

FILED

2005 MAY -4 A 11:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2005*

**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 603**

(By Senators Tomblin, Mr. President, and Sprouse,)

**PASSED April 9, 2005**

**In Effect July 1, 2005 Passage**

S SB 603

FILED

2005 MAY -4 A 11:07

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 603**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

---

[Passed April 9, 2005; to take effect July 1, 2005.]

---

AN ACT to repeal §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended; to repeal §18B-2-1, §18B-2-2 and §18B-2-3 of said code; to repeal §18B-3-5 and §18B-3-7 of said code; to repeal §18B-5-2d of said code; to amend and reenact §5-6-4a of said code; to amend and reenact §5G-1-2 of said code; to amend said code by adding thereto a new section, designated §12-1-12b; to amend and reenact §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code; to amend and reenact §18-2-23a of said code; to amend said code by adding thereto a new section, designated §18-2-24; to amend said code by adding thereto a new section, designated §18A-3-11; to amend and reenact §18A-3A-1 and §18A-3A-2b of said code; to amend said code by adding thereto a new section, designated §18A-3A-6; to amend and reenact §18B-1-3 and §18B-1-6 of said code; to amend and reenact §18B-1A-2 and §18B-1A-6 of said code; to amend and reenact §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-13; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-7; to amend said code by adding thereto a new section, designated §18B-2B-9; to amend and reenact §18B-3-1, §18B-3-2 and §18B-3-3 of said code; to amend said code by adding thereto a new section, designated §18B-3-4; to amend and reenact §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code; to amend and reenact §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-8 of said code; to amend said code by adding thereto a new section, designated §18B-5-10; to amend and reenact §18B-10-1, §18B-10-5 and §18B-10-6 of said code; to amend said code by adding thereto a new section, designated §18B-10-6a; to amend said code by adding thereto a new section, designated §18B-11-7; and to amend and reenact §18B-14-11 of said code, all relating to public and higher education generally; authorizing and requiring certain electronic requisitions; exempting certain institutions from providing certain documentation with requisitions; requiring certain institutions to submit certain documentation to Joint Committee on Government and Finance; expanding certain professional development provisions; establishing a structure to enhance collaboration between certain state and regional entities in providing professional development; requiring certain state and regional entities to ensure coordination and collaboration in professional development efforts and designating certain priorities for professional development; limiting the circumstances for procuring out-of-state services regarding certain professional development issues; reconstituting the Center for Professional Development Board and modifying its membership, duties and certain required employee provisions; creating position of Chief Executive Officer; requiring certain professional development studies and reports; creating the position of Coordinator of the Principals Academy; prohibiting the required attendance of certain employees at certain professional development programs under certain circumstances until date certain; transferring

powers, authorities, responsibilities and duties between certain entities; definitions; requiring transfer of real property under certain circumstances from Higher Education Policy Commission to certain institutions; clarifying requirements for promulgation of higher education rules; requiring certain institutions to promulgate certain rules; establishing certain requirements for rule adoption, validation, enforcement and reporting; limiting certain authorities when rules not adopted; clarifying legislative intent relating to mission of certain institutions; limiting Policy Commission jurisdiction, power, responsibility and authority regarding certain institutions; modifying Policy Commission duties; modifying salary limit of Chancellor for Higher Education; specifying limitation of certain entities on exercising certain authorities and fulfilling certain responsibilities; modifying responsibility for assigning institutions' geographic areas of responsibility; modifying participation requirements and authorization for certain state institutions of higher education to offer graduate programs under certain circumstances and expanding the authorized institutions to offer such programs; modifying certain academic program approval provisions; transferring to certain institutions authority regarding certain capital project management and arrangements; preserving the jurisdiction and authority of certain higher education entities to manage technology; clarifying authority of Policy Commission to assess certain fees; specifying when discharging certain duties requires consultation among various higher education entities; transferring to certain institutions authority to approve tuition and fee increases and set standards for conferring degrees; exempting certain institutions from Policy Commission approval requirements for executing certain documents, instruments, purchases and procurements; requiring disease awareness initiatives; requiring study and report of recommendations relating to higher education personnel issues; establishing scope of personnel study and charges for implementation; requiring employee participation; modifying requirements and authorities regarding delegation of powers by certain higher education entities; providing for disability insurance for

employees; providing flexibility measures for certain state institutions of higher education and providing for future application of flexibility measures to additional state institutions of higher education; **modifying governance by the Council For Community and Technical College Education**; expanding and modifying the powers and duties of research, doctoral-granting public universities and their governing boards; providing legislative findings, purpose and intent for such expansion and modification; expanding authority for certain institutions and establishing parameters and procedures for donating certain surplus computers and related items; limiting application to certain institutions of certain surplus item disposal authority; defining the relationship between the Policy Commission and certain governing boards and between the West Virginia Council for Community and Technical College Education and certain governing boards; establishing and defining the duties of certain governing boards to address state priorities and the goals for post-secondary education established by the Legislature; defining state priorities; requiring annual report of progress; expanding penalty options and jurisdiction of certain parking and vehicle operating violations for certain institutions; specifying certain acceptable qualifications for employment as campus police officer at certain institutions; expanding authority of certain campus police officers; expanding responsibility of certain institutions to investigate certain crimes; exempting certain institutions from requirements to participate in certain cooperative purchasing and operating arrangements; modifying format and documentation requirements for acceptance of certain documents by State Auditor; expanding permissible uses for purchase card; transferring to State Auditor certain duties regarding purchase cards; transferring to State Auditor authority to approve certain purchase card payments designated to exceed the purchase amount limits and to set the amount by which such payments may exceed the limits; modifying for certain institutions certain document submission requirements for travel expense reimbursement; specifying responsibility of certain institutions for ensuring fiscal integrity of

operations; establishing requirements for implementing best business and management practices for certain institutions, including certain required reports; limiting and clarifying certain document approval authority of the Attorney General; authorizing state medical and health professionals schools to participate in self-insurance retention programs pursuant to certain conditions; authorizing state Board of Risk and Insurance Management to enter into agreements with state medical and health professionals schools to develop and implement self-insurance retention programs; requiring plan review by state Insurance Commissioner prior to implementing self-insurance retention programs; authorizing Insurance Commissioner and state Board of Risk and Insurance Management to promulgate emergency rules; expanding discretion of certain institutions to offer undergraduate- and graduate-level fee waivers, eliminating certain waiver award restrictions and requiring rule governing waivers; requiring certain institutions to establish a nonprofit Regional Brownfield Assistance Center; defining Assistance Center service regions; establishing Assistance Center powers and duties; providing temporary authorization to engage in alternative investment options for certain moneys of certain state institutions of higher education and including a set expiration date for such authorization; creating Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics; establishing membership; assigning charge to Commission; providing legislative findings and requiring report to Legislative Oversight Commission on Education Accountability; deleting, repealing and updating certain obsolete provisions; and making technical corrections.

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

That §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended, be repealed; that sections §18B-2-1, §18B-2-2 and §18B-2-3 of said code be repealed; that §18B-3-5 and §18B-3-7 of said code be repealed; that §18B-5-2d of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §5G-1-2 of said code be amended and reenacted; that said

code be amended by adding thereto a new section, designated §12-1-12b; that §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code be amended and reenacted; that §18-2-23a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-2-24; that said code be amended by adding thereto a new section, designated §18A-3-11; that §18A-3A-1 and §18A-3A-2b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-3A-6; that §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2 and §18B-1A-6 of said code be amended and reenacted; that §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-13; that §18B-2A-3 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-7; that said code be amended by adding thereto a new section, designated §18B-2B-9; that §18B-3-1, §18B-3-2 and §18B-3-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-3-4; that §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code be amended and reenacted; that §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-5-10; that §18B-10-1, §18B-10-5 and §18B-10-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-10-6a; that said code be amended by adding thereto a new section, designated §18B-11-7; and that §18B-14-11 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 6. STATE BUILDINGS.**

**§5-6-4a. Review of real property contracts and agreements;  
master plan for office space.**

1 (a) The Secretary of Administration shall provide to the  
2 Joint Committee on Government and Finance a copy of a  
3 contract or agreement for real property exceeding one  
4 million dollars and a report setting forth a detailed  
5 summary of the terms of the contract or agreement,  
6 including the name of the owner of the property and the  
7 agent involved in the sale, at least thirty days prior to any  
8 sale, exchange, transfer, purchase, lease purchase, lease or  
9 rental of real property, any refundings of lease purchases,  
10 leases or rental agreements, any construction of new  
11 buildings and any other acquisition or lease of buildings,  
12 office space or grounds by any state agency, including the  
13 Higher Education Policy Commission, but excepting the  
14 transactions of the state institutions of higher education  
15 known as Marshall University and West Virginia Univer-  
16 sity and the Division of Highways for state road purposes  
17 pursuant to article two-a, chapter seventeen of this code:  
18 *Provided, That* a contract or agreement for the lease  
19 purchase, lease or rental of real property by any state  
20 agency, where the costs of real property acquisition and  
21 improvements are to be financed, in whole or in part, with  
22 bond proceeds, may contain a preliminary schedule of  
23 rents and leases for purposes of review by the committee.

24 (b) For renewals of contracts or agreements required to  
25 be reported by the provisions of this section, the Secretary  
26 of Administration shall provide a report setting forth a  
27 detailed summary of the terms of the contract or agree-  
28 ment, including the name of the owner of the property.

29 (c) Within thirty days after receipt of the contract,  
30 agreement or report, the committee shall meet and review  
31 the contract, agreement or report.

32 (d) On or before the first day of July, two thousand six,  
33 the Secretary of Administration shall conduct an inventory  
34 of available office space and office space needs and shall



35 develop and present a master plan for the utilization of  
36 office space for state agencies to the Joint Committee on  
37 Government and Finance.

38 (e) The governing boards of the state institutions of  
39 higher education known as Marshall University and West  
40 Virginia University shall provide to the Joint Committee  
41 on Government and Finance a copy of any contract or  
42 agreement for real property exceeding one million dollars  
43 and shall make available to the Joint Committee on  
44 Government and Finance upon request a summary of the  
45 terms of the contract or agreement, including the name of  
46 the owner of the property and the agent involved in the  
47 sale.

**CHAPTER 5G. PROCUREMENT OF  
ARCHITECT-ENGINEER SERVICES  
BY STATE AND ITS SUBDIVISIONS.**

**ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.**

**§5G-1-2. Definitions.**

1 As used in this section:

2 (a) The term "agency" means all state departments,  
3 agencies, authorities, quasipublic corporations and all  
4 political subdivisions, including cities, counties, boards of  
5 education and public service districts, except, for the  
6 purposes of this section, the term "agency" does not  
7 include the state institutions of higher education known as  
8 Marshall University and West Virginia University.

9 (b) The term "architectural and engineering services"  
10 includes those professional services of an architectural or  
11 engineering nature as well as incidental services that  
12 members of those professions and those in their employ  
13 may logically or justifiably perform.

14 (c) The term "director of purchasing" means any individ-  
15 ual assigned by any agency to procure the services of  
16 architects and engineers.

17 (d) The term "firm" or "professional firm" means any  
18 individual, firm, partnership, corporation, association or  
19 other legal entity permitted by law to practice the profes-  
20 sions of architecture and engineering.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

### ARTICLE 1. STATE DEPOSITORIES.

#### §12-1-12b. Pilot program for investments by Marshall University and West Virginia University.

1 (a) Notwithstanding any provision of this article to the  
2 contrary, the governing boards of Marshall University and  
3 West Virginia University each may invest certain funds  
4 with its respective nonprofit foundation that has been  
5 established to receive contributions exclusively for that  
6 university and which exists on the first day of January,  
7 two thousand five. Any such investment is subject to the  
8 limitations of this section.

9 (b) A governing board, through its chief financial officer  
10 may enter into agreements, approved as to form by the  
11 State Treasurer, for the investment by its foundation of  
12 certain funds subject to their administration. Any interest  
13 or earnings on the moneys invested is retained by the  
14 investing university.

15 (c) Moneys of a university that may be invested with its  
16 foundation pursuant to this section are those subject to the  
17 administrative control of the university that are collected  
18 under an act of the Legislature for specific purposes and  
19 do not include any funds made available to the university  
20 from the state general revenue fund or the funds estab-  
21 lished in sections eighteen or eighteen-a, article twenty-  
22 two, chapter twenty-nine of this code. Moneys permitted  
23 to be invested under this section may be aggregated in an  
24 investment fund for investment purposes.

25 (d) Of the moneys authorized for investment by this  
26 section, Marshall University and West Virginia University

27 each, respectively, may have invested with its foundation  
28 at any time not more than the greater of:

29 (1) Eighteen million dollars for Marshall University and  
30 twenty-five million dollars for West Virginia University;  
31 or

32 (2) Sixty-five percent of its unrestricted net assets as  
33 presented in the statement of net assets for the fiscal year  
34 end audited financial reports.

35 (e) Investments by foundations that are authorized under  
36 this section shall be made in accordance with and subject  
37 to the provisions of the Uniform Prudent Investor Act  
38 codified as article six-c, chapter forty-four of this code.  
39 As part of its fiduciary responsibilities, each governing  
40 board shall establish investment policies in accordance  
41 with the Uniform Prudent Investor Act for those moneys  
42 invested with its foundation. The governing board shall  
43 review, establish and modify, if necessary, the investment  
44 objectives as incorporated in its investment policies so as  
45 to provide for the financial security of the moneys invested  
46 with its foundation. The governing boards shall give  
47 consideration to the following:

48 (1) Preservation of capital;

49 (2) Diversification;

50 (3) Risk tolerance;

51 (4) Rate of return;

52 (5) Stability;

53 (6) Turnover;

54 (7) Liquidity; and

55 (8) Reasonable cost of fees.

56 (f) A governing board shall report annually by the thirty-  
57 first day of December, to the Governor and to the Joint

58 Committee on Government and Finance on the perfor-  
59 mance of investments managed by its foundation pursuant  
60 to this section.

61 (g) The authority of a governing board to invest moneys  
62 with its foundation pursuant to this section expires on the  
63 first day of July, two thousand ten.

**ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

**§12-3-5. When requisition to Auditor sufficient authority for  
issuing warrant.**

1 (a) When an appropriation has been made by law,  
2 subject to the order or payable on the requisition of a  
3 particular officer, board or person, the order or written or  
4 electronic requisition is sufficient authority to the Auditor  
5 to issue a warrant for the same or any party thereof.

6 (b) The Auditor:

7 (1) Shall accept an electronic requisition from Marshall  
8 University and West Virginia University;

9 (2) May accept an electronic requisition from any entity  
10 other than Marshall University or West Virginia Univer-  
11 sity at his or her discretion; and

12 (3) May not issue a warrant for an amount that exceeds  
13 the appropriation or for an expired appropriation.

**§12-3-6. Requisitions on behalf of state boards and institutions.**

1 (a) An appropriation made to or for any state board or  
2 institution shall be drawn from the Treasury upon the  
3 requisition of an appropriate officer thereof to the Auditor  
4 at such times and in such amounts as is necessary for the  
5 purposes for which the appropriation is made. The  
6 Auditor shall pay the amount named in the requisition at  
7 such times and in such installments as are necessary for  
8 the purposes for which the appropriation is made.

9 (b) Except as provided in subsection (c) of this section, a  
10 requisition for appropriation for new buildings and  
11 substantial betterments shall be accompanied by the  
12 architect's estimate that the amount named in the requisition  
13 is needed for immediate use.

14 (c) The provisions of subsection (b) of this section do not  
15 apply to a requisition from:

16 (1) An institution from which the Auditor is required to  
17 accept an electronic requisition. Such an institution is not  
18 required to submit the documentation required in subsection  
19 (b) of this section, but shall maintain the documentation  
20 for inspection at the Auditor's request; and

21 (2) The Commissioner of Corrections.

22 (d) The Auditor may issue a warrant to pay money out of  
23 the State Treasury only if the money is needed for the  
24 present use.

**§12-3-7. Payment of compensation and expenses of members of  
state boards and commissions; embezzlement.**

1 (a) Unless otherwise provided by law, a member of any  
2 state board or commission:

3 (1) Receives four dollars per day for each day necessarily  
4 employed as such, including time spent traveling to and  
5 returning from the meeting location;

6 (2) Receives the actual and necessary expenses incurred  
7 in the discharge of his or her duties; and

8 (3) Does not receive mileage reimbursement.

9 (b) Prior to receiving compensation or expense reim-  
10 bursement:

11 (1) The member prepares in duplicate an itemized  
12 statement specifying the number of days spent and the  
13 expenses incurred;

14 (2) The member certifies the accuracy of the itemized  
15 statement;

16 (3) The member delivers the original to the secretary or  
17 clerk of the board or commission for preservation in its  
18 office; and

19 (4) The secretary or clerk immediately forwards the  
20 duplicate to the Auditor.

21 (c) If any member willfully makes a greater charge of  
22 services or expenses than truth justified, he or she is guilty  
23 of embezzlement and punished accordingly.

24 (d) The governing board of Marshall University and West  
25 Virginia University each satisfies the requirements of  
26 subsection (b) of this section by maintaining the member's  
27 original itemized, certified statement and submitting an  
28 electronic requisition to the Auditor.

**§12-3-8. Requisition on behalf of institutions to be accompanied  
by statement showing funds on hand.**

1 A requisition made upon the Auditor for any money  
2 appropriated for a state correctional facility; the West  
3 Virginia School for the Deaf and Blind; state mental  
4 health facilities; state hospitals; corrections facilities;  
5 Marshall University; West Virginia University; any other  
6 public institution for education, charity or correction; or  
7 institutions under the jurisdiction of the Higher Education  
8 Policy Commission or the West Virginia Council for  
9 Community and Technical College Education shall be  
10 accompanied by a written or electronic statement of a  
11 financial officer of the institution, showing the amount of  
12 money in his or her hands to the credit of the institution,  
13 or otherwise in its control, on the day the requisition is  
14 forwarded for payment.

**CHAPTER 18. EDUCATION.**

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

**§18-2-23a. Annual professional staff development goals established by State Board; coordination of professional development programs; program development, approval and evaluation.**

1 (a) *Legislative intent.* – The intent of this section is:

2 (1) To provide for the coordination of professional  
3 development programs by the State Board;

4 (2) To promote high-quality instructional delivery and  
5 management practices for a thorough and efficient system  
6 of schools; and

7 (3) To ensure that the expertise and experience of state  
8 institutions of higher education with teacher preparation  
9 programs are included in developing and implementing  
10 professional development programs.

11 (b) *Goals.* – The State Board annually shall establish  
12 goals for professional staff development in the public  
13 schools of the state. As a first priority, the State Board  
14 shall require adequate and appropriate professional staff  
15 development to ensure high quality teaching that will  
16 enable students to achieve the content standards estab-  
17 lished for the required curriculum in the public schools.

18 The State Board shall submit the goals to the State  
19 Department of Education, the Center for Professional  
20 Development, the regional educational service agencies,  
21 the Higher Education Policy Commission and the Legisla-  
22 tive Oversight Commission on Education Accountability  
23 on or before the fifteenth day of January each year.

24 The goals shall include measures by which the effective-  
25 ness of the professional staff development programs will  
26 be evaluated. The professional staff development goals  
27 shall include separate goals for teachers, principals and  
28 paraprofessional service personnel and may include  
29 separate goals for classroom aides and others in the public  
30 schools.

31 In establishing the goals, the State Board shall review  
32 reports that may indicate a need for professional staff  
33 development including, but not limited to, the report of the  
34 Center for Professional Development created in article  
35 three-a, chapter eighteen-a of this code, student test scores  
36 on the statewide student assessment program, the mea-  
37 sures of student and school performance for accreditation  
38 purposes, school and school district report cards and its  
39 plans for the use of funds in the strategic staff develop-  
40 ment fund pursuant to section thirty-two, article two,  
41 chapter eighteen of this code.

42 (c) The Center for Professional Development shall design  
43 a proposed professional staff development program plan  
44 to achieve the goals of the State Board and shall submit  
45 the proposed plan to the State Board for approval as soon  
46 as possible following receipt of the State Board goals each  
47 year. In developing and implementing this plan, the  
48 Center first shall rely upon the available expertise and  
49 experience of state institutions of higher education before  
50 procuring advice, technical assistance or consulting  
51 services from sources outside the state.

52 The proposed plan shall include a strategy for evaluating  
53 the effectiveness of the professional staff development  
54 programs delivered under the plan and a cost estimate.  
55 The State Board shall review the proposed plan and return  
56 it to the Center for Professional Development noting  
57 whether the proposed plan is approved or is not approved,  
58 in whole or in part. If a proposed plan is not approved in  
59 whole, the State Board shall note its objections to the  
60 proposed plan or to the parts of the proposed plan not  
61 approved and may suggest improvements or specific  
62 modifications, additions or deletions to address more fully  
63 the goals or eliminate duplication. If the proposed plan is  
64 not wholly approved, the Center for Professional Develop-  
65 ment shall revise the plan to satisfy the objections of the  
66 State Board. State Board approval is required prior to  
67 implementation of the professional staff development  
68 plan.



69 (d) The State Board approval of the proposed profes-  
70 sional staff development plan shall establish a Master Plan  
71 for Professional Staff Development which shall be submit-  
72 ted by the State Board to the affected agencies and to the  
73 Legislative Oversight Commission on Education Account-  
74 ability. The Master Plan shall include the State Board-  
75 approved plans for professional staff development by the  
76 State Department of Education, the Center for Profes-  
77 sional Development, the state institutions of higher  
78 education and the regional educational service agencies to  
79 meet the professional staff development goals of the State  
80 Board. The Master Plan also shall include a plan for  
81 evaluating the effectiveness of the professional staff  
82 development delivered through the programs and a cost  
83 estimate.

84 The Master Plan shall serve as a guide for the delivery of  
85 coordinated professional staff development programs by  
86 the State Department of Education, the Center for Profes-  
87 sional Development, the state institutions of higher  
88 education and the regional educational service agencies  
89 beginning on the first day of June in the year in which the  
90 Master Plan was approved through the thirtieth day of  
91 May in the following year. This section does not prohibit  
92 changes in the Master Plan, subject to State Board ap-  
93 proval, to address staff development needs identified after  
94 the Master Plan was approved.

**§18-2-24. Collaboration of state institutions of higher education  
having a teacher preparation program with the  
Center for Professional Development and the  
regional education service agencies.**

1 (a) For the purposes of this section, "teacher preparation  
2 institution" means a state institution of higher education  
3 with a teacher preparation program.

4 (b) The intent of this section is to establish a structure to  
5 enhance collaboration between the teacher preparation  
6 institutions, the Center for Professional Development and

7 the regional education service agencies in providing  
8 professional development.

9 (c) The Legislature finds that:

10 (1) There is insufficient collaboration of the teacher  
11 preparation institutions with the Center for Professional  
12 Development and each of the regional education service  
13 agencies;

14 (2) More collaboration would prevent duplication of  
15 services and result in higher quality professional develop-  
16 ment;

17 (3) Creating a structure and assigning responsibility  
18 would promote more effective collaboration;

19 (4) The state's research and doctoral degree-granting  
20 public institutions of higher education, West Virginia  
21 University and Marshall University, have the most capac-  
22 ity to be important sources of research and expertise on  
23 professional development;

24 (5) West Virginia University and Marshall University are  
25 the only institutions in the state that offer course work  
26 leading to a doctoral degree in education administration;

27 (6) As the largest state institutions of higher education,  
28 West Virginia University and Marshall University have  
29 more capacity than any other institution in the state to  
30 handle the additional responsibilities assigned in this  
31 section;

32 (7) The coordination by West Virginia University and  
33 Marshall University of the efforts of other teacher prepa-  
34 ration institutions to collaborate with the Center for  
35 Professional Development and each of the regional  
36 education service agencies will provide points of account-  
37 ability for the collaboration efforts of the other institu-  
38 tions; and

39 (8) The State Board's authority over the regional educa-  
40 tion service agencies can be used to motivate the agencies  
41 to collaborate with the teacher preparation institutions in  
42 providing professional development and will serve as a  
43 point of accountability for the collaboration efforts of the  
44 agencies.

