunity to complete
69 programs in the time frame normally associated with
70 program completion. Each governing board is responsible
71 to see that the needs of nontraditional college-age students
72 are appropriately addressed and, to the extent it is possi-
73 ble for the individual governing board to control, to assure
74 core course work completed at institutions under its
75 jurisdiction is transferable to any other state institution of
76 higher education for credit with the grade earned;
- 77 (h) Subject to the provisions of article one-b of this
78 chapter, the appropriate governing board has the exclusive
79 authority to approve the teacher education programs
80 offered in the institution under its control. In order to
81 permit graduates of teacher education programs to receive
82 a degree from a nationally accredited program and in
83 order to prevent expensive duplication of program accred-
84 itation, the commission may select and utilize one nation-
85 ally recognized teacher education program accreditation
86 standard as the appropriate standard for program evalua-
87 tion;
- 88 (i) Utilize faculty, students and classified employees in
89 institutional-level planning and decisionmaking when
90 those groups are affected;
- 91 (j) Subject to the provisions of federal law and pursuant
92 to the provisions of article nine of this chapter and to rules
93 adopted by the commission and the council, administer a
94 system for the management of personnel matters, includ-
95 ing, but not limited to, personnel classification, compensa-
96 tion and discipline for employees at the institutions under
97 their jurisdiction;
- 98 (k) Administer a system for hearing employee grievances
99 and appeals. Notwithstanding any other provision of this
100 code to the contrary, the procedure established in article

101 six-a, chapter twenty-nine of this code is the exclusive
102 mechanism for hearing prospective employee grievances
103 and appeals. In construing the application of said article
104 to grievances of higher education employees, the following
105 apply:

106 (1) "Chief administrator" means the president of a state
107 institution of higher education as to those employees
108 employed by the institution and the appropriate chancellor
109 as to those employees employed by the commission or
110 council;

111 (2) The state division of personnel may not be a party to
112 nor have any authority regarding a grievance initiated by
113 a higher education employee; and

114 (3) The provisions of this section supersede and replace
115 the grievance procedure set out in article twenty-nine,
116 chapter eighteen of this code for any grievance initiated by
117 a higher education employee after the first day of July,
118 two thousand one;

119 (l) Solicit and utilize or expend voluntary support,
120 including financial contributions and support services, for
121 the institutions under its jurisdiction;

122 (m) Appoint a president for the institutions under its
123 jurisdiction subject to the provisions of section six, article
124 one-b of this chapter;

125 (n) Conduct written performance evaluations of the
126 president pursuant to section six, article one-b of this
127 chapter;

128 (o) Employ all faculty and staff at the institution under
129 its jurisdiction. Such employees operate under the super-
130 vision of the president, but are employees of the governing
131 board;

132 (p) Submit to the commission or council, as appropriate,
133 no later than the first day of November of each year an
134 annual report of the performance of the institution under

135 its jurisdiction during the previous fiscal year as compared
136 to stated goals in its master plan and institutional com-
137 pact;

138 (q) Enter into contracts or consortium agreements with
139 the public schools, private schools or private industry to
140 provide technical, vocational, college preparatory, reme-
141 dial and customized training courses at locations either on
142 campuses of the public institution of higher education or
143 at off-campus locations in the institution's responsibility
144 district. To accomplish this goal, the boards are permitted
145 to share resources among the various groups in the com-
146 munity;

147 (r) Provide and transfer funding and property to certain
148 corporations pursuant to section ten, article twelve of this
149 chapter;

150 (s) Delegate, with prescribed standards and limitations,
151 the part of its power and control over the business affairs
152 of the institution to the president in any case where it
153 considers the delegation necessary and prudent in order to
154 enable the institution to function in a proper and expedi-
155 tious manner and to meet the requirements of its institu-
156 tional compact. If a governing board elects to delegate any
157 of its power and control under the provisions of this
158 subsection, it shall notify the appropriate chancellor. Any
159 such delegation of power and control may be rescinded by
160 the appropriate governing board or the chancellor at any
161 time, in whole or in part;

162 (t) Unless changed by the commission or the council, as
163 appropriate, the governing boards shall continue to abide
164 by existing rules setting forth standards for acceptance of
165 advanced placement credit for their respective institutions.
166 Individual departments at institutions of higher education
167 may, upon approval of the institutional faculty senate,
168 require higher scores on the advanced placement test than
169 scores designated by the appropriate governing board
170 when the credit is to be used toward meeting a require-

171 ment of the core curriculum for a major in that depart-
172 ment;

173 (u) Each governing board, or its designee, shall consult,
174 cooperate and work with the state treasurer and the state
175 auditor to update as necessary and maintain an efficient
176 and cost-effective system for the financial management
177 and expenditure of special revenue and appropriated state
178 funds at the institutions under its jurisdiction that ensures
179 that properly submitted requests for payment be paid on
180 or before due date but, in any event, within fifteen days of
181 receipt in the state auditor's office;

182 (v) The governing boards in consultation with the
183 appropriate chancellor and the secretary of the depart-
184 ment of administration shall develop, update as necessary
185 and maintain a plan to administer a consistent method of
186 conducting personnel transactions, including, but not
187 limited to, hiring, dismissal, promotions and transfers at
188 the institutions under their jurisdiction. Each such
189 personnel transaction shall be accompanied by the appro-
190 priate standardized system or forms which will be submit-
191 ted to the respective governing board and the department
192 of finance and administration;

193 (w) Notwithstanding any other provision of this code to
194 the contrary, the governing boards may transfer funds
195 from any account specifically appropriated for their use to
196 any corresponding line item in a general revenue account
197 at any agency or institution under their jurisdiction as
198 long as such transferred funds are used for the purposes
199 appropriated. The governing boards may transfer funds
200 from appropriated special revenue accounts for capital
201 improvements under their jurisdiction to special revenue
202 accounts at agencies or institutions under their jurisdic-
203 tion as long as such transferred funds are used for the
204 purposes appropriated;

205 (x) Notwithstanding any other provision of this code to
206 the contrary, the governing boards may acquire legal

207 services as are considered necessary, including representa-
208 tion of the governing boards, their institutions, employees
209 and officers before any court or administrative body. The
210 counsel may be employed either on a salaried basis or on
211 a reasonable fee basis. In addition, the governing boards
212 may, but are not required to, call upon the attorney
213 general for legal assistance and representation as provided
214 by law; and

215 (y) Each governing board which has under its jurisdic-
216 tion an administratively linked community and technical
217 college or a regional campus offering community and
218 technical college education programs shall create within
219 the administrative structure of its governing board a
220 subcommittee for community and technical college
221 education. The subcommittee shall have at least four
222 members, one of whom is the chairperson of the board of
223 advisors of the community and technical college or, in the
224 case of the governing board of West Virginia university,
225 both the member representing the community and techni-
226 cal college and the member representing the regional
227 campus;

**§18B-2A-6. University status for public baccalaureate institu-
tions of higher education.**

1 (a) The purpose of this section is to redesignate certain
2 existing public baccalaureate institutions as universities
3 and to provide a mechanism for other public baccalaureate
4 institutions to become universities. The change in name is
5 based on each institution's ability to meet minimum
6 standards developed and adopted by the commission.

7 (b) Each governing board of a public baccalaureate
8 institution is authorized to make changes which would
9 further its eligibility to attain university status:

10 (1) If the college meets the eligibility requirements
11 established by the commission to attain university status
12 and if the commission grants university status, then the

13 governing board shall determine the effective date on
14 which the public baccalaureate institution becomes a
15 university; and

16 (2) On and after the effective date designated by the
17 governing board, the baccalaureate institution shall be
18 designated a university.

19 (c) Concord college, Fairmont state college, Shepherd
20 college and West Virginia state college, having met the
21 eligibility requirements established by the commission to
22 attain university status, are hereby designated as universi-
23 ties on the effective date of this section.

24 (d) An institution may not request or seek additional
25 state appropriations as a result of the redesignation
26 provided for in this section. No consequences, including
27 the need to meet future accreditation requirements in
28 order to maintain university status, which arise as a result
29 of designating an existing state college as a university,
30 provide sufficient justification for an institution to request
31 or in any way seek additional state funds.

32 (e) Notwithstanding any provision of this code to the
33 contrary, Marshall university and West Virginia university
34 are, and remain, the only research and doctoral degree-
35 granting public institutions of higher education in this
36 state.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-1. Legislative findings; intent; purpose.

1 (a) The Legislature hereby finds that:

2 (1) The goals, objectives and purposes contained in
3 enrolled Senate bill no. 653, passed during the two thou-
4 sand regular legislative session, reflected the research
5 findings available to the Legislature at the time; since
6 then, however, additional research indicates that, while
7 enrolled Senate bill no. 653 moves in the appropriate

8 direction of independent accreditation and meeting
9 essential conditions for public community and technical
10 colleges, the legislation does not take the final steps that
11 are considered to be necessary by independent researchers.
12 This position is clearly demonstrated by the recent re-
13 search findings and recommendations cited below:

14 (A) "West Virginia: A Vision Shared! Economic Develop-
15 ment: A Plan for West Virginia's Future", hereinafter cited
16 in this article and article two-c of this chapter as the
17 *Market Street Report*, is a research document commis-
18 sioned by the West Virginia council for community and
19 economic development to assess the economic competitive-
20 ness of the state. The report makes a number of findings
21 and recommendations important to public community and
22 technical college education:

23 (i) The state needs to adopt and implement a specific
24 focus on technical education; in particular, it needs to
25 move away from the traditionally isolated and limited
26 vocational programming towards a systematic approach of
27 teaching technical skills that employers need today;

28 (ii) The state needs to establish a strong technical
29 education system that is separate from the university
30 system and is responsive to the needs of business through-
31 out the state;

32 (iii) The state needs to establish as a high-level priority
33 the training and retraining of its working-age adults to
34 help them acquire and maintain the competitive skills they
35 need to succeed in today's economy; and

36 (iv) The state needs to emphasize the role of lifelong
37 learning as a critical piece of its overall education and
38 training system if the state is to make the transition to the
39 new economy.

40 (B) *The Report to the Legislative Oversight Commission*
41 *on Education Accountability*, hereinafter cited in this
42 article and article two-c as the *McClenney Report*, is a

43 study required by provisions of enrolled Senate bill no. 653
44 and conducted by Dr. Kay McClenney. The research
45 found that:

46 (i) The participation rate in West Virginia community
47 and technical college education is substantially lower than
48 will be necessary if the state is to achieve its goals for
49 economic development and prosperity for its citizens;

50 (ii) The low visibility of the component community and
51 technical colleges effectively restricts access for the West
52 Virginians who most need encouragement to participate in
53 post-secondary education and training;

54 (iii) It is not clear that the parent institutions of the
55 component community colleges actually embrace the
56 community college mission;

57 (iv) The community and technical college developmental
58 education programs are under serving by far the evident
59 needs of the population, especially as that service relates
60 to nontraditional students;

61 (v) Adults over age twenty-five are under represented in
62 the community and technical college student populations;

63 (vi) Technical education program development and
64 enrollment are not at the levels necessary to serve the
65 needs of the state;

66 (vii) Independent accreditation and the essential condi-
67 tions required by enrolled Senate bill no. 653 are neces-
68 sary, but not sufficient alone to provide a strong enough
69 tool to accomplish the state's goal to strengthen commu-
70 nity and technical college education;

71 (viii) The community and technical college will not be
72 able to operate optimally until they move out of the
73 shadow of their "parent" institutions, with the flexibility
74 and autonomy to establish a uniquely community college
75 identity, culture, program mix, outreach capacity and
76 approach to teaching and learning;

77 (ix) The development of stronger support mechanisms for
78 the community and technical colleges should be an exten-
79 sion of the ongoing step-by-step process for achieving the
80 goals for post secondary education in the state;

81 (x) Building on the foundations laid in enrolled commit-
82 tee substitute for Senate bill no. 547 and enrolled Senate
83 bill no. 653, the Legislature should now establish the
84 further systemic and policy supports that are needed for
85 the community and technical college to thrive, perform
86 and meet state goals;

87 (xi) Implementation will necessarily be incremental;

88 (xii) The consistent focus at the state level should be on
89 the statewide mission of raising educational attainment,
90 increasing adult literacy, promoting workforce and
91 economic development and ensuring access to advanced
92 education for the citizens of West Virginia;

93 (xiii) The solution must ensure a high degree of flexibil-
94 ity and autonomy at the local level, preserving the ability
95 of community and technical colleges to respond rapidly
96 and effectively to local needs;

97 (xiv) At the same time, there is serious and recognized
98 need for statewide leadership, coordination and support
99 for the work of the community and technical colleges and
100 the advocacy for the public priorities that these institu-
101 tions are charged to address; and therefore

102 (xv) The state needs to create a community college
103 support capacity at the state level that will bring leader-
104 ship, coordination, technical support, advocacy and
105 critical mass to a statewide network of local community
106 and technical college campuses.

107 (C) The *Report and Recommendations of the Implemen-*
108 *tation Board to the West Virginia Higher Education Policy*
109 *Commission*, hereinafter cited in this article and article
110 two-c of this chapter as the *Implementation Board Report*,

111 is a study required by enrolled Senate bill no. 653 to
112 determine the most effective and efficient method to
113 deliver community and technical college services in the
114 former responsibility areas of Marshall university, West
115 Virginia state college and West Virginia university insti-
116 tute of technology. The *Implementation Board Report*
117 states its goals and vision for community and technical
118 college education in the advantage valley region as one of
119 a dynamic, vital and vibrant community college network
120 which offers:

121 (i) Affordable, quality training and education to stu-
122 dents;

123 (ii) Represents a recognized path of choice to success in
124 the knowledge economy for thousands of West Virginians;
125 and

126 (iii) Provides West Virginia businesses with the highly
127 skilled work force necessary to meet their evolving needs
128 in the global knowledge economy.

129 (D) In furtherance of their goals, the *Implementation*
130 *Board Report* recommended formation of the advantage
131 valley community college network:

132 (i) To enhance economic development through coordi-
133 nated leadership and a delivery system for education and
134 training initiatives;

135 (ii) To provide accountability through a separate com-
136 pact and through independent accreditation of each of the
137 affected community and technical colleges; and

138 (iii) To enhance education opportunities for the citizens
139 of the area and assist in overcoming the barrier of accessi-
140 bility in higher education.

141 (b) Based on the recent research cited above, the Legisla-
142 ture further finds that:

143 (1) The recommendations of the *Market Street Report*
144 clearly point out the shortcomings of the state's current

145 approach to providing post-secondary education and
146 programs and show the consequences of failing to change
147 appropriately;

148 (2) The research, findings, vision and goals set forth in
149 the *McClenney Report* and the *Implementation Board*
150 *Report* are noteworthy and, although written, in part, to
151 address specific institutions, have broad application
152 statewide for community and technical colleges;

153 (3) The research shows that:

154 (A) A need exists to enhance community and technical
155 college education in West Virginia through the delivery of
156 services that meet the goals of this chapter and that are
157 delivered pursuant to the process for meeting the essential
158 conditions established in section three, article three-c of
159 this chapter;

160 (B) A need exists for statewide leadership, coordination
161 and support for the work of the community and technical
162 colleges and for advocacy for the public priorities these
163 institutions are charged to address;

164 (C) Community and technical colleges need to be effi-
165 cient, avoiding duplication and the burden of bureaucracy
166 while recognizing fiscal realities;

167 (D) Community and technical colleges need a high degree
168 of flexibility and local autonomy to preserve and expand
169 their ability to respond rapidly and effectively to local or
170 regional needs;

171 (E) Community and technical colleges need state-level
172 support and leadership that recognize differences among
173 regions of the state and among institutions and accept the
174 reality that institutions are at different stages in their
175 development and have different challenges and capabili-
176 ties;

177 (F) Clear benchmarks and regular monitoring are
178 required to assess the progress of community and technical

179 colleges toward meeting the established goals and for
180 meeting the essential conditions, including independent
181 accreditation, established in this chapter;

182 (G) Implementation will necessarily be incremental;

183 (4) Certain acts to streamline accountability, to make
184 maximum use of existing assets to meet new demands and
185 target funding to initiatives designed to enhance and
186 reorient existing capacity and to provide incentives for
187 brokering and collaboration require that the role of the
188 joint commission for vocational-technical- occupational
189 education be reexamined.

190 (c) *Legislative intent.* – The intent of the Legislature in
191 enacting this article is to address the research findings
192 cited above by reconstituting the joint commission for
193 vocational- technical-occupational education as the West
194 Virginia council for community and technical college
195 education in order to reorient the mission, role and
196 responsibilities consistent with and supportive of the
197 mission, role and responsibilities of the commission, the
198 goals for post-secondary education and accountability for
199 assisting the public community and technical colleges,
200 branches, centers, regional centers and other delivery sites
201 with a community and technical college mission in achiev-
202 ing the state's public policy agenda.

203 (d) *Purpose.* – The purpose of this article is to provide for
204 the development of a leadership and support mechanism
205 for the community and technical colleges, branches,
206 centers, regional centers and other delivery sites with a
207 community and technical college mission to assist them in
208 meeting the essential conditions and in the step-by-step
209 implementation process for achieving the goals for com-
210 munity and technical college education as provided for in
211 article three-c of this chapter and to promote coordination
212 and collaboration among secondary and post-secondary
213 vocational-technical-occupational and adult basic educa-
214 tion programs as provided for in this chapter and

215 chapter eighteen of this code. The focus of this leadership
216 and support mechanism is to encourage development of a
217 statewide mission to raise education attainment, increase
218 adult literacy, promote work force and economic develop-
219 ment and ensure access to secondary and post-secondary
220 education for the citizens of the state while maintaining
221 the local autonomy and flexibility necessary to the success
222 of community and technical education.

§18B-2B-2. Definitions.

1 The following words when used in this article have the
2 meaning hereinafter ascribed to them unless the context
3 clearly indicates a different meaning:

4 (a) "Adult basic education" means adult basic skills
5 education designed to improve the basic literacy needs of
6 adults, including information processing skills, communi-
7 cation skills and computational skills, leading to a high
8 school equivalency diploma under the jurisdiction of the
9 state board of education.

10 (b) "Post-secondary vocational-technical-occupational
11 education" means any course or program beyond the high
12 school level that results in, or may result in, the awarding
13 of a two-year associate degree, certificate or other creden-
14 tial from an institution under the jurisdiction of a govern-
15 ing board or other public or private education provider.

16 (c) "Secondary vocational-technical-occupational
17 education" means any course or program at the high
18 school level that results in, or may result in, a high school
19 diploma or its equivalent under the jurisdiction of the
20 state board of education.

21 (d) "Chancellor for community and technical college
22 education" means the chief executive officer of the West
23 Virginia council for community and technical college
24 education employed pursuant to section three, article
25 two-b of this chapter. Any reference in this code to the
26 vice chancellor for community and technical college

27 education and workforce development means the chancel-
28 lor for community and technical college education.