45 (d) West Virginia University and Marshall University  
46 shall collaborate with the Center for Professional Develop-  
47 ment in performing the Center's duties. This collaboration  
48 shall include at least the following:

49 (1) Including the teacher preparation institutions in the  
50 proposed professional staff development program plan  
51 required to be submitted to the State Board by section  
52 twenty-three-a of this article;

53 (2) Providing any available research-based expertise that  
54 would be helpful in the design of the proposed professional  
55 staff development program plan;

56 (3) Providing any available research-based expertise that  
57 would be helpful in the implementation of professional  
58 development programs; and

59 (4) Arranging for other state institutions of higher  
60 education having a teacher preparation program to assist  
61 the Center when that assistance would be helpful.

62 (e) All teacher preparation institutions shall collaborate  
63 with the regional education service agency of the service  
64 area in which the institution is located at least to:

65 (1) Prevent unnecessary duplication of services;

66 (2) Assist in the implementation of the professional  
67 development programs of the regional education service  
68 agency; and

69 (3) Assist the regional education service agency in  
70 obtaining any available grants for professional develop-

71 ment or to apply for any available grant with the agency  
72 collaboratively.

73 (f) Since no teacher preparation institution exists in the  
74 service area of Regional Education Service Agency IV,  
75 Marshall University shall collaborate with that Agency for  
76 the purposes set forth in subdivision (e) of this section.

77 (g) In addition to the collaboration required by subsec-  
78 tions (e) and (f) of this section of all teacher preparation  
79 institutions, West Virginia University and Marshall  
80 University shall:

81 (1) Coordinate the collaboration of each of the other  
82 teacher preparation institutions in their designated  
83 coordination area with the appropriate regional education  
84 service agency. This coordination at least includes ensur-  
85 ing that each of the other institutions are collaborating  
86 with the appropriate regional education service agency;  
87 and

88 (2) Collaborate with each of the other teacher prepara-  
89 tion institutions in their designated coordination area.  
90 This collaboration at least includes providing assistance to  
91 the other institutions in providing professional develop-  
92 ment and in their collaboration with the appropriate  
93 regional education service agency.

94 (h) The designated coordination area of West Virginia  
95 University includes the service areas of Regional Educa-  
96 tion Service Agencies V, VI, VII and VIII. The designated  
97 coordination area of Marshall University includes the  
98 service areas of Regional Education Service Agencies I, II,  
99 III and IV.

100 (i) The State Board shall ensure that each of the regional  
101 education service agencies is collaborating with the  
102 teacher preparation institution or institutions in its service  
103 area for the purposes set forth in subsection (e) of this  
104 section. Since Regional Education Service Agency IV does  
105 not have a teacher preparation institution in its service

106 area, the State Board shall ensure that it is collaborating  
107 with Marshall University for the purposes set forth in  
108 subsection (e) of this section.

109 (j) Before a regional education service agency, except for  
110 Regional Education Service Agency IV, obtains profes-  
111 sional development related services or expertise from any  
112 teacher preparation institution outside of that agency's  
113 service area, the agency shall inform the Center for  
114 Professional Development Board. Before Regional Educa-  
115 tion Service Agency IV obtains professional development  
116 related services or expertise from any teacher preparation  
117 institution other than Marshall University, the agency  
118 shall inform the Center Board.

119 (k) The collaboration and coordination requirements of  
120 this section include collaborating and coordinating to  
121 provide professional development for at least teachers,  
122 principals and paraprofessionals.

#### **CHAPTER 18A. SCHOOL PERSONNEL.**

##### **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

##### **§18A-3-11. Study of professional development standards and best practices.**

1 The Legislative Oversight Commission on Education  
2 Accountability shall cause a study to be conducted to  
3 determine and to recommend standards and best practices  
4 for professional development that are focused on advanc-  
5 ing student achievement. The study and a final report of  
6 recommendations shall be completed prior to the first day  
7 of September, two thousand five. The Commission shall  
8 submit the final report to the Joint Committee on Govern-  
9 ment and Finance. The Commission shall determine if  
10 resources to assist in the completion of the study are  
11 available from sources other than public funds and shall  
12 report such to the Joint Committee.

**ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.**

**§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.**

1 (a) Teaching is a profession that directly correlates to the  
2 social and economic well-being of a society and its citi-  
3 zens. Superior teaching is essential to a well-educated and  
4 productive populace. Strong academic leadership pro-  
5 vided by principals and administrators skilled in modern  
6 management principles is also essential. The intent of this  
7 article is to recognize the value of professional involve-  
8 ment by experienced educators, principals and administra-  
9 tors in building and maintaining a superior force of  
10 professional educators and to establish avenues for  
11 applying this involvement.

12 (b) The general mission of the Center is to advance the  
13 quality of teaching and management in the schools of West  
14 Virginia through: (1) The implementation primarily of  
15 statewide training, professional staff development,  
16 including professional staff development for at least  
17 teachers, principals and paraprofessionals, and technical  
18 assistance programs and practices as recommended by the  
19 State Board to assure the highest quality of teaching and  
20 management; and (2) the provision of technical and other  
21 assistance and support to regional and local education  
22 agencies in identifying and providing high-quality profes-  
23 sional staff development, including professional staff  
24 development for at least teachers, principals and  
25 paraprofessionals, and training programs and implement-  
26 ing best practices to meet their locally identified needs.  
27 The Center also may implement local programs if the State  
28 Board, in its Master Plan for Professional Staff Develop-  
29 ment established pursuant to section twenty-three-a,  
30 article two, chapter eighteen of this code, determines that  
31 there is a specific local need for the programs. Addition-  
32 ally, the Center shall perform other duties assigned to it by  
33 law.

34 Nothing in this article shall be construed to require any  
35 specific level of funding by the Legislature.

36 (c) The Center for Professional Development Board is  
37 reconstituted and all terms of members elected or ap-  
38 pointed prior to the effective date of this section are  
39 expired. The Center Board shall consist of thirteen  
40 persons as follows:

41 (1) The Secretary of Education and the Arts, ex officio,  
42 and the State Superintendent, ex officio, each of whom is:

43 (A) Entitled to vote; and

44 (B) A Cochair of the Board.

45 (2) Two members of the State Board, elected by the State  
46 Board;

47 (3) One person employed by West Virginia University  
48 and one person employed by Marshall University, both of  
49 whom are:

50 (A) Appointed by the President of the employing institu-  
51 tion;

52 (B) Faculty in the teacher education section of the  
53 employing institution; and

54 (C) Knowledgeable in matters relevant to the issues  
55 addressed by the Center;

56 (4) One Regional Education Service Agency Executive  
57 Director, elected by all of the Regional Education Service  
58 Agency Executive Directors;

59 (5) Three experienced educators, of whom one is a  
60 working classroom teacher, one is a school principal and  
61 one is a county administrator. All such educators are:

62 (A) Appointed by the Governor by and with the advice  
63 and consent of the Senate;

64 (B) Experienced educators who have achieved recogni-  
65 tion for their superior knowledge, ability and performance  
66 in teaching or management, as applicable; and

67 (C) Knowledgeable in matters relevant to the issues  
68 addressed by the Center; and

69 (6) Three citizens of the state who are:

70 (A) Knowledgeable in matters relevant to the issues  
71 addressed by the Center, including, but not limited to,  
72 professional development and management principles; and

73 (B) Appointed by the Governor by and with the advice  
74 and consent of the Senate.

75 (C) Not more than two such members may be residents  
76 within the same congressional district.

77 (d) Each appointment and election is for a two-year  
78 term. Such members may serve no more than two consec-  
79 utive two-year terms.

80 (1) The State Board shall elect another member to fill the  
81 unexpired term of any person who vacates State Board  
82 membership.

83 (2) The Regional Education Service Agency Executive  
84 Directors shall elect an executive director to fill the  
85 unexpired term of any executive director who ceases to be  
86 employed in that capacity.

87 (3) Of the initial members appointed by the Governor,  
88 three are appointed for one-year terms and three are  
89 appointed for two-year terms. Each successive appoint-  
90 ment by the Governor is for a two-year term. The Gover-  
91 nor shall appoint a new member to fill the unexpired term  
92 of any vacancy in the appointed membership.

93 (4) The President of West Virginia University and  
94 Marshall University each appoints an employee to fill the  
95 unexpired term of any member who ceases to be employed  
96 by that institution.



97 (e) The Center for Professional Development Board shall  
98 meet at least quarterly and the appointed members shall  
99 be reimbursed for reasonable and necessary expenses  
100 actually incurred in the performance of their official  
101 duties from funds appropriated or otherwise made avail-  
102 able for those purposes upon submission of an itemized  
103 statement therefor.

104 (f) The position of Executive Director is abolished. The  
105 Governor shall appoint, by and with the advice and  
106 consent of the Senate, a Chief Executive Officer with  
107 knowledge and experience in professional development  
108 and management principles. Any reference in this code to  
109 the Executive Director of the Center for Professional  
110 Development means the Chief Executive Officer. From  
111 appropriations to the Center for Professional Develop-  
112 ment, the Center Board sets the salary of the Chief Execu-  
113 tive Officer. The Center Board, upon the recommendation  
114 of the Chief Executive Officer, may employ other staff  
115 necessary to carry out the mission and duties of the Center.  
116 The Chief Executive Officer serves at the will and pleasure  
117 of the Governor. Annually, the Center Board shall evalu-  
118 ate the Chief Executive Officer, and shall report the results  
119 to the Governor. The duties of the Chief Executive Officer  
120 include:

121 (1) Managing the daily operations of the Center;

122 (2) Ensuring the implementation of the Center's mission;

123 (3) Ensuring collaboration of the Center with other  
124 professional development providers;

125 (4) Requesting from the Governor and the Legislature  
126 any resources or statutory changes that would help in  
127 enhancing the collaboration of all professional develop-  
128 ment providers in the state, in advancing the quality of  
129 professional development through any other means or  
130 both;

131 (5) Serving as the chair of the Principals Standards  
132 Advisory Council created in section two-c, article three of  
133 this chapter and convening regular meetings of this  
134 Council to effectuate its purposes; and

135 (6) Other duties as assigned by the Governor or the  
136 Center Board.

137 (g) When practicable, personnel employed by state  
138 higher education agencies and state, regional and county  
139 public education agencies shall be made available to the  
140 Center to assist in the operation of projects of limited  
141 duration, subject to the provisions of section twenty-four,  
142 article two, chapter eighteen of this code.

143 (h) The Center shall assist in the delivery of programs  
144 and activities pursuant to this article to meet statewide,  
145 and if needed as determined by the goals and Master Plan  
146 for Professional Staff Development established by the  
147 State Board pursuant to section twenty-three-a, article  
148 two, chapter eighteen of this code, the local professional  
149 development needs of paraprofessionals, teachers, princi-  
150 pals and administrators and may contract with existing  
151 agencies or agencies created after the effective date of this  
152 section or others to provide training programs in the most  
153 efficient manner. Existing programs currently based in  
154 agencies of the state shall be continued in the agency of  
155 their origin unless the Center establishes a compelling  
156 need to transfer or cancel the existing program. The  
157 Center shall recommend to the Governor the transfer of  
158 funds to the providing agency, if needed, to provide  
159 programs approved by the Center.

160 (i) The Center for Professional Development shall  
161 implement training and professional development pro-  
162 grams for the Principals Academy based upon the mini-  
163 mum qualities, proficiencies and skills necessary for  
164 principals in accordance with the standards established by  
165 the State Board pursuant to the terms of section two-c,  
166 article three of this chapter.

167 (j) In accordance with section two-c, article three of this  
168 chapter, the Center shall be responsible for paying reason-  
169 able and necessary expenses for persons attending the  
170 Principals Academy: *Provided*, That nothing in this  
171 section shall be construed to require any specific level of  
172 funding by the Legislature.

173 (k) Persons attending the professional development  
174 offerings of the Center and other courses and services  
175 offered by the Center for Professional Development,  
176 except the Principals Academy shall be assessed fees  
177 which shall be less than the full cost of attendance. There  
178 is hereby created in the State Treasury a special revenue  
179 account known as the "Center for Professional Develop-  
180 ment Fund". All moneys collected by the Center shall be  
181 deposited in the fund for expenditure by the Center Board  
182 for the purposes specified in this section. Moneys remain-  
183 ing in the fund at the end of the fiscal year are subject to  
184 reappropriation by the Legislature.

185 (l) The Center Board shall make collaboration with the  
186 State Board in providing professional development  
187 services in the following areas a priority:

188 (1) Services to those public schools selected by the State  
189 Superintendent pursuant to section three-g, article two-e,  
190 chapter eighteen of this code; and

191 (2) Services in any specific subject matter area that the  
192 State Board, the Legislature or both, determine is justified  
193 due to a need to increase student achievement in that area.

**§18A-3A-2b. The Principals Academy.**

1 (a) There is hereby established within the Center for  
2 Professional Development the "Principals Academy".  
3 Training through the Principals Academy shall include at  
4 least the following:

5 (1) Training designed to build within principals the  
6 minimum qualities, proficiencies and skills that will be

7 required of all principals pursuant to the rules of the State  
8 Board;

9 (2) Specialized training and professional development  
10 programs for all principals; and

11 (3) Specialized training and professional development  
12 programs for the following principals:

13 (A) Newly appointed principals;

14 (B) Principals whose schools have been designated as  
15 seriously impaired, which programs shall commence as  
16 soon as practicable following the designation;

17 (C) Principals subject to improvement plans; and

18 (D) Principals of schools with significantly different  
19 grade level configurations.

20 (b) The Legislature finds that the quality of the principal  
21 of a school is one of the most important factors in deter-  
22 mining the academic achievement of students and that  
23 well-trained, highly qualified principals should be a  
24 priority for the state.

25 (b) The Legislature further finds that while the Princi-  
26 pals Academy has been effective in training quality leaders  
27 for the state's public schools, the training provided is such  
28 a significant factor in determining their success that a new  
29 position is needed to coordinate and focus primarily on the  
30 Principals Academy to increase further the quality of the  
31 training.

32 (c) Therefore, from appropriations to the Center for  
33 Professional Development, the Center Board shall employ  
34 and fix the compensation of the Coordinator of the  
35 Principals Academy. The Coordinator serves at the will  
36 and pleasure of the Center Board. It is the duty of the  
37 Coordinator, subject to direction and oversight by the  
38 Center and the Chief Executive Officer, to lead the Princi-  
39 pals Academy, to focus primarily on the Principals Acad-

40 emy and to make a continuous effort to enhance further  
41 the quality of the training and professional development  
42 programs of the Academy. The Center Board, the Chief  
43 Executive Officer, or both, may assign duties to the  
44 coordinator other than those that relate to the Principals  
45 Academy so long as the Coordinator is able to focus  
46 primarily on the Principals Academy.

**§18A-3A-6. Attendance outside the employment term.**

1 (a) A professional educator may not be required to  
2 attend the principals academy or any other program  
3 offered through the Center for Professional Development  
4 outside his or her employment term. A professional  
5 educator may attend the academy or other program  
6 outside his or her employment term by mutual agreement  
7 between the Center, the educator, and his or her employer.

8 (b) The provisions of this section expire on the first day  
9 of July, two thousand six.

**CHAPTER 18B. HIGHER EDUCATION.**

**ARTICLE 1. GOVERNANCE.**

**§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  
8 in 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 authoritics 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  
24 West Virginia University and transferred to and vested in  
25 the 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  
32 Commission on Higher Education and transferred to and  
33 vested 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  
61 of 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  
65 of July, two thousand, are hereby transferred to the  
66 Interim Governing Board until the first day of July, two  
67 thousand one, and shall continue in effect and shall be  
68 deemed the orders, resolutions and rules of the Interim  
69 Governing Board until rescinded, revised, altered or  
70 amended by the Commission or the governing boards in  
71 the manner and to the extent authorized and permitted by  
72 law. Such orders, resolutions and rules shall include:

73 (1) Those adopted or promulgated by the Board of  
74 Governors of West Virginia University and in effect  
75 immediately prior to the first day of July, one thousand  
76 nine hundred sixty-nine, unless and until rescinded,  
77 revised, altered or amended by the Board of Regents in the  
78 manner and to the extent authorized and permitted by  
79 law;

80 (2) Those respecting state colleges and universities  
81 adopted or promulgated by the West Virginia Board of  
82 Education and in effect immediately prior to the first day  
83 of July, one thousand nine hundred sixty-nine, unless and  
84 until rescinded, revised, altered or amended by the Board

85 of Regents in the manner and to the extent authorized and  
86 permitted by law;

87 (3) Those adopted or promulgated by the State Commis-  
88 sion on Higher Education and in effect immediately prior  
89 to the first day of July, one thousand nine hundred  
90 sixty-nine, unless and until rescinded, revised, altered or  
91 amended by the Board of Regents in the manner and to the  
92 extent authorized and permitted by law; and

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

99 (e) Title to all real property transferred to or vested in  
100 the Interim Governing Board pursuant to this section of  
101 the code is hereby transferred to the Commission effective  
102 the first day of July, two thousand one. The board of  
103 governors for each institution may request that the  
104 Commission transfer title to the board of governors of any  
105 real property specifically identifiable with that institution  
106 or the Commission may initiate the transfer. Any such  
107 request must be made within two years of the effective  
108 date of this section and be accompanied by an adequate  
109 legal description of the property. In the case of real  
110 property that is specifically identifiable with Marshall  
111 University or West Virginia University, the Commission  
112 shall transfer title to all real property, except real property  
113 that is used jointly by institutions or for statewide pro-  
114 grams under the jurisdiction of the Commission or the  
115 Council, to the Board of Governors of Marshall University  
116 or West Virginia University, as appropriate, upon receipt  
117 of a request from the appropriate governing board accom-  
118 panied by an adequate legal description of the property.

119 The title to any real property that is jointly utilized by  
120 institutions or for statewide programs under the jurisdic-



121 tion of the Commission or the Council shall be retained by  
122 the Commission.

123 (f) Ownership of or title to any other property, materials,  
124 equipment or supplies obtained or purchased by the  
125 Interim Governing Board or the previous governing boards  
126 on behalf of an institution is hereby transferred to the  
127 board of governors of that institution effective the first  
128 day of July, two thousand one.

129 (g) Each valid agreement and obligation previously  
130 transferred or vested in the Interim Governing Board and  
131 which was undertaken or agreed to on behalf of an institu-  
132 tion or institutions is hereby transferred to the board of  
133 governors of the institution or institutions for whose  
134 benefit the agreement was entered into or the obligation  
135 undertaken effective the first day of July, two thousand  
136 one.

137 (1) The obligations contained in revenue bonds issued by  
138 the previous governing boards under the provisions of  
139 section eight, article ten of this chapter and article  
140 twelve b, chapter eighteen of this code are hereby trans-  
141 ferred to the Commission and each institution shall  
142 transfer to the Commission those funds the Commission  
143 determines are necessary to pay that institution's share of  
144 bonded indebtedness.

145 (2) The obligations contained in revenue bonds issued on  
146 behalf of a state institution of higher education pursuant  
147 to any other section of this code is hereby transferred to  
148 the board of governors of the institution on whose behalf  
149 the bonds were issued.

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

151 (1) Adopted or promulgated by the respective Board of  
152 Trustees, Board of Directors or Interim Governing Board  
153 and in effect immediately prior to the first day of July, two  
154 thousand one, are hereby transferred to the Commission  
155 effective the first day of July, two thousand one, and

156 continue in effect until rescinded, revised, altered,  
157 amended or transferred to the governing boards by the  
158 Commission as provided in this section and in section six  
159 of this article.

160 (2) Adopted or promulgated by the Commission relating  
161 solely to community and technical colleges or community  
162 and technical college education, or rules which the Council  
163 finds necessary for the exercise of its lawful powers and  
164 duties pursuant to the provisions of this chapter, may be  
165 adopted by the Council and continue in effect until  
166 rescinded, revised, altered, amended or transferred to the  
167 governing boards under the jurisdiction of the Council  
168 pursuant to section six of this article. Nothing in this  
169 section requires the initial rules of the Commission that  
170 are adopted by the Council to be promulgated again under  
171 the procedure set forth in article three-a, chapter  
172 twenty-nine-a of this code unless such rules are rescinded,  
173 revised, altered or amended.

174 (3) Adopted or promulgated by the Commission relating  
175 to multiple types of public institutions of higher education  
176 or community and technical college education as well as  
177 baccalaureate and post-baccalaureate education are  
178 transferred to the Council in part as follows:

179 (A) That portion of the rule relating solely to community  
180 and technical colleges or community and technical college  
181 education is transferred to the Council and continues in  
182 effect until rescinded, revised, altered, amended or trans-  
183 ferred to the governing boards by the Council as provided  
184 in this section and in section six of this article;

185 (B) That portion of the rule relating to institutions or  
186 education other than community and technical colleges is  
187 retained by the Commission and continues in effect until  
188 rescinded, revised, altered, amended or transferred to the  
189 governing boards by the Commission as provided in this  
190 section and in section six of this article.

191 (i) The Commission may, in its sole discretion, transfer  
192 any rule, other than a legislative rule, to the jurisdiction of  
193 the governing boards of the institutions under its jurisdic-  
194 tion who may rescind, revise, alter or amend any rule so  
195 transferred pursuant to rules adopted by the Commission  
196 pursuant to section six of this article.

197 The Council may, in its sole discretion, transfer any rule,  
198 other than a legislative rule, to the jurisdiction of the  
199 governing boards of the institutions under its jurisdiction  
200 who may rescind, revise, alter or amend any rule so  
201 transferred pursuant to rules adopted by the Council  
202 pursuant to section six of this article.

203 (j) As to any title, agreement, obligation, order, resolu-  
204 tion, rule or any other matter about which there is some  
205 uncertainty, misunderstanding or question, the matter  
206 shall be summarized in writing and sent to the Commis-  
207 sion which shall make a determination regarding such  
208 matter within thirty days of receipt thereof.

209 (k) Rules or provisions of law which refer to other  
210 provisions of law which were repealed, rendered inopera-  
211 tive or superseded by the provisions of this section shall  
212 remain in full force and effect to such extent as may still  
213 be applicable to higher education and may be so inter-  
214 preted. Such references include, but are not limited to,  
215 references to sections and prior enactments of article  
216 twenty-six, chapter eighteen of this code and code provi-  
217 sions relating to retirement, health insurance, grievance  
218 procedures, purchasing, student loans and savings plans.  
219 Any determination which needs to be made regarding  
220 applicability of any provision of law shall first be made by  
221 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) As it relates to the authority granted to governing  
14 boards of state institutions of higher education to promul-  
15 gate, adopt, amend or repeal any rule under the provisions  
16 of this code:

17 (1) "Rule" means any regulation, guideline, directive,  
18 standard, statement of policy or interpretation of general  
19 application which has institutionwide effect or which  
20 affects the rights, privileges or interests of employees,  
21 students or citizens. Any regulation, guideline, directive,  
22 standard, statement of policy or interpretation of general  
23 application that meets this definition is a rule for the  
24 purposes of this section.

25 (2) Regulations, guidelines or policies established for  
26 individual units, divisions, departments or schools of the  
27 institution, which deal solely with the internal manage-  
28 ment or responsibilities of a single unit, division, depart-  
29 ment or school or with academic curricular policies that do  
30 not constitute a mission change for the institution, are  
31 excluded from this subsection, except for the requirements  
32 relating to posting.

33 (3) The Commission and Council each shall promulgate  
34 a rule to guide the development and approval of rules  
35 made by their respective governing boards, including the  
36 governing boards of Marshall University and West Vir-  
37 ginia University. The rules promulgated by the Commis-  
38 sion and Council shall include, but are not limited to, the

39 following provisions which shall be included in the rule on  
40 rules adopted by each governing board of a state institu-  
41 tion of higher education:

42 (A) A procedure to ensure that public notice is given and  
43 that the right of interested parties to have a fair and  
44 adequate opportunity to respond is protected, including  
45 providing for a thirty-day public comment period prior to  
46 final adoption of a rule;

47 (B) Designation of a single location where all proposed  
48 and approved rules, guidelines and other policy statements  
49 are posted and can be accessed by the public; and

50 (C) A procedure to maximize Internet access to all  
51 proposed and approved rules, guidelines and other policy  
52 statements to the extent technically and financially  
53 feasible.

54 (d) Nothing in this section requires that any rule reclass-  
55 sified or transferred by the Commission or the Council  
56 under this section be promulgated again under the proce-  
57 dures set out in article three-a, chapter twenty-nine-a of  
58 this code unless the rule is amended or modified.

59 (e) The Commission and Council each shall file with the  
60 Legislative Oversight Commission on Education Account-  
61 ability any rule it proposes to promulgate, adopt, amend or  
62 repeal under the authority of this article.

63 (f) The governing boards of Marshall University and  
64 West Virginia University, respectively, shall promulgate  
65 and adopt any rule which they are required to adopt by  
66 this chapter or chapter eighteen-c of this code no later  
67 than the first day of July, two thousand six. On and after  
68 this date:

69 (1) Any rule of either governing board which meets the  
70 definition set out in subsection (c) of this section and  
71 which has not been promulgated and adopted by formal

72 vote of the appropriate governing board is void and may  
73 not be enforced;

74 (2) Any authority granted by this code which inherently  
75 requires the governing board to promulgate and adopt a  
76 rule is void until the governing board complies with the  
77 provisions of this section.

78 (g) Within thirty days of the adoption of a rule, including  
79 repeal or amendment of an existing rule, the governing  
80 boards of Marshall University and West Virginia Univer-  
81 sity, respectively, shall furnish to the Commission or the  
82 Council, as appropriate, a copy of each rule which has  
83 been formally adopted;

84 (h) Not later than the first day of October, two thousand  
85 five, and annually thereafter, each governing board of a  
86 state institution of higher education shall file with the  
87 Commission or the Council, as appropriate, a list of all  
88 institutional rules that were in effect for that institution  
89 on the first day of July of that year, including the most  
90 recent date on which each rule was considered and  
91 adopted, amended or repealed by the governing board.  
92 For all rules adopted, amended or repealed after the  
93 effective date of this section, the list shall include a  
94 statement by the chair of the governing board certifying  
95 that the governing board has complied with the provisions  
96 of this section when each listed rule was adopted.

**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 Com-  
27 mission or Council determines appropriate. In the deter-  
28 mination of mission, the institutions and the Commission  
29 or Council shall consider the report completed by the  
30 national center for higher education management systems  
31 pursuant to the legislative study as provided in section  
32 seven, article 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 and the ultimate responsibility for developing and adopt-  
60 **ing the final version of the community and technical**  
61 college 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, as appropriate, shall continue  
70 this process as long 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) *Assignment of geographic areas of responsibility.* -

88 (1) The Commission shall assign geographic areas of  
89 responsibility to the state institutions of higher education  
90 under its jurisdiction, except for the state institutions of  
91 higher education known as Marshall University and West  
92 Virginia University. For institutions other than the state  
93 institutions of higher education known as Marshall  
94 University and West Virginia University, the geographic  
95 areas of responsibility are made a part of their institu-  
96 tional compacts to ensure that all areas of the state are  
97 provided necessary programs and services to achieve the  
98 public policy agenda.

99 (2) Pursuant to the provisions of section four, article  
100 three-c of this chapter, the Council shall assign geographic  
101 areas of responsibility to the state institutions of higher  
102 education under its jurisdiction, including the administra-  
103 tively linked institution known as Marshall Community  
104 and Technical College, the administratively linked institu-  
105 tion known as the Community and Technical College at  
106 West Virginia University Institute of Technology and the  
107 regional campus known as West Virginia University at  
108 Parkersburg.

109 (3) The geographic areas of responsibility for the state  
110 institutions of higher education known as Marshall

111 University and West Virginia University are assigned by  
112 the Legislature.

113 (4) The benchmarks established in the institutional  
114 compacts shall include measures of programs and services  
115 by geographic area throughout the assigned geographic  
116 area of responsibility.

117 (e) The compacts shall contain benchmarks used to  
118 determine progress toward meeting the goals established  
119 in the compacts. The benchmarks shall meet the following  
120 criteria:

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

122 (2) They shall be directly linked to the goals in the  
123 compacts;

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

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

128 (f) The Commission and Council each shall establish by  
129 legislative rule indicators which measure the degree to  
130 which the goals and objectives set forth in section one-a,  
131 article one of this chapter are being addressed and met by  
132 the institutions under their respective jurisdictions. The  
133 benchmarks established in subsection (e) of this section  
134 shall be measured by the indicators.

135 (1) The rules pertaining to benchmarks and indicators in  
136 effect for the Commission and the Council on the effective  
137 date of this section remain in effect for the institutions  
138 under their respective jurisdictions.

139 (2) The legislative rules shall set forth at the least the  
140 following as pertains to all state institutions of higher  
141 education:

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

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

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

148 (D) Sufficient detail within the benchmarks and indica-  
149 tors to:

150 (i) Provide measurable evidence that the pursuits of the  
151 institution are targeting the educational needs of the  
152 citizens of the state and the components of the compacts  
153 and master plans;

154 (ii) Delineate the goals and benchmarks for an institu-  
155 tion so that the Commission, or Council can precisely  
156 measure the degree to which progress is being made  
157 toward achieving the goals for post-secondary education  
158 provided in section one-a, article one of this chapter; and

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

162 (3) In addition to any other requirement, the legislative  
163 rule established by the Council shall set forth at the least  
164 the following as pertains to community and technical  
165 college education:

166 (A) Benchmarks and indicators which are targeted to  
167 identify:

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

172 (ii) Information and data necessary to be considered by  
173 the Council in making the determination required by  
174 section three, article two-c of this chapter;

175 (iii) The degree to which progress is being made in the  
176 areas considered by the Council for the purpose of making

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

179 (B) Sufficient detail within the benchmarks and indica-  
180 tors to provide clear evidence to support an objective  
181 determination by the Council that an institution's progress  
182 toward achieving the goals for post-secondary education  
183 and the essential conditions is so deficient that implemen-  
184 tation of the provisions of section four, article two-c of  
185 this chapter is warranted and necessary.

186 (g) The Commission or the Council, as appropriate, shall  
187 approve the master plans developed by the boards of  
188 governors and the institutional boards of advisors pursu-  
189 ant to section four, article two-a of this chapter or section  
190 one, article six of this chapter, as appropriate.

**§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 is responsible for accomplishing the follow-  
25 ing:

26 (1) Ensuring that West Virginia University and Marshall  
27 University assist in the expansion of access to master's  
28 degree programs throughout West Virginia. These institu-  
29 tions shall place a strong emphasis on collaboration with  
30 the baccalaureate colleges and community and technical  
31 colleges in each region when funds are available;

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

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

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

43 (5) Determining the graduate program needs of each  
44 region.

45 (d) Bluefield State College, Concord University,  
46 Fairmont State University, Glenville State College,  
47 Shepherd University, West Liberty State College and West  
48 Virginia State University shall meet the need for graduate  
49 education in their regions pursuant to this subsection and  
50 subsection (c) of this section.

51 (1) If an institution's proposal to offer a Master's degree  
52 receives the approval of the Commission, that Master's  
53 degree may be offered solely by the institution.

54 (2) If an institution does not receive the approval of the  
55 Commission for a proposal to offer a Master's degree, that  
56 institution may broker or collaborate with another higher  
57 education institution to develop a revised proposal for  
58 offering that brokered or collaborative Master's degree.

59 (e) There is an urgent need for master's degree programs  
60 for teachers in disciplines or subject areas, such as mathe-  
61 matics, science, history, literature, foreign languages and  
62 the arts. Currently, master's-level courses in education  
63 that are offered in the regions served by the state universi-  
64 ties are primarily in areas such as guidance and counsel-  
65 ing, administration, special education and other disci-  
66 plines unrelated to teaching in subject areas. If this need  
67 is not being met in a region through the procedure estab-  
68 lished in subsection (d) of this section, then the graduate  
69 center in that region may plan a master's degree program  
70 in education focused on teaching in subject area fields in  
71 which the demand is not being met. No institution may  
72 begin a graduate program under the provisions of this  
73 section until the program has been reviewed and approved  
74 by the Commission. The Commission shall approve only  
75 those programs, as authorized by this subsection, that  
76 emphasize serving the needs of teachers and schools in the  
77 colleges' immediate regions. In determining whether a  
78 program should be approved, the Commission also shall  
79 rely upon the recommendations of the statewide task force  
80 on teacher quality provided in section eight, article  
81 fourteen of this chapter.

82 (f) The Commission shall review all graduate programs  
83 being offered under the provisions of this section and,  
84 using the criteria established for program startup in  
85 subsection (d) of this section, determine which programs  
86 should be discontinued.

87 (g) At least annually, the governing boards shall evaluate  
88 graduate programs developed pursuant to the provisions  
89 of this section and report to the Commission on the  
90 following:

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

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

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

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

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

98 The governing boards shall provide the Commission with  
99 any additional information the Commission requests in  
100 order to make a determination on the viability of a pro-  
101 gram.

102 (h) In developing any graduate program under the  
103 provisions of this section, institutions shall consider  
104 delivering courses at times and places convenient to adult  
105 students who are employed full time. Institutions shall  
106 place an emphasis on extended degree programs, distance  
107 learning and off-campus centers which utilize the  
108 cost-effective nature of extending existing university  
109 capacity to serve the state rather than duplicating the core  
110 university capacity and incurring the increased cost of  
111 developing master's degree programs at other institutions  
112 throughout the state.

113 (i) Brokering institutions shall invite proposals from  
114 other public institutions of higher education for service  
115 provision prior to contracting with other institutions:  
116 *Provided*, That if institutions propose providing graduate  
117 programs in service areas other than in their responsibility  
118 district, the institution seeking to establish a program  
119 shall work through the district's lead institution in provid-  
120 ing those services.

121 (j) In addition to the approval required by the Commis-  
122 sion, authorization for any institution to offer a master's  
123 degree program under the provisions of this section is

124 subject to the formal approval processes established by the  
125 governing boards.

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

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

1 (a) The primary responsibility of the Commission is to  
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 and the powers and  
9 duties assigned to the governing boards of Marshall  
10 University and West Virginia University, respectively. To  
11 that end, the Commission has the following powers and  
12 duties relating to the institutions under its jurisdiction:

13 (1) Develop, oversee and advance the public policy  
14 agenda pursuant to section one, article one-a of this  
15 chapter 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) Develop, oversee and advance the implementation  
24 jointly with the Council of a financing policy for higher  
25 education in West Virginia. The policy shall meet the  
26 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) Incorporate the plan for strategic funding to  
38 strengthen capacity for support of community and techni-  
39 cal college education established by the West Virginia  
40 Council for Community and Technical College Education  
41 pursuant to the provisions of section six, article two-b of  
42 this chapter;

43 (3) In collaboration with the Council, create a policy  
44 leadership structure capable of the following actions:

45 (A) Developing, building public consensus around and  
46 sustaining attention to a long-range public policy agenda.  
47 In developing the agenda, the Commission and Council  
48 shall seek input from the Legislature and the Governor  
49 and specifically from the State Board of Education and  
50 local school districts in order to create the necessary  
51 linkages to assure smooth, effective and seamless move-  
52 ment of students through the public education and  
53 post-secondary education systems and to ensure that the  
54 needs of public school courses and programs can be  
55 fulfilled by the graduates produced and the programs  
56 offered;

57 (B) Ensuring that the governing boards carry out their  
58 duty effectively to govern the individual institutions of  
59 higher education; and

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

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

96 system as a whole in meeting the goals and objectives set  
97 forth in section one-a, article one of this chapter;

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

103 (C) The priorities established for capital investment  
104 needs pursuant to subdivision (11) of this subsection and  
105 the justification for such priority;

106 (D) Recommendations of the Commission for statutory  
107 changes needed to further the goals and objectives set  
108 forth in section one-a, article one of this chapter;

109 (11) Establish a formal process for identifying needs for  
110 capital investments and for determining priorities for  
111 these investments for consideration by the Governor and  
112 the Legislature as part of the appropriation request  
113 process. It is the responsibility of the Commission to  
114 assure a fair distribution of funds for capital projects  
115 between the Commission and the Council. To that end the  
116 Commission shall take the following steps:

117 (A) Receive the list of priorities developed by the Council  
118 for capital investment for the institutions under the  
119 Council's jurisdiction pursuant to subsection (b), section  
120 six, article two-b of this chapter;

121 (B) Place the ranked list of projects on the agenda for  
122 action within sixty days of the date on which the list was  
123 received;

124 (C) Select a minimum of three projects from the list  
125 submitted by the Council to be included on the ranked list  
126 established by the Commission. At least one of the three  
127 projects selected must come from the top two priorities  
128 established by the Council.

129 (12) Maintain guidelines for institutions to follow  
130 concerning extensive capital project management except  
131 the governing boards of Marshall University and West  
132 Virginia University are not subject to the provisions of this  
133 subdivision as it relates to the state institutions of higher  
134 education known as Marshall University and West Vir-  
135 ginia University. The guidelines shall provide a process  
136 for developing capital projects, including, but not limited  
137 to, the notification by an institution to the Commission of  
138 any proposed capital project which has the potential to  
139 exceed one million dollars in cost. Such a project may not  
140 be pursued by an institution without the approval of the  
141 Commission. An institution may not participate directly  
142 or indirectly with any public or private entity in any  
143 capital project which has the potential to exceed one  
144 million dollars in cost;

145 (13) Acquire legal services as are considered necessary,  
146 including representation of the Commission, its institu-  
147 tions, employees and officers before any court or adminis-  
148 trative body, notwithstanding any other provision of this  
149 code to the contrary. The counsel may be employed either  
150 on a salaried basis or on a reasonable fee basis. In addi-  
151 tion, the Commission may, but is not required to, call upon  
152 the Attorney General for legal assistance and representa-  
153 tion as provided by law;

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

156 (15) Employ other staff as necessary and appropriate to  
157 carry out the duties and responsibilities of the Commission  
158 and the Council, in accordance with the provisions of  
159 article four of this chapter;

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

162 (17) Advise and consent in the appointment of the  
163 presidents of the institutions of higher education under its

164 jurisdiction pursuant to section six of this article. The role  
165 of the Commission in approving an institutional president  
166 is to assure through personal interview that the person  
167 selected understands and is committed to achieving the  
168 goals and objectives as set forth in the institutional  
169 compact and in section one-a, article one of this chapter;

170 (18) Approve the total compensation package from all  
171 sources for presidents of institutions under its jurisdiction,  
172 as proposed by the governing boards. The governing  
173 boards must obtain approval from the Commission of the  
174 total compensation package both when institutional  
175 presidents are employed initially and afterward when any  
176 change is made in the amount of the total compensation  
177 package;

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

185 (20) Approve and implement a uniform standard jointly  
186 with the Council to determine which students shall be  
187 placed in remedial or developmental courses. The stan-  
188 dard shall be aligned with college admission tests and  
189 assessment tools used in West Virginia and shall be  
190 applied uniformly by the governing boards throughout the  
191 public higher education system. The chancellors shall  
192 develop a clear, concise explanation of the standard which  
193 they shall communicate to the State Board of Education  
194 and the State Superintendent of schools;

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

197 (22) Jointly with the Council, develop and implement an  
198 oversight plan to manage systemwide technology such as  
199 the following:

200 (A) Expanding distance learning and technology net-  
201 works to enhance teaching and learning, promote access to  
202 quality educational offerings with minimum duplication  
203 of effort; and

204 (B) Increasing the delivery of instruction to nontradi-  
205 tional students, to provide services to business and indus-  
206 try and increase the management capabilities of the higher  
207 education system.

208 (C) Notwithstanding any other provision of law or this  
209 code to the contrary, the Council, Commission and state  
210 institutions of higher educations are not subject to the  
211 jurisdiction of the Chief Technology Officer for any  
212 purpose.

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

221 (24) Establish and implement policies and procedures to  
222 ensure that students may transfer and apply toward the  
223 requirements for a degree the maximum number of credits  
224 earned at any regionally accredited in-state or out-of-state  
225 higher education institution with as few requirements to  
226 repeat courses or to incur additional costs as is consistent  
227 with sound academic policy;

228 (25) Establish and implement policies and procedures to  
229 ensure that students may transfer and apply toward the  
230 requirements for a master's degree the maximum number  
231 of credits earned at any regionally accredited in-state or  
232 out-of-state higher education institution with as few  
233 requirements to repeat courses or to incur additional costs  
234 as is consistent with sound academic policy;

235 (26) Establish and implement policies and programs, in  
236 cooperation with the Council and the institutions of higher  
237 education, through which students who have gained  
238 knowledge and skills through employment, participation  
239 in education and training at vocational schools or other  
240 education institutions, or internet-based education  
241 programs, may demonstrate by competency-based assess-  
242 ment that they have the necessary knowledge and skills to  
243 be granted academic credit or advanced placement  
244 standing toward the requirements of an associate degree  
245 or a bachelor's degree at a state institution of higher  
246 education;

247 (27) Seek out and attend regional, national and interna-  
248 tional meetings and forums on education and workforce  
249 development-related topics, as in the Commission's  
250 discretion is critical for the performance of their duties as  
251 members, for the purpose of keeping abreast of education  
252 trends and policies to aid it in developing the policies for  
253 this state to meet the established education goals and  
254 objectives pursuant to section one-a, article one of this  
255 chapter;

256 (28) Develop, establish and implement a rule for higher  
257 education governing boards and institutions to follow  
258 when considering capital projects. The guidelines shall  
259 assure that the governing boards and institutions do not  
260 approve or promote capital projects involving private  
261 sector businesses which would have the effect of reducing  
262 property taxes on existing properties or avoiding, in whole  
263 or in part, the full amount of taxes which would be due on  
264 newly developed or future properties;

265 (29) Consider and submit to the appropriate agencies of  
266 the executive and legislative branches of state government  
267 a budget that reflects recommended appropriations from  
268 the Commission and the institutions under its jurisdiction.  
269 The Commission shall submit as part of its budget pro-  
270 posal the separate recommended appropriations it received  
271 from the Council, both for the Council and the institutions

272 under the Council's jurisdiction. The Commission annu-  
273 ally shall submit the proposed institutional allocations  
274 based on each institution's progress toward meeting the  
275 goals of its institutional compact;

276 (30) The Commission has the authority to assess institu-  
277 tions under its jurisdiction, including the state institutions  
278 of higher education known as Marshall University and  
279 West Virginia University, for the payment of expenses of  
280 the Commission or for the funding of statewide higher  
281 education services, obligations or initiatives related to the  
282 goals set forth for the provision of public higher education  
283 in the state;

284 (31) Promulgate rules allocating reimbursement of  
285 appropriations, if made available by the Legislature, to  
286 institutions of higher education for qualifying noncapital  
287 expenditures incurred in the provision of services to  
288 students with physical, learning or severe sensory disabili-  
289 ties;

290 (32) Make appointments to boards and commissions  
291 where this code requires appointments from the State  
292 College System Board of Directors or the University of  
293 West Virginia System Board of Trustees which were  
294 abolished effective the thirtieth day of June, two thousand,  
295 except in those cases where the required appointment has  
296 a specific and direct connection to the provision of com-  
297 munity and technical college education, the appointment  
298 shall be made by the Council. Notwithstanding any  
299 provisions of this code to the contrary, the Commission or  
300 the Council may appoint one of its own members or any  
301 other citizen of the state as its designee. The Commission  
302 and Council shall appoint the total number of persons in  
303 the aggregate required to be appointed by these previous  
304 governing boards;

305 (33) Pursuant to the provisions of article three-a, chapter  
306 twenty-nine-a of this code and section six, article one of  
307 this chapter, promulgate rules as necessary or expedient to



308 fulfill the purposes of this chapter. The Commission and  
309 the Council shall promulgate a uniform joint legislative  
310 rule for the purpose of standardizing, as much as possible,  
311 the administration of personnel matters among the  
312 institutions of higher education;

313 (34) Determine when a joint rule among the governing  
314 boards of the institutions under its jurisdiction is neces-  
315 sary or required by law and, in those instances, in consul-  
316 tation with the governing boards of all the institutions  
317 under its jurisdiction, promulgate the joint rule;

318 (35) In consultation with the governing boards of  
319 Marshall University and West Virginia University, imple-  
320 ment a policy jointly with the Council whereby course  
321 credit earned at a community and technical college  
322 transfers for program credit at any other state institution  
323 of higher education and is not limited to fulfilling a  
324 general education requirement;

325 (36) Promulgate a joint rule with the Council establish-  
326 ing tuition and fee policy for all institutions of higher  
327 education, other than state institutions of higher education  
328 known as Marshall University and West Virginia Univer-  
329 sity which are subject to the provisions of section one,  
330 article ten of this chapter. The rule shall include, but is  
331 not limited to, the following:

332 (A) Comparisons with peer institutions;

333 (B) Differences among institutional missions;

334 (C) Strategies for promoting student access;

335 (D) Consideration of charges to out-of-state students;  
336 and

337 (E) Such other policies as the Commission and Council  
338 consider appropriate; and

339 (37) Implement general disease awareness initiatives to  
340 educate parents and students, particularly dormitory

341 residents, about meningococcal meningitis; the potentially  
342 life-threatening dangers of contracting the infection;  
343 behaviors and activities that can increase risks; measures  
344 that can be taken to prevent contact or infection; and  
345 potential benefits of vaccination. The Commission shall  
346 encourage institutions that provide medical care to  
347 students to provide access to the vaccine for those who  
348 wish to receive it.

349 (b) In addition to the powers and duties listed in subsec-  
350 tion (a) of this section, the Commission has the following  
351 general powers and duties related to its role in developing,  
352 articulating and overseeing the implementation of the  
353 public policy agenda:

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

357 (2) Policy analysis and research focused on issues  
358 affecting the system as a whole or a geographical region  
359 thereof;

360 (3) Development and implementation of institutional  
361 mission definitions including use of incentive funds to  
362 influence institutional behavior in ways that are consistent  
363 with public priorities;

364 (4) Academic program review and approval for institu-  
365 tions under its jurisdiction, including the use of institu-  
366 tional missions as a template to judge the appropriateness  
367 of both new and existing programs and the authority to  
368 implement needed changes. The Commission's authority  
369 to review and approve academic programs for either the  
370 state institution of higher education known as Marshall  
371 University or West Virginia University is limited to  
372 programs that are proposed to be offered at a new location  
373 not presently served by that institution;

374 (5) Distribution of funds appropriated to the Commis-  
375 sion, including incentive and performance-based funding;

376 (6) Administration of state and federal student aid  
377 programs under the supervision of the vice chancellor for  
378 administration, including promulgation of any rules  
379 necessary to administer those programs;

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

383 (8) Development, establishment and implementation of  
384 information, assessment and accountability systems,  
385 including maintenance of statewide data systems that  
386 facilitate long-term planning and accurate measurement  
387 of strategic outcomes and performance indicators;

388 (9) Jointly with the Council, developing, establishing and  
389 implementing policies for licensing and oversight for both  
390 public and private degree-granting and nondegree-grant-  
391 ing institutions that provide post-secondary education  
392 courses or programs in the state pursuant to the findings  
393 and policy recommendations required by section eleven of  
394 this article;

395 (10) Development, implementation and oversight of  
396 statewide and region-wide projects and initiatives related  
397 to providing post-secondary education at the baccalaure-  
398 ate level and above such as those using funds from federal  
399 categorical programs or those using incentive and perfor-  
400 mance-based funding from any source; and

401 (11) Quality assurance that intersects with all other  
402 duties of the Commission particularly in the areas of  
403 research, data collection and analysis, planning, policy  
404 analysis, program review and approval, budgeting and  
405 information and accountability systems.