29 (e) "West Virginia council for community and technical
30 college education" or "council" means the council estab-
31 lished pursuant to section three of this article. Any
32 reference in this code to the joint commission for voca-
33 tional-technical-occupational education means the West
34 Virginia council for community and technical college
35 education.

**§18B-2B-3. West Virginia council for community and technical
college education; supervision of chancellor;
chief executive officer.**

1 (a) There is continued the West Virginia council for
2 community and technical college education. The council
3 has all the powers and duties assigned by law to the joint
4 commission for vocational-technical-occupational educa-
5 tion prior to the effective date of this section and such
6 other powers and duties as may be assigned by law.

7 (b) The council shall employ a chancellor for community
8 and technical college education. The chancellor serves as
9 chief executive officer of the council at the will and
10 pleasure of the council. The chancellor shall be compen-
11 sated at a level set by the council not to exceed eighty
12 percent of the annual salary of the chancellor for higher
13 education.

14 (1) The vice chancellor for community and technical
15 college education and workforce development, as the
16 current chief executive officer of the council, shall con-
17 tinue in such capacity upon the effective date of this
18 section, and shall be the chancellor for community and
19 technical college education.

20 (A) The council shall conduct a written performance
21 evaluation of the chancellor one year after the effective
22 date of this section. The council shall report the results of
23 the evaluation to the legislative oversight commission on

24 education accountability during the legislative interim
25 meeting period following the evaluation.

26 (B) After reviewing the evaluation, the council shall
27 make a determination by vote of its members on continu-
28 ing employment and compensation level for the chancellor.

29 (C) After the initial contract period, the council shall
30 conduct written performance evaluations of the chancellor
31 annually and may offer the chancellor a contract of longer
32 term, but not to exceed three years. At the end of each
33 contract period, the council shall review the evaluations
34 and make a determination by vote of its members on
35 continuing employment and level of compensation.

36 (D) When a vacancy occurs in the position of chancellor,
37 the council shall enter into an initial employment contract
38 for one year with the candidate selected to fill the vacancy.
39 At the end of the initial period, the council shall make a
40 determination by vote of its members on continuing
41 employment and compensation level for the chancellor and
42 shall continue thereafter as set forth in paragraph (C) of
43 this subdivision.

44 (2) The chancellor maintains all benefits of employment
45 held, accrued and afforded as the vice chancellor for
46 community and technical college education and workforce
47 development. Such benefits include, but are not limited
48 to, retirement benefits, continued membership in the same
49 retirement system, any insurance coverage and sick and
50 annual leave. For the purposes of leave conversion
51 established in section thirteen, article sixteen, chapter five
52 of this code, the chancellor is not a new employee, and the
53 prohibition on conversion does not apply if the chancellor
54 was eligible for leave conversion while serving as vice
55 chancellor on the day preceding the effective date of this
56 section. On the effective date of this section, for the
57 purpose of section thirteen article sixteen, chapter five of
58 this code, the chancellor:

59 (A) Maintains all sick and annual leave accrued, and all
60 rights to convert the leave that had been accrued as vice
61 chancellor; and

62 (B) Continues to maintain his or her status for eligibility
63 under the provisions and application of said section as
64 applied while serving as vice chancellor on the day preced-
65 ing the effective date of this section.

§18B-2B-4. Appointment, composition and terms of council.

1 (a) The council is comprised of thirteen members selected
2 as follows:

3 (1) Eight members appointed by the governor, with the
4 advice and consent of the Senate:

5 (A) One member shall be appointed from each commu-
6 nity and technical college consortia district as established
7 in this section.

8 (B) Prior to appointment, the governor shall interview
9 each candidate to assure that the person selected under-
10 stands and is committed to achieving the goals and
11 objectives as set forth in the institutional compacts and in
12 section one-a, article one of this chapter. The governor
13 shall invite the president of the Senate, the speaker of the
14 House of Delegates, the chairs of the Senate and House of
15 Delegates committees on finance and education and such
16 other legislative leaders as the governor may determine to
17 participate in interviewing potential candidates. Each
18 member appointed to the council by the governor shall
19 represent the public interest and shall be committed to the
20 legislative intent and goals set forth in section one-a,
21 article one of this chapter.

22 (2) The chairperson of the West Virginia workforce
23 investment council;

24 (3) The executive director of the West Virginia develop-
25 ment office, or designee;

26 (4) The president of the West Virginia AFL-CIO, or a
27 designee;

28 (5) The chair of the higher education policy commission
29 who serves as an ex officio, nonvoting member of the
30 council; and

31 (6) The assistant superintendent for technical and adult
32 education of the state department of education who serves
33 as an ex officio, nonvoting member of the council;

34 (b) Any appointed member shall be a citizen of the state,
35 shall represent the public interest and shall understand
36 and be committed to achieving the goals and objectives set
37 forth in section one-a, article one of this chapter, the
38 essential conditions set forth in article three-c of this
39 chapter, and the goals for secondary and post-secondary
40 vocational-technical-occupational and adult basic educa-
41 tion in the state. Any appointed member shall represent
42 the interests of the business, labor and employer communi-
43 ties and demonstrate knowledge of the education needs of
44 the various regions, attainment levels and age groups
45 within the state.

46 (c) The governor may not appoint any person to be a
47 member of the council who is an officer, employee or
48 member of an advisory board of any state college or
49 university, the holder of any other public office or public
50 employment under the government of this state or any of
51 its political subdivisions, an appointee or employee of any
52 governing board or an immediate family member of any
53 employee under the jurisdiction of the commission or any
54 governing board. An individual may not serve on the
55 council who is engaged in providing, or employed by a
56 person or company whose primary function is to provide,
57 workforce development services and activities.

58 (d) Members of the council serve for staggered terms of
59 four years. Notwithstanding the provisions of subdivision
60 (1), subsection (a) of this section, on the effective date of

61 this section any current member of the council maintains
62 his or her appointment to the council and continues to
63 serve for the remainder of the term for which originally
64 appointed. Any additional appointment required by the
65 provisions of said subdivision shall represent a consortia
66 district not otherwise represented on the council.

§18B-2B-5. Meetings and compensation.

1 (a) The council shall hold at least eight meetings annu-
2 ally and may meet more often at the call of the chairper-
3 son. One such meeting shall be a public forum for the
4 discussion of the goals and standards for workforce
5 development, economic development and vocational
6 education in the state.

7 (b) The council shall hold an annual meeting each June
8 for the purpose of electing officers for the next fiscal year.
9 At the annual meeting, the council shall elect from its
10 appointed members a chairperson and other officers as it
11 may consider necessary or desirable. The chairperson and
12 other officers are elected for two-year terms commencing
13 on the first day of July following the annual meeting. The
14 chairperson of the board may serve no more than two
15 consecutive two-year terms as chair, except that the
16 member serving as chairperson of the council on the
17 effective date of this section is eligible to serve a two-year
18 term regardless of the number of consecutive terms
19 already served.

20 (c) Members of the council serve without compensation.
21 Members shall be reimbursed for all reasonable and
22 necessary expenses actually incurred in the performance
23 of official duties under this article upon presentation of an
24 itemized sworn statement of their expenses. An ex officio
25 member of the council who is an employee of the state is
26 reimbursed by the employing agency.

27 (d) A majority of the members appointed constitutes a
28 quorum for conducting the business of the council. All

29 action taken by the council shall be by majority vote of the
30 members present.

§18B-2B-6. Powers and duties of the council.

1 (a) The council is the sole agency responsible for admin-
2 istration of vocational-technical-occupational education
3 and community and technical college education in the
4 state. The council has jurisdiction and authority over the
5 community and technical colleges and the system of
6 community and technical college education as a whole,
7 including community and technical college education
8 programs as defined in section two, article one of this
9 chapter.

10 (b) As relates to the authority established in subsection
11 (a) of this section, the council has the following powers
12 and duties:

13 (1) Develop, oversee and advance the public policy
14 agenda as it relates to community and technical college
15 education to address major challenges facing the state,
16 including, but not limited to, the goals and objectives
17 found in section one-a, article one of this chapter and
18 including specifically those goals and objectives pertaining
19 to the compacts created pursuant to section two, article
20 one-a of this chapter and to develop and implement the
21 master plan described in section nine of this article for the
22 purpose of accomplishing the mandates of this section;

23 (2) Jointly with the commission, develop, oversee and
24 advance the implementation of a financing policy for
25 higher education in West Virginia. The policy shall meet
26 the following criteria:

27 (A) Provide an adequate level of education and general
28 funding for institutions pursuant to section five, article
29 one-a of this chapter;

30 (B) Serve to maintain institutional assets, including, but
31 not limited to, human and physical resources and deferred
32 maintenance;

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

37 (D) Establish for incorporation into the financing policy
38 for higher education in West Virginia a plan for strategic
39 funding to strengthen capacity for support of community
40 and technical college education;

41 (3) Create a policy leadership structure relating to
42 community and technical college education capable of the
43 following actions:

44 (A) Developing, building public consensus around and
45 sustaining attention to a long-range public policy agenda.
46 In developing the agenda, the council shall seek input from
47 the Legislature and the governor and specifically from the
48 state board of education and local school districts in order
49 to create the necessary linkages to assure smooth, effective
50 and seamless movement of students through the public
51 education and post-secondary education systems and to
52 ensure that the needs of public school courses and pro-
53 grams can be fulfilled by the graduates produced and the
54 programs offered;

55 (B) Ensuring that the governing boards of the institu-
56 tions under the council's jurisdiction carry out their duty
57 effectively to govern the individual institutions of higher
58 education; and

59 (C) Holding the community and technical college institu-
60 tions and the community and technical college system as
61 a whole accountable for accomplishing their missions and
62 implementing the provisions of the compacts;

63 (4) To develop for inclusion in the statewide public
64 agenda, a plan for raising education attainment, increasing
65 adult literacy, promoting work force and economic
66 development and ensuring access to advanced education
67 for the citizens of West Virginia;

68 (5) To provide statewide leadership, coordination,
69 support, and technical assistance to the community and
70 technical colleges and to provide a focal point for visible
71 and effective advocacy for their work and for the public
72 policy agenda approved by the commission and council.
73 For the institutions under their jurisdiction, this responsi-
74 bility includes, but is not limited to:

75 (A) Ensuring that the governing boards carry out their
76 duty effectively to govern the individual institutions of
77 higher education; and

78 (B) Holding the institutions and the system as a whole
79 accountable for accomplishing their missions and imple-
80 menting the provisions of the compacts;

81 (6) To review and adopt annually all institutional
82 compacts for the community and technical colleges
83 pursuant to the provisions of section two, article one-a of
84 this chapter;

85 (7) Serve as the accountability point to:

86 (A) The governor for implementation by the community
87 and technical colleges of their role in advancing the public
88 policy agenda; and

89 (B) The Legislature by maintaining a close working
90 relationship with the legislative leadership and the
91 legislative oversight commission on education account-
92 ability;

93 (8) Jointly with the commission, promulgate a legislative
94 rule pursuant to article three-a, chapter twenty-nine-a of
95 this code to fulfill the purposes of section five, article
96 one-a of this chapter;

97 (9) Establish and implement the benchmarks and
98 performance indicators necessary to measure institutional
99 achievement towards state policy priorities and institu-
100 tional missions;

101 (10) Review the progress of community and technical
102 colleges in every region of West Virginia. The review
103 includes, but is not limited to, evaluating and reporting
104 annually to the legislative oversight commission on
105 education accountability on the step-by-step implementa-
106 tion required in article three-c of this chapter;

107 (11) Annually report to the Legislature and to the
108 legislative oversight commission on education account-
109 ability during the January interim meetings on a date and
110 at a time and location to be determined by the president of
111 the Senate and the speaker of the House of Delegates. The
112 report shall address at least the following:

113 (A) The performance of the community and technical
114 college system during the previous fiscal year, including,
115 but not limited to, progress in meeting goals stated in the
116 compacts and progress of the institutions and the system
117 as a whole in meeting the goals and objectives set forth in
118 section one-a, article one of this chapter;

119 (B) The priorities established for capital investment
120 needs pursuant to subdivision (12) of this subsection and
121 the justification for such priority;

122 (C) Recommendations of the council for statutory
123 changes necessary to further the goals and objectives set
124 forth in section one-a, article one of this chapter;

125 (12) Establish a formal process for identifying needs for
126 capital investments and for determining priorities for
127 these investments. When the needs have been determined,
128 the council shall take the following steps:

129 (A) Develop a ranked list of the top ten projects for
130 capital investment for the institutions under its jurisdic-
131 tion;

132 (B) Convey the ranked list to the commission for its
133 consideration pursuant to section four, article one-b of this
134 chapter;

135 (13) Draw upon the expertise available within the
136 governor's workforce investment office and the West
137 Virginia development office as a resource in the area of
138 workforce development and training;

139 (14) Acquire legal services as are considered necessary,
140 including representation of the council, its institutions,
141 employees and officers before any court or administrative
142 body, notwithstanding any other provision of this code to
143 the contrary. The counsel may be employed either on a
144 salaried basis or on a reasonable fee basis. In addition, the
145 council may, but is not required to, call upon the attorney
146 general for legal assistance and representation as provided
147 by law;

148 (15) Employ a chancellor for community and technical
149 college education pursuant to section three of this article;

150 (16) Employ other staff as necessary and appropriate to
151 carry out the duties and responsibilities of the council
152 consistent with the provisions of section two, article four
153 of this chapter;

154 (17) Employ other staff as necessary and appropriate to
155 carry out the duties and responsibilities of the council who
156 are employed solely by the council;

157 (18) Provide suitable offices in Charleston for the
158 chancellor and other staff;

159 (19) Approve the total compensation package from all
160 sources for presidents of community and technical col-
161 leges, as proposed by the governing boards. The governing
162 boards must obtain approval from the council of the total
163 compensation package both when presidents are employed
164 initially and subsequently when any change is made in the
165 amount of the total compensation package;

166 (20) Establish and implement policies and procedures to
167 ensure that students may transfer and apply toward the
168 requirements for a degree the maximum number of credits

169 earned at any regionally accredited in-state or out-of-state
170 higher education institution with as few requirements to
171 repeat courses or to incur additional costs as is consistent
172 with sound academic policy;

173 (21) Establish and implement policies and programs,
174 jointly with the community and technical colleges, through
175 which students who have gained knowledge and skills
176 through employment, participation in education and
177 training at vocational schools or other education institu-
178 tions, or internet-based education programs, may demon-
179 strate by competency-based assessment that they have the
180 necessary knowledge and skills to be granted academic
181 credit or advanced placement standing toward the require-
182 ments of an associate degree or a bachelor's degree at a
183 state institution of higher education;

184 (22) Seek out and attend regional and national meetings
185 and forums on education and workforce development-
186 related topics, as in the council's discretion is critical for
187 the performance of their duties as members for the pur-
188 pose of keeping abreast of community and technical
189 college education trends and policies to aid it in develop-
190 ing the policies for this state to meet the established
191 education goals and objectives pursuant to section one-a,
192 article one of this chapter;

193 (23) Assess community and technical colleges for the
194 payment of expenses of the council or for the funding of
195 statewide services, obligations or initiatives related
196 specifically to the provision of community and technical
197 college education;

198 (24) Promulgate rules allocating reimbursement of
199 appropriations, if made available by the Legislature, to
200 community and technical colleges for qualifying
201 noncapital expenditures incurred in the provision of
202 services to students with physical, learning or severe
203 sensory disabilities;

204 (25) Assume the prior authority of the commission in
205 examining and approving tuition and fee increase propos-
206 als submitted by community and technical college govern-
207 ing boards as provided in section one, article ten of this
208 chapter.

209 (26) Consider and submit to the commission, a single
210 budget for community and technical college education that
211 reflects recommended appropriations for community and
212 technical colleges and that:

213 (A) Considers the progress of each institution toward
214 meeting the essential conditions set forth in section three,
215 article three-c of this chapter, including independent
216 accreditation; and

217 (B) Considers the progress of each institution toward
218 meeting the goals established in its institutional compact;

219 (27) Administer and distribute the independently
220 accredited community and technical college development
221 account;

222 (28) Establish a plan of strategic funding to strengthen
223 capacity for support of community and technical college
224 education in all areas of the state;

225 (29) Foster coordination among all state-level, regional
226 and local entities providing post-secondary vocational
227 education or work force development and coordinate all
228 public institutions and entities that have a community and
229 technical college mission;

230 (30) Assume the principal responsibility for overseeing
231 the implementation of the step-by-step process for achiev-
232 ing independent accreditation and for meeting the essen-
233 tial conditions pursuant to article three-c of this chapter;

234 (31) Advise and consent in the appointment of the
235 presidents of the community and technical colleges
236 pursuant to section six, article one-b of this chapter. The
237 role of the council in approving a president is to assure

238 through personal interview that the person selected
239 understands and is committed to achieving the goals and
240 objectives as set forth in the institutional compact and in
241 section one-a, article one of this chapter;

242 (32) Provide a single, statewide link for current and
243 prospective employers whose needs extend beyond one
244 locality;

245 (33) Provide a mechanism that serves two or more
246 institutions to facilitate joint problem-solving in areas
247 including, but not limited to:

248 (A) Defining faculty roles and personnel policies;

249 (B) Delivering high-cost technical education programs
250 across the state;

251 (C) Providing one-stop service for workforce training to
252 be delivered by multiple institutions; and

253 (D) Providing opportunities for resource-sharing and
254 collaborative ventures;

255 (34) Provide support and technical assistance to develop,
256 coordinate, and deliver effective and efficient community
257 and technical college education programs and services in
258 the state;

259 (35) Assist the community and technical colleges in
260 establishing and promoting links with business, industry
261 and labor in the geographic areas for which each of the
262 community and technical colleges is responsible;

263 (36) Develop alliances among the community and
264 technical colleges for resource sharing, joint development
265 of courses and courseware, and sharing of expertise and
266 staff development;

267 (37) Serve aggressively as an advocate for development
268 of a seamless curriculum;

269 (38) Cooperate with the governor's P-20 council of West
270 Virginia to remove barriers relating to transfer and
271 articulation between and among community and technical
272 colleges, state colleges and universities and public educa-
273 tion, preschool through grade twelve;

274 (39) Encourage the most efficient utilization of available
275 resources;

276 (40) Coordinate with the commission in informing public
277 school students, their parents and teachers of the academic
278 preparation that students need in order to be prepared
279 adequately to succeed in their selected fields of study and
280 career plans, including presentation of academic career
281 fairs;

282 (41) Jointly with the commission, approve and imple-
283 ment a uniform standard, as developed by the chancellors,
284 to determine which students shall be placed in remedial or
285 developmental courses. The standard shall be aligned with
286 college admission tests and assessment tools used in West
287 Virginia and shall be applied uniformly by the governing
288 boards throughout the public higher education system.
289 The chancellors shall develop a clear, concise explanation
290 of the standard which the governing boards shall commu-
291 nicate to the state board of education and the state
292 superintendent of schools;

293 (42) Develop and implement strategies and curriculum
294 for providing developmental education which shall be
295 applied by any state institution of higher education
296 providing developmental education.