406 (c) In addition to the powers and duties provided in  
407 subsections (a) and (b) of this section and any other powers  
408 and duties as may be assigned to it by law, the Commission  
409 has such other powers and duties as may be necessary or  
410 expedient to accomplish the purposes of this article.

411 (d) The Commission is authorized to withdraw specific  
412 powers of any governing board of an institution under its  
413 jurisdiction for a period not to exceed two years, if the  
414 Commission makes a determination that:

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

418 (2) The Commission has received information, substanti-  
419 ated by independent audit, of significant mismanagement  
420 or failure to carry out the powers and duties of the board  
421 of governors according to state law; or

422 (3) Other circumstances which, in the view of the Com-  
423 mission, severely limit the capacity of the board of gover-  
424 nors to carry out its duties and responsibilities.

425 The period of withdrawal of specific powers may not  
426 exceed two years during which time the Commission is  
427 authorized to take steps necessary to reestablish the  
428 conditions for restoration of sound, stable and responsible  
429 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 Educa-  
3 tion who is the Chief Executive Officer of the Commission  
4 and 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  
22 end of each contract period, the Commission shall review  
23 the 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 Commission sets the Chancellor's salary. The  
35 salary may not exceed by more than twenty percent the  
36 average annual salary of chief executive officers of state  
37 systems of higher education in the states that comprise the  
38 membership of the Southern Regional Education 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  
42 shall coordinate the West Virginia University School of  
43 Medicine, the Marshall University School of Medicine and  
44 the West Virginia School of Osteopathic Medicine and also  
45 shall provide assistance to the governing boards on  
46 matters related to medical education and health sciences.

47 The Vice Chancellor for Health Sciences shall perform all  
48 duties assigned by the Chancellor, the Commission and  
49 state law. In the case of a vacancy in the office of Vice  
50 Chancellor of Health Sciences, the duties assigned to this  
51 Office by law are the responsibility of the Chancellor or a  
52 designee.

53 (g) The Commission shall employ a Vice Chancellor for  
54 Administration pursuant to section two, article four of this  
55 chapter.

56 (h) The Commission may employ a Vice Chancellor for  
57 State Colleges who serves at the will and pleasure of the  
58 Commission. It is the duty and responsibility of the Vice  
59 Chancellor for State Colleges to:

60 (1) Provide assistance to the Commission, the Chancellor  
61 and the state colleges on matters related to or of interest  
62 and concern to these institutions;

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

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

70 (4) Perform all duties assigned by the Chancellor, the  
71 Commission and state law.

72 In addition, the Vice Chancellor for State Colleges has  
73 the responsibility and the duty to provide staff assistance  
74 to the institutional presidents and governing boards to the  
75 extent practicable.

76 (i) On behalf of the Commission, the Chancellor may  
77 enter into agreements with any state agency or political  
78 subdivision of the state, any state higher education  
79 institution or any other person or entity to enlist staff

80 assistance to implement the powers and duties assigned by  
81 the Commission or by state law.

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

86 (1) To carry out policy and program directives of the  
87 Commission;

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

92 (3) To prepare and submit to the Commission for its  
93 approval the proposed budget of the Commission including  
94 the offices of the Chancellor and the Vice Chancellors;

95 (4) To assist the governing boards in developing rules,  
96 subject to the provisions of section six, article one of this  
97 chapter. Nothing in this chapter requires the rules of the  
98 governing boards to be filed pursuant to the rule-making  
99 procedures provided in article three-a, chapter  
100 twenty-nine-a of this code. The Commission and the  
101 Council, either separately or jointly as appropriate, are  
102 responsible for ensuring that any policy which is required  
103 to be uniform across the institutions is applied in a  
104 uniform manner;

105 (5) To perform all other duties and responsibilities  
106 assigned by the Commission or by state law.

107 (k) The Chancellor shall be reimbursed for all actual and  
108 necessary expenses incurred in the performance of all  
109 assigned duties and responsibilities.

110 (l) The Chancellor, with the Commission, advises the  
111 Legislature on matters of higher education in West  
112 Virginia. The Chancellor shall work closely with the  
113 Legislative Oversight Commission on Education Account-

114 ability and with the elected leadership of the state to  
115 ensure that they are fully informed about higher education  
116 issues and that the Commission fully understands the goals  
117 for higher education that the Legislature has established  
118 by law.

119 (m) The Chancellor may design and develop for consider-  
120 ation by the Commission new statewide or regional  
121 initiatives in accordance with the goals set forth in section  
122 one-a, article one of this chapter and the public policy  
123 agenda articulated by the Commission. In those instances  
124 where the initiatives to be proposed have a direct and  
125 specific impact or connection to community and technical  
126 college education as well as to baccalaureate and graduate  
127 education, the Chancellor for Higher Education and the  
128 Chancellor for Community and Technical College Educa-  
129 tion shall design and develop the initiatives jointly for  
130 consideration by the Commission and the Council.

131 (n) The Chancellor shall work closely with members of  
132 the State Board of Education and with the State Superin-  
133 tendent of Schools to assure that the following goals are  
134 met:

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

137 (2) Appropriate coordination of missions and programs.  
138 To further the goals of cooperation and coordination  
139 between the Commission and the State Board of Educa-  
140 tion, the Chancellor serves as an ex officio, nonvoting  
141 member 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 state 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 University, Fairmont  
7 State University, Glenville State College, Marshall Uni-  
8 versity, Shepherd University, West Liberty State College,  
9 West Virginia School of Osteopathic Medicine, West  
10 Virginia State University 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 in  
18 section one, article six of this chapter.

19 Subject to the approval of the Commission, the Govern-  
20 ing Board of West Virginia University appoints the  
21 President of the regional campus known as West Virginia  
22 University Institute of Technology. The president of each  
23 regional campus serves at the will and pleasure of the  
24 appointing 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  
29 and Technical College and West Virginia Northern Com-  
30 munity 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 college 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  
38 at West Virginia University Institute of Technology and  
39 West 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 Commu-  
46 nity and Technical College of Shepherd.

47 (b) *Other appointments.* – The institutional president  
48 appoints a provost to be the administrative head of the  
49 Potomac campus of West Virginia University.

50 (c) *Evaluation of presidents.* – The appointing governing  
51 board shall conduct written performance evaluations of  
52 each institution's president, including the presidents of  
53 administratively linked community and technical colleges.  
54 Evaluations shall be done in every fourth year of employ-  
55 ment as president, recognizing unique characteristics of  
56 the institution and utilizing institutional personnel,  
57 institutional boards of advisors as appropriate, staff of the  
58 appropriate governing board and persons knowledgeable  
59 in higher education matters who are not otherwise em-  
60 ployed by a governing board. A part of the evaluation  
61 shall be a determination of the success of the institution in  
62 meeting the requirements of its institutional compact.

**§18B-1B-13. Study of issues affecting employees in public  
higher education.**

1 (a) In consultation with the Council, the governing  
2 boards, the State Advisory Council of Faculty established  
3 pursuant to section two, article six of this chapter and the  
4 State Advisory Council of Classified Employees estab-  
5 lished pursuant to section five, article six of this chapter,  
6 the Commission shall conduct a study relating to issues  
7 affecting employees in public higher education.

8 (b) The study includes, but is not limited to, the follow-  
9 ing:

10 (1) Reviewing statutes, rules, guidelines, interpretations  
11 and other statements of policy;

12 (2) Surveying the capacity, professional training and  
13 practices of human resources staff by institution, including  
14 the number of staff employed in each institutional human  
15 resources office, their job titles and responsibilities;

16 (3) Evaluating the strengths and weaknesses of the  
17 statewide classification and compensation system and  
18 examining alternatives;

19 (4) Reviewing job titles and responsibilities to determine  
20 if certain families of jobs should be classified or  
21 nonclassified;

22 (5) Evaluating and recommending best practices and  
23 methods to establish salary rates for faculty, classified  
24 employees, nonclassified employees and administrators,  
25 including;

26 (A) Developing measurable indicators of "merit" and  
27 "performance" if these terms are to be used in a system for  
28 determining benefits;

29 (B) Developing reliable instruments of performance  
30 evaluation for all classes of employees; and

31 (C) Exploring the feasibility of authorizing employee  
32 bonuses under a merit or performance-based system;

33 (6) Determining the most effective and efficient method  
34 to train administrators who perform employee evaluations  
35 and assuring that they use these instruments appropri-  
36 ately;

37 (7) Exploring justifications for maintaining or removing  
38 the internal preference for hiring, promoting and transfer-  
39 ring classified employees pursuant to article seven of this  
40 chapter;

41 (8) Developing recommendations for a fair and rational  
42 policy covering reductions in force;

43 (9) Identifying unnecessary state-level paperwork  
44 requirements related to personnel and recommending  
45 methods to eliminate them while maintaining strict fiscal  
46 accountability;

47 (10) Evaluating the strengths and weaknesses of state-  
48 wide tenure and promotion policies for faculty and  
49 examining alternatives;

50 (11) Evaluating the feasibility of implementing differen-  
51 tial salary rates based on cost of living or other relevant  
52 factors;

53 (12) Determining whether employees whose salaries are  
54 derived from funds other than state appropriations should  
55 be subject to the provisions of article seven of this chapter  
56 and how such employees should be treated in any policy on  
57 reductions in force; and

58 (13) Determining the true costs or benefits as well as the  
59 advantages and disadvantages that may accrue as a result  
60 of decisions to outsource certain institutional functions.  
61 In order to perform a cost/benefit analysis, the Commis-  
62 sion must first develop an accurate database of institu-  
63 tional practices including the number of positions being  
64 outsourced or filled by temporary employees and the true  
65 amount of cost savings, if any.

66 (c) The Commission shall report to the Legislative  
67 Oversight Commission on Education Accountability by the  
68 first day of October, two thousand five, and every six  
69 months thereafter on the progress of the study.

70 (d) The Commission shall complete its work and report  
71 its findings, conclusions and recommendations, together  
72 with drafts of any legislation necessary to effectuate the  
73 recommendations, to the Legislative Oversight Commis-  
74 sion on Education Accountability by the first day of  
75 December, two thousand eight.

76 (1) In making its recommendations, the Commission  
77 shall take into account the impact of proposed changes on  
78 employees and the communities in which state institutions  
79 of higher education are located; and

80 (2) The Commission shall include documentation to  
81 support any conclusion or recommendation included as a  
82 part of their findings and shall attach estimates of cost or  
83 savings to each recommendation, if that recommendation  
84 has a fiscal impact on any public agency or institution.

**ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

**§18B-2A-3. Supervision of governing boards; promulgation of rules.**

1 (a) The governing boards are subject to the supervision  
2 of the Commission or the Council, as appropriate, except  
3 for the governing boards of Marshall University and West  
4 Virginia University as it relates to the state institutions of  
5 higher education know as Marshall University and West  
6 Virginia University. The Chancellor for Higher Education  
7 and the Chancellor for Community and Technical College  
8 Education, under the supervision of their respective  
9 boards, are responsible for the coordination of policies and  
10 purposes of the governing boards and shall provide for and  
11 facilitate sufficient interaction among the governing  
12 boards and between the governing boards and the State  
13 Board of Education to meet the goals and objectives  
14 provided in the compacts and in section one-a, article one  
15 of this chapter.

16 (b) The governing boards and the State Board of Educa-  
17 tion shall provide any and all information requested by the  
18 Commission or the Council in an appropriate format and  
19 in a timely manner.

**§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.

12 (1) The ultimate responsibility for developing and  
13 updating the master plans at the institutional level resides  
14 with the board of governors, or board of advisors, as  
15 applicable, but the ultimate responsibility for approving  
16 the final version of the institutional master plans, includ-  
17 ing periodic updates, resides with the Commission or  
18 Council, as appropriate.

19 (2) Each master plan shall include, but not be limited to,  
20 the following:

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

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

31 (C) Documentation of the involvement of the Commis-  
32 sion or Council, as appropriate, institutional constituency  
33 groups, clientele of the institution and the general public  
34 in the development of all segments of the institutional  
35 master plan.

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

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

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

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

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

66 (g) The governing boards shall ensure that the sequence  
67 and availability of academic programs and courses offered  
68 by the institutions under their jurisdiction is such that  
69 students have the maximum opportunity to complete  
70 programs in the time frame normally associated with

71 program completion. Each governing board is responsible  
72 to see that the needs of nontraditional college-age students  
73 are appropriately addressed and, to the extent it is possi-  
74 ble for the individual governing board to control, to assure  
75 core course work completed at institutions under its  
76 jurisdiction is transferable to any other state institution of  
77 higher education for credit with the grade earned;

78 (h) Subject to the provisions of article one-b of this  
79 chapter, the appropriate governing board has the exclusive  
80 authority to approve the teacher education programs  
81 offered in the institution under its control. In order to  
82 permit graduates of teacher education programs to receive  
83 a degree from a nationally accredited program and in  
84 order to prevent expensive duplication of program accred-  
85 itation, the Commission may select and utilize one nation-  
86 ally recognized teacher education program accreditation  
87 standard as the appropriate standard for program evalua-  
88 tion;

89 (i) Utilize faculty, students and classified employees in  
90 institution a level planning and decisionmaking when  
91 those groups are affected;

92 (j) Subject to the provisions of federal law and pursuant  
93 to the provisions of article nine of this chapter and to rules  
94 adopted by the Commission and the Council, administer a  
95 system for the management of personnel matters, includ-  
96 ing, but not limited to, personnel classification, compensa-  
97 tion and discipline for employees at the institutions under  
98 their jurisdiction;

99 (k) Administer a system for hearing employee grievances  
100 and appeals. Notwithstanding any other provision of this  
101 code to the contrary, the procedure established in article  
102 six-a, chapter twenty-nine of this code is the exclusive  
103 mechanism for hearing prospective employee grievances  
104 and appeals. In construing the application of said article  
105 to grievances of higher education employees, the following  
106 apply:



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

112 (2) The State Division of Personnel may not be a party to  
113 nor have any authority regarding a grievance initiated by  
114 a higher education employee; and

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

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

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

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

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

133 (p) Submit to the Commission or Council, as appropriate,  
134 no later than the first day of November of each year an  
135 annual report of the performance of the institution under  
136 its jurisdiction during the previous fiscal year as compared  
137 to stated goals in its master plan and institutional com-  
138 pact;

139 (q) Enter into contracts or consortium agreements with  
140 the public schools, private schools or private industry to

141 provide technical, vocational, college preparatory, reme-  
142 dial and customized training courses at locations either on  
143 campuses of the public institution of higher education or  
144 at off-campus locations in the institution's responsibility  
145 district. To accomplish this goal, the boards are permitted  
146 to share resources among the various groups in the com-  
147 munity;

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

151 (s) Delegate, with prescribed standards and limitations,  
152 the part of its power and control over the business affairs  
153 of the institution to the president in any case where it  
154 considers the delegation necessary and prudent in order to  
155 enable the institution to function in a proper and expedi-  
156 tious manner and to meet the requirements of its institu-  
157 tional compact. If a governing board elects to delegate any  
158 of its power and control under the provisions of this  
159 subsection, it shall enter such delegation in the minutes of  
160 the meeting when the decision was made and shall notify  
161 the Commission or Council, as appropriate. Any such  
162 delegation of power and control may be rescinded by the  
163 appropriate governing board, the Commission or Council,  
164 as appropriate, at any time, in whole or in part, except  
165 that the Commission may not revoke delegations of  
166 authority made by the governing boards of Marshall  
167 University or West Virginia University as they relate to the  
168 state institutions of higher education known as Marshall  
169 University and West Virginia University;

170 (t) Unless changed by the Commission or the Council, as  
171 appropriate, the governing boards shall continue to abide  
172 by existing rules setting forth standards for acceptance of  
173 advanced placement credit for their respective institutions.  
174 Individual departments at institutions of higher education  
175 may, upon approval of the institutional faculty senate,  
176 require higher scores on the advanced placement test than  
177 scores designated by the appropriate governing board

178 when the credit is to be used toward meeting a require-  
179 ment of the core curriculum for a major in that depart-  
180 ment;

181 (u) Each governing board, or its designee, shall consult,  
182 cooperate and work with the State Treasurer and the State  
183 Auditor to update as necessary and maintain an efficient  
184 and cost-effective system for the financial management  
185 and expenditure of special revenue and appropriated state  
186 funds at the institutions under its jurisdiction that ensures  
187 that properly submitted requests for payment be paid on  
188 or before due date but, in any event, within fifteen days of  
189 receipt in the State Auditor's office;

190 (v) The governing boards in consultation with the  
191 appropriate chancellor and the Secretary of the Depart-  
192 ment of Administration shall develop, update as necessary  
193 and maintain a plan to administer a consistent method of  
194 conducting personnel transactions, including, but not  
195 limited to, hiring, dismissal, promotions and transfers at  
196 the institutions under their jurisdiction. Each such  
197 personnel transaction shall be accompanied by the appro-  
198 priate standardized system or forms which will be submit-  
199 ted to the respective governing board and the Department  
200 of Finance and Administration;

201 (w) *Transfer of funds.* -

202 (1) Notwithstanding any other provision of this code to  
203 the contrary, the governing boards may transfer funds  
204 from any account specifically appropriated for their use to  
205 any corresponding line item in a general revenue account  
206 at any agency or institution under their jurisdiction as  
207 long as such transferred funds are used for the purposes  
208 appropriated.

209 (2) The governing boards may transfer funds from  
210 appropriated special revenue accounts for capital im-  
211 provements under their jurisdiction to special revenue  
212 accounts at agencies or institutions under their jurisdic-

213 tion as long as such transferred funds are used for the  
214 purposes appropriated.

215 (x) Notwithstanding any other provision of this code to  
216 the contrary, the governing boards may acquire legal  
217 services as are considered necessary, including representa-  
218 tion of the governing boards, their institutions, employees  
219 and officers before any court or administrative body. The  
220 counsel may be employed either on a salaried basis or on  
221 a reasonable fee basis. In addition, the governing boards  
222 may, but are not required to, call upon the Attorney  
223 General for legal assistance and representation as pro-  
224 vided by law;

225 (y) Each governing board which has under its jurisdic-  
226 tion an administratively linked community and technical  
227 college or a regional campus offering community and  
228 technical college education programs shall create within  
229 the administrative structure of its governing board a  
230 subcommittee for community and technical college  
231 education. The subcommittee shall have at least four  
232 members, one of whom is the chairperson of the board of  
233 advisors of the community and technical college or, in the  
234 case of the Governing Board of West Virginia University,  
235 both the member representing the community and techni-  
236 cal college and the member representing the regional  
237 campus; and

238 (z) A governing board may contract and pay for disabil-  
239 ity insurance for a class or classes of employees at a state  
240 institution of higher education under its jurisdiction.

**§18B-2A-7. Additional powers and duties of governing boards.**

1 (a) A state institution of higher education is granted the  
2 powers, duties and authorities previously granted to the  
3 state institutions of higher education known as Marshall  
4 University and West Virginia University, subject to the  
5 following:

6 (1) The institutional operating budgets of all institutions  
7 to which this section applies have achieved a level of  
8 funding comparable with, but not less than ninety percent  
9 of, their respective peers, as established pursuant to  
10 section three, article one-a of this chapter;

11 (2) The Commission approves granting the powers, duties  
12 and authorities to that institution; and

13 (3) The powers, duties and authorities may not be  
14 granted to any institution prior to the first day of July, two  
15 thousand twelve.

16 (b) The powers, duties and authorities granted pursuant  
17 to this section are those provided in:

18 (1) Section four-a, article six, chapter five of this code;

19 (2) Section two, article one, chapter five-g of this code;

20 (3) Section twelve-b, article one, chapter twelve of this  
21 code;

22 (4) Sections five, six, seven and eight, article three,  
23 chapter twelve of this code;

24 (5) Sections three and six, article one of this chapter;

25 (6) Section two, article one-a of this chapter;

26 (7) Section four, article one-b of this chapter;

27 (8) Sections three and four of this article;

28 (9) Sections two and three, article three of this chapter;

29 (10) Sections five, five-a, six and seven, article four of  
30 this chapter;

31 (11) Sections three, four, seven and nine, article five of  
32 this chapter; and

33 (12) Sections one and six-a, article ten of this chapter.

34 (c) This section does not apply to any community and  
35 technical college.

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

**§18B-2B-9. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.**

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

4 (1) "Proprietary schools that award specialized associate  
5 degrees" means institutions of higher education; and

6 (2) "Specialized associate degrees" means degrees  
7 awarded by such institutions pursuant to a program of not  
8 fewer than two academic years.

9 (b) Nothing in this section qualifies proprietary schools  
10 for additional state moneys not otherwise qualified under  
11 other provisions of this code.

12 (c) It is unlawful for any person representing a corre-  
13 spondence, business, occupational or trade school inside or  
14 outside this state, as these are defined by the Council by  
15 rule promulgated in accordance with article three-a,  
16 chapter twenty-nine a of this code, to solicit, sell or offer  
17 to sell courses of instruction to any resident of this state  
18 for consideration or remuneration unless the school first  
19 applies for a permit, or obtains a permit, from the Council  
20 in the manner and on the terms herein prescribed, except  
21 this section does not apply to private organizations which  
22 offer only tax return preparation courses. The rule  
23 previously promulgated by the State College System Board  
24 of Directors and transferred to the Council by section six,  
25 article two-b, chapter eighteen-b of this code remains in  
26 effect until rescinded or amended by the Council.

27 (1) All private training or educational institutions,  
28 schools or academies or other organizations shall apply for  
29 a permit from the Council on forms provided by the  
30 Council.

31 (2) Each initial application shall be accompanied by a  
32 nonrefundable fee of two thousand dollars. The Council  
33 also may assess an additional fee based on any additional  
34 expense required to evaluate the application.

35 (3) The Council shall make a determination on the initial  
36 permit application within ninety days after receipt of the  
37 application and fee.

38 (4) An applicant for an initial permit shall show proof at  
39 the time of filing an application that adequate facilities  
40 are available and ready for occupancy and that all instruc-  
41 tional equipment, books and supplies and personnel are in  
42 place and ready for operation. A representative of the  
43 Council shall make an on-site visit to the facilities of all  
44 new applicants to confirm their readiness for operation  
45 prior to issuance of the initial permit if the facilities are  
46 located in West Virginia.

47 (5) A school is considered to be established under the  
48 provisions of this article on the date it first begins to  
49 operate lawfully. An established school is not required to  
50 reapply for a permit as a result of changes in governance;  
51 administration; ownership; or form of operation.

52 (6) After the first permit year, an annual fee of five  
53 hundred dollars is imposed on each school for each campus  
54 it operates in this state.

55 (d) Each application shall be accompanied by a surety  
56 bond in the penal sum of thirty-five thousand dollars for  
57 any school which has its physical facilities located in this  
58 state and which has operated in this state for at least ten  
59 years:

60 (1) If the school has changed ownership within the last  
61 ten years by transfer of ownership control to a person who  
62 is a spouse, parent, sibling, child or grandchild of the  
63 previous owner, the surety bond shall continue in the penal  
64 sum of thirty-five thousand dollars.

65 (2) Any school which has operated in West Virginia for  
66 fewer than ten years, excluding those schools which have  
67 changed ownership within the last ten years as provided in  
68 subdivision (1) of this section, and any school located in  
69 another state which applies for a permit hereunder, shall  
70 provide a surety bond of fifty thousand dollars.

71 (3) Any school may be required to increase its bond to  
72 one hundred fifty thousand dollars if either of the follow-  
73 ing conditions apply:

74 (A) The school's accreditation is terminated for cause; or

75 (B) The school's institutional eligibility under the Higher  
76 Education Act of 1965, as amended, has been terminated  
77 for cause. Expiration, nonrenewal or voluntary relin-  
78 quishment of accreditation or institutional eligibility  
79 under the Higher Education Act, or failure to meet the  
80 requirements of one or more programs under the Act, are  
81 not considered to be a termination for cause.

82 (4) Any school may be required to increase its bond to an  
83 amount not to exceed four hundred thousand dollars if, in  
84 accordance with the standards of the American Institute  
85 of Certified Public Accountants, the school's audited  
86 financial statements are qualified because the school's  
87 continued financial viability as an ongoing concern is in  
88 doubt and the Council determines an increased bond is  
89 reasonably necessary to protect the financial obligations  
90 legally due the students then enrolled at the institution.

91 (A) A school may be required to maintain the increased  
92 bonding requirements described above until all students  
93 attending classes at the date of termination either gradu-  
94 ate or withdraw.



95 (B) The bond may be continuous and shall be condi-  
96 tioned to provide indemnification to any student suffering  
97 loss as a result of any fraud or misrepresentation used in  
98 procuring the student's enrollment, failure of the school to  
99 meet contractual obligations, or failure of the school to  
100 meet the requirements of this section.

101 (C) The bond shall be given by the school itself as a  
102 blanket bond covering all of its representatives.

103 (D) The surety on a bond may cancel the same upon  
104 giving thirty days' notice in writing to the principal on the  
105 bond and to the state Council and thereafter shall be  
106 relieved of liability for any breach of condition occurring  
107 after the effective date of the cancellation.

108 (e) A permit shall be valid for one year corresponding to  
109 the effective date of the bond and may be renewed upon  
110 application, accompanied by the required fee and the  
111 surety bond as herein required. All fees collected for the  
112 issuance or renewal of a permit shall be deposited in the  
113 State Treasury to the credit of the Council.

114 (f) The Council may refuse a permit to any school if the  
115 Council finds that the school engages in practices which  
116 are inconsistent with this section or with rules issued  
117 pursuant thereto.

118 (g) A permit issued hereunder may be suspended or  
119 revoked by the Council for fraud or misrepresentation in  
120 soliciting or enrolling students, for failure of the school to  
121 fulfill its contract with one or more students who are  
122 residents of West Virginia or for violation of or failure to  
123 comply with any provision of this section or with any  
124 regulation of the Council pertinent thereto.

125 (1) Before taking any action to suspend or revoke a  
126 school's permit, the Council shall give the school fifteen  
127 days' notice and convene a hearing, if a hearing is re-  
128 quested by the school.

129 (2) Prior to the Council taking any adverse action,  
130 including refusal, suspension or revocation of a permit, the  
131 Council shall give the school reasonable opportunity to  
132 take corrective measures.

133 (3) Any refusal, suspension or revocation of a permit, or  
134 any other adverse action against a school, shall comply  
135 with all constitutional provisions, including due process,  
136 relating to the protection of property rights.

137 (h) All correspondence, business, occupational or trade  
138 schools which have been issued a permit shall make  
139 annual reports to the Council on forms furnished by the  
140 Council and shall provide such appropriate information as  
141 the Council reasonably may require. All correspondence,  
142 business, occupational or trade schools which have been  
143 issued a permit shall furnish to the Council a list of its  
144 official representatives. Each school shall be issued a  
145 certificate of identification by the Council for each of its  
146 official representatives.

147 (i) The issuance of a permit pursuant to this section does  
148 not constitute approval or accreditation of any course or  
149 school. No school, nor any representative of a school, may  
150 make any representation stating, asserting or implying  
151 that a permit issued pursuant to this section constitutes  
152 approval or accreditation by the State of West Virginia,  
153 Council or any other department or agency of the state.

154 (j) The Council is hereby authorized to adopt rules and  
155 conduct on-site reviews to evaluate academic standards  
156 maintained by schools for the awarding of certificates,  
157 diplomas, associate degrees and specialized associate  
158 degrees.

159 (1) These standards may include curriculum, personnel,  
160 facilities, materials and equipment.

161 (2) For accredited correspondence, business, occupa-  
162 tional and trade schools under permit on the first day of  
163 July, one thousand nine hundred seventy-nine, which have

164 their physical facilities located in this state and which are  
165 accredited by the appropriate nationally recognized  
166 accrediting agency or association approved by the United  
167 States Department of Education, the accrediting agency's  
168 standards, procedures and criteria are accepted as meeting  
169 applicable laws, standards and rules of the Council.

170 (3) Institutions which are institutionally accredited by  
171 accrediting agencies recognized by the United States  
172 Department of Education to establish academic standards  
173 for post-secondary education may offer post-secondary  
174 educational programs leading to certificates, diplomas and  
175 associate degrees and may award certificates, diplomas  
176 and associate degrees to graduates who successfully  
177 complete required programs in accordance with the  
178 academic standards required by such accrediting agency.

179 (4) If a review undertaken by the Council indicates there  
180 may be deficiencies in the academic standards the institu-  
181 tion maintains in its educational programs and if such  
182 deficiencies are of such a material nature that they  
183 jeopardize continued accreditation, the Council shall  
184 notify the institution. If the Council and the institution  
185 are unable to agree on the deficiencies or the steps neces-  
186 sary to correct the deficiencies, the Council shall consult  
187 with the institution's accrediting agency regarding an  
188 academically appropriate resolution which may include a  
189 joint on-site review by the Council and the accrediting  
190 agency.

191 (5) The Council also may review the academic standards  
192 of unaccredited institutions and may require such institu-  
193 tions to maintain recognized academic standards that are  
194 reasonably appropriate to the nature of the institution and  
195 the training offered.

196 (k) The Council may authorize an investigation of  
197 written student complaints alleging a violation of this  
198 section, Council rules or accreditation standards and may

199 take appropriate action based on the findings of such an  
200 investigation.

201 (l) All evaluations or investigations of correspondence,  
202 business, occupational and trade schools and actions  
203 resulting from such evaluations or investigations shall be  
204 made in accordance with rules promulgated by the Council  
205 pursuant to article three-a, chapter twenty-nine-a of this  
206 code.

207 (m) In regard to private, proprietary educational institu-  
208 tions operating under this section of the code, accredited  
209 by a national or regional accrediting agency or association  
210 recognized by the United States Department of Education  
211 and which provide training at a campus located in this  
212 state:

213 (1) Any rule or standard which is authorized by this or  
214 any section of the code or other law and which is now in  
215 effect or promulgated hereafter by the Council (or other  
216 agency with jurisdiction) shall be clearly, specifically and  
217 expressly authorized by narrowly construed enabling law  
218 and shall be unenforceable and without legal effect unless  
219 authorized by an Act of the Legislature under the provi-  
220 sions of article three-a, chapter twenty-nine-a of this code.

221 (2) Notwithstanding any other provision of this section  
222 or other law to the contrary, the institution's accrediting  
223 agency standards, procedures and criteria shall be ac-  
224 cepted as the standards and rules of the Council (or other  
225 agency with jurisdiction) and as meeting other law or legal  
226 requirements relating to the operation of proprietary  
227 institutions which such Council or other agency has the  
228 legal authority to enforce under any section of the code or  
229 other law. Nothing in this section denies students the use  
230 of remedies that would otherwise be available under state  
231 or federal consumer laws or federal law relating to federal  
232 college financial assistance programs.

233 (3) Accredited institutions operating hereunder are  
234 hereby recognized as postsecondary. Academic progress  
235 is measured and reported in credit hours and all re-  
236 ports/documents are filed on a credit-hour basis unless the  
237 institution notifies the Council that it utilizes clock hours  
238 as its unit of measurement.

239 (n) A representative of any school who solicits, sells or  
240 offers to sell courses of instruction to any resident of this  
241 state for consideration or remuneration unless the school  
242 first applies for a permit, or obtains a permit, is guilty of  
243 a misdemeanor and, upon conviction thereof, shall be fined  
244 not more than two hundred dollars per day per violation,  
245 or imprisoned in jail not more than sixty days, or both  
246 fined and imprisoned. No correspondence, business,  
247 occupational or trade school shall maintain an action in  
248 any court of this state to recover for services rendered  
249 pursuant to a contract solicited by the school if the school  
250 did not hold a valid permit at the time the contract was  
251 signed by any of the parties thereto. The Attorney General  
252 or any county prosecuting attorney, at the request of the  
253 Council or upon his or her own motion, may bring any  
254 appropriate action or proceeding in any court of compe-  
255 tent jurisdiction for the enforcement of the provisions of  
256 this section relating to permits, bonds and sureties.

257 (o) In regard to institutions operating under this section,  
258 all substantive standards and procedural requirements  
259 established by the Council (or the West Virginia state  
260 program review entity or other agency with jurisdiction  
261 over institutions operating hereunder) shall meet all  
262 substantive and procedural standards of due process  
263 relating to the protection of an individual citizen's prop-  
264 erty rights as provided under the United States Constitu-  
265 tion and shall follow the substantive standards and  
266 procedural requirements established by or under authority  
267 of this section.

**ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH, DOC-  
TORAL-GRANTING PUBLIC UNIVERSITIES.**

**§18B-3-1. Legislative findings, purpose; intent; definition.**

1 (a) The Legislature finds that an effective and efficient  
2 system of doctoral-level education is vital to providing for  
3 the economic well-being of the citizens of West Virginia  
4 and for accomplishing established state goals and objec-  
5 tives. As the only research and doctoral-granting public  
6 universities in the state, Marshall University and West  
7 Virginia University are major assets to the citizens of West  
8 Virginia and must be an integral part of any plan to  
9 strengthen and expand the economy.

10 (b) The Legislature further finds that these two institu-  
11 tions must compete in both a national and global environ-  
12 ment that is rapidly changing, while they continue to  
13 provide high quality education that is both affordable and  
14 accessible and remain accountable to the people of West  
15 Virginia for the most efficient and effective use of scarce  
16 resources.

17 (c) The Legislature further finds that Marshall Univer-  
18 sity and West Virginia University, under the direction of  
19 their respective governing boards, have sufficient staff and  
20 internal expertise to manage operational governance of  
21 their institutions in an efficient and accountable manner  
22 and can best fulfill their public missions when their  
23 governing boards are given flexibility and autonomy  
24 sufficient to meet state goals established in this article and  
25 in section one-a, article one of this chapter.

26 (d) Therefore, the purposes of this article include, but are  
27 not limited to, the following:

28 (1) Enhancing the competitive position of Marshall  
29 University and West Virginia University in the current  
30 environment for research and development;

31 (2) Providing the governing boards of these institutions  
32 with operational flexibility and autonomy, including tools  
33 to promote economic development in West Virginia;

34 (3) Encouraging the development of research expertise in  
35 areas directly beneficial to the state; and

36 (4) Focusing the attention and resources of the governing  
37 boards on state goals and priorities to enhance the compet-  
38 itive position of the state and the economic, social and  
39 cultural well-being of its citizens.

40 (e) The following terms wherever used or referred to in  
41 this chapter have the following meaning, unless a different  
42 meaning plainly appears from the context:

43 (1) "State institution of higher education known as  
44 Marshall University" means the doctoral-granting re-  
45 search institution and does not include Marshall Commu-  
46 nity and Technical College; and

47 (2) "State institution of higher education known as West  
48 Virginia University" means the doctoral-granting research  
49 institution and does not include any of the following:

50 (A) The regional campus known as West Virginia Univer-  
51 sity Institute of Technology;

52 (B) The administratively linked institution known as the  
53 Community and Technical College at West Virginia  
54 University Institute of Technology; and

55 (C) The regional campus known as West Virginia Univer-  
56 sity at Parkersburg.

57 (f) The governing boards of Marshall University and  
58 West Virginia University each have the power and the  
59 obligation to perform functions, tasks and duties as  
60 prescribed by law and to exercise their authority and carry  
61 out their responsibilities in a manner that is consistent  
62 with and not in conflict with the powers and duties  
63 assigned by law to the West Virginia Council for Commu-  
64 nity and Technical College Education and the Higher  
65 Education Policy Commission.

66 (g) While the governing boards of Marshall University  
 67 and West Virginia University, respectively, may choose to  
 68 delegate powers and duties to the presidents of the state  
 69 institutions of higher education known as Marshall  
 70 University and West Virginia University pursuant to  
 71 subsection (s), section four, article two-a of this chapter,  
 72 ultimately, it is they who are accountable to the Legisla-  
 73 ture, the Governor and the citizens of West Virginia for  
 74 meeting the established state goals set forth in this article  
 75 and section one-a, article one of this chapter. Therefore,  
 76 it is the intent of the Legislature that grants of operational  
 77 flexibility and autonomy be made directly to the governing  
 78 boards and are not grants of operational flexibility and  
 79 autonomy to the presidents of these institutions.

**§18B-3-2. Computer and computer equipment donation program.**

1 Notwithstanding any other provision of this code to the  
 2 contrary, the governing boards are authorized to create a  
 3 program to donate surplus computers and computer-  
 4 related equipment to education facilities, nonprofit  
 5 organizations, juvenile detention centers, municipal and  
 6 county public safety offices and other public, charitable or  
 7 educational enterprises or organizations in this state.

8 (a) Only equipment which otherwise would be trans-  
 9 ferred to the Surplus Property Unit of the Purchasing  
 10 Division may be donated;

11 (b) The governing boards shall keep records and ac-  
 12 counts that clearly identify the equipment donated, the age  
 13 of the equipment, the reasons for declaring it obsolete and  
 14 the name of the education facility, nonprofit organization,  
 15 juvenile detention center, municipal or county public  
 16 safety office or other public, charitable or educational  
 17 enterprise or organization to which the equipment was  
 18 donated;

19 (c) Each governing board shall promulgate a rule in  
 20 accordance with the provisions of section six, article one



21 of this chapter to implement the donation program. The  
22 rules shall specify the procedures to be used for record  
23 keeping and shall provide for fair and impartial selection  
24 of equipment recipients.

**§18B-3-3. Relationship of governing boards to the Commission  
and the Council.**

1 (a) *Relationship between the Commission and the*  
2 *governing boards.* -

3 (1) The Commission functions as a state-level coordinat-  
4 ing board exercising its powers and duties in relation to  
5 the governing boards of Marshall University and West  
6 Virginia University only as specifically prescribed by law;

7 (2) The primary responsibility of the Commission is to  
8 work collaboratively with the governing boards to re-  
9 search, develop and propose policy that will achieve the  
10 established goals and objectives set forth in this chapter  
11 and chapter eighteen-c of this code; and

12 (3) The Commission has specific responsibilities which  
13 include, but are not limited to, the following:

14 (A) Advocating for public higher education at the state  
15 level; and

16 (B) Collecting and analyzing data, researching, develop-  
17 ing recommendations, and advising the Legislature and  
18 the Governor on broad policy initiatives, use of incentive  
19 funding, national and regional trends in higher education  
20 and issues of resource allocation involving multiple  
21 governing boards.

22 (b) *Relationship between the Council and the governing*  
23 *boards.* -

24 (1) The Council maintains all powers and duties assigned  
25 to it by law or policy relating to the administratively  
26 linked institution known as Marshall Community and  
27 Technical College, the administratively linked institution

28 known as the Community and Technical College at West  
29 Virginia University Institute of Technology and the  
30 regional campus known as West Virginia University at  
31 Parkersburg;

32 (2) In addition to recognizing the authority assigned by  
33 law to the Council, it is the responsibility of the governing  
34 boards of Marshall University and West Virginia Univer-  
35 sity to exercise their authority and carry out their respon-  
36 sibilities in a manner that is consistent with and comple-  
37 mentary to the powers and duties assigned by law or  
38 policy to the community and technical colleges or to the  
39 Council;

40 (3) It is further the responsibility of the governing  
41 boards to abide by the rules duly promulgated by the  
42 Council relating to the community and technical colleges,  
43 to strengthen the community and technical college mission  
44 of these institutions, to aid them in meeting the essential  
45 conditions set forth in section three, article three-c of this  
46 chapter and to promote them to students, parents and the  
47 community as independently accredited institutions in  
48 their own right.

49 (c) The governing boards shall work collaboratively with  
50 the Commission, the Council and their staff to provide any  
51 and all information requested by the Commission or the  
52 Council in an appropriate format and in a timely manner.

**§18B-3-4. Duty of governing boards to address state priorities.**

1 (a) The expertise of faculty and graduate students at the  
2 state institutions of higher education known as Marshall  
3 University and West Virginia University is important to  
4 every citizen of this state. It is the responsibility of the  
5 governing boards to channel this expertise into research  
6 and analysis that will yield measurable benefits to the  
7 citizens of West Virginia. Therefore, in addition to the  
8 goals for post-secondary education established in section  
9 one-a, article one of this chapter, and goals established

10 elsewhere in this code, it is the responsibility of the  
11 governing boards in collaboration to concentrate attention  
12 and resources on certain specific state priorities that have  
13 a direct, positive impact on the economic, social and  
14 cultural wellbeing of the people of West Virginia. These  
15 priorities include, but are not limited to, the following:

16 (1) Developing Regional Brownfield Assistance Centers  
17 pursuant to section seven, article eleven of this chapter;

18 (2) Performing professional development-related  
19 research and coordinating the delivery of professional  
20 development to educators in the public schools of the state  
21 pursuant to the provisions of article two, chapter eighteen  
22 of this code;

23 (3) Building subject matter expertise in public school  
24 finance, including mastery of the theories and concepts  
25 used in developing formulas to provide state-level finan-  
26 cial support to public education; and

27 (4) Researching and proposing cost-efficient methods to  
28 the Legislature for governing boards other than Marshall  
29 University and West Virginia University to dispose of  
30 obsolete computers and computer-related equipment.

31 (b) The Legislature may, but is not required to, make  
32 additional appropriations for the benefit of the state  
33 institutions of higher education known as Marshall  
34 University and West Virginia University to assist them in  
35 fulfilling the purposes set forth in subsection (a) of this  
36 section.

37 (c) In addition to the priorities established in subsection  
38 (a) of this section, each governing board separately shall  
39 focus resources and attention on improving their gradua-  
40 tion rates for full-time undergraduate students as a  
41 specific institutional priority. The graduation rate is  
42 measured as a percentage of the undergraduate students  
43 who obtain a degree within six years of the date of enroll-

44 ment as full-time freshmen. The governing boards shall  
45 develop and implement plans to reach the following goals:

46 (1) Marshall University shall attain a graduation rate for  
47 full-time undergraduate students of forty percent by the  
48 first day of July, two thousand eight, and shall attain a  
49 graduation rate for full-time undergraduate students of  
50 forty-five percent by the first day of July, two thousand  
51 ten.

52 (2) West Virginia University shall attain a graduation  
53 rate for full-time undergraduate students of sixty percent  
54 by the first day of July, two thousand eight, and shall  
55 attain a graduation rate for full-time undergraduate  
56 students of sixty-three percent by the first day of July, two  
57 thousand ten.

58 (3) The Commission shall monitor and report by the first  
59 day of December, two thousand five, and annually thereaf-  
60 ter, to the Legislative Oversight Commission on Education  
61 Accountability on the progress of the governing boards  
62 toward meeting the goals set forth in subdivisions (1) and  
63 (2) of this subsection.

**ARTICLE 4. GENERAL ADMINISTRATION.**

**§18B-4-5. Campus police officers; appointment; qualifications;  
authority; compensation and removal.**

1 (a) The governing boards may appoint bona fide resi-  
2 dents of this state to serve as campus police officers upon  
3 any premises owned or leased by the State of West Vir-  
4 ginia and under the jurisdiction of the governing boards,  
5 subject to the conditions and restrictions established in  
6 this section.

7 (1) A person who previously was qualified for employ-  
8 ment as a law-enforcement officer for a state agency or  
9 political subdivision of the state is considered certified for  
10 appointment as a campus police officer at the state  
11 institutions of higher education under the jurisdiction of

12 the governing boards of Marshall University and West  
13 Virginia University.

14 (2) Before performing duties as a campus police officer  
15 in any county, a person shall qualify as is required of  
16 county police officers by:

17 (A) Taking and filing an oath of office as required by  
18 article one, chapter six of this code; and

19 (B) Posting an official bond as required by article two,  
20 chapter six of this code.

21 (b) A campus police officer may carry a gun and any  
22 other dangerous weapon while on duty if the officer fulfills  
23 the certification requirement for law-enforcement officers  
24 under section five, article twenty-nine, chapter thirty of  
25 this code or meets the requirements of subsection (a) of  
26 this section.

27 (c) It is the duty of a campus police officer to preserve  
28 law and order:

29 (1) On the premises under the jurisdiction of the govern-  
30 ing board; and

31 (2) On any street, road or thoroughfare, except controlled  
32 access and open country highways, immediately adjacent  
33 to or passing through premises, to which the officer is  
34 assigned by the president of the state institution of higher  
35 education.

36 (A) For the purpose of this subdivision, the campus  
37 police officer is a law-enforcement officer pursuant to the  
38 provisions of section one, article twenty-nine, chapter  
39 thirty of this code.

40 (B) The officer has and may exercise all the powers and  
41 authority of a law-enforcement officer as to offenses  
42 committed within the area assigned;

43 (C) The officer is subject to all the requirements and  
44 responsibilities of a law-enforcement officer;

45 (D) Authority assigned pursuant to this subdivision does  
46 not supersede in any way the authority or duty of other  
47 law-enforcement officers to preserve law and order on  
48 such premises.

49 (E) Campus police officers may assist a local law-  
50 enforcement agency on public highways. The assistance  
51 may be provided to control traffic in and around premises  
52 owned by the state when:

53 (i) Traffic is generated as a result of athletic or other  
54 activities conducted or sponsored by a state institution of  
55 higher education; and

56 (ii) The assistance has been requested by the local law-  
57 enforcement agency.

58 (F) Campus police officers may assist a local law-en-  
59 forcement agency in any location under the agency's  
60 jurisdiction at the request of the agency.

61 (d) The salary of a campus police officer is paid by the  
62 appropriate governing board. Each state institution may  
63 furnish each campus police officer with a firearm and an  
64 official uniform to be worn while on duty. The institution  
65 shall furnish and require each officer while on duty to  
66 wear a shield with an appropriate inscription and to carry  
67 credentials certifying to the person's identity and author-  
68 ity as a campus police officer.

69 (e) A governing board may at its pleasure revoke the  
70 authority of any campus police officer and such officers  
71 serve at the will and pleasure of the governing board. The  
72 president of the state institution shall report the termina-  
73 tion of employment of a campus police officer by filing a  
74 notice to that effect in the office of the clerk of each  
75 county in which the campus police officer's oath of office  
76 was filed.

**§18B-4-5a. Crimes committed on campus of institutions of higher education.**

1 (a) The president or a designee of each state institution  
2 of higher education shall on a regular and timely basis  
3 provide information to the public concerning alleged  
4 crimes occurring on the institution's property which have  
5 been reported to a campus police officer or any other  
6 officer of the institution.

7 (1) A crime is considered reported when:

8 (A) A campus police officer or other officer of the  
9 institution determines that the report is credible;

10 (B) The report is submitted in writing and attested to by  
11 the victim on forms at the institution for such purpose; or

12 (C) The institution is notified by a law-enforcement  
13 agency of the reporting of a crime alleged to have occurred  
14 on the institution's property.

15 (2) Such reports are referred within twenty-four hours to  
16 the appropriate law-enforcement agencies, as defined in  
17 section one, article twenty-nine, chapter thirty of this  
18 code, for further investigation.