297 (43) Develop a statewide system of community and
298 technical college programs and services in every region of
299 West Virginia for competency-based certification of
300 knowledge and skills, including a statewide compe-
301 tency-based associate degree program;

302 (44) Review and approve all institutional master plans
303 for the community and technical colleges;

304 (45) Establish policies or rules for promulgation that are
305 necessary or expedient for the effective and efficient
306 performance of community and technical colleges in the
307 state;

308 (46) In its sole discretion, transfer any rule under its
309 jurisdiction, other than a legislative rule, to the jurisdic-
310 tion of the governing boards who may rescind, revise, alter
311 or amend any rule so transferred pursuant to rules adopted
312 by the council;

313 (47) Establish benchmarks and performance indicators
314 for community and technical colleges to measure institu-
315 tional progress toward meeting the goals as outlined in
316 section one-a, article one of this chapter and in meeting
317 the essential conditions established in article three-c of
318 this chapter;

319 (48) Develop for inclusion in the higher education report
320 card, as defined in section eight, article one-b of this
321 chapter, a separate section on community and technical
322 colleges. This section shall include, but is not limited to,
323 evaluation of the institutions based upon the benchmarks
324 and indicators developed in subdivision (47) of this
325 subsection;

326 (49) Facilitate continuation of the advantage valley
327 community college network under the leadership and
328 direction of Marshall community and technical college;

329 (50) Initiate and facilitate creation of other regional
330 networks of affiliated community and technical colleges
331 that the council finds to be appropriate and in the best
332 interests of the citizens to be served;

333 (51) Develop with the state board of education state
334 plans for secondary and post-secondary voca-
335 tional-technical-occupational and adult basic education,
336 including, but not limited to:

337 (A) Policies to strengthen vocational-technical-occupa-
338 tional and adult basic education; and

339 (B) Programs and methods to assist in the improvement,
340 modernization and expanded delivery of vocational-
341 technical-occupational and adult basic education pro-
342 grams;

343 (52) Distribute federal vocational education funding
344 provided under the Carl D. Perkins Vocational and
345 Technical Education Act of 1998, PL 105-332, with an
346 emphasis on distributing financial assistance among
347 secondary and post-secondary vocational-technical-
348 occupational and adult basic education programs to help
349 meet the public policy agenda.

350 In distributing funds the council shall use the following
351 guidelines:

352 (A) The board of education shall continue to be the fiscal
353 agent for federal vocational education funding;

354 (B) The percentage split between the board of education
355 and the council shall be determined by rule promulgated
356 by the council under the provisions of article three-a,
357 chapter twenty-nine-a of this code. The council shall first
358 obtain the approval of the board of education before
359 proposing a rule;

360 (53) Collaborate, cooperate and interact with all second-
361 ary and post-secondary vocational-technical-occupational
362 and adult basic education programs in the state, including
363 the programs assisted under the federal Carl D. Perkins
364 Vocational and Technical Education Act of 1998, PL
365 105-332, and the Workforce Investment Act of 1998, to
366 promote the development of seamless curriculum and the
367 elimination of duplicative programs;

368 (54) Coordinate the delivery of vocational-techni-
369 cal-occupational and adult basic education in a manner

370 designed to make the most effective use of available public
371 funds to increase accessibility for students;

372 (55) Analyze and report to the West Virginia board of
373 education on the distribution of spending for voca-
374 tional-technical-occupational and adult basic education in
375 the state and on the availability of vocational-technical-
376 occupational and adult basic education activities and
377 services within the state;

378 (56) Promote the delivery of vocational-technical-
379 occupational education, adult basic education and commu-
380 nity and technical college education programs in the state
381 which emphasize the involvement of business, industry
382 and labor organizations;

383 (57) Promote public participation in the provision of
384 vocational-technical-occupational education, adult basic
385 education and community and technical education at the
386 local level, emphasizing programs which involve the
387 participation of local employers and labor organizations;

388 (58) Promote equal access to quality vocational-techni-
389 cal-occupational education, adult basic education and
390 community and technical college education programs to
391 handicapped and disadvantaged individuals, adults in
392 need of training and retraining, single parents, homemak-
393 ers, participants in programs designed to eliminate sexual
394 bias and stereotyping and criminal offenders serving in
395 correctional institutions;

396 (59) Meet annually between the months of October and
397 December with the advisory committee of community and
398 technical college presidents created pursuant to section
399 eight of this article to discuss those matters relating to
400 community and technical college education in which
401 advisory committee members or the council may have an
402 interest;

403 (60) Accept and expend any gift, grant, contribution,
404 bequest, endowment or other money for the purposes of
405 this article;

406 (61) Assume the powers set out in section five, article
407 three of this chapter. The rules previously promulgated by
408 the state college system board of directors pursuant to that
409 section and transferred to the commission are hereby
410 transferred to the council and shall continue in effect until
411 rescinded, revised, altered or amended by the council;

412 (62) Pursuant to the provisions of article three-a, chapter
413 twenty-nine-a of this code and section six, article one of
414 this chapter, promulgate rules as necessary or expedient to
415 fulfill the purposes of this chapter. The council and
416 commission shall promulgate a uniform joint legislative
417 rule for the purpose of standardizing, as much as possible,
418 the administration of personnel matters among the
419 institutions of higher education;

420 (63) Determine when a joint rule among the governing
421 boards of the community and technical colleges is neces-
422 sary or required by law and, in those instances and in
423 consultation with the governing boards, promulgate the
424 joint rule;

425 (64) Promulgate a joint rule with the commission estab-
426 lishing tuition and fee policy for all institutions of higher
427 education. The rule shall include, but is not limited to, the
428 following:

429 (A) Comparisons with peer institutions;

430 (B) Differences among institutional missions;

431 (C) Strategies for promoting student access;

432 (D) Consideration of charges to out-of-state students;
433 and

434 (E) Such other policies as the commission and council
435 consider appropriate;

436 (65) In cooperation with the West Virginia division of
437 highways, study a method for increasing the signage
438 signifying community and technical college locations

439 along the state interstate highways, and report to the
440 legislative oversight commission on education account-
441 ability regarding any recommendations and required costs;
442 and

443 (66) Implement a policy jointly with the commission
444 whereby any course credit earned at a community and
445 technical college transfers for program credit at any other
446 state institution of higher education and is not limited to
447 fulfilling a general education requirement.

448 (c) In addition to the powers and duties listed in subsec-
449 tions (a) and (b) of this section, the council has the follow-
450 ing general powers and duties related to its role in devel-
451 oping, articulating and overseeing the implementation of
452 the public policy agenda for community and technical
453 colleges:

454 (1) Planning and policy leadership including a distinct
455 and visible role in setting the state's policy agenda for the
456 delivery of community and technical college education and
457 in serving as an agent of change;

458 (2) Policy analysis and research focused on issues
459 affecting the community and technical college system as a
460 whole or a geographical region thereof;

461 (3) Development and implementation of each community
462 and technical college mission definition including use of
463 incentive funds to influence institutional behavior in ways
464 that are consistent with public priorities;

465 (4) Academic program review and approval for the
466 institutions under its jurisdiction, including the use of
467 institutional missions as a template to judge the appropri-
468 ateness of both new and existing programs and the author-
469 ity to implement needed changes;

470 (5) Development of budget and allocation of resources
471 for institutions delivering community and technical
472 college education, including reviewing and approving

473 institutional operating and capital budgets and distribut-
474 ing incentive and performance-based funding;

475 (6) Acting as the agent to receive and disburse public
476 funds related to community and technical college educa-
477 tion when a governmental entity requires designation of a
478 statewide higher education agency for this purpose;

479 (7) Development, establishment and implementation of
480 information, assessment and accountability systems,
481 including maintenance of statewide data systems that
482 facilitate long-term planning and accurate measurement
483 of strategic outcomes and performance indicators for
484 community and technical colleges;

485 (8) Jointly with the commission, development, establish-
486 ment and implementation of policies for licensing and
487 oversight of both public and private degree-granting and
488 nondegree-granting institutions that provide
489 post-secondary education courses or programs pursuant to
490 the findings and policy recommendations to be determined
491 as set forth in section eleven, article one-b of this chapter;

492 (9) Development, implementation and oversight of
493 statewide and regionwide projects and initiatives related
494 specifically to providing community and technical college
495 education such as those using funds from federal categori-
496 cal programs or those using incentive and perfor-
497 mance-based funding from any source; and

498 (10) Quality assurance that intersects with all other
499 duties of the council particularly in the areas of planning,
500 policy analysis, program review and approval, budgeting
501 and information and accountability systems.

502 (d) The council is authorized to withdraw specific
503 powers of a governing board under its jurisdiction for a
504 period not to exceed two years if the council makes a
505 determination that:

506 (1) The governing board has failed for two consecutive
507 years to develop an institutional compact as required in
508 article one of this chapter;

509 (2) The council has received information, substantiated
510 by independent audit, of significant mismanagement or
511 failure to carry out the powers and duties of the board of
512 governors according to state law; or

513 (3) Other circumstances which, in the view of the coun-
514 cil, severely limit the capacity of the board of governors to
515 carry out its duties and responsibilities.

516 The period of withdrawal of specific powers may not
517 exceed two years during which time the council is autho-
518 rized to take steps necessary to reestablish the conditions
519 for restoration of sound, stable and responsible institu-
520 tional governance.

521 (e) In addition to the powers and duties provided for in
522 subsections (a) and (b), (c) and (d) of this section and any
523 other powers and duties as may be assigned to it by law,
524 the council has:

525 (1) Such other powers and duties as may be necessary or
526 expedient to accomplish the purposes of this article; and

527 (2) All powers, duties and responsibilities directly
528 related to community and technical colleges and commu-
529 nity and technical college education that were vested in
530 the commission prior to the effective date of this section.

531 (f) When the council and commission, each, is required to
532 consent, cooperate, collaborate or provide input into the
533 actions of the other:

534 (1) The body acting first shall convey its decision in the
535 matter to the other body with a request for concurrence in
536 the action;

537 (2) The commission or the council, as the receiving body,
538 shall place the proposal on its agenda and shall take final

539 action within sixty days of the date when the request for
540 concurrence is received; and

541 (3) If the receiving body fails to take final action within
542 sixty days, the original proposal stands and is binding on
543 both the commission and the council.

§18B-2B-6a. Transfer of funds; council authority to expend funds.

1 On the effective date of this section, the unexpended
2 balance remaining in the appropriation for the West
3 Virginia council for community and technical education is
4 transferred from the commission to the authority of the
5 council to be expended by the council to carry out the
6 purposes of this article.

§18B-2B-7. Powers and duties of the chief executive officer.

1 (a) The chancellor for community and technical college
2 education is the chief executive officer of the council and
3 as such may exercise the powers and duties assigned by the
4 council. The chancellor has the following powers and
5 duties:

6 (1) To serve as the principal accountability point for the
7 council for implementation of the public policy agenda as
8 it relates to community and technical colleges;

9 (2) To assume principal responsibility for directing and
10 assisting the work of the council; and

11 (3) To supervise and direct staff of the council as
12 necessary and appropriate to carry out the duties and
13 responsibilities of this article.

14 (A) On the effective date of this section, all personnel
15 employed by the commission and under the supervision of
16 the vice chancellor for community and technical college
17 education and workforce development on the first day of
18 January, two thousand four, are transferred to the juris-
19 diction of the council and are under the direct supervision

20 of the chancellor for community and technical college
21 education.

22 (B) Prior to the first day of October, two thousand four,
23 any such employee, including the chief executive officer of
24 the council, may not be terminated or have his or her
25 salary or rebenefit level reduced as the result of the gover-
26 nance reorganization set forth in this article.

27 (4) On behalf of the council, the chancellor may enter
28 into agreements with any state agency or political subdivi-
29 sion of the state, any state higher education institution or
30 any other person or entity to enlist staff assistance to
31 implement the powers and duties assigned to the council
32 by state law.

33 (5) The chancellor is responsible for the day-to-day
34 operations of the council and has the following responsi-
35 bilities:

36 (A) To carry out policy and program directives of the
37 council;

38 (B) To develop and submit annual reports on the imple-
39 mentation plan to achieve the goals and objectives set
40 forth in section one-a, article one of this chapter and in the
41 institutional compacts;

42 (C) To prepare and submit to the council for its approval
43 the proposed budget of the council including the office of
44 the chancellor and necessary staff;

45 (D) To assist the governing boards in developing rules,
46 subject to the provisions of section six, article one of this
47 chapter. Nothing in this chapter requires the rules of the
48 governing boards to be filed pursuant to the rule-making
49 procedures provided in article three-a, chapter
50 twenty-nine-a of this code. The chancellor is responsible
51 for ensuring that any policy which is required to be
52 uniform across the institutions under the jurisdiction of
53 the council is applied in a uniform manner; and

54 (E) To perform all other duties and responsibilities
55 assigned by the council or by state law.

56 (6) The chancellor shall be reimbursed for all actual and
57 necessary expenses incurred in the performance of all
58 assigned duties and responsibilities.

59 (7) The council is the primary advocate for community
60 and technical college education and, with the chancellor,
61 advises the Legislature on matters of community and
62 technical college education in West Virginia. The chancel-
63 lor shall work closely with the legislative oversight
64 commission on education accountability and with the
65 elected leadership of the state to ensure that they are fully
66 informed about community and technical college educa-
67 tion issues and that the council fully understands the goals
68 for higher education that the Legislature has established
69 by law.

70 (8) The chancellor may design and develop for consider-
71 ation by the council new statewide or regional initiatives
72 directly related to community and technical college
73 education and in accordance with the goals set forth in
74 section one-a, article one of this chapter and the public
75 policy agenda.

76 (9) The chancellor shall work closely with members of
77 the state board of education and with the state superinten-
78 dent of schools to assure that the following goals are met:

79 (A) Development and implementation of a seamless
80 kindergarten-through-college system of education; and

81 (B) Appropriate coordination of missions and programs.
82 To further the goals of cooperation and coordination
83 between the council and the state board of education, the
84 chancellor serves as an ex officio, nonvoting member of the
85 state board of education.

**§18B-2B-8. State advisory committee of community and techni-
cal college presidents.**

1 (a) There is continued the state advisory committee of
2 community and technical college presidents. For the
3 purposes of this section, the state advisory committee of
4 community and technical college presidents is referred to
5 as the "advisory committee".

6 (b) Each president of a public community and technical
7 college, as defined in section one, article six of this chap-
8 ter, is a member of the advisory committee. An adminis-
9 trative head of a component, branch, center, regional
10 center or other delivery site with a community and techni-
11 cal college mission may be a member if considered appro-
12 priate.

13 (c) The chancellor serves as chair of the advisory
14 committee. The advisory committee shall meet at least
15 once each quarter and may meet at such other times as
16 called by the chair or by a majority of the members.

17 (d) The advisory committee shall communicate to the
18 council on matters of importance to the group. It shall
19 meet annually between the months of October and Decem-
20 ber with the council to discuss those matters relating to
21 community and technical college education in which
22 advisory committee members or the council may have an
23 interest.

24 (e) The chancellor shall prepare meeting minutes which
25 shall be made available, upon request, to the public.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

**§18B-2C-3. Authority and duty of council to determine progress
of community and technical colleges; conditions;
authority to create West Virginia community
and technical college.**

1 (a) The council annually shall review and analyze all the
2 public community and technical colleges, and any
3 branches, centers, regional centers or other delivery sites
4 with a community and technical college mission, to

5 determine their progress toward meeting the goals and
6 objectives set forth in section one-a, article one of this
7 chapter and toward advancing the purposes, goals and
8 objectives set forth in article three-c of this chapter.

9 (b) The analysis required in subsection (a) of this section
10 shall be based, in whole or in part, upon the findings made
11 pursuant to the rule establishing benchmarks and indica-
12 tors required to be promulgated by the council in section
13 six, article two-b of this chapter.

14 (c) Based upon their analysis in subsections (a) and (b) of
15 this section, the council shall make a determination
16 whether any one or more of the following conditions
17 exists:

18 (1) One or more of the component community and
19 technical colleges required to do so has not achieved or is
20 not making sufficient, satisfactory progress toward
21 achieving the essential conditions, including independent
22 accreditation;

23 (2) One or more of the public community and technical
24 colleges, branches, centers, regional centers and other
25 delivery sites with a community and technical college
26 mission requires financial assistance or other support to
27 meet the goals and essential conditions set forth in this
28 chapter;

29 (3) It is in the best interests of the people of the state or
30 a region within the state to have a single, accredited
31 institution which can provide an umbrella of statewide
32 accreditation;

33 (4) It is in the best interests of the people of the state or
34 a region of the state to have one accredited institution able
35 to extend accreditation to institutions and entities re-
36 quired to seek independent accreditation;

37 (5) One or more of the public community and technical
38 colleges, branches, centers, regional centers or other

39 delivery sites with a community and technical college
40 mission requests from the council the type of assistance
41 which can best be delivered through implementation of the
42 provisions of section four of this article. Institutional
43 requests that may be considered by the council include,
44 but are not limited to, assistance in seeking and/or attain-
45 ing independent accreditation, in meeting the goals for
46 post-secondary education established in section one-a,
47 article one of this chapter, in meeting the essential condi-
48 tions set forth in section three, article three-c of this
49 chapter, or in establishing and implementing regional
50 networks.

51 (6) One or more public community and technical col-
52 leges, branches, centers, regional centers or other delivery
53 sites with a community and technical college mission has
54 not met, or is not making sufficient, satisfactory progress
55 toward meeting, the goals set forth in section one-a, article
56 one of this chapter; and

57 (7) The council determines that it is in the best interests
58 of the people of the state or a region of the state to create
59 a statewide, independently accredited community and
60 technical college.

61 (d) The council may not make a determination subject to
62 the provisions of subsection (c) of this section that a
63 condition does not exist based upon a finding that the
64 higher education entity lacks sufficient funds to make
65 sufficient, satisfactory progress.

66 (e) By the first day of December annually, the council
67 shall prepare and file with the legislative oversight
68 commission on education accountability a written report
69 on the findings and determinations required by this
70 section, together with a detailed history of any actions
71 taken by the council under the authority of this article.

**§18B-2C-4. Authority of council in creating West Virginia
community and technical college.**

1 (a) Subject to the provisions of subsection (c), section
2 three of this article, if the council makes a determination
3 that one or more of the conditions exists, then the council
4 is authorized to create the West Virginia community and
5 technical college.

6 (b) As soon as practicable after the council determines
7 that the college should be created, the council shall notify
8 the governor, the president of the Senate, the speaker of
9 the House of Delegates and the legislative oversight
10 commission on education accountability of the proposed
11 actions. The council shall conduct a study regarding the
12 procedures, findings and determinations considered
13 necessary prior to any creation of the college and shall
14 report its findings to the legislative oversight commission
15 on education accountability. The council may not create
16 the college prior to the report being received by the
17 legislative oversight commission on education account-
18 ability.

19 (c) On or before the first day of December of the year in
20 which the college is created, the council shall certify to the
21 legislative oversight commission on education account-
22 ability proposed legislation to accomplish the purposes of
23 this article for those matters requiring statutory change.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-2. Purposes of article.

1 The general purposes of this article are the following:

2 (a) To establish community and technical college educa-
3 tion that is well articulated with the public schools and
4 four-year colleges; that makes maximum use of shared
5 facilities, faculty, staff, equipment and other resources;
6 that encourages traditional and nontraditional students
7 and adult learners to pursue a lifetime of learning; that
8 serves as an instrument of economic development; and that
9 has the independence and flexibility to respond quickly to
10 changing needs;

11 (b) To charge the respective governing boards with
12 providing community and technical college education at
13 state institutions of higher education under their jurisdic-
14 tion that has the administrative, programmatic and
15 budgetary control necessary to allow maximum flexibility
16 and responsiveness to district and community needs.
17 Education services shall be provided consistent with the
18 goal of sharing facilities, faculty, staff, equipment and
19 other resources within and among the districts, the other
20 systems of public and higher education and other educa-
21 tion and training programs;

22 (c) To establish the essential conditions for community
23 and technical college programs and services, as defined in
24 section three of this article, necessary to ensure that each
25 region of West Virginia is served by a community and
26 technical college meeting the needs of the people of the
27 region;

28 (d) To establish a mechanism for assuring that, where
29 applicable, a transition plan for meeting the essential
30 conditions is developed by each relevant community and
31 technical college;

32 (e) To establish community and technical college consor-
33 tia districts for each of the community and technical
34 colleges to ensure accountability that the full range of
35 community and technical college education programs and
36 services is provided in all areas of the state, including the
37 implementation of seamless curricula and the West
38 Virginia EDGE, "Earn a Degree Graduate Early" pro-
39 gram;

40 (f) To define the full range of programs and services that
41 each community and technical college has the responsibil-
42 ity to provide; and

43 (g) To establish such other policies and procedures
44 necessary to ensure that the needs of West Virginia, its
45 people and its businesses are met for the programs and

46 services that can be provided through a comprehensive
47 system of community and technical colleges.

**§18B-3C-3. Essential conditions for community and technical
college programs and services.**

1 The Legislature hereby establishes the following essen-
2 tial conditions for community and technical college
3 programs and services:

4 (a) Independent accreditation by the higher learning
5 commission of the north central association of colleges and
6 schools (NCA), by the first day of July, two thousand five,
7 reflecting external validation that academic programs,
8 services, faculty, governance, financing and other policies
9 are aligned with the community and technical college
10 mission of the institution. An institution meets this
11 requirement if on such date the council determines that
12 the institution is on target to meet independent accredita-
13 tion status. A community and technical college continues
14 to share the accreditation of the sponsoring institution
15 until such time as independent accreditation is achieved;

16 (b) A full range of community and technical college
17 services offered as specified in section six of this article;

18 (c) Programmatic approval consistent with the provi-
19 sions of section nine of this article;

20 (d) A fee structure competitive with its peer institutions;

21 (e) Basic services, some of which may be obtained under
22 contract with existing institutions in the region. These
23 basic services shall include, but are not limited to, the
24 following:

25 (1) Student services, including, but not limited to,
26 advising, academic counseling, financial aid and provision
27 of the first line of academic mentoring and mediation;

28 (2) Instructional support services;

- 29 (3) Access to information and library services;
- 30 (4) Physical space in which courses can be offered;
- 31 (5) Access to necessary technology for students, faculty
32 and mentors;
- 33 (6) Monitoring and assessment; and
- 34 (7) Administrative services, including, but not limited to,
35 registration, fee collection and bookstore and other
36 services for the distribution of learning materials;
- 37 (f) A president who is the chief executive officer of the
38 community and technical college appointed and serving
39 pursuant to the terms of section six, article one-b of this
40 chapter. The president reports directly to the institutional
41 board of governors. It is the responsibility of the board of
42 governors to provide sufficient time at each meeting for
43 the president to discuss issues relevant to the mission of
44 the community and technical college;
- 45 (g) An institutional board of governors or an institu-
46 tional board of advisors appointed and serving as required
47 by law;
- 48 (h) A full-time core faculty, complemented by persons
49 engaged through contract or other arrangements, includ-
50 ing:
- 51 (1) College and university faculty, to teach community
52 college courses; and
- 53 (2) Qualified business, industry and labor persons
54 engaged as adjunct faculty in technical areas;
- 55 (i) A faculty personnel policy, formally established to be
56 separate and distinct from that of other institutions, which
57 includes, but is not limited to, appointment, promotion,
58 workload and, if appropriate, tenure pursuant to section
59 nine of this article. These policies shall be appropriate for
60 the community and technical college mission and may not
61 be linked to the policies of any other institution;

62 (j) Community and technical colleges designed and
63 operating as open-provider centers with the authority and
64 flexibility to draw on the resources of the best and most
65 appropriate provider to ensure that community and
66 technical college services are available and delivered in the
67 region in a highly responsive manner. A community and
68 technical college may contract with other institutions and
69 providers as necessary to obtain the academic programs
70 and resources to complement those available through a
71 sponsoring college, where applicable, in order to meet the
72 region's needs;

73 (k) Separately identified state funding allocations for
74 each of the community and technical colleges.

75 (l) Full budgetary authority for the president of the
76 institution, subject to accountability to its governing
77 board, including authority to retain all tuition and fees
78 generated by the community and technical college for use
79 to carry out its mission.

**§18B-3C-4. Community and technical college consortia plan-
ning districts.**

1 (a) Unless otherwise designated, the president of each
2 community and technical college facilitates the formation
3 of community and technical college consortia in the state,
4 which includes representatives of community and techni-
5 cal colleges, public vocational-technical education centers,
6 and public baccalaureate institutions offering associate
7 degrees. The community and technical college consortium
8 shall:

9 (1) Complete a comprehensive assessment of the district
10 to determine what education and training programs are
11 necessary to meet the short and long-term work force
12 development needs of the district;

13 (2) Coordinate efforts with regional labor market
14 information systems to identify the ongoing needs of
15 business and industry, both current and projected, and to

16 provide information to assist in an informed program of
17 planning and decisionmaking;

18 (3) Plan and develop a unified effort between the com-
19 munity and technical colleges and public voca-
20 tional-technical education to meet the documented
21 workforce development needs of the district through
22 individual and cooperative programs, shared facilities,
23 faculty, staff, equipment and other resources and the
24 development and use of distance learning and other
25 education technologies;

26 (4) Regularly review and revise curricula to ensure that
27 the workforce needs are met, develop new programs and
28 phase out or modify existing programs as appropriate to
29 meet such needs, streamline procedures for designing and
30 implementing customized training programs;

31 (5) Increase the integration of secondary and post-
32 secondary curriculum and programs that are targeted to
33 meet regional labor market needs, including implementa-
34 tion of seamless curricula project in all major career
35 pathways and the West Virginia EDGE, "Earn a Degree
36 Graduate Early" program;

37 (6) Plan and implement integrated professional develop-
38 ment activities for secondary and post-secondary faculty,
39 staff and administrators;

40 (7) Ensure that program graduates have attained the
41 competencies required for successful employment through
42 the involvement of business, industry and labor in estab-
43 lishing student credentialing;

44 (8) Performance assessment of student knowledge and
45 skills which may be gained from multiple sources so that
46 students gain credit toward program completion and
47 advance more rapidly without repeating course work in
48 which they already possess competency;

49 (9) Cooperate with workforce investment boards in
50 establishing one-stop-shop career centers with integrated

51 employment and training and labor market information
52 systems that enable job seekers to assess their skills,
53 identify and secure needed education training and secure
54 employment and employers to locate available workers;

55 (10) Increase the integration of adult literacy, adult basic
56 education, federal Work Force Investment Act and com-
57 munity and technical college programs and services to
58 expedite the transition of adults from welfare to gainful
59 employment; and

60 (11) Establish a single point of contact for employers and
61 potential employers to access education and training
62 programs throughout the district.

63 (b) The community and technical college education
64 consortium shall cooperate with the regional work force
65 investment board in the district and shall participate in
66 any development or amendment to the regional work force
67 investment plan.

68 (c) To carry out the provisions of this section, community
69 and technical college consortia planning districts are
70 established and defined as follows:

71 (1) Northern panhandle community and technical college
72 district includes Hancock, Brooke, Ohio, Marshall and
73 Wetzell counties.

74 (A) The facilitating institution is West Virginia northern
75 community and technical college.

76 (B) Participating institutions include West Virginia
77 northern community and technical college; John Marshall
78 high school; Cameron high school; John D. Rockefeller
79 center; and other public vocational technical schools
80 offering post-secondary programs.

81 (2) North central West Virginia community and technical
82 college district includes Monongalia, Marion, Preston,
83 Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton,
84 Lewis, Calhoun, Gilmer and Upshur counties.

85 (A) The facilitating institution is Fairmont state commu-
86 nity and technical college.

87 (B) Participating institutions include Fairmont state
88 community and technical college; Glenville state college;
89 Randolph county vocational-technical center; Monongalia
90 county technical education center; united technical center;
91 Marion county technical center; Fred W. Eberly technical
92 center; and other public vocational technical schools
93 offering post-secondary programs.

94 (3) Mid-Ohio valley community and technical college
95 district includes Tyler, Pleasants, Ritchie, Wood, Wirt,
96 Jackson and Roane counties.

97 (A) The facilitating institution is West Virginia univer-
98 sity at Parkersburg.

99 (B) Participating institutions includes West Virginia
100 university at Parkersburg; West Virginia northern commu-
101 nity and technical college; Roane-Jackson technical center;
102 Gaston Caperton center; Wood County technical center;
103 and other public vocational technical schools offering
104 post-secondary programs.

105 (4) Potomac highlands community and technical college
106 district includes Tucker, Pendleton, Grant, Hardy, Mineral
107 and Hampshire counties.

108 (A) The facilitating institution is eastern West Virginia
109 community and technical college.

110 (B) Participating institutions include eastern West
111 Virginia community and technical college; South Branch
112 career and technical center; Mineral County technical
113 center; and other public vocational technical schools
114 offering post-secondary programs.

115 (5) Shenandoah valley community and technical college
116 district includes Berkeley, Jefferson and Morgan counties.

117 (A) The facilitating institution is the community and
118 technical college of Shepherd.

119 (B) Participating institutions include the community and
120 technical college of Shepherd; James Rumsey technical
121 institute; and other public vocational technical schools
122 offering post-secondary programs.

123 (6) Advantage valley community and technical college
124 district includes Fayette, Kanawha, Clay, Putnam, Cabell,
125 Mason and Wayne counties.

126 (A) The facilitating institution is Marshall community
127 and technical college.

128 (B) Every five years the council shall:

129 (i) Evaluate the progress of the advantage valley consor-
130 tia toward achieving the goals and benchmarks of its
131 compact;

132 (ii) Evaluate the progress of each community and
133 technical college in the district toward achieving the goals
134 and benchmarks of its institutional compact;

135 (iii) Determine which community and technical college
136 in the district would best serve the needs of the district for
137 the following five-year period if serving as the facilitating
138 institution; and

139 (iv) Designate the community and technical college
140 selected pursuant to subparagraph (iii) of this paragraph
141 to serve as the facilitating institution for the following
142 five-year period.

143 (C) Participating institutions include Marshall commu-
144 nity and technical college; the community and technology
145 college at West Virginia university institute of technology;
146 West Virginia state community and technical college;
147 Carver career center; Garnet career center; Ben Franklin
148 career center; Putnam County vocational-technical-
149 occupational center; Cabell County career-technical
150 center; and other public vocational technical schools
151 offering post-secondary programs.

152 (7) Southern mountains community and technical college
153 district includes Lincoln, Boone, Logan, Mingo, Wyoming
154 and McDowell counties.

155 (A) The facilitating institution is southern West Virginia
156 community and technical college.

157 (B) Participating institutions include southern West
158 Virginia community and technical college; New River
159 community and technical college; Boone County career
160 and technical center; Wyoming County vocational-
161 technical center; Ralph R. Willis Career and technical
162 center; McDowell County career and technology center;
163 Mingo County vocation-technical center; Charles Yeager
164 technical center; and other public vocational technical
165 schools offering post-secondary programs.

166 (8) Southeastern community and technical college
167 district includes Raleigh, Summers, Fayette, Nicholas,
168 Webster, Pocahontas, Greenbrier, Monroe and Mercer
169 counties.

170 (A) The facilitating institution is New River community
171 and technical college.

172 (B) Participating institutions include New River commu-
173 nity and technical college; southern West Virginia commu-
174 nity and technical college; the community and technical
175 college at West Virginia university institute of technology;
176 Bluefield state college; academy of careers and technology;
177 Fayette plateau vocation-technology center; Summers
178 County high school; Monroe County technical center;
179 Mercer County technical center; and other public voca-
180 tional technical schools offering post-secondary programs.

181 (d) In the role of the facilitating institution of the
182 community and technical college district, the college:

183 (1) Communicates to the council;

184 (2) Facilitates the delivery of comprehensive community
185 and technical college education in the region, which

186 includes the seven areas of comprehensive community and
187 technical college education delivery as required by section
188 six of this article; and

189 (3) Facilitates development of statement of commitment
190 signed by all participating institutions in the region as to
191 how community and technical college education will be
192 delivered.

193 (e) Participating institutions are not subordinate to the
194 facilitating institution but will sign the statement of
195 commitment to participate.

196 (f) The council shall:

197 (1) Establish guidelines for community and technical
198 college consortia development;

199 (2) Set goals for each consortium based upon legislative
200 goals for the delivery of comprehensive community and
201 technical college education; and

202 (3) Establish a format for development of a consortium
203 compact outlining plans for achieving stated goals to be
204 submitted to the council for approval on or before the
205 fifteenth day of November, two thousand four.

206 (g) On or before the fifteenth day of November, two
207 thousand four, each consortium shall submit to the council
208 for approval a compact which outlines plans for obtaining
209 the stated goals. Each compact shall include the imple-
210 mentation of seamless curricula and the West Virginia
211 EDGE, "Earn a Degree Graduate Early" program, and be
212 updated annually.

213 (h) The council annually shall evaluate the progress
214 made in meeting the compact goals for each community
215 and technical college consortia through the development
216 and collection of performance indicator data.

**§18B-3C-5. Appointment of community and technical college
presidents.**

1 The administrative head of a community and technical
2 college is the president who is chosen pursuant to the
3 terms of section six, article one-b of this chapter. Any
4 individual employed as provost of an administratively
5 linked community and technical college on the first day of
6 January, two thousand four, continues as the administra-
7 tive head of the institution and becomes the community
8 and technical college president on the effective date of this
9 section.

§18B-3C-6. Community and technical college programs.

1 (a) The mission of each community and technical college
2 includes the following programs which may be offered on
3 or off campus, at the work site, in the public schools and
4 at other locations and at times that are convenient for the
5 intended population:

6 (1) Career and technical education skill sets, certificates,
7 associate of applied science and selected associate of
8 science degree programs for students seeking immediate
9 employment, individual entrepreneurship skills, occupa-
10 tional development, skill enhancement and career mobil-
11 ity;

12 (2) Transfer education associate of arts and associate of
13 science degree programs for students whose education goal
14 is to transfer into a baccalaureate degree program;

15 (3) Developmental/remedial education courses, literacy
16 education, tutorials, skills development labs and other
17 services for students who need to improve their skills in
18 mathematics, English, reading, study skills, computers and
19 other basic skill areas;

20 (4) Workforce training and retraining and contract
21 education with business and industry to train or retrain
22 employees;

23 (5) Continuing development assistance and education
24 credit and noncredit courses for professional and

25 self-development, certification and licensure and literacy
26 training;

27 (6) Community service workshops, lectures, seminars,
28 clinics, concerts, theatrical performances and other
29 noncredit activities to meet the cultural, civic and personal
30 interests and needs of the community; and

31 (7) Cooperative arrangements with the public school
32 system for the seamless progression of students through
33 programs of study which are calculated to begin at the
34 secondary level and conclude at the community and
35 technical college level.

36 (b) All administrative, programmatic and budgetary
37 control over community and technical college education
38 within the institution is vested in the president, subject to
39 rules adopted by the council. The president with the
40 institutional board of governors or institutional board of
41 advisors, as appropriate, is responsible for the regular
42 review, revision, elimination and establishment of pro-
43 grams within the institution to assure that the needs of the
44 community and technical college consortia district are
45 met. It is the intent of the Legislature that the program
46 review and approval process for community and technical
47 college education be separate and distinct from baccalau-
48 reate education and subject to the provisions of section
49 nine of this article.

50 (c) Independently accredited community and technical
51 colleges shall serve as higher education centers for their
52 regions by brokering with colleges, universities and other
53 providers, in state and out of state, to ensure the coordi-
54 nated access of students, employers and other clients to
55 needed programs and services.

**§18B-3C-8. Process for achieving independently accredited
community and technical colleges.**

1 (a) By the first day of July, two thousand five, West
2 Virginia shall have a statewide network of independently

3 accredited community and technical colleges serving every
4 region of the state. This section does not apply to the
5 freestanding community and technical colleges or West
6 Virginia university at Parkersburg.

7 (b) To be eligible for funds appropriated to develop
8 independently accredited community and technical
9 colleges, a state institution of higher education shall
10 demonstrate the following:

11 (1) That it has as a part of its institutional compact
12 approved by the council a step-by-step plan with measur-
13 able benchmarks for developing an independently accred-
14 ited community and technical college that meets the
15 essential conditions set forth in section three of this
16 article;

17 (2) That it is able to offer evidence to the satisfaction of
18 the council that it is making progress toward accomplish-
19 ing the benchmarks established in its institutional com-
20 pact for developing an independently accredited commu-
21 nity and technical college; and

22 (3) That it has submitted an expenditure schedule
23 approved by the council which sets forth a proposed plan
24 of expenditures for funds allocated to it from the fund.

25 (c) The following are recommended strategies for moving
26 from the current arrangement of "component" community
27 and technical colleges to the legislatively mandated
28 statewide network of independently accredited community
29 and technical colleges serving every region of the state.
30 The Legislature recognizes that there may be other means
31 to achieve this ultimate objective; however, it is the intent
32 of the Legislature that the move from the current arrange-
33 ment of "component" community and technical colleges to
34 the legislatively mandated statewide network of independ-
35 ently accredited community and technical colleges serving
36 every region of the state shall be accomplished. The
37 following recommendations are designed to reflect signifi-

38 cant variations among regions and the potential impacts
39 on the sponsoring institutions.