19 (b) For the state institutions of higher education under  
20 the jurisdiction of the Governing Board of Marshall  
21 University and for the state institution of higher education  
22 known as West Virginia University only, the campus police  
23 shall investigate a crime within their respective jurisdic-  
24 tions for up to thirty days if the county prosecuting  
25 attorney does not reassign the case to another agency  
26 sooner.

27 (c) The information required to be made available to the  
28 public regarding the crime report shall be available within  
29 ten days of the report. The information shall include the  
30 nature of the criminal offense, the date of the offense, the  
31 general location of the offense (such as a designation of a

32 specific building or area of the campus) and the time of  
33 day when the offense occurred.

34 (1) This subsection does not require the release of any  
35 information which may disclose the identity of the victim.

36 (2) The institution shall withhold the information  
37 required to be made available to the public for a longer  
38 period upon certification of investigative need that the  
39 information be withheld from the public.

40 (A) The certification shall be filed by an officer of one of  
41 the investigating law-enforcement agencies with the  
42 president of the institution or the designee to whom the  
43 duties required by this section have been delegated.

44 (B) The required information may not be withheld after  
45 an arrest has been made in connection with the crime  
46 report.

47 (d) For purposes of this section, "crime" is defined as  
48 those offenses required to be reported under the federal  
49 Crime Awareness and Campus Security Act of 1990, as  
50 amended. "Crime" includes murder, rape, robbery,  
51 aggravated assault, burglary, motor vehicle theft and  
52 arrests for liquor, drug or weapons laws violations.

53 (e) The Council and Commission shall provide crime  
54 reporting forms to institutions under their respective  
55 jurisdictions and promulgate a rule pursuant to the  
56 provisions of article three-a, chapter twenty-nine-a of this  
57 code as necessary to implement this section.

**§18B-4-6. Acquisition, operation and regulation of parking  
areas and facilities at state institutions of higher  
education; regulation of parking, speed and flow  
of traffic on campus roads and driveways; civil  
and criminal penalties; disposition of revenue.**

1 (a) The governing boards are hereby authorized to  
2 construct, maintain and operate automobile parking



3 facilities or areas upon any premises owned or leased at  
4 any state institution of higher education under their  
5 jurisdiction for use by students, faculty, staff and visitors.  
6 The governing boards may charge fees for use of the  
7 parking facilities or areas under their control. All moneys  
8 collected for the use of the parking facilities or areas shall  
9 be paid to the credit of the state institution of higher  
10 education at which the fees were charged into a special  
11 fund in the State Treasury. The moneys in the fund are  
12 used first to pay the cost of maintaining and operating the  
13 parking facilities or areas.

14 Any excess not needed for this purpose may be used for  
15 the acquisition of property by lease or purchase and the  
16 construction thereon of additional parking facilities or  
17 areas. Any money in the fund not needed immediately for  
18 the acquisition, construction, maintenance or operation of  
19 the parking facilities or areas may be temporarily invested  
20 by the governing boards with the West Virginia Investment  
21 Management Board to the credit of the institution by  
22 which the fees were charged.

23 (b) Notwithstanding any other motor vehicle or traffic  
24 law or regulation to the contrary, a governing board may  
25 regulate and control at any state institution under its  
26 jurisdiction the speed, flow and parking of vehicles on  
27 campus roads, driveways and parking facilities or areas.

28 (1) Rules for this purpose shall be promulgated by the  
29 governing boards in the manner prescribed in section six,  
30 article one of this chapter; and

31 (2) When so promulgated, the rules have the force and  
32 effect of law.

33 (3) The governing board shall post in a conspicuous  
34 location in each parking facility or area, a summary of the  
35 rules governing the use of the facility or area including,  
36 but not limited to, the availability of temporary parking

37 permits and where these permits may be obtained and the  
38 penalties which may be imposed for violations of the rules.

39 (4) The governing board shall post in a conspicuous  
40 location along each campus road and driveway notice  
41 signs pertaining to the speed of vehicles, spaces available  
42 for parking, directional flow of traffic and penalties which  
43 may be imposed for violations of the rules.

44 (c) Any person parking or operating a vehicle in violation  
45 of the rules shall be issued a citation:

46 (1) Describing the offense charged;

47 (2) Ordering an appearance:

48 (A) Within ten days, excluding Saturdays, Sundays and  
49 holidays observed by the state institution, before a desig-  
50 nated official of the institution;

51 (B) Before a magistrate located in the county if the  
52 person cited fails to appear within the ten days; or

53 (C) Before the judge of the municipal court, if the state  
54 institution is located within a municipality having such an  
55 official, and the person cited fails to appear within the ten  
56 days.

57 (d) The designated official of the state institution has  
58 exclusive jurisdiction of the offense during the ten-day  
59 period until the citations are forwarded to a magistrate.  
60 For the state institutions of higher education under the  
61 jurisdiction of the Governing Board of Marshall University  
62 and for the state institution of higher education known as  
63 West Virginia University only, the designated official of  
64 the institution has exclusive jurisdiction of the offense for  
65 thirty days following the violation. After thirty days the  
66 official forwards the citation to a magistrate. Any person  
67 so cited may plead no contest to the offense and, by so  
68 pleading, is subject to a civil penalty to be determined  
69 uniformly by the designated official and commensurate  
70 with the severity of the offense. For the state institutions

71 under the jurisdiction of the Governing Board of Marshall  
72 University and for the state institution of higher education  
73 known as West Virginia University only, the amount  
74 imposed may not exceed twenty dollars. For all other  
75 institutions the amount may not exceed ten dollars, for  
76 each offense as partial reimbursement to the state institu-  
77 tion of higher education for the cost of regulating traffic  
78 and parking. In the case of the state institutions under the  
79 jurisdiction of the Governing Board of Marshall University  
80 and in the case of the state institution of higher education  
81 known as West Virginia University only, the designated  
82 official shall determine the penalty uniformly, commensu-  
83 rate with the severity of the offense, and may apply  
84 academic restrictions in lieu of requiring a student to  
85 appear in court and receive penalties otherwise provided  
86 in this section. Moneys derived from civil penalties  
87 imposed herein shall be deposited in the special fund in the  
88 state treasury created by this section and credited to the  
89 state institution to which the penalty was paid.

90 (e) Upon expiration of the ten-day or thirty-day period,  
91 as applicable, or upon a pleading of not guilty before the  
92 designated official of the state institution within the  
93 applicable period, the magistrate or judge of the municipal  
94 court has jurisdiction of the offense. Any person cited  
95 under the provisions of this section, upon a finding of  
96 guilty by the magistrate or municipal judge, is subject to  
97 a fine for each offense by the state institutions under the  
98 jurisdiction of the Governing Board of Marshall University  
99 and for the state institution of higher education known as  
100 West Virginia University only, of up to forty dollars, and  
101 at all other state institutions not less than ten dollars nor  
102 more than twenty dollars, the amount to be commensurate  
103 with the severity of the offense.

104 (f) Each designated official of a state institution presid-  
105 ing over a case under the provisions of this section shall  
106 keep a record of every citation which alleges a violation of  
107 such provisions, or the rules promulgated in accordance

108 therewith, and shall keep a record of every official action  
109 in reference thereto including, but not limited to, a record  
110 of every plea of no contest, conviction or acquittal, of the  
111 offense charged, and the amount of the fine or civil penalty  
112 resulting from each citation.

113 (g) Whenever a vehicle is parked on any state institution  
114 campus road, driveway or parking facility or area in a  
115 manner which violates posted rules and substantially  
116 impedes the flow of traffic or endangers the health and  
117 safety, the institution may, in addition to the issuing of a  
118 citation and subsequent procedures set forth herein,  
119 remove the vehicle, by towing or otherwise, to an area  
120 owned by the institution or areas designated for this  
121 purpose. The vehicle, having been towed to the designated  
122 area or areas, may be rendered immovable by use of  
123 locking wheel blocks or other device not damaging to the  
124 vehicle. The state institution of higher education shall  
125 maintain any vehicle so towed in the same condition as it  
126 was immediately prior to being towed, but shall not be  
127 liable for any damage to a vehicle towed to, or kept in, a  
128 designated area pursuant to the provisions of this section.  
129 The state institution of higher education shall pay for the  
130 cost of removing the vehicle and shall have a right to  
131 reimbursement from the owner for this cost and for the  
132 reasonable cost of keeping the vehicle in the designated  
133 area. Until payment of these costs, the state institution of  
134 higher education may retain possession of the vehicle and  
135 the institution shall have a lien on the vehicle for the  
136 amount due. The state institution of higher education may  
137 enforce this lien in the manner provided in section four-  
138 teen, article eleven, chapter thirty-eight of this code for  
139 the enforcement of other liens. For the state institutions  
140 of higher education under the jurisdiction of the Govern-  
141 ing Board of Marshall University and for the state institu-  
142 tion of higher education known as West Virginia Univer-  
143 sity only, the provisions of this subsection also apply when  
144 a vehicle is subject to three or more unpaid citations.

145 (h) If, at any time, Marshall Community and Technical  
146 College ceases to share a physical campus location with  
147 Marshall University, it may not be included as an institu-  
148 tion under the jurisdiction of the governing board of  
149 Marshall University for the purposes of subsections  
150 (a),(d),(e) and (g) of this section.

**§18B-4-7. Accreditation of institutions of higher education;  
standards for degrees.**

1 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, except the governing  
6 boards of Marshall University and West Virginia Univer-  
7 sity shall make rules for the state institutions of higher  
8 education known as Marshall University and West Vir-  
9 ginia University, and shall determine the minimum  
10 standards for conferring degrees. The governing boards of  
11 Marshall University and West Virginia University shall  
12 promulgate rules pursuant to the provisions of section six,  
13 article one of this chapter for the accreditation of the state  
14 institutions of higher education known as Marshall  
15 University and West Virginia University. An institution of  
16 higher education may not confer any degree on any basis  
17 of work or merit below the minimum standards prescribed  
18 by the Council, Commission or the governing boards.  
19 Nothing in this section infringes upon the rights, including  
20 rights to award degrees, granted to any institution by  
21 charter given according to law, or by actions of the  
22 Council or Commission or their predecessors, prior to the  
23 effective date of this section. With the approval of the  
24 Commission, governing boards of institutions which  
25 currently offer substantial undergraduate course offerings  
26 and a master's degree in a discipline are authorized to  
27 grant baccalaureate degrees in that discipline.

28 Except as otherwise provided in this section, a charter or  
29 other instrument containing the right to confer degrees of

30 higher education status may not be granted by the State of  
31 West Virginia to any institution, association or organiza-  
32 tion within the state, nor may any such degree be awarded,  
33 until the condition of conferring the degree has first been  
34 approved in writing by the Council, Commission or  
35 appropriate governing board.

**ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

**§18B-5-3. Authority to contract for programs, services and facilities.**

1 The governing boards, the Commission and the Council  
2 are authorized and empowered to enter into contracts and  
3 expend funds for programs, services and facilities pro-  
4 vided by public and private education institutions, associ-  
5 ations, boards, agencies, consortia, corporations, partner-  
6 ships, individuals and local, state and federal governmen-  
7 tal bodies within and outside of West Virginia in order  
8 that maximum higher education opportunities of high  
9 quality may be provided to the citizens of the state in the  
10 most economical manner. In no event may a contract for  
11 such services and facilities be entered into unless the  
12 Commission, the Council or the governing boards have  
13 determined that such services and facilities are necessary  
14 and would be at a savings to the state.

**§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 except the governing boards of Marshall University and  
8 West Virginia University, respectively, are subject to the  
9 provisions of subsection (d) of this section.

10 (b) The Commission and Council jointly shall adopt rules  
11 governing and controlling acquisitions and purchases in  
12 accordance with the provisions of this section. The rules  
13 shall assure that the Council, Commission and governing  
14 boards:

15 (1) Do not preclude any person from participating and  
16 making sales thereof to the governing board or to the  
17 Council or Commission except as otherwise provided in  
18 section five of this article. Provision of consultant services  
19 such as strategic planning services will not preclude or  
20 inhibit the governing boards, Council or Commission from  
21 considering any qualified bid or response for delivery of a  
22 product or a commodity because of the rendering of those  
23 consultant services;

24 (2) Establish and prescribe specifications, in all proper  
25 cases, for materials, supplies, equipment, services and  
26 printing to be purchased;

27 (3) Adopt and prescribe such purchase order, requisition  
28 or other forms as may be required;

29 (4) Negotiate for and make purchases and acquisitions in  
30 such quantities, at such times and under contract, in the  
31 open market or through other accepted methods of govern-  
32 mental purchasing as may be practicable in accordance  
33 with general law;

34 (5) Advertise for bids on all purchases exceeding  
35 twenty-five thousand dollars, to purchase by means of  
36 sealed bids and competitive bidding or to effect advanta-  
37 geous purchases through other accepted governmental  
38 methods and practices;

39 (6) Post notices of all acquisitions and purchases for  
40 which competitive bids are being solicited in the purchas-  
41 ing office of the specified institution involved in the  
42 purchase, at least two weeks prior to making such pur-  
43 chases and ensure that the notice is available to the public  
44 during business hours;

- 45 (7) Provide for purchasing in the open market;
- 46 (8) Provide for vendor notification of bid solicitation and  
47 emergency purchasing;
- 48 (9) Provide that competitive bids are not required for  
49 purchases of twenty-five thousand dollars or less; and
- 50 (10) Provide for not fewer than three bids where bidding  
51 is required. If fewer than three bids are submitted, an  
52 award may be made from among those received.
- 53 (c) When a state institution of higher education submits  
54 a contract, agreement or other document to the Attorney  
55 General for approval as to form as required by this chapter  
56 the following conditions apply:
- 57 (1) "Form" means compliance with the Constitution and  
58 statutes of the State of West Virginia.
- 59 (2) The Attorney General does not have the authority to  
60 reject a contract, agreement or other document based on  
61 the substantive provisions therein or any extrinsic matter  
62 so long as there is compliance with the Constitution and  
63 statutes of this State.
- 64 (3) Within fifteen days of receipt, the Attorney General  
65 must notify the appropriate state institution of higher  
66 education in writing that the contract, agreement or other  
67 document is approved or disapproved as to form. If the  
68 contract, agreement or other document is disapproved as  
69 to form, the notice of disapproval must identify each  
70 defect that supports the disapproval.
- 71 (4) If the state institution elects to challenge the disap-  
72 proval by filing a Writ of Mandamus or other action and  
73 prevails, then the Attorney General shall pay reasonable  
74 attorney fees and costs incurred.
- 75 (d) Pursuant to this subsection, the governing boards of  
76 Marshall University and West Virginia University, respec-  
77 tively, may:



78 (1) Purchase or acquire all materials, supplies, equip-  
79 ment, services and printing required for the governing  
80 board without approval from the Commission or the Vice  
81 Chancellor for Administration and may issue checks in  
82 advance to cover postage as provided in subsection (f) of  
83 this section;

84 (2) Make purchases from cooperative buying groups,  
85 consortia, the federal government or from federal govern-  
86 ment contracts if the materials, supplies, services, equip-  
87 ment or printing to be purchased is available from these  
88 groups and if this would be the most financially advanta-  
89 geous manner of making the purchase;

90 (3) Select and acquire by contract or lease all grounds,  
91 buildings, office space or other space, the rental of which  
92 is necessarily required by the governing board; and

93 (4) Use purchase cards under terms approved for the  
94 Commission, the Council and governing boards of state  
95 institutions of higher education and participate in any  
96 expanded program of use as provided in subsection (w) of  
97 this section.

98 (e) The governing boards shall adopt sufficient account-  
99 ing and auditing procedures and promulgate and adopt  
100 appropriate rules subject to the provisions of section six,  
101 article one of this chapter to govern and control acquisi-  
102 tions, purchases, leases and other instruments for grounds,  
103 buildings, office or other space or lease-purchase agree-  
104 ments.

105 (f) The Council, Commission or each governing board,  
106 through the Vice Chancellor for Administration, may issue  
107 a check in advance to a company supplying postage meters  
108 for postage used by that board, the Council or Commission  
109 and by the state institutions of higher education under  
110 their jurisdiction.

111 (g) When a purchase is to be made by bid, any or all bids  
112 may be rejected. However, all purchases based on adver-

113 tised bid requests shall be awarded to the lowest responsi-  
114 ble bidder taking into consideration the qualities of the  
115 articles to be supplied, their conformity with specifica-  
116 tions, their suitability to the requirements of the governing  
117 boards, Council or Commission and delivery terms. The  
118 preference for resident vendors as provided in section  
119 thirty-seven, article three, chapter five-a of this code apply  
120 to the competitive bids made pursuant to this section.

121 (h) The governing boards, Council and Commission shall  
122 maintain a purchase file, which shall be a public record  
123 and open for public inspection. After the award of the  
124 order or contract, the governing boards, Council and  
125 Commission shall indicate upon the successful bid that it  
126 was the successful bid and shall further indicate why bids  
127 are rejected and, if the mathematical low vendor is not  
128 awarded the order or contract, the reason therefor. A  
129 record in the purchase file may not be destroyed without  
130 the written consent of the Legislative Auditor. Those files  
131 in which the original documentation has been held for at  
132 least one year and in which the original documents have  
133 been reproduced and archived on microfilm or other  
134 equivalent method of duplication may be destroyed  
135 without the written consent of the Legislative Auditor. All  
136 files, no matter the storage method, shall be open for  
137 inspection by the Legislative Auditor upon request.

138 (i) The Commission and Council also jointly shall adopt  
139 rules to prescribe qualifications to be met by any person  
140 who is to be employed as a buyer pursuant to this section.  
141 These rules shall require that a person may not be em-  
142 ployed as a buyer unless that person, at the time of em-  
143 ployment, either is:

144 (1) A graduate of an accredited college or university; or

145 (2) Has at least four years' experience in purchasing for  
146 any unit of government or for any business, commercial or  
147 industrial enterprise.

148 (j) Any person making purchases and acquisitions  
149 pursuant to this section shall execute a bond in the penalty  
150 of fifty thousand dollars, payable to the State of West  
151 Virginia, with a corporate bonding or surety company  
152 authorized to do business in this state as surety thereon, in  
153 form prescribed by the Attorney General and conditioned  
154 upon the faithful performance of all duties in accordance  
155 with this section and sections five through eight, inclusive,  
156 of this article and the rules of the governing board and the  
157 Council and Commission. In lieu of separate bonds for  
158 such buyers, a blanket surety bond may be obtained. Any  
159 such bond shall be filed with the Secretary of State. The  
160 cost of any such bond shall be paid from funds appropri-  
161 ated to the applicable governing board or the Council or  
162 Commission.

163 (k) All purchases and acquisitions shall be made in  
164 consideration and within limits of available appropria-  
165 tions and funds and in accordance with applicable provi-  
166 sions of article two, chapter five-a of this code relating to  
167 expenditure schedules and quarterly allotments of funds.  
168 Notwithstanding any other provision of this code to the  
169 contrary, only those purchases exceeding the dollar  
170 amount for competitive sealed bids in this section are  
171 required to be encumbered and they may be entered into  
172 the state's centralized accounting system by the staff of  
173 the Commission, Council or governing boards to satisfy the  
174 requirements of article two, chapter five-a of this code and  
175 specifically sections twenty-six, twenty-seven and  
176 twenty-eight of said article to determine whether the  
177 amount of the purchase is within the Commission's,  
178 Council's or governing board's quarterly allotment, is in  
179 accordance with the approved expenditure schedule and  
180 otherwise conforms to the provisions of said article.

181 (l) The governing boards, Council and Commission may  
182 make requisitions upon the Auditor for a sum to be known  
183 as an advance allowance account, not to exceed five  
184 percent of the total of the appropriations for the governing

185 board, Council or Commission, and the Auditor shall draw  
186 a warrant upon the Treasurer for such accounts. All  
187 advance allowance accounts shall be accounted for by the  
188 applicable governing board or the Council or Commission  
189 once every thirty days or more often if required by the  
190 State Auditor.

191 (m) Contracts entered into pursuant to this section shall  
192 be signed by the applicable governing board or the Council  
193 or Commission in the name of the state and shall be  
194 approved as to form by the Attorney General. A contract  
195 which requires approval as to form by the Attorney  
196 General is considered approved if the Attorney General  
197 has not responded within fifteen days of presentation of  
198 the contract. A contract or a change order for that con-  
199 tract and notwithstanding any other provision of this code  
200 to the contrary, associated documents such as performance  
201 and labor/material payments, bonds and certificates of  
202 insurance which use terms and conditions or standardized  
203 forms previously approved by the Attorney General and do  
204 not make substantive changes in the terms and conditions  
205 of the contract do not require approval as to form by the  
206 Attorney General. The Attorney General shall make a list  
207 of those changes which he or she considers to be substan-  
208 tive and the list, and any changes thereto, shall be pub-  
209 lished in the State Register. A contract that exceeds the  
210 dollar amount requiring competitive sealed bids in this  
211 section shall be filed with the State Auditor. If requested  
212 to do so, the governing boards, Council or Commission  
213 shall make all contracts available for inspection by the  
214 State Auditor. The governing board, Council or Commis-  
215 sion, as appropriate, shall prescribe the amount of deposit  
216 or bond to be submitted with a bid or contract, if any, and  
217 the amount of deposit or bond to be given for the faithful  
218 performance of a contract.

219 (n) If the governing board, Council or Commission  
220 purchases or contracts for materials, supplies, equipment,  
221 services and printing contrary to the provisions of sections

222 four through seven of this article or the rules pursuant  
223 thereto, such purchase or contract is void and of no effect.

224 (o) Any governing board or the Council or Commission,  
225 as appropriate, may request the Director of purchases to  
226 make available, from time to time, the facilities and  
227 services of that department to the governing boards,  
228 Council or Commission in the purchase and acquisition of  
229 materials, supplies, equipment, services and printing and  
230 the director of purchases shall cooperate with that govern-  
231 ing board, Council or Commission, as appropriate, in all  
232 such purchases and acquisitions upon such request.

233 (p) Each governing board or the Council or Commission,  
234 as appropriate, shall permit private institutions of higher  
235 education to join as purchasers on purchase contracts for  
236 materials, supplies, services and equipment entered into by  
237 that governing board or the Council or Commission. Any  
238 private school desiring to join as purchasers on such  
239 purchase contracts shall file with that governing board or  
240 the Council or Commission an affidavit signed by the  
241 president of the institution of higher education or a  
242 designee requesting that it be authorized to join as pur-  
243 chaser on purchase contracts of that governing board or  
244 the Council or Commission, as appropriate. The private  
245 school shall agree that it is bound by such terms and  
246 conditions as that governing board or the Council or  
247 Commission may prescribe and that it will be responsible  
248 for payment directly to the vendor under each purchase  
249 contract.

250 (q) Notwithstanding any other provision of this code to  
251 the contrary, the governing boards, Council and Commis-  
252 sion, as appropriate, may make purchases from coopera-  
253 tive buying groups, consortia, the federal government or  
254 from federal government contracts if the materials,  
255 supplies, services, equipment or printing to be purchased  
256 is available from cooperative buying groups, consortia, the  
257 federal government or from a federal contract and pur-  
258 chasing from the cooperative buying groups, consortia,

259 federal government or from a federal government contract  
260 would be the most financially advantageous manner of  
261 making the purchase.

262 (r) An independent performance audit of all purchasing  
263 functions and duties which are performed at any state  
264 institution of higher education, except Marshall University  
265 and West Virginia University, shall be performed each  
266 fiscal year. The Joint Committee on Government and  
267 Finance shall conduct the performance audit and the  
268 governing boards, Council and Commission, as appropri-  
269 ate, are responsible for paying the cost of the audit from  
270 funds appropriated to the governing boards, Council or  
271 Commission.

272 (1) The governing boards of Marshall University and  
273 West Virginia University, respectively, shall provide for  
274 independent performance audits of all purchasing func-  
275 tions and duties on their campuses at least once in each  
276 three-year period.