40 (1) *New River community and technical college.* –

41 (A) There is continued the multicampus entity known as
42 New River community and technical college, administra-
43 tively linked to Bluefield state college. New River commu-
44 nity and technical college is headquartered in the Beckley
45 higher education center and incorporates the campuses of
46 Greenbrier community college center of New River
47 community and technical college and Nicholas community
48 college center of New River community and technical
49 college. New River community and technical college shall
50 be an independently accredited community and technical
51 college. The council shall appoint an institutional board
52 of advisors, pursuant to section one, article six of this
53 chapter, for New River community and technical college
54 which is separate from the institutional board of governors
55 of Bluefield state college. The board of advisors shall
56 become the board of governors pursuant to section one,
57 article two-a of this chapter when the institution achieves
58 independent accreditation.

59 (B) Bluefield state college may continue associate degree
60 programs in areas of particular institutional strength
61 which are closely articulated to their baccalaureate
62 programs and missions or which are of a high-cost nature
63 and can best be provided through direct coordination with
64 a baccalaureate institution. Any such program shall be
65 delivered under the authority of the council and through
66 contract with the community and technical college. The
67 terms of the contract shall be negotiated between the
68 council and the governing board of the sponsoring institu-
69 tion. The final contract is approved by the council. Such
70 a program shall be evaluated according to the benchmarks
71 and indicators for community and technical college
72 education developed by the council. If the council deter-
73 mines that the program is making insufficient progress
74 toward accomplishing the benchmarks, the program shall

75 thereafter be delivered by the community and technical
76 college.

77 (C) Bluefield state college may continue the associate of
78 science degree in nursing which is an existing nationally
79 accredited associate degree program in an area of particu-
80 lar institutional strength and which is closely articulated
81 to the baccalaureate program and mission. The program
82 is of a high-cost nature and can best be provided through
83 direct administration by a baccalaureate institution. This
84 program may not be transferred to New River community
85 and technical college or any other community and techni-
86 cal college as long as the program maintains national
87 accreditation and is seamlessly coordinated into the
88 baccalaureate program at the institution.

89 (D) By the first day of July, two thousand five, New
90 River community and technical college shall be independ-
91 ently accredited. The president and the board of governors
92 of Bluefield state college are responsible for obtaining
93 independent accreditation of the community and technical
94 college. If the multicampus entity known as New River
95 community and technical college has not obtained inde-
96 pendent accreditation by this date, the council shall choose
97 one of the following options:

98 (i) Create New River as a freestanding community and
99 technical college; or

100 (ii) Assign the responsibility for obtaining independent
101 accreditation to another state institution of higher educa-
102 tion.

103 (E) The president and the board of governors of Bluefield
104 state college also are accountable to the council for
105 ensuring that the full range of community and technical
106 college services is available throughout the region and that
107 New River community and technical college adheres to the
108 essential conditions pursuant to section three of this
109 article.

110 (F) As an independently accredited community and
111 technical college, New River also shall serve as a higher
112 education center for its region by brokering with other
113 colleges, universities and other providers, in state and out
114 of state, both public and private, to ensure the coordinated
115 access of students, employers and other clients to needed
116 programs and services.

117 (G) New River community and technical college shall
118 participate in the planning and development of a unified
119 effort involving multiple providers to meet the docu-
120 mented education and work force development needs in
121 the region. Nothing in this subdivision prohibits or limits
122 any existing, or the continuation of any existing, affilia-
123 tion between mountain state university, West Virginia
124 university institute of technology and West Virginia
125 university. The objective is to assure students and employ-
126 ers in the area that there is coordination and efficient use
127 of resources among the separate programs and facilities,
128 existing and planned, in the Beckley area.

129 (2) *Fairmont state community and technical college.* –
130 Fairmont state community and technical college is an
131 independently accredited community and technical
132 college. The community and technical college is developed
133 on the base of the component community and technical
134 college of Fairmont state college. Subject to the provisions
135 of this section, the president and the governing board of
136 Fairmont state college are responsible, according to a plan
137 approved by the council, for step-by-step implementation
138 of the independently accredited community and technical
139 college which adheres to the essential conditions pursuant
140 to section three of this article. Subject to the provisions of
141 section twelve of this article, the community and technical
142 college will remain administratively linked to Fairmont
143 state college. Fairmont state college may continue associ-
144 ate degree programs in areas of particular institutional
145 strength which are closely articulated to their baccalaure-
146 ate programs and missions or which are of a high-cost

147 nature and can best be provided in direct coordination
148 with a baccalaureate institution. Any such program shall
149 be delivered under the authority of the council and
150 through contract with the community and technical
151 college. The terms of the contract shall be negotiated
152 between the council and the governing board of the
153 sponsoring institution. The final contract is approved by
154 the council. Such a program shall be evaluated according
155 to the benchmarks and indicators for community and
156 technical college education developed by the council. If
157 the council determines that the program is making insuffi-
158 cient progress toward accomplishing the benchmarks, the
159 program shall thereafter be delivered by the community
160 and technical college.

161 (3) *Marshall community and technical college.* – Mar-
162 shall community and technical college is an independently
163 accredited community and technical college. The new
164 community and technical college is developed on the base
165 of the component community and technical college of
166 Marshall university. Subject to the provisions of this
167 section, the president and the governing board of Marshall
168 university are responsible, according to a plan approved
169 by the council, for step-by-step implementation of the new
170 independently accredited community and technical college
171 which adheres to the essential conditions pursuant to
172 section three of this article. Subject to the provisions of
173 section twelve of this article, the community and technical
174 college will remain administratively linked to Marshall
175 university. Marshall university may continue associate
176 degree programs in areas of particular institutional
177 strength which are closely articulated to their baccalaure-
178 ate programs and missions or which are of a high-cost
179 nature and can best be provided in direct coordination
180 with a baccalaureate institution. Any such program shall
181 be delivered under the authority of the council and
182 through contract with the community and technical
183 college. The terms of the contract shall be negotiated
184 between the council and the governing board of the

185 sponsoring institution. The final contract is approved by
186 the council. Such a program shall be evaluated according
187 to the benchmarks and indicators for community and
188 technical college education developed by the council. If
189 the council determines that the program is making insuffi-
190 cient progress toward accomplishing the benchmarks, the
191 program shall thereafter be delivered by the community
192 and technical college.

193 (4) *The community and technical college of Shepherd.* –
194 The community and technical college of Shepherd shall
195 become an independently accredited community and
196 technical college. The new community and technical
197 college is developed on the base of the component commu-
198 nity and technical college of Shepherd college. Subject to
199 the provisions of this section, the president and the
200 governing board of Shepherd college are responsible,
201 according to a plan approved by the council, for
202 step-by-step implementation of the new independently
203 accredited community and technical college which adheres
204 to the essential conditions pursuant to section three of this
205 article. Subject to the provisions of section twelve of this
206 article, the community and technical college will remain
207 administratively linked to Shepherd college. Shepherd
208 college may continue associate degree programs in areas of
209 particular institutional strength which are closely articu-
210 lated to their baccalaureate programs and missions or
211 which are of a high-cost nature and can best be provided
212 in direct coordination with a baccalaureate institution.
213 Any such program shall be delivered under the authority
214 of the council and through contract with the community
215 and technical college. The terms of the contract shall be
216 negotiated between the council and the governing board of
217 the sponsoring institution. The final contract is approved
218 by the council. Such a program shall be evaluated accord-
219 ing to the benchmarks and indicators for community and
220 technical college education developed by the council. If
221 the council determines that the program is making insuffi-
222 cient progress toward accomplishing the benchmarks, the

223 program shall thereafter be delivered by the community
224 and technical college.

225 (5) *West Virginia state community and technical college.*
226 – West Virginia state community and technical college
227 shall become an independently accredited community and
228 technical college. The new community and technical
229 college is developed on the base of the component commu-
230 nity and technical college of West Virginia state college.
231 Subject to the provisions of this section, the president and
232 the governing board of West Virginia state college are
233 responsible, according to a plan approved by the council,
234 for step-by-step implementation of the new independently
235 accredited community and technical college which adheres
236 to the essential conditions pursuant to section three of this
237 article. Subject to the provisions of section twelve of this
238 article, the community and technical college will remain
239 administratively linked to West Virginia state college.
240 West Virginia state college may continue associate degree
241 programs in areas of particular institutional strength
242 which are closely articulated to their baccalaureate
243 programs and missions or which are of a high-cost nature
244 and can best be provided in direct coordination with a
245 baccalaureate institution. Any such program shall be
246 delivered under the authority of the council and through
247 contract with the community and technical college. The
248 terms of the contract shall be negotiated between the
249 council and the governing board of the sponsoring institu-
250 tion. The final contract is approved by the council. Such
251 a program shall be evaluated according to the benchmarks
252 and indicators for community and technical college
253 education developed by the council. If the council deter-
254 mines that the program is making insufficient progress
255 toward accomplishing the benchmarks, the program shall
256 thereafter be delivered by the community and technical
257 college.

258 (6) *The community and technical college at West Virginia*
259 *university institute of technology.* – The community and

260 technical college at West Virginia university institute of
261 technology is an independently accredited community and
262 technical college. The new community and technical
263 college is developed on the base of the component commu-
264 nity and technical college of West Virginia university
265 institute of technology. Subject to the provisions of this
266 section, the president and the governing board of West
267 Virginia university institute of technology are responsible,
268 according to a plan approved by the commission, for
269 step-by-step implementation of the new independently
270 accredited community and technical college which adheres
271 to the essential conditions pursuant to section three of this
272 article. Subject to the provisions of section twelve of this
273 article, the community and technical college will remain
274 administratively linked to West Virginia university
275 institute of technology. West Virginia university institute
276 of technology may continue associate degree programs in
277 areas of particular institutional strength which are closely
278 articulated to their baccalaureate programs and missions
279 or which are of a high-cost nature and can best be pro-
280 vided in direct coordination with a baccalaureate institu-
281 tion. Any such program shall be delivered under the
282 authority of the council and through contract with the
283 community and technical college. The terms of the
284 contract shall be negotiated between the council and the
285 governing board of the sponsoring institution. The final
286 contract is approved by the council. Such a program shall
287 be evaluated according to the benchmarks and indicators
288 for community and technical college education developed
289 by the council. If the council determines that the program
290 is making insufficient progress toward accomplishing the
291 benchmarks, the program shall thereafter be delivered by
292 the community and technical college.

293 (d) For each administratively linked community and
294 technical college which fails to achieve independent
295 accreditation by the first day of July, two thousand five,
296 the council shall choose one of the following options:

297 (1) Create the administratively linked institution as a
298 freestanding community and technical college; or

299 (2) Assign the responsibility for obtaining independent
300 accreditation to another state institution of higher educa-
301 tion.

302 The president and the board of governors of each
303 sponsoring institution is accountable to the council for
304 ensuring that the community and technical college is able
305 to meet the conditions for independent accreditation and
306 adheres to the essential conditions pursuant to section
307 three of this article.

§18B-3C-9. Increasing flexibility for community and technical colleges.

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

4 (1) Incorporate the most effective and efficient use of
5 technology in accessing and delivering courses and pro-
6 grams in order to make the best use of available resources
7 and to control costs;

8 (2) Incorporate a model to offer occupational program
9 curricula in smaller modules to accommodate specific
10 student and employer needs and to gain sufficient flexibil-
11 ity in formatting courses;

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

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

17 (A) To that end, the freestanding community and techni-
18 cal colleges may employ faculty for an indefinite period
19 without a grant of tenure and shall work toward a staffing
20 goal of no more than twenty percent of the faculty holding

21 tenure or being tenure-track employees. Tenured faculty
22 employed by the freestanding community and technical
23 colleges before the first day of July, one thousand nine
24 hundred ninety-nine, are not affected by this provision.

25 (B) All community and technical colleges, other than
26 those set forth in paragraph (A) of this subdivision, may
27 employ faculty for an indefinite period without a grant of
28 tenure. The immediate goal is to use this provision as a
29 tool to assist the community and technical colleges in
30 meeting the essential conditions provided for in section
31 three of this article and in gaining independent accredita-
32 tion status. The ultimate goal is to provide the flexibility
33 community and technical colleges need to meet the needs
34 of the state by working toward having no more than
35 twenty percent of the core faculty holding tenure or being
36 tenure-track employees. Tenured faculty employed by
37 community and technical colleges other than freestanding
38 community and technical colleges on the thirtieth day of
39 June, two thousand, may not be affected by this provision.
40 Tenure may not be denied to a faculty member solely as a
41 result of change in employing institution necessitated by
42 the change to independently accredited community and
43 technical colleges.

44 (b) The governing boards shall adopt a model of program
45 approval for the community and technical colleges that
46 permits occupational programs to be customized to meet
47 needs without requiring approval by any governing board
48 or other agency of government. The model shall incorpo-
49 rate a post-audit review of such programs on a three-year
50 cycle to determine the effectiveness of the programs in
51 meeting district needs.

52 (c) The council shall promulgate rules to implement the
53 provisions of this section and shall file these rules for
54 review and approval with the chancellor no later than the
55 first day of December, two thousand four.

§18B-3C-10. Freestanding community and technical colleges; tuition and fees.

1 (a) Each governing board may fix tuition and establish
2 and set such other fees to be charged students at its
3 community and technical college as it considers appropri-
4 ate, subject to the provisions of this subsection and article
5 ten of this chapter.

6 (1) The governing board, in consultation with the
7 council, also may establish special fees for such purposes
8 as, including, but not limited to, health services, student
9 activities, student recreation, athletics or any other
10 extracurricular purposes. The council shall determine
11 which fees, if any, do not apply to the entire student
12 population and to which students such fees do not apply.
13 Such special fees may be used only for the purposes for
14 which collected.

15 (2) A community and technical college may contract with
16 any other state institution of higher education for the
17 participation of its students in programs, activities or
18 services of the other institution and for the use of such fees
19 collected.

20 (b) All tuition and fee charges in the total aggregate shall
21 comply with the terms of the institution's compact ap-
22 proved by the council, based on peer comparisons or cost
23 of instruction as set forth in the goals for post-secondary
24 education pursuant to section one-a, article one of this
25 chapter.

§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.

1 (a) *Intent and purposes.* –

2 (1) It is the intent of the Legislature to establish commu-
3 nity and technical colleges in every region of the state that

4 meet the essential conditions of section three of this
5 article.

6 (2) The Legislature finds that, in order to increase
7 efficiency, reduce costs and, generally, to facilitate the
8 effective transition from community and technical colleges
9 which are components of existing institutions of higher
10 education to community and technical colleges which meet
11 the essential conditions, it is appropriate to maintain an
12 administrative link between the community and technical
13 colleges and the sponsoring institutions.

14 (3) This section defines the relationship between an
15 administratively linked community and technical college
16 and its sponsoring institution.

17 (b) Where an independently accredited community and
18 technical is linked administratively to a sponsoring state
19 college or university in order to ensure efficient use of
20 limited resources, the following conditions apply:

21 (1) The community and technical college shall be accred-
22 ited separately from the sponsoring institution;

23 (2) All state funding allocations for the community and
24 technical college shall be transferred directly to the
25 community and technical college. The sponsoring institu-
26 tion may charge fees for administrative overhead costs
27 subject to a schedule approved by the council.

28 (A) By the first day of December, two thousand four, the
29 council shall develop a new model, or select an existing
30 model, for services to be provided by sponsoring institu-
31 tions and the fees to be charged administratively linked
32 community and technical colleges for the services. The fee
33 schedule shall be based upon the reasonable and custom-
34 ary fee for any service and shall bear a rational relation-
35 ship to the cost of providing the service. Nothing in this
36 paragraph requires the council to adopt a particular model
37 for service delivery.

38 (B) With the approval of the council, a community and
39 technical college and the sponsoring institution may
40 customize the model to fit their needs;

41 (3) Policies shall be formally established to ensure the
42 separation of academic and faculty personnel policies of
43 the community and technical college from those of the
44 sponsoring institution. These policies include, but are not
45 limited to, appointment, promotion, workload and, if
46 appropriate, tenure; and

47 (4) The council may authorize a community and techni-
48 cal college to decline any service of the sponsoring institu-
49 tion provided in subsection (c) of this section if the council
50 determines that the service is not appropriate for the
51 community and technical college, or that declining the
52 service is in the best interest of the community and
53 technical college. Any service declined may be obtained
54 from an alternate source with the approval of the council.

55 (c) The sponsoring institution which is administratively
56 linked to a community and technical college shall provide
57 the following services:

58 (1) Personnel management;

59 (2) Recordkeeping;

60 (3) Payroll;

61 (4) Accounting;

62 (5) Legal services;

63 (6) Registration;

64 (7) Student aid;

65 (8) Student records; and

66 (9) Such other services as determined to be necessary and
67 appropriate by the council.

68 (d) The institutional governing board shall appoint the
69 president of the community and technical college, who
70 serves at the will and pleasure of the governing board.

71 (e) The governing board and the council are responsible
72 for the step-by-step development of the community and
73 technical college and for compliance with the essential
74 conditions, all as required by this article.

75 (f) The president of the community and technical college
76 has such responsibilities, powers and duties in the devel-
77 opment of the community and technical college and in
78 compliance with the essential conditions, as directed by
79 the governing board or as are necessary for the proper
80 implementation of the provisions of this act.

81 (g) Notwithstanding any other provision of this code to
82 the contrary, the commission shall take necessary steps to
83 ensure that institutional bonded indebtedness is secure
84 and that each administratively linked community and
85 technical college assumes its fair share of any institutional
86 debt acquired while it was part of the baccalaureate
87 institution.

88 (h) The community and technical college is encouraged
89 to secure academic services from the sponsoring institution
90 when it is in the best interests of the students to be served,
91 the community and technical college and the sponsoring
92 institution. In determining whether or not to secure
93 services from the sponsoring institution, the community
94 and technical college shall consider the following:

95 (1) The cost of the academic services;

96 (2) The quality of the academic services;

97 (3) The availability, both as to time and place, of the
98 academic services; and

99 (4) Such other considerations as the community and
100 technical college finds appropriate taking into account the
101 best interests of the students to be served, the community

102 and technical college, and the sponsoring institution.
103 Nothing in this article prohibits any state institution of
104 higher education from purchasing or brokering remedial
105 or developmental courses from a community and technical
106 college.

ARTICLE 4. GENERAL ADMINISTRATION.

**§18B-4-1. Employment of chancellors; designation of staff;
offices.**

1 (a) The council and commission each shall employ a
2 chancellor to assist in the performance of their respective
3 duties and responsibilities subject to the following condi-
4 tions:

5 (1) Each chancellor serves at the will and pleasure of the
6 hiring body.

7 (2) Neither chancellor may hold or retain any other
8 administrative position within the system of higher
9 education while employed as chancellor.

10 (3) Each chancellor is responsible for carrying out the
11 directives of the body by whom employed and shall work
12 with that body in developing policy options.

13 (4) The commission shall designate a limited number of
14 positions that are under the direct control and supervision
15 of the chancellor for higher education. These positions
16 form the nuclear staff of the chancellor's office and may
17 equal no more than fifteen percent of the total number of
18 staff employed by the commission.