277 (2) Each audit shall be inclusive of the entire time period  
278 that has elapsed since the date of the preceding audit.

279 (3) Copies of all appropriate documents relating to any  
280 audit performed by the governing boards of Marshall  
281 University and West Virginia University shall be furnished  
282 to the Joint Committee on Government and Finance and  
283 the Legislative Oversight Commission on Education  
284 Accountability within thirty days of the date the audit  
285 report is completed.

286 (s) The governing boards shall require each institution  
287 under their respective jurisdictions to notify and inform  
288 every vendor doing business with that institution of the  
289 provisions of section fifty-four, article three, chapter  
290 five-a of this code, also known as the Prompt Pay Act of  
291 1990.

292 (t) Consultant services, such as strategic planning  
293 services, may not preclude or inhibit the governing boards,

294 Council or Commission from considering any qualified bid  
295 or response for delivery of a product or a commodity  
296 because of the rendering of those consultant services.

297 (u) After the Commission or Council, as appropriate, has  
298 granted approval for lease-purchase arrangements by the  
299 governing boards, a governing board may enter into  
300 lease-purchase arrangements for capital improvements,  
301 including equipment, except the governing boards of  
302 Marshall University and West Virginia University may  
303 enter into lease-purchase arrangements for the state  
304 institutions of higher education known as Marshall  
305 University and West Virginia University without seeking  
306 the approval of the Commission or the Council. Any  
307 lease-purchase arrangement so entered shall constitute a  
308 special obligation of the State of West Virginia. The  
309 obligation under a lease-purchase arrangement so entered  
310 may be from any funds legally available to the institution  
311 and must be cancelable at the option of the governing  
312 board or institution at the end of any fiscal year. The  
313 obligation, any assignment or securitization thereof, never  
314 constitutes an indebtedness of the State of West Virginia  
315 or any department, agency or political subdivision thereof,  
316 within the meaning of any constitutional provision or  
317 statutory limitation, and may not be a charge against the  
318 general credit or taxing powers of the state or any political  
319 subdivision thereof. Such facts shall be plainly stated in  
320 any lease-purchase agreement. Further, the  
321 lease-purchase agreement shall prohibit assignment or  
322 securitization without consent of the lessee and the  
323 approval of the agreement as to form by the Attorney  
324 General of West Virginia. Proposals for any arrangement  
325 must be requested in accordance with the requirements of  
326 this section and any rules or guidelines of the Commission  
327 and Council. In addition, any lease-purchase agreement  
328 which exceeds one hundred thousand dollars total shall be  
329 approved as to form by the Attorney General of West  
330 Virginia. The interest component of any lease-purchase  
331 obligation is exempt from all taxation of the State of West

332 Virginia, except inheritance, estate and transfer taxes. It  
333 is the intent of the Legislature that if the requirements set  
334 forth in the Internal Revenue Code of 1986, as amended,  
335 and any regulations promulgated pursuant thereto are  
336 met, the interest component of any lease-purchase obliga-  
337 tion also is exempt from the gross income of the recipient  
338 for purposes of federal income taxation and may be  
339 designated by the governing board or the president of the  
340 institution as a bank-qualified obligation.

341 (v) Notwithstanding any other provision of this code to  
342 the contrary, the Commission, Council and governing  
343 boards have the authority, in the name of the state, to  
344 lease, or offer to lease, as lessee, any grounds, buildings,  
345 office or other space in accordance with this paragraph  
346 and as provided below:

347 (1) The Commission, Council and governing boards have  
348 sole authority to select and to acquire by contract or lease  
349 all grounds, buildings, office space or other space, the  
350 rental of which is necessarily required by the Commission,  
351 Council or governing boards for the institutions under  
352 their jurisdiction. For state institutions of higher educa-  
353 tion other than Marshall University and West Virginia  
354 University, the Chief Executive Officer of the Commission,  
355 Council or an institution shall certify the following:

356 (A) That the grounds, buildings, office space or other  
357 space requested is necessarily required for the proper  
358 function of the Commission, Council or institution;

359 (B) That the Commission, Council or institution will be  
360 responsible for all rent and other necessary payments in  
361 connection with the contract or lease; and

362 (C) That satisfactory grounds, buildings, office space or  
363 other space is not available on grounds and in buildings  
364 currently owned or leased by the Commission, Council or  
365 the institution.



366 Before executing any rental contract or lease, the  
367 Commission, Council or a governing board shall determine  
368 the fair rental value for the rental of the requested  
369 grounds, buildings, office space or other space, in the  
370 condition in which they exist, and shall contract for or  
371 lease the premises at a price not to exceed the fair rental  
372 value.

373 (2) The Commission, Council and governing boards are  
374 authorized to enter into long-term agreements for build-  
375 ings, land and space for periods longer than one fiscal year  
376 but not to exceed forty years. Any purchase of real estate,  
377 any lease-purchase agreement and any construction of new  
378 buildings or other acquisition of buildings, office space or  
379 grounds resulting therefrom, pursuant to the provisions of  
380 this subsection shall be presented by the Commission or  
381 Council, as appropriate, to the Joint Committee on Gov-  
382 ernment and Finance for prior review. Any such lease  
383 shall contain, in substance, all the following provisions:

384 (A) That the Commission, Council or governing board, as  
385 lessee, has the right to cancel the lease without further  
386 obligation on the part of the lessee upon giving thirty days'  
387 written notice to the lessor at least thirty days prior to the  
388 last day of the succeeding month;

389 (B) That the lease is considered canceled without further  
390 obligation on the part of the lessee if the Legislature or the  
391 federal government fails to appropriate sufficient funds  
392 therefor or otherwise acts to impair the lease or cause it to  
393 be canceled; and

394 (C) That the lease is considered renewed for each ensuing  
395 fiscal year during the term of the lease unless it is canceled  
396 by the Commission, Council or governing board before the  
397 end of the then-current fiscal year.

398 (3) The Commission, Council or institution which is  
399 granted any grounds, buildings, office space or other space  
400 leased in accordance with this section may not order or

436 (A) Appropriate use of the purchasing card system;

437 (B) Full compliance with the provisions of article three,  
438 chapter twelve of this code relating to the purchasing card  
439 program; and

440 (C) Sufficient accounting and auditing procedures for all  
441 purchasing card transactions.

442 (2) By the first day of November, two thousand four, the  
443 Council and Commission jointly shall present the proce-  
444 dures to the Legislative Oversight Commission on Educa-  
445 tion Accountability for its adoption.

446 (3) Notwithstanding any other provision of this code to  
447 the contrary, if the Legislative Oversight Commission on  
448 Education Accountability adopts the procedures, the  
449 Council, Commission, and any institution authorized  
450 pursuant to subdivision (4) of this subsection, may use  
451 purchasing cards for:

452 (A) Travel expenses directly related to the job duties of  
453 the traveling employee, including fuel and food; and

454 (B) Any routine, regularly scheduled payment, including,  
455 but not limited to, utility payments and real property  
456 rental fees. The Council, Commission and each institution,  
457 annually by the thirtieth day of June, shall provide to the  
458 State Purchasing Division a list of all goods or services for  
459 which payment was made pursuant to this provision  
460 during that fiscal year.

461 (4) The Commission and Council each shall evaluate the  
462 capacity of each institution under its jurisdiction for  
463 complying with the procedures established pursuant to  
464 subdivision (3) of this subsection. The Commission and  
465 Council each shall authorize expanded use of purchasing  
466 cards pursuant to said subdivision for any such institution  
467 it determines has the capacity to comply.

**§18B-5-7. Disposition of obsolete and unusable equipment,  
surplus supplies and other unneeded materials.**

401 make permanent changes of any type thereto, unless the  
402 Commission, Council or governing board, as appropriate,  
403 has first determined that the change is necessary for the  
404 proper, efficient and economically sound operation of the  
405 institution. For purposes of this section, a "permanent  
406 change" means any addition, alteration, improvement,  
407 remodeling, repair or other change involving the expendi-  
408 ture of state funds for the installation of any tangible  
409 thing which cannot be economically removed from the  
410 grounds, buildings, office space or other space when  
411 vacated by the institution.

412 (4) Leases and other instruments for grounds, buildings,  
413 office or other space, once approved by the Commission,  
414 Council or governing board, may be signed by the Chief  
415 Executive Officer of the Commission, Council or institu-  
416 tion. Any lease or instrument exceeding one hundred  
417 thousand dollars annually shall be approved as to form by  
418 the Attorney General. A lease or other instrument for  
419 grounds, buildings, office or other space that contains a  
420 term, including any options, of more than six months for  
421 its fulfillment shall be filed with the State Auditor.

422 (5) The Commission and Council jointly may promulgate  
423 rules they consider necessary to carry out the provisions of  
424 this section. The governing boards of Marshall University  
425 and West Virginia University shall promulgate rules  
426 pursuant to section six, article one of this chapter to  
427 implement the provisions of this section.

428 (w) Purchasing card use may be expanded by the Coun-  
429 cil, Commission and state institutions of higher education  
430 pursuant to the provisions of this subsection.

431 (1) The Council and Commission jointly shall establish  
432 procedures to be implemented by the Council, Commission  
433 and any institution under their respective jurisdictions  
434 using purchasing cards. The procedures shall ensure that  
435 each maintains:

1 (a) The Commission, the Council and the governing  
2 boards shall dispose of obsolete and unusable equipment,  
3 surplus supplies and other unneeded materials, either by  
4 transfer to other governmental agencies or institutions, by  
5 exchange or trade, or by sale as junk or otherwise. The  
6 Commission, the Council and each governing board shall  
7 adopt rules governing and controlling the disposition of all  
8 such equipment, supplies and materials.

9 (1) At least ten days prior to the disposition, the Com-  
10 mission, the Council or the governing boards, as applica-  
11 ble, shall advertise, by newspaper publication as a Class II  
12 legal advertisement in compliance with the provisions of  
13 article three, chapter fifty-nine of this code, in the county  
14 in which the equipment, supplies and materials are  
15 located, the availability or sales of such disposable equip-  
16 ment, supplies and materials.

17 (2) The Commission, the Council or governing boards, as  
18 applicable, may sell the disposable equipment, supplies  
19 and materials, in whole or in part, at public auction or by  
20 sealed bid, or may transfer, exchange or trade the same to  
21 other governmental agencies or institutions (if by transfer,  
22 exchange or trade, then without advertising), in whole or  
23 in part, as sound business practices may warrant under  
24 existing circumstances and conditions.

25 (3) The requirements set forth in subsection (a) of this  
26 section apply to Marshall University and West Virginia  
27 University relating only to those items of obsolete and  
28 unusable equipment, surplus supplies and other unneeded  
29 materials that exceed five thousand dollars in recorded net  
30 book value. Marshall University and West Virginia  
31 University may dispose of obsolete and unusable comput-  
32 ers and computer-related equipment pursuant to the  
33 provisions of section two, article three of this chapter.

34 (b) The Commission, Council or governing board, as  
35 appropriate, except for Marshall University and West  
36 Virginia University, shall report annually to the Legisla-

37 tive Auditor, all sales of commodities made during the  
38 preceding six months.

39 (1) The report shall include a description of the commod-  
40 ities sold, the name of the buyer to whom each commodity  
41 was sold, and the price paid by the buyer.

42 (2) Marshall University and West Virginia University  
43 shall report biennially to the Legislative Auditor the total  
44 sales of commodities made during the preceding biennium  
45 along with the total recorded net book value of such  
46 commodities.

47 (c) The proceeds of sales or transfers shall be deposited  
48 in the State Treasury to the credit on a pro rata basis of  
49 the fund or funds from which the purchase of the particu-  
50 lar commodities or expendable commodities was made.  
51 The Commission, Council or governing board, as appropri-  
52 ate, may charge and assess fees reasonably related to the  
53 costs of care and handling with respect to the transfer,  
54 warehousing, sale and distribution of state property that  
55 is disposed of or sold pursuant to the provisions of this  
56 section.

**§18B-5-9. Higher education fiscal responsibility.**

1 (a) The governing boards of Marshall University and  
2 West Virginia University each shall ensure the fiscal  
3 integrity of its operations using best business and manage-  
4 ment practices.

5 (1) The practices include at least the following:

6 (A) Complying with Generally Accepted Accounting  
7 Principles of the Governmental Accounting Standards  
8 Board (GAAP); and the Generally Accepted Government  
9 Auditing Standards of the Government Accountability  
10 Office (GAGAS);

11 (B) Operating without material weakness in internal  
12 controls as defined by GAAP, GAGAS and, where applica-

13 ble, the Office of Management and Budget (●MB) Circular  
14 A-133;

15 (C) Maintaining annual audited financial statements  
16 with an unqualified opinion;

17 (D) Presenting annual audited financial statements to  
18 the respective governing board;

19 (E) Maintaining quarterly financial statements certified  
20 by the chief financial officer of the institution; and

21 (F) Implementing best practices from Sarbanes-Oxley, or  
22 adopting the applicable tenets of Sarbanes-Oxley as best  
23 practices.

24 (2) Marshall University, West Virginia University and  
25 the research corporation of each:

26 (A) Shall comply with the ●MB Circular A-133 annual  
27 grant award audit requirements; and

28 (B) Is exempt from the provisions of section fourteen,  
29 article four, chapter twelve of this code.

30 (3) Within thirty days of the completion of the financial  
31 audit report, the governing boards of Marshall University  
32 and West Virginia University each shall furnish to the  
33 Commission, the Legislative Oversight Commission on  
34 Education Accountability and the Joint Committee on  
35 Government and Finance copies of the annual audited  
36 financial statements.

37 (b) The Commission or Council, as appropriate, shall  
38 ensure the fiscal integrity of any electronic process con-  
39 ducted at its offices and at all other institutions using best  
40 business and management practices.

41 (c) Marshall University, West Virginia University, the  
42 Council and the Commission each shall implement a  
43 process whereby, to the maximum extent practicable,  
44 employees of Marshall University, West Virginia Univer-

45 sity, the Council, Commission and all other state institu-  
46 tions of higher education receive their wages via electronic  
47 transfer or direct deposit.

48 (d) Notwithstanding the provisions of section ten-a,  
49 article three, chapter twelve of this code, and except as  
50 otherwise provided in this subsection, the amount of any  
51 purchase made with a purchasing card used by the Coun-  
52 cil, the Commission or any other state institution of higher  
53 education may not exceed five thousand dollars.

54 (1) Subject to approval of the Auditor, any emergency  
55 payment and any routine, regularly scheduled payment,  
56 including, but not limited to, utility payments, contracts  
57 and real property rental fees, may exceed this limit by an  
58 amount to be determined by the Auditor.

59 (2) The Council, Commission and any state institution of  
60 higher education may use a purchasing card for travel  
61 expenses directly related to the job duties of the traveling  
62 employee. Where approved by the auditor, such expenses  
63 may exceed five thousand dollars by an amount to be  
64 determined by the auditor. Traveling expenses may  
65 include registration fees and airline and other transporta-  
66 tion reservations, if approved by the president of the  
67 institution. Traveling expenses may not include fuel or  
68 food purchases except, the state institutions of higher  
69 education known as Marshall University and West Vir-  
70 ginia University may include in traveling expenses the  
71 purchase of fuel and food.

72 (3) The state institutions known as Marshall University  
73 and West Virginia University each shall maintain one  
74 purchasing card for use only in a situation declared an  
75 emergency by the institution's president. The Council,  
76 Commission and all other institutions shall maintain one  
77 purchase card for use only in a situation declared an  
78 emergency by the president of the institution and ap-  
79 proved by the appropriate chancellor. Emergencies may  
80 include, but are not limited to, partial or total destruction

81 of a campus facility; loss of a critical component of utility  
82 infrastructure; heating, ventilation or air condition failure  
83 in an essential academic building; loss of campus road,  
84 parking lot or campus entrance; or a local, regional, or  
85 national emergency situation that has a direct impact on  
86 the campus.

87 (e) Notwithstanding the provisions of section ten-f,  
88 article three, chapter twelve of this code, or any other  
89 provision of this code or law to the contrary, the Auditor  
90 shall accept any receiving report submitted in a format  
91 utilizing electronic media. The Auditor shall conduct any  
92 audit or investigation of the Council, Commission or any  
93 institution at its own expense and at no cost to the Coun-  
94 cil, Commission or institution.

95 (f) The Council and the Commission each shall maintain  
96 a rule in accordance with the provisions of article three-a,  
97 chapter twenty-nine-a of this code. The rule shall provide  
98 for institutions individually or cooperatively to maximize  
99 their use of any of the following purchasing practices that  
100 are determined to provide a financial advantage:

- 101 (1) Bulk purchasing;
- 102 (2) Reverse bidding;
- 103 (3) Electronic marketplaces; and
- 104 (4) Electronic remitting.

105 (g) Each institution shall establish a consortium with at  
106 least one other institution, in the most cost-efficient  
107 manner feasible, to consolidate the following operations  
108 and student services:

- 109 (1) Payroll operations;
- 110 (2) Human resources operations;
- 111 (3) Warehousing operations;
- 112 (4) Financial transactions;



113 (5) Student financial aid application, processing and  
114 disbursement;

115 (6) Standard and bulk purchasing; and

116 (7) Any other operation or service appropriate for  
117 consolidation as determined by the Council or Commis-  
118 sion.

119 (h) An institution may charge a fee to each institution for  
120 which it provides a service or performs an operation. The  
121 fee rate shall be in the best interest of both the institution  
122 being served and the providing institution, as approved by  
123 the Council and Commission.

124 (i) Any community and technical college, college and  
125 university may provide the services authorized by this  
126 section for the benefit of any governmental body or public  
127 or private institution.

128 (j) Each institution shall strive to minimize its number of  
129 low-enrollment sections of introductory courses. To the  
130 maximum extent practicable, institutions shall use dis-  
131 tance learning to consolidate the course sections. Marshall  
132 University, West Virginia University, the Council and  
133 Commission shall report the progress of reductions as  
134 requested by the Legislative Oversight Commission on  
135 Education Accountability.

136 (k) An institution shall use its natural resources and  
137 alternative fuel resources to the maximum extent feasible.  
138 The institution:

139 (1) May supply the resources for its own use and for use  
140 by any other institution;

141 (2) May supply the resources to the general public at fair  
142 market value;

143 (3) Shall maximize all federal or grant funds available  
144 for research regarding alternative energy sources; and

145 (4) May develop research parks to further the purpose of  
146 this section and to expand the economic development  
147 opportunities in the state.

148 (l) Any cost-savings realized or fee procured or retained  
149 by an institution pursuant to implementation of the  
150 provisions of this section is retained by the institution.

151 (m) The provisions of subsection (b) of this section do not  
152 apply to the state institutions known as Marshall Univer-  
153 sity and West Virginia University. Each is authorized, but  
154 not required, to comply with the provisions of subsections  
155 (f), (g) and (h) of this section.

156 (1) The governing boards of Marshall University and  
157 West Virginia University, respectively, each shall promul-  
158 gate a rule on purchasing procedures pursuant to the  
159 provisions of section six, article one of this chapter.  
160 Neither institution is subject to the rules required by  
161 subsection (f) of this section.

162 (2) If either governing board elects to implement the  
163 provisions of said subsection (g) of this section, the follow-  
164 ing conditions apply:

165 (A) The governing board makes the determination  
166 regarding any additional operation or service which is  
167 appropriate for consolidation without input from the  
168 Council or Commission;

169 (B) The governing board sets the fee charged to any  
170 institution for which it provides a service or performs an  
171 operation. The fee rate shall be in the best interest of both  
172 the institution being served and the providing institution,  
173 but it is not subject to approval by the Council or Commis-  
174 sion; and

175 (C) The governing board may not implement the provi-  
176 sions of this subdivision in a manner which supercedes the  
177 requirements established in section twelve, article three-c  
178 of this chapter.

**§18B-5-10. Medical professional liability insurance and risk management functions.**

1 (a) The Legislature finds that, while recent reforms have  
2 helped to address the rising costs and limited availability  
3 of medical malpractice and risk management insurance in  
4 West Virginia, the state's doctoral-granting research  
5 universities and their medical schools continue to face  
6 significant challenges related to the cost and operation of  
7 insurance and risk management programs.

8 (b) The Legislature further finds that the availability of  
9 cost-efficient insurance and risk management programs is  
10 essential to the long-term financial integrity and viability  
11 of these universities and their medical and other health  
12 professional schools.

13 (c) It is the responsibility of the Legislature to make the  
14 best use of available resources and to assure the availabil-  
15 ity of high quality medical education to meet the needs of  
16 the citizens of the state.

17 (d) Therefore, to aid the medical and other health  
18 professional schools in meeting these goals and objectives,  
19 the following program is authorized:

20 (1) Upon the agreement of the West Virginia State Board  
21 of Risk and Insurance Management, the health profession-  
22 als schools under the jurisdiction of the governing boards  
23 of Marshall University, West Virginia University and the  
24 West Virginia School of Osteopathic Medicine, respec-  
25 tively, may participate, separately, in a self-insurance  
26 retention program in conjunction with the state insurance  
27 program administered by the West Virginia State Board of  
28 Risk and Insurance Management to provide medical  
29 professional liability coverage to its health care profes-  
30 sionals and students.

31 (2) In administering the self-insurance retention pro-  
32 gram, each governing board has the authority to adminis-

33 ter, manage and/or settle its own medical professional  
34 liability insurance claims.

35 (e) Notwithstanding the provisions of article twelve,  
36 chapter twenty-nine of this code, the West Virginia State  
37 Board of Risk and Insurance Management is hereby  
38 authorized and empowered to enter into separate agree-  
39 ments with the health professionals schools under the  
40 jurisdiction of the governing boards of Marshall Univer-  
41 sity, West Virginia University, and the West Virginia  
42 School of Osteopathic Medicine, respectively, to develop  
43 and implement a self-insurance retention program for  
44 medical professional liability insurance.

45 (f) Prior to the implementation of any self-insurance  
46 retention program, the governing boards of Marshall  
47 University, West Virginia University, and the West Vir-  
48 ginia School of Osteopathic Medicine, respectively, shall  
49 submit the proposed program plan to the state Insurance  
50 Commissioner for review:

51 (1) The review shall include, but is not limited to, claims  
52 handling procedures, investment policies, and reserving  
53 practices.

54 (2) A governing board may not implement a plan until it  
55 has been reviewed by the state Insurance Commissioner.

56 (g) The Insurance Commissioner and Board of Risk and  
57 Insurance Management each may promulgate an emer-  
58 gency rule as necessary pursuant to the provisions of  
59 article three, chapter twenty-nine-a of this code, to specify  
60 further the requirements of self-insurance retention  
61 programs under this section.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITU-  
TIONS OF HIGHER EDUCATION.**

**§18B-10-1. Enrollment, tuition and other fees at education  
institutions; refund of fees.**

1 (a) Each governing board shall fix tuition and other fees  
2 for each school term for the different classes or categories

3 of students enrolling at each state institution of higher  
4 education under its jurisdiction and may include among  
5 the tuition and fees any one or more of the following as  
6 defined in section one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue  
11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees  
13 collected;

14 (2) All auxiliary and auxiliary capital fees collected; and

15 (3) All required educational and general capital fees  
16 collected to support existing system wide and institutional  
17 debt service and future systemwide and institutional debt  
18 service, capital projects and campus renewal for educa-  
19 tional and general facilities.

20 (4) Subject to any covenants or restrictions imposed with  
21 respect to revenue bonds payable from such accounts, an  
22 institution may expend funds from each such special  
23 revenue account for any purpose for which funds were  
24 collected within that account regardless of the original  
25 purpose for which the funds were collected.

26 (c) The purposes for which tuition and fees may be  
27 expended include, but are not limited to, health services,  
28 student activities, recreational, athletic and extracurricu-  
29 lar activities. Additionally, tuition and fees may be used  
30 to finance a student's attorney to perform legal services for  
31 students in civil matters at the institutions: *Provided*,  
32 That the legal services are limited only to those types of  
33 cases, programs or services approved by the administrative  
34 head of the institution where the legal services are to be  
35 performed.