19 Nevertheless, regardless of the number or title of the
20 positions so designated, the commission is responsible to
21 the council and the chancellor for community and techni-
22 cal college education for providing services in areas
23 essential to exercising the powers and duties assigned to
24 the council by law. The commission may not charge the
25 council any fee for the provision of these essential services.
26 The service areas include, but are not limited to, legal

27 services, research, technology, computing, finance and
28 facilities, academic affairs, telecommunications, human
29 resources, student services and any other general areas the
30 council considers to be essential to the exercise of its legal
31 authority. The services are provided under the general
32 supervision of the vice chancellor for administration.

33 (5) For the purpose of developing or evaluating policy
34 options, the chancellors may request the assistance of the
35 presidents and staff of the institutions under their respec-
36 tive jurisdictions.

37 (b) In addition to the staff positions designated in
38 subdivision (4), subsection (a) of this section, the vice
39 chancellor for administration, employed pursuant to
40 section two of this article, serves the offices of the chancel-
41 lers to discharge jointly the duties and responsibilities of
42 the council and commission.

43 (c) The vice chancellor for health sciences shall coordi-
44 nate the West Virginia university school of medicine, the
45 Marshall university school of medicine and the West
46 Virginia school of osteopathic medicine.

47 (d) Suitable offices for the vice chancellor of administra-
48 tion and other staff shall be provided in Charleston.

**§18B-4-2. Employment of vice chancellor for administration;
office; powers and duties generally.**

1 (a) By and with the advice and consent of the council, the
2 commission shall employ a vice chancellor for administra-
3 tion who may not be dismissed without the consent of the
4 council:

5 (1) The individual serving as vice chancellor for adminis-
6 tration on the effective date of this section may continue
7 to serve on an interim basis until the commission and the
8 council have agreed, jointly, on a candidate to fill the
9 position;

10 (2) The interim vice chancellor for administration may
11 be considered as a candidate for the position;

12 (3) The position shall be filled on a permanent basis no
13 later than the first day of October, two thousand four; and

14 (4) Any vacancy occurring in this position shall be filled
15 pursuant to the requirements of this section.

16 (b) Any reference in this chapter or chapter eighteen-c of
17 this code to the senior administrator means the vice
18 chancellor for administration.

19 (c) The vice chancellor for administration has a ministe-
20 rial duty, in consultation with and under direction of the
21 chancellors, to perform such functions, tasks and duties as
22 may be necessary to carry out the policy directives of the
23 council and commission and such other duties as may be
24 prescribed by law.

25 (d) The vice chancellor for administration shall supervise
26 such professional, administrative, clerical and other
27 employees as may be necessary to these duties and shall
28 delineate staff responsibilities as considered desirable and
29 appropriate. It is the responsibility of the vice chancellor
30 for administration, within the parameters of the total
31 resources available, to supervise and direct the staff in
32 such a way that the staff and resource needs of the council,
33 the commission and the offices of the chancellors are met.

34 (e) Any employee of the commission or the council whose
35 job duties meet criteria listed in the system of job classifi-
36 cations as stated in article nine of this chapter is accorded
37 the job title, compensation and rights established in the
38 article as well as all other rights and privileges accorded
39 classified employees by the provisions of this code.

40 (f) The office of the vice chancellor for administration
41 and all personnel, except for the chancellor for community
42 and technical college education and staff transferred to the
43 jurisdiction of the council pursuant to subsection (a),

44 section seven, article two-b of this chapter, who are
45 employed on the first day of January, two thousand four,
46 within the higher education central office and the West
47 Virginia network for educational telecomputing remain
48 under the jurisdiction of the commission. Prior to the first
49 day of October, two thousand four, any such employee may
50 not be terminated or have his or her salary and benefit
51 levels reduced as the result of the higher education reorga-
52 nization that occurs on the effective date of this section.

53 (g) The vice chancellor for administration shall follow
54 state and national education trends and gather data on
55 higher education needs.

56 (h) The vice chancellor for administration, in accordance
57 with established guidelines and in consultation with and
58 under the direction of the chancellors, shall administer,
59 oversee or monitor all state and federal student assistance
60 and support programs administered on the state level,
61 including those provided for in chapter eighteen-c of this
62 code.

63 (i) The vice chancellor for administration has a fiduciary
64 responsibility to administer the tuition and registration fee
65 capital improvement revenue bond accounts of the govern-
66 ing boards.

67 (j) The vice chancellor for administration shall adminis-
68 ter the purchasing system or systems of the council and
69 commission, the offices of the chancellors and the govern-
70 ing boards. By mutual agreement, the commission and the
71 council may delegate authority for the purchasing systems
72 or portions thereof to the institution presidents.

73 (k) The vice chancellor for administration is responsible
74 for the management of the West Virginia network for
75 educational telecomputing (WVNET). The vice chancellor
76 for administration shall establish a computer advisory
77 board, which shall be representative of higher education
78 and other users of the West Virginia network for educa-

79 tional telecomputing as the commission and council
80 determine appropriate. It is the responsibility of the
81 computer advisory board to recommend to the commission
82 and the council policies for a statewide shared computer
83 system.

84 (l) The central office, under the direction of the vice
85 chancellor for administration, shall provide necessary staff
86 support to the commission, the council and offices of the
87 chancellors.

88 (m) The vice chancellor for administration may adminis-
89 ter any program or service authorized or required to be
90 performed by the board of trustees or the board of direc-
91 tors on the thirtieth day of June, two thousand, and not
92 specifically assigned to another agency. In addition, the
93 vice chancellor for administration may administer any
94 program or service authorized or required to be performed
95 by the commission, council or chancellors, but not as-
96 signed specifically to the commission, council or chancel-
97 lers. Any such program or service may include, but is not
98 limited to, telecommunications activities and other
99 programs and services provided for under grants and
100 contracts from federal and other external funding sources.

**§18B-4-7. Accreditation of institutions of higher education;
standards for degrees.**

1 (a) The council shall make rules for the accreditation of
2 community and technical colleges in this state and shall
3 determine the minimum standards for conferring degrees.
4 The commission shall make rules for the accreditation of
5 colleges and universities in this state and shall determine
6 the minimum standards for conferring degrees. An
7 institution of higher education may not confer any degree
8 on any basis of work or merit below the minimum stan-
9 dards prescribed by the council or commission. Nothing in
10 this section infringes upon the rights, including rights to
11 award degrees, granted to any institution by charter given
12 according to law, or by actions of the council or commis-

13 sion or their predecessors, prior to the effective date of this
14 section. With the approval of the commission, governing
15 boards of institutions which currently offer substantial
16 undergraduate course offerings and a master's degree in a
17 discipline are authorized to grant baccalaureate degrees in
18 that discipline.

19 Except as otherwise provided in this section, a charter or
20 other instrument containing the right to confer degrees of
21 higher education status may not be granted by the state of
22 West Virginia to any institution, association or organiza-
23 tion within the state, nor may any such degree be awarded,
24 until the condition of conferring the degree has first been
25 approved in writing by the council or commission.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

**§18B-5-4. Purchase or acquisition of materials, supplies, equip-
ment, services and printing.**

1 (a) The council, commission and each governing board,
2 through the vice chancellor for administration, shall
3 purchase or acquire all materials, supplies, equipment,
4 services and printing required for that governing board or
5 the council or commission, as appropriate, and the state
6 institutions of higher education under their jurisdiction.
7 The commission and council jointly shall adopt rules
8 governing and controlling acquisitions and purchases in
9 accordance with the provisions of this section. The rules
10 shall assure that the council, commission and governing
11 boards:

12 (1) Do not preclude any person from participating and
13 making sales thereof to the governing board or to the
14 council or commission except as otherwise provided in
15 section five of this article. Provision of consultant services
16 such as strategic planning services will not preclude or
17 inhibit the governing boards, council or commission from
18 considering any qualified bid or response for delivery of a
19 product or a commodity because of the rendering of those
20 consultant services;

21 (2) Establish and prescribe specifications, in all proper
22 cases, for materials, supplies, equipment, services and
23 printing to be purchased;

24 (3) Adopt and prescribe such purchase order, requisition
25 or other forms as may be required;

26 (4) Negotiate for and make purchases and acquisitions in
27 such quantities, at such times and under contract, in the
28 open market or through other accepted methods of govern-
29 mental purchasing as may be practicable in accordance
30 with general law;

31 (5) Advertise for bids on all purchases exceeding
32 twenty-five thousand dollars, to purchase by means of
33 sealed bids and competitive bidding or to effect advanta-
34 geous purchases through other accepted governmental
35 methods and practices;

36 (6) Post notices of all acquisitions and purchases for
37 which competitive bids are being solicited in the purchas-
38 ing office of the specified institution involved in the
39 purchase, at least two weeks prior to making such pur-
40 chases and ensure that the notice is available to the public
41 during business hours;

42 (7) Provide for purchasing in the open market;

43 (8) Provide for vendor notification of bid solicitation and
44 emergency purchasing;

45 (9) Provide that competitive bids are not required for
46 purchases of twenty-five thousand dollars or less; and

47 (10) Provide for not fewer than three bids where bidding
48 is required. If fewer than three bids are submitted, an
49 award may be made from among those received.

50 (b) The council, commission or each governing board,
51 through the vice chancellor for administration, may issue
52 a check in advance to a company supplying postage meters
53 for postage used by that board, the council or commission

54 and by the state institutions of higher education under
55 their jurisdiction.

56 (c) When a purchase is to be made by bid, any or all bids
57 may be rejected. However, all purchases based on adver-
58 tised bid requests shall be awarded to the lowest responsi-
59 ble bidder taking into consideration the qualities of the
60 articles to be supplied, their conformity with specifica-
61 tions, their suitability to the requirements of the governing
62 boards, council or commission and delivery terms. The
63 preference for resident vendors as provided in section
64 thirty-seven, article three, chapter five-a of this code apply
65 to the competitive bids made pursuant to this section.

66 (d) The governing boards, council and commission shall
67 maintain a purchase file, which shall be a public record
68 and open for public inspection. After the award of the
69 order or contract, the governing boards, council and
70 commission shall indicate upon the successful bid that it
71 was the successful bid and shall further indicate why bids
72 are rejected and, if the mathematical low vendor is not
73 awarded the order or contract, the reason therefor. A
74 record in the purchase file may not be destroyed without
75 the written consent of the legislative auditor. Those files
76 in which the original documentation has been held for at
77 least one year and in which the original documents have
78 been reproduced and archived on microfilm or other
79 equivalent method of duplication may be destroyed
80 without the written consent of the legislative auditor. All
81 files, no matter the storage method, shall be open for
82 inspection by the legislative auditor upon request.

83 (e) The commission and council also jointly shall adopt
84 rules to prescribe qualifications to be met by any person
85 who is to be employed as a buyer pursuant to this section.
86 These rules shall require that a person may not be em-
87 ployed as a buyer unless that person, at the time of em-
88 ployment, either is:

89 (1) A graduate of an accredited college or university; or

90 (2) Has at least four years' experience in purchasing for
91 any unit of government or for any business, commercial or
92 industrial enterprise.

93 (f) Any person making purchases and acquisitions
94 pursuant to this section shall execute a bond in the penalty
95 of fifty thousand dollars, payable to the state of West
96 Virginia, with a corporate bonding or surety company
97 authorized to do business in this state as surety thereon, in
98 form prescribed by the attorney general and conditioned
99 upon the faithful performance of all duties in accordance
100 with this section and sections five through eight, inclusive,
101 of this article and the rules of the governing board and the
102 council and commission. In lieu of separate bonds for such
103 buyers, a blanket surety bond may be obtained. Any such
104 bond shall be filed with the secretary of state. The cost of
105 any such bond shall be paid from funds appropriated to
106 the applicable governing board or the council or commis-
107 sion.

108 (g) All purchases and acquisitions shall be made in
109 consideration and within limits of available appropria-
110 tions and funds and in accordance with applicable provi-
111 sions of article two, chapter five-a of this code relating to
112 expenditure schedules and quarterly allotments of funds.

113 (h) The governing boards, council and commission may
114 make requisitions upon the auditor for a sum to be known
115 as an advance allowance account, not to exceed five
116 percent of the total of the appropriations for the governing
117 board, council or commission, and the auditor shall draw
118 a warrant upon the treasurer for such accounts. All
119 advance allowance accounts shall be accounted for by the
120 applicable governing board or the council or commission
121 once every thirty days or more often if required by the
122 state auditor.

123 (i) Contracts entered into pursuant to this section shall
124 be signed by the applicable governing board or the council
125 or commission in the name of the state and shall be

126 approved as to form by the attorney general. A contract
127 which requires approval as to form by the attorney general
128 is considered approved if the attorney general has not
129 responded within fifteen days of presentation of the
130 contract. A contract or a change order for that contract
131 and notwithstanding any other provision of this code to
132 the contrary, associated documents such as performance
133 and labor/material payments, bonds and certificates of
134 insurance which use terms and conditions or standardized
135 forms previously approved by the attorney general and do
136 not make substantive changes in the terms and conditions
137 of the contract do not require approval by the attorney
138 general. The attorney general shall make a list of those
139 changes which he or she deems to be substantive and the
140 list, and any changes thereto, shall be published in the
141 state register. A contract that exceeds fifteen thousand
142 dollars shall be filed with the state auditor. If requested
143 to do so, the governing boards, council or commission shall
144 make all contracts available for inspection by the state
145 auditor. The governing board, council or commission, as
146 appropriate, shall prescribe the amount of deposit or bond
147 to be submitted with a bid or contract, if any, and the
148 amount of deposit or bond to be given for the faithful
149 performance of a contract.

150 (j) If the governing board, council or commission pur-
151 chases or contracts for materials, supplies, equipment,
152 services and printing contrary to the provisions of sections
153 four through seven of this article or the rules pursuant
154 thereto, such purchase or contract is void and of no effect.

155 (k) Any governing board or the council or commission, as
156 appropriate, may request the director of purchases to
157 make available, from time to time, the facilities and
158 services of that department to the governing boards,
159 council or commission in the purchase and acquisition of
160 materials, supplies, equipment, services and printing and
161 the director of purchases shall cooperate with that govern-

162 ing board, council or commission, as appropriate, in all
163 such purchases and acquisitions upon such request.

164 (l) Each governing board or the council or commission,
165 as appropriate, shall permit private institutions of higher
166 education to join as purchasers on purchase contracts for
167 materials, supplies, services and equipment entered into by
168 that governing board or the council or commission. Any
169 private school desiring to join as purchasers on such
170 purchase contracts shall file with that governing board or
171 the council or commission an affidavit signed by the
172 president of the institution of higher education or a
173 designee requesting that it be authorized to join as pur-
174 chaser on purchase contracts of that governing board or
175 the council or commission, as appropriate. The private
176 school shall agree that it is bound by such terms and
177 conditions as that governing board or the council or
178 commission may prescribe and that it will be responsible
179 for payment directly to the vendor under each purchase
180 contract.

181 (m) Notwithstanding any other provision of this code to
182 the contrary, the governing boards, council and commis-
183 sion, as appropriate, may make purchases from coopera-
184 tive buying groups, consortia, the federal government or
185 from federal government contracts if the materials,
186 supplies, services, equipment or printing to be purchased
187 is available from cooperative buying groups, consortia, the
188 federal government or from a federal contract and pur-
189 chasing from the cooperative buying groups, consortia,
190 federal government or from a federal government contract
191 would be the most financially advantageous manner of
192 making the purchase.

193 (n) An independent performance audit of all purchasing
194 functions and duties which are performed at any institu-
195 tion of higher education shall be performed each fiscal
196 year. The joint committee on government and finance
197 shall conduct the performance audit and the governing
198 boards, council and commission, as appropriate, are

199 responsible for paying the cost of the audit from funds
200 appropriated to the governing boards, council or commis-
201 sion.

202 (o) The governing boards shall require each institution
203 under their respective jurisdictions to notify and inform
204 every vendor doing business with that institution of the
205 provisions of section fifty-four, article three, chapter
206 five-a of this code, also known as the "prompt pay act of
207 1990".

208 (p) Consultant services, such as strategic planning
209 services, may not preclude or inhibit the governing boards,
210 council or commission from considering any qualified bid
211 or response for delivery of a product or a commodity
212 because of the rendering of those consultant services.

213 (q) After the commission or council, as appropriate, has
214 granted approval for lease-purchase arrangements by the
215 governing boards, a governing board may enter into
216 lease-purchase arrangements for capital improvements,
217 including equipment. Any lease-purchase arrangement so
218 entered shall constitute a special obligation of the state of
219 West Virginia. The obligation under a lease-purchase
220 arrangement so entered may be from any funds legally
221 available to the institution and must be cancelable at the
222 option of the governing board or institution at the end of
223 any fiscal year. The obligation, any assignment or securi-
224 tization thereof, never constitutes an indebtedness of the
225 state of West Virginia or any department, agency or
226 political subdivision thereof, within the meaning of any
227 constitutional provision or statutory limitation, and may
228 not be a charge against the general credit or taxing powers
229 of the state or any political subdivision thereof. Such facts
230 shall be plainly stated in any lease-purchase agreement.
231 Further, the lease-purchase agreement shall prohibit
232 assignment or securitization without consent of the lessee
233 and the approval of the attorney general of West Virginia.
234 Proposals for any arrangement must be requested in
235 accordance with the requirements of this section and any

236 rules or guidelines of the commission and council. In
237 addition, any lease-purchase agreement which exceeds one
238 hundred thousand dollars total shall be approved by the
239 attorney general of West Virginia. The interest component
240 of any lease-purchase obligation is exempt from all
241 taxation of the state of West Virginia, except inheritance,
242 estate and transfer taxes. It is the intent of the Legislature
243 that if the requirements set forth in the Internal Revenue
244 Code of 1986, as amended, and any regulations promul-
245 gated pursuant thereto are met, the interest component of
246 any lease-purchase obligation also is exempt from the
247 gross income of the recipient for purposes of federal
248 income taxation and may be designated by the governing
249 board or the president of the institution as a
250 bank-qualified obligation.

251 (r) Notwithstanding any other provision of this code to
252 the contrary, the commission, council and governing
253 boards have the authority, in the name of the state, to
254 lease, or offer to lease, as lessee, any grounds, buildings,
255 office or other space in accordance with this paragraph
256 and as provided below:

257 (1) The commission, council and governing boards have
258 sole authority to select and to acquire by contract or lease
259 all grounds, buildings, office space or other space, the
260 rental of which is necessarily required by the commission,
261 council or governing boards for the institutions under their
262 jurisdiction. The chief executive officer of the commission,
263 council or an institution shall certify the following:

264 (A) That the grounds, buildings, office space or other
265 space requested is necessarily required for the proper
266 function of the commission, council or institution;

267 (B) That the commission, council or institution will be
268 responsible for all rent and other necessary payments in
269 connection with the contract or lease; and

270 (C) That satisfactory grounds, buildings, office space or
271 other space is not available on grounds and in buildings

272 currently owned or leased by the commission, council or
273 the institution.

274 Before executing any rental contract or lease, the
275 commission, council or a governing board shall determine
276 the fair rental value for the rental of the requested
277 grounds, buildings, office space or other space, in the
278 condition in which they exist, and shall contract for or
279 lease the premises at a price not to exceed the fair rental
280 value.

281 (2) The commission, council and governing boards are
282 authorized to enter into long-term agreements for build-
283 ings, land and space for periods longer than one fiscal year
284 but not to exceed forty years. Any purchase of real estate,
285 any lease-purchase agreement and any construction of new
286 buildings or other acquisition of buildings, office space or
287 grounds resulting therefrom, pursuant to the provisions of
288 this subsection shall be presented by the policy commis-
289 sion or council, as appropriate, to the joint committee on
290 government and finance for prior review. Any such lease
291 shall contain, in substance, all the following provisions:

292 (A) That the commission, council or governing board, as
293 lessee, has the right to cancel the lease without further
294 obligation on the part of the lessee upon giving thirty days'
295 written notice to the lessor at least thirty days prior to the
296 last day of the succeeding month;

297 (B) That the lease is considered canceled without further
298 obligation on the part of the lessee if the Legislature or the
299 federal government fails to appropriate sufficient funds
300 therefor or otherwise acts to impair the lease or cause it to
301 be canceled; and

302 (C) That the lease is considered renewed for each ensuing
303 fiscal year during the term of the lease unless it is canceled
304 by the commission, council or governing board before the
305 end of the then-current fiscal year.

306 (3) The commission, council or institution which is
307 granted any grounds, buildings, office space or other space
308 leased in accordance with this section may not order or
309 make permanent changes of any type thereto, unless the
310 commission, council or governing board, as appropriate,
311 has first determined that the change is necessary for the
312 proper, efficient and economically sound operation of the
313 institution. For purposes of this section, a "permanent
314 change" means any addition, alteration, improvement,
315 remodeling, repair or other change involving the expendi-
316 ture of state funds for the installation of any tangible
317 thing which cannot be economically removed from the
318 grounds, buildings, office space or other space when
319 vacated by the institution.

320 (4) Leases and other instruments for grounds, buildings,
321 office or other space, once approved by the commission,
322 council or governing board, may be signed by the chief
323 executive officer of the commission, council or institution.
324 Any lease or instrument exceeding one hundred thousand
325 dollars annually shall be approved as to form by the
326 attorney general. A lease or other instrument for grounds,
327 buildings, office or other space that contains a term,
328 including any options, of more than six months for its
329 fulfillment shall be filed with the state auditor.

330 (5) The commission and council jointly may promulgate
331 rules they consider necessary to carry out the provisions of
332 this section.

ARTICLE 6. ADVISORY COUNCILS AND BOARDS.

§18B-6-1. Institutional boards of advisors for regional cam- puses and certain administratively linked commu- nity and technical colleges.

1 (a) There is hereby continued or established institutional
2 boards of advisors as follows:

3 (1) For each regional campus. The chairperson of the
4 board of advisors of West Virginia university at

5 Parkersburg serves as an ex officio, voting member of the
6 governing board of West Virginia university;

7 (2) For administratively linked community and technical
8 colleges which share a physical location with the sponsor-
9 ing institution. This category includes Fairmont state
10 community and technical college, Marshall community
11 and technical college, West Virginia state community and
12 technical college and the community and technical college
13 at West Virginia university institute of technology. The
14 chairperson of the board of advisors of each administra-
15 tively linked community and technical college serves as an
16 ex officio, voting member of the sponsoring institution's
17 board of governors or, in the case of the community and
18 technical college at West Virginia university institute of
19 technology, the chairperson of the board of advisors serves
20 as an ex officio voting member of the governing board of
21 West Virginia university;

22 (3) For New River community and technical college and
23 the community and technical college of Shepherd, until
24 these institutions achieve independent accreditation. As
25 long as New River community and technical college or the
26 community and technical college of Shepherd retains a
27 board of advisors and remains administratively linked to
28 the baccalaureate institution, the chairperson of that
29 board of advisors serves as an ex officio, voting member of
30 the governing board of Bluefield state college or Shepherd
31 college, respectively.

32 (b) The lay members of the institutional boards of
33 advisors for the regional campuses are appointed by the
34 board of governors.

35 (c) The lay members of the institutional boards of
36 advisors established for the administratively linked
37 community and technical colleges are appointed by the
38 West Virginia council for community and technical college
39 education.

40 (d) The board of advisors consists of fifteen members,
41 including a full-time member of the faculty with the rank
42 of instructor or above duly elected by the faculty of the
43 respective institution; a member of the student body in
44 good academic standing, enrolled for college credit work
45 and duly elected by the student body of the respective
46 institution; a member from the institutional classified
47 employees duly elected by the classified employees of the
48 respective institution; and twelve lay persons appointed
49 pursuant to this section who have demonstrated a sincere
50 interest in and concern for the welfare of that institution
51 and who are representative of the population of its respon-
52 sibility district and fields of study. At least eight of the
53 twelve lay persons appointed shall be residents of the
54 state. Of the lay members who are residents of the state,
55 at least two shall be alumni of the respective institution
56 and no more than a simple majority may be of the same
57 political party.

58 (e) The student member serves for a term of one year
59 beginning upon appointment in July, two thousand four,
60 and ending on the thirtieth day of April, two thousand
61 five. Thereafter the term shall begin on the first day of
62 May. The member from the faculty and the classified
63 employees, respectively, serves for a term of two years
64 beginning upon appointment in July, two thousand four,
65 and ending on the thirtieth day of April, two thousand
66 five. Thereafter the term shall begin on the first day of
67 May; and the twelve lay members serve terms of four years
68 each beginning upon appointment in July, two thousand
69 four. Thereafter, the term shall begin on the first day of
70 May. All members are eligible to succeed themselves for
71 no more than one additional term. A vacancy in an
72 unexpired term of a member shall be filled for the remain-
73 der of the unexpired term within thirty days of the occur-
74 rence thereof in the same manner as the original appoint-
75 ment or election. Except in the case of a vacancy:

76 (1) Commencing in two thousand five, all elections shall
77 be held and all appointments shall be made no later than

78 the thirtieth day of April preceding the commencement of
79 the term; and

80 (2) Terms of members begin on the first day of May
81 following election, except for two thousand four only,
82 terms begin upon appointment in July.

83 (f) Each board of advisors shall hold a regular meeting at
84 least quarterly, commencing in May of each year. Addi-
85 tional meetings may be held upon the call of the chairper-
86 son, president of the institution or upon the written
87 request of at least five members. A majority of the mem-
88 bers constitutes a quorum for conducting the business of
89 the board of advisors.

90 (g) One of the twelve lay members shall be elected as
91 chairperson by the board of advisors in May of each year,
92 except that the chairperson elected in two thousand four
93 shall be elected in July. No member may serve as chair-
94 person for more than two consecutive years.

95 (h) The president of the institution shall make available
96 resources of the institution for conducting the business of
97 the board of advisors. The members of the board of
98 advisors shall be reimbursed for all reasonable and
99 necessary expenses actually incurred in the performance
100 of their official duties under this section upon presentation
101 of an itemized sworn statement thereof. All expenses
102 incurred by the boards of advisors and the institutions
103 under this section shall be paid from funds allocated to the
104 institutions for that purpose.

105 (i) Prior to the submission by the president to its govern-
106 ing board, the board of advisors shall review all proposals
107 of the institution in the areas of mission, academic pro-
108 grams, budget, capital facilities and such other matters as
109 requested by the president of the institution or its govern-
110 ing board or otherwise assigned to it by law. The board of
111 advisors shall comment on each such proposal in writing,
112 with such recommendations for concurrence therein or

113 revision or rejection thereof as it considers proper. The
114 written comments and recommendations shall accompany
115 the proposal to the governing board and the governing
116 board shall include the comments and recommendations in
117 its consideration of and action on the proposal. The
118 governing board shall promptly acknowledge receipt of the
119 comments and recommendations and shall notify the
120 board of advisors in writing of any action taken thereon.

121 (j) Prior to their implementation by the president, the
122 board of advisors shall review all proposals regarding
123 institution-wide personnel policies. The board of advisors
124 may comment on the proposals in writing.

125 (k) The board of advisors shall provide advice and
126 assistance to the president and the governing board in
127 areas including, but not limited to, the following:

128 (1) Establishing closer connections between higher
129 education and business, labor, government and community
130 and economic development organizations to give students
131 greater opportunities to experience the world of work.
132 Examples of such experiences include business and
133 community service internships, apprenticeships and
134 cooperative programs;

135 (2) Communicating better and serving the current work
136 force and work force development needs of their service
137 area, including the needs of nontraditional students for
138 college-level skills upgrading and retraining and the needs
139 of employers for specific programs of limited duration; and

140 (3) Assessing the performance of the institution's gradu-
141 ates and assisting in job placement.

142 (l) When a vacancy occurs in the office of president of
143 the institution, the board of advisors shall serve as a
144 search and screening committee for candidates to fill the
145 vacancy under guidelines established by the council.
146 When serving as a search and screening committee, the
147 board of advisors and its governing board are each autho-

148 rized to appoint up to three additional persons to serve on
149 the committee as long as the search and screening process
150 is in effect. The three additional appointees of the board
151 of advisors shall be faculty members of the institution.
152 For the purposes of the search and screening process only,
153 the additional members shall possess the same powers and
154 rights as the regular members of the board of advisors,
155 including reimbursement for all reasonable and necessary
156 expenses actually incurred. Following the search and
157 screening process, the committee shall submit the names
158 of at least three candidates to the council, or to the
159 governing board in the case of West Virginia university
160 institute of technology, for consideration. If the council or
161 governing board rejects all candidates submitted, the
162 committee shall submit the names of at least three addi-
163 tional candidates and this process shall be repeated until
164 the council or governing board approves one of the candi-
165 dates submitted. In all cases, the governing board shall
166 make the appointment with the approval of the council or
167 the commission in the case of West Virginia university
168 institute of technology. The governing board or the
169 council shall provide all necessary staff assistance to the
170 board of advisors in its role as a search and screening
171 committee.

172 (m) The boards of advisors shall develop a master plan
173 for those administratively linked community and technical
174 colleges which retain boards of advisors. The ultimate
175 responsibility for developing and updating the master
176 plans at the institutional level resides with the institu-
177 tional board of advisors, but the ultimate responsibility for
178 approving the final version of these institutional master
179 plans, including periodic updates, resides with the council.
180 The plan shall include, but not be limited to, the following:

181 (1) A detailed demonstration of how the master plan will
182 be used to meet the goals and objectives of the institu-
183 tional compact;

184 (2) A well-developed set of goals outlining missions,
185 degree offerings, resource requirements, physical plant
186 needs, personnel needs, enrollment levels and other
187 planning determinates and projections necessary in such
188 a plan to assure that the needs of the institution's area of
189 responsibility for a quality system of higher education are
190 addressed;

191 (3) Documentation of the involvement of the commission,
192 institutional constituency groups, clientele of the institu-
193 tion and the general public in the development of all
194 segments of the institutional master plan.

195 The plan shall be established for periods of not less than
196 three nor more than six years and shall be revised periodi-
197 cally as necessary, including recommendations on the
198 addition or deletion of degree programs as, in the discre-
199 tion of the board of advisors, may be necessary.

§18B-6-1a. Definitions.

1 For the purposes of this article, the following words have
2 the meanings specified unless the context clearly indicates
3 a different meaning:

4 (a) "Advisory council of classified employees" or
5 "classified council" means the state advisory organization
6 of classified employees created pursuant to section five of
7 this article.

8 (b) "Advisory council of faculty" or "faculty council"
9 means the state advisory organization of faculty created
10 pursuant to section two of this article.

11 (c) "Advisory council of students" or "student advisory
12 council" means the state advisory organization of students
13 created pursuant to section four of this article.

14 (d) "Classified employee", in the singular or plural,
15 means any regular full-time or regular part-time employee
16 of a governing board, the commission, the council or the
17 West Virginia network for educational telecomputing who

18 holds a position that is assigned a particular job title and
19 pay grade in accordance with the personnel classification
20 system established by law.

21 (e) "Community and technical college" means eastern
22 West Virginia community and technical college, Fairmont
23 state community and technical college, Marshall commu-
24 nity and technical college, New River community and
25 technical college, West Virginia northern community and
26 technical college, the community and technical college of
27 Shepherd, southern West Virginia community and techni-
28 cal college, West Virginia state community and technical
29 college, the community and technical college at West
30 Virginia university institute of technology, West Virginia
31 university at Parkersburg and any other community and
32 technical college so designated by the Legislature.

33 (f) "Council" means the West Virginia council for
34 community and technical college education created
35 pursuant to section three, article two-b of this chapter.

36 (g) "Institutional classified employee council" or "staff
37 council" means the advisory group of classified employees
38 formed at a state institution of higher education pursuant
39 to section six of this article.

40 (h) "Institutional faculty senate", "faculty senate" or
41 "faculty assembly" means the advisory group of faculty
42 formed at a state institution of higher education pursuant
43 to section three of this article.

44 (i) "State institution of higher education", in the singular
45 or plural, means the institutions as defined in section two,
46 article one of this chapter and, additionally, Fairmont
47 state community and technical college, Marshall commu-
48 nity and technical college, New River community and
49 technical college, Potomac state college of West Virginia
50 university, Robert C. Byrd health sciences Charleston
51 division of West Virginia university, the community and
52 technical college of Shepherd, West Virginia state commu-

53 nity and technical college, West Virginia university at
54 Parkersburg, West Virginia university institute of technol-
55 ogy, the community and technical college at West Virginia
56 university institute of technology, the higher education
57 policy commission, the West Virginia council for commu-
58 nity and technical college education, the West Virginia
59 network for educational telecomputing and any other
60 institution so designated by the Legislature.

§18B-6-2. State advisory council of faculty.

1 (a) There is continued the state advisory council of
2 faculty.

3 (b) *Election of members and terms of office.* –

4 (1) During the month of April of each odd-numbered
5 year, each president of a state institution of higher educa-
6 tion, at the direction of the faculty council and in accor-
7 dance with procedures established by the faculty council,
8 shall convene a meeting or otherwise institute a balloting
9 process to elect one faculty member from each institution
10 of higher education to serve on the faculty council.

11 (2) Terms of the members are for two years and begin on
12 the first day of July of each odd-numbered year. Members
13 are eligible to succeed themselves.

14 (3) For the year two thousand four only, each president
15 of an administratively linked community and technical
16 college shall consult with the faculty council during the
17 month of July to establish procedures and convene a
18 meeting or otherwise institute a balloting process to elect
19 one faculty member from that institution to serve on the
20 faculty council. Members so elected shall take office upon
21 election and serve until the next regularly scheduled
22 election held pursuant to this section; thereafter, faculty
23 members elected to represent administratively linked
24 community and technical colleges serve a regular two-year
25 term.

26 (c) The faculty council shall meet at least once each
27 quarter and may meet at such other times as called by the
28 chairperson or by a majority of its members. One of the
29 quarterly meetings shall be during the month of July, at
30 which meeting the faculty council shall elect a chairperson
31 from among its members. The chairperson may serve no
32 more than two consecutive terms as chair. A member may
33 not vote by proxy at the election. In the event of a tie in
34 the last vote taken for such election, a member authorized
35 by the faculty council shall select the chairperson by lot
36 from the names of those persons tied. Immediately
37 following the election of a chairperson, and in the manner
38 prescribed by this section for the election of a chairperson,
39 the faculty council shall elect a member to preside over
40 meetings in the absence of the chairperson. If the chair-
41 person vacates the position, the faculty council shall meet
42 and elect a new chairperson to fill the unexpired term
43 within thirty days following the vacancy.

44 (d) The faculty council, through its chairperson and in
45 any appropriate manner, shall communicate to the com-
46 mission or the council, as appropriate, matters of higher
47 education in which the faculty members have an interest.

48 (e) The commission and council each shall meet annually
49 between the months of October and December with the
50 faculty council to discuss matters of higher education in
51 which the faculty members or the commission or council
52 may have an interest.

53 (f) Members of the faculty council serve without compen-
54 sation. Members are entitled to reimbursement for actual
55 and necessary expenses, including travel expenses, in-
56 curred in the performance of their official duties. Ex-
57 penses are paid from funds allocated to the state institu-
58 tion of higher education which the member serves.

59 (g) The faculty council shall prepare minutes of its
60 meetings, which minutes shall be available, upon request,

61 to any faculty member of a state institution of higher
62 education represented on the faculty council.

§18B-6-3. Institutional faculty senate.

1 (a) Effective the first day of July, two thousand four, a
2 faculty senate is established at each institution of higher
3 education, except for those institutions which choose to
4 establish a faculty assembly. In the latter case, all faculty
5 participate in the faculty assembly and the requirements
6 of subsections (b) and (c) of this section do not apply.
7 Members and officers of an organized, campus-level
8 advisory group of faculty who are serving prior to the
9 effective date of this section may continue to serve with all
10 the rights, privileges and responsibilities prescribed herein
11 until the time that members elected as set forth in subsec-
12 tion (b) of this section assume office.

13 (b) Members of each faculty senate are elected as follows:

14 (1) During the month of April of each even-numbered
15 year, each president of a state institution of higher educa-
16 tion, at the direction of the faculty and in accordance with
17 procedures established by the faculty, shall convene a
18 meeting or otherwise institute a balloting process to elect
19 the members of the faculty senates, except that for two
20 thousand four only, the election shall take place in July.

21 (2) Selection procedures shall provide for appropriate
22 representation of all academic units within the institution.

23 (3) The faculty member who is elected to serve on the
24 faculty council is an ex officio, voting member of the
25 faculty senate and reports to the faculty senate on meet-
26 ings of the faculty council and the board of governors.

27 (c) Members serve a term of two years, which term
28 begins on the first day of July of each even-numbered year,
29 except for the year two thousand four when terms begin
30 upon election. Members of the faculty senate are eligible
31 to succeed themselves.

32 (d) Each faculty senate shall elect a chairperson from
33 among its members. The chairperson serves a term of two
34 years, and may serve no more than two consecutive terms
35 as chairperson.

36 (e) The faculty senate meets quarterly and may meet at
37 such other times as called by the chairperson or by a
38 majority of the members. With appropriate notification to
39 the president of the institution, the chairperson may
40 convene a faculty senate meeting for the purpose of
41 sharing information and discussing issues affecting faculty
42 and the effective and efficient management of the institu-
43 tion.

44 (f) The president of the institution shall meet at least
45 quarterly with the faculty senate to discuss matters
46 affecting faculty and the effective and efficient manage-
47 ment of the institution.

48 (g) The governing board of the institution shall meet at
49 least annually with the faculty senate to discuss matters
50 affecting faculty and the effective and efficient manage-
51 ment of the institution.

§18B-6-4. State advisory council of students.

1 (a) There is continued the state advisory council of
2 students.