36 (d) The Commission and Council jointly shall propose a  
37 rule for legislative approval in accordance with the  
38 provisions of article three-a, chapter twenty-nine-a of this  
39 code to govern the fixing, collection and expenditure of  
40 tuition and other fees.

41 (e) The Legislature finds that an emergency exists and,  
42 therefore, the Commission and Council jointly shall file the  
43 rule required by subsection (d) of this section as an  
44 emergency rule pursuant to the provisions of article  
45 three-a, chapter twenty-nine-a of this code, subject to the  
46 prior approval of the Legislative Oversight Commission on  
47 Education Accountability.

48 (f) The schedule of all tuition and fees, and any changes  
49 therein, shall be entered in the minutes of the meeting of  
50 the appropriate governing board and the board shall file  
51 with the Commission or Council, or both, as appropriate,  
52 and the Legislative Auditor a certified copy of such  
53 schedule and changes.

54 (g) The boards shall establish the rates to be charged  
55 full-time students, as defined in section one-b of this  
56 article, who are enrolled during a regular academic term.

57 (1) Undergraduate students taking fewer than twelve  
58 credit hours in a regular term shall have their fees reduced  
59 pro rata based upon one twelfth of the full-time rate per  
60 credit hour and graduate students taking fewer than nine  
61 credit hours in a regular term shall have their fees reduced  
62 pro rata based upon one ninth of the full-time rate per  
63 credit hour.

64 (2) Fees for students enrolled in summer terms or other  
65 nontraditional time periods shall be prorated based upon  
66 the number of credit hours for which the student enrolls in  
67 accordance with the above provisions.

68 (h) All fees are due and payable by the student upon  
69 enrollment and registration for classes except as provided  
70 in this subsection:

71 (1) The governing boards shall permit fee payments to be  
72 made in installments over the course of the academic term.  
73 All fees shall be paid prior to the awarding of course credit  
74 at the end of the academic term.

75 (2) The governing boards also shall authorize the accep-  
76 tance of credit cards or other payment methods which may  
77 be generally available to students for the payment of fees.  
78 The governing boards may charge the students for the  
79 reasonable and customary charges incurred in accepting  
80 credit cards and other methods of payment.

81 (3) If a governing board determines that a student's  
82 finances are affected adversely by a legal work stoppage,  
83 it may allow the student an additional six months to pay  
84 the fees for any academic term. The governing board shall  
85 determine on a case-by-case basis if the finances of a  
86 student are affected adversely.

87 (4) The Commission and Council jointly shall propose a  
88 rule in accordance with the provisions of article three-a,  
89 chapter twenty-nine-a of this code, defining conditions  
90 under which an institution may offer tuition and fee  
91 deferred payment plans through the institution or through  
92 third parties.

93 (5) An institution may charge interest or fees for any  
94 deferred or installment payment plans.

95 (i) In addition to the other fees provided in this section,  
96 each governing board may impose, collect and distribute  
97 a fee to be used to finance a nonprofit, student-controlled  
98 public interest research group if the students at the  
99 institution demonstrate support for the increased fee in a  
100 manner and method established by that institution's  
101 elected student government. The fee may not be used to  
102 finance litigation against the institution.

103 (j) Institutions shall retain tuition and fee revenues not  
104 pledged for bonded indebtedness or other purposes in  
105 accordance with the tuition rule proposed by the Commis-

106 sion and Council jointly pursuant to this section. The  
107 tuition rule shall:

108 (1) Provide a basis for establishing nonresident tuition  
109 and fees;

110 (2) Allow institutions to charge different tuition and fees  
111 for different programs;

112 (3) Provide that a board of governors may propose to the  
113 Commission, Council or both, as appropriate, a mandatory  
114 auxiliary fee under the following conditions:

115 (A) The fee shall be approved by the Commission,  
116 Council or both, as appropriate, and either the students  
117 below the senior level at the institution or the Legislature  
118 before becoming effective;

119 (B) Increases may not exceed previous state subsidies by  
120 more than ten percent;

121 (C) The fee may be used only to replace existing state  
122 funds subsidizing auxiliary services such as athletics or  
123 bookstores;

124 (D) If the fee is approved, the amount of the state  
125 subsidy shall be reduced annually by the amount of money  
126 generated for the institution by the fees. All state subsi-  
127 dies for the auxiliary services shall cease five years from  
128 the date the mandatory auxiliary fee is implemented;

129 (E) The Commission, Council or both, as appropriate,  
130 shall certify to the Legislature by the first day of October  
131 in the fiscal year following implementation of the fee, and  
132 annually thereafter, the amount of fees collected for each  
133 of the five years;

134 (4) Establish methodology, where applicable, to ensure  
135 that, within the appropriate time period under the com-  
136 pact, community and technical college tuition rates for  
137 community and technical college students in all independ-  
138 ently accredited community and technical colleges will be



139 commensurate with the tuition and fees charged by their  
140 peer institutions.

141 (k) A penalty may not be imposed by the Commission or  
142 Council upon any institution based upon the number of  
143 nonresidents who attend the institution unless the Com-  
144 mission or Council determines that admission of nonresi-  
145 dents to any institution or program of study within the  
146 institution is impeding unreasonably the ability of resident  
147 students to attend the institution or participate in the  
148 programs of the institution. The institutions shall report  
149 annually to the Commission or Council on the numbers of  
150 nonresidents and such other enrollment information as the  
151 Commission or Council may request.

152 (l) Tuition and fee increases of the governing boards,  
153 except for the governing boards of the state institutions of  
154 higher education known as Marshall University and West  
155 Virginia University, are subject to rules adopted by the  
156 Commission and Council jointly pursuant to this section  
157 and in accordance with the provisions of article three-a,  
158 chapter twenty-nine-a of this code.

159 (1) Subject to the provisions of subdivision (4) of this  
160 subsection, a governing board of an institution under the  
161 jurisdiction of the Commission may propose tuition and  
162 fee increases of up to nine and one-half percent for  
163 undergraduate resident students for any fiscal year. The  
164 nine and one-half percent total includes the amount of  
165 increase over existing tuition and fees, combined with the  
166 amount of any newly established, specialized fee which  
167 may be proposed by a governing board.

168 (2) A governing board of an institution under the juris-  
169 diction of the Council may propose tuition and fee in-  
170 creases of up to four and three quarters percent for  
171 undergraduate resident students for any fiscal year. The  
172 four and three-quarters percent total includes the amount  
173 of increase over existing tuition and fees, combined with

174 the amount of any newly established, specialized fee which  
175 may be proposed by a governing board.

176 (3) The Commission or Council, as appropriate, shall  
177 examine individually each request from a governing board  
178 for an increase.

179 (4) The governing boards of Marshall University and  
180 West Virginia University, as these provisions relate to the  
181 state institutions of higher education known as Marshall  
182 University and West Virginia University, each may  
183 annually:

184 (A) Increase tuition and fees for undergraduate resident  
185 students to the maximum allowed by this section without  
186 seeking approval from the Commission; and

187 (B) Set tuition and fee rates for post-baccalaureate  
188 resident students and for all nonresident students, includ-  
189 ing establishing regional tuition and fee rates, reciprocity  
190 agreements or both.

191 (C) The provisions of this subdivision do not apply to  
192 tuition and fee rates of the administratively linked institu-  
193 tion known as Marshall Community and Technical College,  
194 the administratively linked institution known as the  
195 Community and Technical College at West Virginia  
196 University Institute of Technology and the regional  
197 campuses known as West Virginia University Institute of  
198 Technology and West Virginia University at Parkersburg.

199 (5) Any proposed tuition and fee increase for state  
200 institutions of higher education other than the state  
201 institutions of higher education known as Marshall  
202 University and West Virginia University requires the  
203 approval of the Commission or Council, as appropriate. In  
204 determining whether to approve or deny the governing  
205 board's request, the Commission or Council shall deter-  
206 mine the progress the institution has made toward meeting  
207 the conditions outlined in this subdivision and shall make  
208 this determination the predominate factor in its decision.

209 The Commission or Council shall consider the degree to  
210 which each institution has met the following conditions:

211 (A) Has maximized resources available through nonresi-  
212 dent tuition and fee charges to the satisfaction of the  
213 Commission or Council;

214 (B) Is consistently achieving the benchmarks established  
215 in the compact of the institution pursuant to the provisions  
216 of article one-a of this chapter;

217 (C) Is continuously pursuing the statewide goals for  
218 post-secondary education and the statewide compact  
219 established in articles one and one-a of this chapter;

220 (D) Has demonstrated to the satisfaction of the Commis-  
221 sion or Council that an increase will be used to maintain  
222 high-quality programs at the institution;

223 (E) Has demonstrated to the satisfaction of the Commis-  
224 sion or Council that the institution is making adequate  
225 progress toward achieving the goals for education estab-  
226 lished by the southern regional education board; and

227 (F) To the extent authorized, will increase by up to five  
228 percent the available tuition and fee waivers provided by  
229 the institution. The increased waivers may not be used for  
230 athletics.

231 (6) This section does not require equal increases among  
232 institutions or require any level of increase at an institu-  
233 tion.

234 (7) The Commission and Council shall report to the  
235 Legislative Oversight Commission on Education Account-  
236 ability regarding the basis for each approval or denial as  
237 determined using the criteria established in subdivision (5)  
238 of this subsection.

**§18B-10-5. Fee waivers – Undergraduate schools.**

1 Each governing board periodically may establish fee  
2 waivers for students in undergraduate studies at institu-

3 tions under its jurisdiction entitling recipients to waiver of  
4 tuition, capital and other fees subject to the following  
5 conditions and limitations:

6 (a) Undergraduate fee waivers established by the  
7 governing boards of Marshall University and West Vir-  
8 ginia University, respectively, for the state institutions of  
9 higher education known as Marshall University and West  
10 Virginia University, are subject to the provisions of section  
11 six-a of this Article;

12 (b) For the governing boards of state institutions of  
13 higher education other than the state institutions of higher  
14 education known as Marshall University and West Vir-  
15 ginia University, the following conditions apply:

16 (1) An institution may not have in effect at any time a  
17 number of undergraduate fee waivers which exceeds five  
18 percent of the number of full-time equivalent undergradu-  
19 ate students registered during the fall semester of the  
20 immediately preceding academic year.

21 (2) Each undergraduate fee waiver entitles the recipient  
22 thereof to attend a designated state institution of higher  
23 education without payment of the tuition, capital and  
24 other fees as may be prescribed by the governing board  
25 and is for a period of time not to exceed eight semesters of  
26 undergraduate study.

27 (3) The governing board shall make rules pursuant to the  
28 provisions of section six, article one of this chapter,  
29 governing the award of undergraduate fee waivers; the  
30 issuance and cancellation of certificates entitling the  
31 recipients to the benefits thereof; the use of the fee waivers  
32 by the recipients; and the rights and duties of the recipi-  
33 ents with respect to the fee waivers. These rules may not  
34 be inconsistent with the provisions of this section.

35 (4) The awarding of undergraduate fee waivers shall be  
36 entered in the minutes of the meetings of the governing  
37 board.

38 (5) Students enrolled in an administratively-linked  
39 community and technical college shall be awarded a  
40 proportionate share of the total number of undergraduate  
41 fee waivers awarded by a governing board. The number to  
42 be awarded to students of the community and technical  
43 college is based upon the full-time equivalent enrollment  
44 of that institution.

**§18B-10-6. Fee waivers – Professional and graduate schools.**

1 In addition to the fee waivers authorized for undergrad-  
2 uate study by the provisions of section five of this article,  
3 each governing board periodically may establish fee  
4 waivers for study in graduate and professional schools  
5 under its jurisdiction, including medicine and dentistry,  
6 entitling the recipients to waiver of tuition, capital, and  
7 other fees, subject to the following conditions and limita-  
8 tions:

9 (a) Graduate and professional fee waivers established by  
10 the governing boards of Marshall University and West  
11 Virginia University, respectively, are subject to the  
12 provisions of section six-a of this Article;

13 (b) For the governing boards of state institutions of  
14 higher education other than the state institutions of higher  
15 education known as Marshall University and West Vir-  
16 ginia University, the following conditions apply:

17 (1) An institution may not have in effect at any time a  
18 number of graduate and professional school fee waivers  
19 which exceeds five percent of the number of full-time  
20 equivalent graduate and professional students registered  
21 during the corresponding fall semester, spring semester  
22 and summer term of the immediately preceding academic  
23 year. In addition to the above five percent, all graduate  
24 assistants employed by these institutions shall be granted  
25 a fee waiver.

26 (2) Each graduate or professional school fee waiver  
27 entitles the recipient to waiver of the tuition, capital and

28 other fees as may be prescribed by the governing boards  
29 and is for a period of time not to exceed the number of  
30 semesters normally required in the recipient's academic  
31 discipline.

32 (3) The governing boards shall make rules pursuant to  
33 the provisions of section six, article one of this chapter,  
34 governing the award of graduate and professional school  
35 fee waivers; the issuance and cancellation of certificates  
36 entitling the recipients to the benefits thereof; the use of  
37 the fee waivers by the recipients; and the rights and duties  
38 of the recipients with respect to the fee waivers. These  
39 rules may not be inconsistent with the provisions of this  
40 section.

41 (4) The awarding of graduate and professional school fee  
42 waivers shall be entered in the minutes of the meeting of  
43 each governing board.

**§18B-10-6a. Undergraduate, graduate and professional fee  
waivers - Marshall University and West Vir-  
ginia University.**

1 (a) *Undergraduate fee waivers.* -

2 (1) The governing boards of Marshall University and  
3 West Virginia University, respectively, may establish fee  
4 waivers for students in undergraduate studies at institu-  
5 tions under their jurisdiction which entitle recipients to  
6 waiver of tuition, capital and other fees, in whole or in  
7 part.

8 (2) Each undergraduate fee waiver is for a period of time  
9 not to exceed eight semesters of undergraduate study.

10 (3) Each governing board shall promulgate rules pursu-  
11 ant to the provisions of section six, article one of this  
12 chapter to govern the award of undergraduate fee waivers;  
13 the issuance and cancellation of certificates entitling the  
14 recipients to the benefits thereof; the use of the fee waivers  
15 by the recipients; and the rights and duties of the recipi-

16 ents with respect to the fee waivers. These rules may not  
17 be inconsistent with the provisions of this section.

18 (4) The awarding of undergraduate fee waivers shall be  
19 entered in the minutes of the meetings of the governing  
20 board.

21 (5) Students enrolled in an administratively linked  
22 community and technical college shall be awarded a  
23 proportionate share of the total number of undergraduate  
24 fee waivers awarded by a governing board. The number to  
25 be awarded to students of the community and technical  
26 college is based upon the full-time equivalent enrollment  
27 of that institution.

28 (b) *Graduate and professional school fee waivers.* -

29 (1) In addition to the fee waivers authorized for under-  
30 graduate study by subsection (a) of this section, the  
31 governing boards of Marshall University and West Vir-  
32 ginia University, respectively, each may establish fee  
33 waivers for study in the graduate and professional schools  
34 under its jurisdiction, including medicine and dentistry,  
35 which entitle the recipients to waiver of tuition, capital  
36 and other fees, in whole or in part.

37 (2) Each graduate or professional school fee waiver  
38 entitles the recipient to waiver of the tuition, capital, and  
39 other fees, in whole or in part, as may be prescribed by the  
40 governing board and is for a period of time not to exceed  
41 the number of semesters normally required in the recipi-  
42 ent's academic discipline.

43 (3) The governing boards each shall promulgate a rule  
44 pursuant to the provisions of section six, article one of this  
45 chapter, governing the award of graduate and professional  
46 school fee waivers; the issuance and cancellation of  
47 certificates entitling the recipients to the benefits thereof;  
48 the use of the fee waivers by the recipients; and the rights  
49 and duties of the recipients with respect to the fee waivers.

50 These rules may not be inconsistent with the provisions of  
51 this section.

52 (4) The awarding of graduate and professional school fee  
53 waivers shall be entered in the minutes of the meeting of  
54 each governing board.

**ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.**

**§18B-11-7. Regional Brownfield Assistance Centers.**

1 (a) For the purposes of this section, "eligible entities"  
2 means government entities as defined by the Comprehen-  
3 sive Environmental Response, Compensation, and Liabil-  
4 ity Act of 1980, as amended, at 42 U. S. C. §9604 or  
5 nonprofit organizations as defined by the federal Financial  
6 Assistance Management Improvement Act at 31 U. S. C.  
7 §6101.

8 (b) Marshall University and West Virginia University  
9 each shall establish a nonprofit Regional Brownfield  
10 Assistance Center through the corporations set out in  
11 article twelve of this chapter for the purposes of expedit-  
12 ing the redevelopment of Brownfield sites. The Centers  
13 shall provide assistance to eligible entities on state and  
14 federal Brownfield programs, secure state and federal  
15 funding for Brownfield redevelopment and acquire  
16 property eligible for state and federal Brownfield assis-  
17 tance.

18 (c) The Center established by Marshall University serves  
19 the following counties:

20 (1) McDowell, Mercer, Monroe, Raleigh, Summers and  
21 Wyoming;

22 (2) Cabell, Lincoln, Logan, Mason, Mingo and Wayne;

23 (3) Boone, Clay, Kanawha and Putnam; and

24 (4) Braxton, Fayette, Greenbrier, Nicholas, Pocahontas  
25 and Webster.



26 (d) The Center established by West Virginia University  
27 serves the following counties:

28 (1) Calhoun, Jackson, Pleasants, Ritchie, Roane, Tyler,  
29 Wirt and Wood;

30 (2) Brooke, Hancock, Marshall, Ohio and Wetzel;

31 (3) Barbour, Doddridge, Gilmer, Harrison, Lewis,  
32 Marion, Monongalia, Preston, Randolph, Taylor, Tucker  
33 and Upshur; and

34 (4) Berkeley, Grant, Hampshire, Hardy, Jefferson,  
35 Mineral, Morgan and Pendleton.

36 (e) To accomplish the purposes of this section, the  
37 Regional Brownfield Assistance Centers each have powers  
38 and duties including, but not limited to, the following:

39 (1) Acquiring property that is eligible for state and  
40 federal Brownfield assistance pursuant to the Small  
41 Business Liability Relief and Brownfields Revitalization  
42 Act (Public Law No. 107-118, 185 stat. 2356) and the West  
43 Virginia Voluntary Remediation and Redevelopment Act  
44 established in article twenty-two, chapter twenty-two of  
45 this code;

46 (2) Serving as the developer of property or entering into  
47 partnerships, agreements or other contractual arrange-  
48 ments with other public or private entities for the purposes  
49 of managing and coordinating remediation and redevelop-  
50 ment activities;

51 (3) Preparing an inventory of Brownfield sites within  
52 their respective geographic regions by the first day of July,  
53 two thousand six, and updating the inventory of sites  
54 annually;

55 (4) Promoting and coordinating the development of  
56 Brownfield property by providing training and technical  
57 assistance on Brownfield development, grant writing, site

58 assessments, remediation, community involvement and site  
59 preparation to eligible entities;

60 (5) Administering federal Brownfield Job Training  
61 Grants, the Brownfields Revolving Fund, and other federal  
62 Brownfield financial assistance programs to assist eligible  
63 entities in their Brownfield development efforts;

64 (6) Coordinating efforts to secure federal Brownfield  
65 funding by establishing priority rankings and by other  
66 necessary measures to maximize federal financial assis-  
67 tance and eliminate overlapping competition for federal  
68 dollars;

69 (7) Coordinating the development and publication by the  
70 first day of July, two thousand six, of a website to provide  
71 education and appropriate information on Brownfields  
72 development in West Virginia; and

73 (8) Coordinating with the West Virginia Development  
74 Office and the Department of Environmental Protection to  
75 establish and track key Brownfield economic statistics and  
76 conduct Brownfield conferences, as appropriate.

**ARTICLE 14. MISCELLANEOUS.**

**§18B-14-11. Legislative findings; creation of Governor's Commission on Graduate Study in Science, Technology, Engineering, and Mathematics; membership; report.**

1 (a) The Legislature finds that West Virginia ranks below  
2 most other states on key indicators of scientific and  
3 technical capacity, including the number of scientists and  
4 engineers who hold doctoral degrees, the number of  
5 science and engineering post-doctorates and the number  
6 of science and engineering graduate students.

7 (b) The Legislature further finds that this lack of scien-  
8 tific and technical capacity places the state at a competi-  
9 tive disadvantage to other states in terms of generating  
10 economic development and winning research grants, as

11 evidenced by limited amounts of academic research and  
12 development funding, industrial research and develop-  
13 ment, small business innovation grant awards, technol-  
14 ogy-related start-up companies and the low number of  
15 high-tech jobs.

16 (c) To address these findings, there is created the Gover-  
17 nor's Commission on Graduate Study in Science, Technol-  
18 ogy, Engineering and Mathematics, which may be cited as  
19 the STEM Commission, to address issues which include,  
20 but are not limited to, the following:

21 (1) Promoting coordination between higher education  
22 and K-12 education to create a seamless system of science  
23 and mathematics education and to improve science and  
24 mathematics education at all levels;

25 (2) Increasing the number of graduate students and  
26 post-doctorates in science, technology, engineering and  
27 mathematics, including the number of women and minor-  
28 ity graduate students in these fields;

29 (3) Increasing the number of West Virginia undergradu-  
30 ate and graduate students who receive nationally competi-  
31 tive scholarships and fellowships in science, technology,  
32 engineering and mathematics, such as Goldwater, Howard  
33 Hughes, National Science Foundation and Udall Fellow-  
34 ships;

35 (4) Improving the quality of graduate faculty and  
36 programs in science, technology, engineering and mathe-  
37 matics;

38 (5) Aligning graduate programs in science, technology,  
39 engineering and mathematics with the goals and objectives  
40 of the State EPSCoR Program, the State Science and  
41 Technology Advisory Council, the West Virginia Develop-  
42 ment Office and the Doctoral Scholars Program of the  
43 Southern Regional Education Board; and

44 (6) Increasing the quantity and enhancing the quality of  
45 academic research, as measured by federal and external  
46 expenditures for research and development.

47 (d) *STEM Commission membership.* --

48 (1) The Commission is comprised of fourteen members  
49 selected as follows:

50 (A) The Governor or designee, who serves as Chair;

51 (B) The Chancellor for the Higher Education Policy  
52 Commission;

53 (C) The Director of Academic Affairs of the Higher  
54 Education Policy Commission;

55 (D) The Executive Director of the State EPSCoR Pro-  
56 gram;

57 (E) The Executive Director of the West Virginia Devel-  
58 opment Office or designee;

59 (F) The provosts of Marshall University and West  
60 Virginia University or their designees;

61 (G) Five members appointed by the Governor who  
62 represent academic, business and research interests; and

63 (H) The Chair of the House of Delegates Committee on  
64 Education and the Chair of the West Virginia Senate  
65 Committee on Education as ex officio, nonvoting members  
66 who serve in an advisory capacity.

67 (2) At least two of the Governor's appointees are state  
68 residents.

69 (3) The Governor shall make appointments to the  
70 Commission so that members may begin their delibera-  
71 tions no later than the first day of July, two thousand five.

72 (e) The Commission shall complete its work and report  
73 its findings, conclusions and recommendations, together  
74 with drafts of any legislation necessary to effectuate the

Enr. Com. Sub. for S. B. No. 603] 140

75 recommendations, to the Legislative Oversight Commis-  
76 sion on Education Accountability, the Higher Education  
77 Policy Commission and the State EPSCoR Advisory  
78 Council by the first day of December, two thousand five.


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

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within  this the   
Day of  2005.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 29 2005

Time *J. E. ...*