3 (b) During the month of April of each year, each student
4 government organization at each institution of higher
5 education shall elect a student to serve on the student
6 advisory council. Terms of the members of the student
7 advisory council are for one year and begin on the first day
8 of September of each year. A duly elected member cur-
9 rently serving on the advisory council of students may
10 continue to serve until a new member from that institution
11 is elected pursuant to the provisions of this section.
12 Members of the student advisory council are eligible to
13 succeed themselves.

14 (c) The student advisory council shall meet at least once
15 each quarter. One of the quarterly meetings shall be
16 during the month of September, at which meeting the
17 student advisory council shall elect a chairperson. A
18 member may not vote by proxy at the election. In the
19 event of a tie in the last vote taken for the election, a
20 member authorized by the student advisory council shall
21 select the chairperson by lot from the names of those
22 persons tied. Immediately following the election of a
23 chairperson, the student advisory council shall elect, in the
24 manner prescribed by this section for the election of a
25 chairperson, a member of the council to preside over
26 meetings in the absence of the chairperson. If the chair-
27 person vacates the position, the student advisory council
28 shall meet and elect a new chairperson to fill the unex-
29 pired term within thirty days following the vacancy.

30 (d) The student advisory council, through its chairperson
31 and in any appropriate manner, shall communicate to the
32 commission or the council, as appropriate, matters of
33 higher education in which the student members have an
34 interest.

35 (e) At the request of the chairperson of the student
36 advisory council, the commission and council each shall
37 meet annually, between the months of October and
38 December, with the student advisory council to discuss
39 matters of higher education in which the student members
40 or the commission or council have an interest.

41 (f) Members of the student advisory council serve
42 without compensation, but are entitled to reimbursement
43 for actual and necessary expenses, including travel
44 expenses, incurred in the performance of their official
45 duties. Expenses are paid from funds allocated to the state
46 institution of higher education in which the student is
47 enrolled.

48 (g) The student advisory council shall prepare minutes of
49 its meetings. The minutes shall be available, upon request,

50 to any student of a state institution of higher education
51 represented on the council.

§18B-6-5. State advisory councils of classified employees.

1 (a) There is hereby continued the state advisory council
2 of classified employees.

3 (b) *Election of members and terms of office. –*

4 (1) During the month of April of each odd-numbered
5 year, each president of a state institution of higher educa-
6 tion, at the direction of the classified council and in
7 accordance with procedures established by the classified
8 council, shall convene a meeting or otherwise institute a
9 balloting process to elect one classified employee from
10 each institution of higher education to serve on the
11 classified council.

12 (2) Terms of the members are for two years and begin on
13 the first day of July of each odd-numbered year. Members
14 are eligible to succeed themselves.

15 (3) For the year two thousand four only, each president
16 of an administratively linked community and technical
17 college shall consult with the classified council during the
18 month of July to establish procedures and convene a
19 meeting or otherwise institute a balloting process to elect
20 one classified employee from that institution to serve on
21 the classified council. Members so elected take office upon
22 election and serve until the next regularly scheduled
23 election held pursuant to this section; thereafter, classified
24 employees elected to represent administratively linked
25 community and technical colleges serve a regular two-year
26 term.

27 (c) The classified council shall meet at least once each
28 quarter and may meet at such other times as called by the
29 chairperson or by a majority of its members. One of the
30 quarterly meetings shall be during the month of July, at
31 which meeting the classified council shall elect a chairper-

32 son from among its members. The chairperson may serve
33 no more than two consecutive terms as chairperson. A
34 member may not vote by proxy at the election. In the
35 event of a tie in the last vote taken for the election, a
36 member authorized by the classified council shall select
37 the chairperson by lot from the names of those persons
38 tied. Immediately following the election of a chairperson,
39 the classified council shall elect, in the manner prescribed
40 by this section for the election of a chairperson, a member
41 of the classified council to preside over meetings in the
42 absence of the chairperson. If the chairperson vacates the
43 position, the classified council shall meet and elect a new
44 chairperson to fill the unexpired term within thirty days
45 following the vacancy.

46 (d) The classified council, through its chairperson and in
47 any appropriate manner, shall communicate to the com-
48 mission or the council, as appropriate, matters of higher
49 education in which the classified employees have an
50 interest.

51 (e) The commission and council each shall meet annually,
52 between the months of October and December, with the
53 classified council to discuss matters of higher education in
54 which the classified employees or the commission or
55 council have an interest.

56 (f) Members of the classified council serve without
57 compensation, but are entitled to reimbursement for actual
58 and necessary expenses, including travel expenses, in-
59 curred in the performance of their official duties. Ex-
60 penses are paid from funds allocated to the state institu-
61 tion of higher education which the member serves.

62 (g) The classified council shall prepare minutes of its
63 meetings. The minutes shall be available, upon request, to
64 any classified employee of a state institution of higher
65 education represented on the classified council.

§18B-6-6. Institutional classified employee council.

1 (a) There is continued at each institution of higher
2 education an institutional classified employees advisory
3 council to be known as the staff council.

4 (b) During the month of April of each odd-numbered
5 year, each president of a state institution of higher educa-
6 tion, at the direction of the staff council and in accordance
7 with procedures established by the staff council, shall
8 convene a meeting or otherwise institute a balloting
9 process to elect members of the staff council, except that
10 for two thousand four only, the election shall take place in
11 July. Members are elected as follows:

12 (1) Two classified employees from the administra-
13 tive/managerial sector;

14 (2) Two classified employees from the profes-
15 sional/nonteaching sector;

16 (3) Two classified employees from the paraprofessional
17 sector;

18 (4) Two classified employees from the secretarial/clerical
19 sector;

20 (5) Two classified employees from the physical
21 plant/maintenance sector;

22 (6) The classified employee who is elected to serve on the
23 advisory council of classified employees serves as an ex
24 officio, voting member of the staff council. This member
25 shall report to the staff council on meetings of the classi-
26 fied council and the board of governors; and

27 (7) Classified employees at Marshall university and West
28 Virginia university may elect five classified employees
29 from each of the five sectors to serve on the staff council.

30 (c) Members serve a term of two years, which term
31 begins on the first day of July of each odd-numbered year.
32 Members of the staff council are eligible to succeed
33 themselves.

34 (d) Classified employees shall select one of their mem-
35 bers to serve as chairperson. All classified employees at
36 the institution are eligible to vote for the chairperson by
37 any method approved by a majority of their members. The
38 chairperson is eligible to succeed himself or herself.

39 (e) The staff council shall meet at least monthly or at the
40 call of the chairperson. With appropriate notification to
41 the president of the institution, the chairperson may
42 convene staff council meetings for the purpose of sharing
43 information and discussing issues affecting the classified
44 employees or the efficient and effective operations of the
45 institution.

46 (f) The president of the institution shall meet at least
47 quarterly with the staff council to discuss matters affect-
48 ing classified employees.

49 (g) The governing board of the institution shall meet at
50 least annually with the staff council to discuss matters
51 affecting classified employees and the effective and
52 efficient management of the institution.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

1 (a) Definitions for terms used in this section are in
2 accordance with those provided in section two, article nine
3 of this chapter, except that the provisions of this section
4 apply only to classified employees whose employment, if
5 continued, accumulates to a minimum total of one thou-
6 sand forty hours during a calendar year and extends over
7 at least nine months of a calendar year. This section also
8 applies to any classified employee who is involuntarily
9 transferred to a position in nonclassified status for which
10 he or she did not apply. Any classified employee involun-
11 tarily transferred to a position in nonclassified status may
12 only exercise the rights set out in this section for positions

13 equivalent to or lower than the last job class the employee
14 held.

15 (b) All decisions by the appropriate governing board, the
16 council or commission or its agents at state institutions of
17 higher education concerning reductions in work force of
18 full-time classified personnel, whether by temporary
19 furlough or permanent termination, shall be made in
20 accordance with this section. For layoffs by classification
21 for reason of lack of funds or work, or abolition of position
22 or material changes in duties or organization and for recall
23 of employees laid off, consideration shall be given to an
24 employee's seniority as measured by permanent employ-
25 ment in the service of the state system of higher education.
26 In the event that the institution desires to lay off a more
27 senior employee, the institution shall demonstrate that the
28 senior employee cannot perform any other job duties held
29 by less senior employees of that institution in the same job
30 class or any other equivalent or lower job class for which
31 the senior employee is qualified. If an employee refuses to
32 accept a position in a lower job class, the employee retains
33 all rights of recall provided in this section. If two or more
34 employees accumulate identical seniority, the priority is
35 determined by a random selection system established by
36 the employees and approved by the institution.

37 (c) Any employee laid off during a furlough or reduction
38 in work force is placed upon a preferred recall list and is
39 recalled to employment by the institution on the basis of
40 seniority. An employee's listing with an institution
41 remains active for a period of one calendar year from the
42 date of termination or furlough or from the date of the
43 most recent renewal. If an employee fails to renew the
44 listing with the institution, the employee's name may be
45 removed from the list. An employee placed upon the
46 preferred list shall be recalled to any position opening by
47 the institution within the classifications in which the
48 employee had previously been employed or to any lateral
49 position for which the employee is qualified. An employee

50 on the preferred recall list does not forfeit the right to
51 recall by the institution if compelling reasons require the
52 employee to refuse an offer of reemployment by the
53 institution.

54 The institution shall notify all employees maintaining
55 active listings on the preferred recall list of all position
56 openings that periodically exist. The notice shall be sent
57 by certified mail to the last known address of the em-
58 ployee. It is the duty of each employee listed to notify the
59 institution of any change in address and to timely renew
60 the listing with the institution. A position opening may
61 not be filled by the institution, whether temporary or
62 permanent, until all employees on the preferred recall list
63 have been properly notified of existing vacancies and have
64 been given an opportunity to accept reemployment.

65 (d) A nonexempt classified employee, who applies and
66 meets the minimum qualifications for a nonexempt job
67 opening at the institution where currently employed,
68 whether the job is a lateral transfer or a promotion, shall
69 be transferred or promoted before a new person is hired.

70 (1) This subsection does not apply if the hiring is affected
71 by:

72 (A) Mandates in affirmative action plans; or

73 (B) The requirements of Public Law 101-336, the Ameri-
74 cans with Disabilities Act.

75 (2) This subsection applies to any nonexempt classified
76 employee, including:

77 (A) One who has not accumulated a minimum total of
78 one thousand forty hours during the calendar year; and

79 (B) One whose contract does not extend over at least nine
80 months of a calendar year.

81 (3) If more than one qualified, nonexempt classified
82 employee applies, the best-qualified nonexempt classified

83 employee is awarded the position. In instances where the
84 classified employees are equally qualified, the nonexempt
85 classified employee with the greatest amount of continu-
86 ous seniority at that institution is awarded the position.

87 (4) A nonexempt classified employee is one to whom the
88 provisions of the federal Fair Labor Standards Act, as
89 amended, apply.

90 (e) In addition to any other information required, any
91 application for personnel governed by the provisions of
92 this section shall include the applicant's social security
93 number.

94 (f) Regardless of the level of seniority for any employee,
95 for the purposes of this section:

96 (1) In the case of a reduction in force, an employee at a
97 community and technical college may not displace any
98 employee of an institution under the jurisdiction of the
99 commission.

100 (2) In the case of a reduction in force, an employee at an
101 institution under the jurisdiction of the commission may
102 not displace any employee of a community and technical
103 college.

104 (3) For the purpose of this subsection, an employee
105 performing a dual service for a sponsoring institution and
106 an administratively linked community and technical
107 college is an employee at an institution under the jurisdic-
108 tion of the commission if the sponsoring institution
109 receives a fee from the administratively linked community
110 and technical college for the service performed by that
111 employee.

§18B-7-12. Maintenance of benefits for employees.

1 (a) On the effective date of this section, any individual
2 employed on the day preceding the effective date of this
3 section by the chancellor for higher education or commis-
4 sion maintains all benefits of employment held, accrued

5 and afforded prior to the effective date of this section.
6 Such benefits include, but are not limited to, retirement
7 benefits, continued membership in the same retirement
8 system, any insurance coverage, and sick and annual leave.
9 For the purposes of leave conversion established in section
10 thirteen, article sixteen, chapter five of this code, an
11 employee is not a new employee, and the prohibition on
12 conversion does not apply if the employee was eligible for
13 leave conversion on the day preceding the effective date of
14 this section. For the purpose of section thirteen, article
15 sixteen, chapter five of this code:

16 (1) Each employee maintains all sick and annual leave
17 accrued, and all rights to convert the leave that had been
18 accrued on the day preceding the effective date of this
19 section; and

20 (2) Each employee continues to maintain his or her status
21 for eligibility under the provisions and application of said
22 section thirteen as applied to the employee on the day
23 preceding the effective date of this section.

24 (b) Prior to the first day of October, two thousand four,
25 an employee may not be terminated, or have his or her
26 salary or benefit levels reduced as the result of the higher
27 education reorganization set forth in this article.

**ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSI-
FICATION SYSTEM.**

§18B-9-1. Legislative purpose.

1 The purpose of the Legislature in the enactment of this
2 article is to require the commission and council jointly to
3 establish, control, supervise and manage a complete,
4 uniform system of personnel classification in accordance
5 with the provisions of this article for all employees other
6 than faculty and nonclassified employees at state institu-
7 tions of higher education.

§18B-9-2. Definitions.

1 As used in this article:

2 (a) "Classified employee" or "employee" means any
3 regular full-time or regular part-time employee of a
4 governing board, the commission or the council, including
5 all employees of the West Virginia network for educational
6 telecomputing, who hold a position that is assigned a
7 particular job title and pay grade in accordance with the
8 personnel classification system established by this article
9 or by the commission and council;

10 (b) "Nonclassified employee" means an individual who
11 is responsible for policy formation at the department or
12 institutional level, or reports directly to the president, or
13 is in a position considered critical to the institution by the
14 president pursuant to policies adopted by the governing
15 board. The percentage of personnel placed in the category
16 of "nonclassified" at any given institution may not exceed
17 ten percent of the total number of employees of that
18 institution who are eligible for membership in any state
19 retirement system of the state of West Virginia or other
20 retirement plan authorized by the state: *Provided*, That an
21 additional ten percent of the total number of employees of
22 that institution as defined in this subsection may be placed
23 in the category of "nonclassified" if they are in a position
24 considered critical to the institution by the president.
25 Final approval of such placement shall be with the appro-
26 priate governing board;

27 (c) "Job description" means the specific listing of duties
28 and responsibilities as determined by the appropriate
29 governing board, the commission or council and associ-
30 ated with a particular job title;

31 (d) "Job title" means the name of the position or job as
32 defined by the appropriate governing board, the commis-
33 sion or council;

34 (e) "Merit increases and salary adjustments" means the
35 amount of additional salary increase allowed on a merit

36 basis or to rectify salary inequities or accommodate
37 competitive market conditions in accordance with rules
38 established by the governing boards, the commission or
39 council;

40 (f) "Pay grade" means the number assigned by the
41 commission and council to a particular job title and refers
42 to the vertical column heading of the salary schedule
43 established in section three of this article;

44 (g) "Personnel classification system" means the process
45 of job categorization adopted by the commission and
46 council jointly by which job title, job description, pay
47 grade and placement on the salary schedule are deter-
48 mined;

49 (h) "Salary" means the amount of compensation paid
50 through the state treasury per annum to a classified
51 employee;

52 (i) "Schedule" or "salary schedule" means the grid of
53 annual salary figures established in section three of this
54 article; and

55 (j) "Years of experience" means the number of years a
56 person has been an employee of the state of West Virginia
57 and refers to the horizontal column heading of the salary
58 schedule established in section three of this article. For
59 the purpose of placement on the salary schedule, employ-
60 ment for nine months or more equals one year of experi-
61 ence, but a classified employee may not accrue more than
62 one year of experience during any given fiscal year.
63 Employment for less than full time or less than nine
64 months during any fiscal year shall be prorated. In
65 accordance with rules established by the commission and
66 council jointly, a classified employee may be granted
67 additional years of experience not to exceed the actual
68 number of years of prior, relevant work or experience at
69 accredited institutions of higher education other than state
70 institutions of higher education.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1b. Special equity fee; purpose; exemptions.

1 In addition to the other fees provided in this article, each
2 governing board has the authority to impose, collect and
3 expend the proceeds of a special equity fee under the
4 following conditions:

5 (a) The fee shall be used solely for the purpose of com-
6 plying with the athletic provisions of 20 U. S. C. 1681, *et*
7 *seq.*, known as Title IX of the Education Amendment of
8 1972;

9 (b) The fee is exempt from limitations on fee increases
10 set forth in this article for three years from the effective
11 date of this section;

12 (c) The fee may not be used by an institution to advance
13 its classification of participation in its athletics governing
14 body; and

15 (d) The fee may not be imposed upon part-time students
16 or students enrolled in an administratively-linked commu-
17 nity and technical college.

§18B-10-2. Higher education resource fee.

1 In addition to the fees specifically provided for in section
2 one of this article, all students enrolled for credit at a state
3 institution of higher education shall pay a higher educa-
4 tion resource fee. The commission and council jointly shall
5 fix the fee rates for the various institutions and classes of
6 students under their respective jurisdictions and may from
7 time to time change these rates. The amount of the fee
8 charged at each institution shall be prorated for part-time
9 students. The fee imposed by this section is in addition to
10 the maximum fees allowed to be collected under the
11 provision of section one of this article and is not limited
12 thereby. Refunds of the fee may be made in the same

13 manner as any other fee collected at state institutions of
14 higher education.

15 Ninety percent of the total fees collected at each institu-
16 tion pursuant to this section shall be deposited in a special
17 fund in the state treasury for the institution at which the
18 fees are collected and may be used by the institution for
19 libraries and library supplies, including books, periodicals,
20 subscriptions and audiovisual materials, instructional
21 equipment and materials; and for the improvement in
22 quality and scope of student services. Up to ten percent of
23 the fee collections from institutions under the jurisdiction
24 of the commission shall be deposited in a special fund and
25 expended or allocated by the commission to meet general
26 operating expenses of the commission or to fund statewide
27 programs. Up to ten percent of the fee collections from
28 institutions under the jurisdiction of the council shall be
29 deposited in a special fund and expended or allocated by
30 the council to meet general operating expenses of the
31 council or to fund statewide programs. The boards shall,
32 to the maximum extent practicable, offset the impact, if
33 any, on financially needy students of any potential fee
34 increases under this section by allocating an appropriate
35 amount of such fee revenue to the state scholarship
36 program to be expended in accordance with the provisions
37 of article five, chapter eighteen-c of this code.

38 The commission and council each shall, on or before the
39 first day of July annually, provide the legislative auditor
40 with a report of the projected fee collections for the board
41 and each of its institutions and the expenditures proposed
42 for such fee.

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

Lucy Zinnell Howe
.....
Chairman Senate Committee

Greg Butcher
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell Holmes
.....
Clerk of the Senate

Gregg M. Bond
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert B. Biss
.....
Speaker House of Delegates

The within is approved this the 17th
Day of April, 2004.

Bob Wise
.....
Governor

PRESENTED TO THE

GOVERNOR

DATE 3/22/04

TIME 4:15 pm