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WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

House Bill No. 4026

(By Delegates M. Poling, Paxton, Williams,
Beach, Louisos, Smith, Walker, Andes, Canterbury,
Ireland and Romine)



Passed March 12, 2010

In Effect Ninety Days From Passage

HB 4026

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H. B. 4026

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(BY DELEGATES M. POLING, PAXTON, WILLIAMS,
BEACH, LOUISOS, SMITH, WALKER, ANDES, CANTERBURY,
IRELAND AND ROMINE)

[Passed March 12, 2010; in effect ninety days from passage]

AN ACT to repeal §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended; to repeal §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code; to amend and reenact §5-6-4a of said code; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-4-6 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-10-8 of said code; and to amend said code by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-12, §18B-19-13, §18B-19-14, §18B-19-15, §18B-19-16, §18B-19-17 and §18B-19-18, all relating to higher education capital facilities generally; repealing certain specific duties of governing boards of higher education institutions; eliminating condemnation rights of those boards; eliminating execution of contracts and deeds by those boards; eliminating certain obligation concerning capital construction and repair duties;

eliminating the authority of certain state institutions from selling certain properties and lease-back provisions; replacing those duties that are being repealed with similar responsibilities; setting forth certain specific responsibilities of the Higher Education Policy Commission and the Council for Community and Technical College Education; reviewing tuition and fee increases; reviewing and approving capital project planning, financing, management and maintenance; permitting the acquisition, sale, transfer, exchange, lease, conveyance and condemnation of real property; permitting the construction and operation of capital facilities; permitting the collection and use of certain capital fees; establishing in the State Treasury a capital maintenance fund for each state institution of higher education; setting forth legislative findings and intent; defining terms; requiring rulemaking; providing for system facilities institution and facilities planning; designating Marshall Community and Technical College as Mountwest Community and Technical College; making certain technical corrections; and deleting certain obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-2B-6 of said code be amended and reenacted; that §18B-4-6 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-10-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10,

§18B-19-11, §18B-19-12, §18B-19-13, §18B-19-14, §18B-19-15, §18B-19-16, §18B-19-17 and §18B-19-18, 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 \$1 million
4 and a report setting forth a detailed summary of the terms of the
5 contract or agreement, including the name of the owner of the
6 property and the agent involved in the sale, at least thirty days
7 prior to any sale, exchange, transfer, purchase, lease purchase,
8 lease or rental of real property, any refundings of lease
9 purchases, leases or rental agreements, any construction of new
10 buildings and any other acquisition or lease of buildings, office
11 space or grounds by any state agency, but excepting the
12 transactions of the Higher Education Policy Commission,
13 Council for Community and Technical College Education, state
14 institutions of higher education and the Division of Highways
15 for state road purposes pursuant to article two-a, chapter
16 seventeen of this code: *Provided*, That a contract or agreement
17 for the lease purchase, lease or rental of real property by any
18 state agency, where the costs of real property acquisition and
19 improvements are to be financed, in whole or in part, with bond
20 proceeds, may contain a preliminary schedule of rents and
21 leases for purposes of review by the committee.

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

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

CHAPTER 18B. HIGHER EDUCATION

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 the
3 goals and objectives found in section one-a, article one and
4 article one-d of this chapter. The commission shall exercise
5 its authority and carry out its responsibilities in a manner that
6 is consistent and not in conflict with the powers and duties
7 assigned by law to the West Virginia Council for Community
8 and Technical College Education and the powers and duties
9 assigned to the governing boards of Marshall University and
10 West Virginia University, respectively. To that end, the
11 commission, has the following powers and duties relating to
12 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 chapter
15 to address major challenges facing the state, including, but
16 not limited to, the goals and objectives found in section one-
17 a, article one of this chapter and article one-d of this chapter
18 and including specifically those goals and objectives
19 pertaining to the compacts created pursuant to section seven,

20 article one-d of this chapter and to develop and implement
21 the master plan described in section five, article one-d of this
22 chapter for the purpose of accomplishing the mandates of this
23 section;

24 (2) Develop, oversee and advance the promulgation and
25 implementation of a financing rule for state institutions of
26 higher education under its jurisdiction. The rule shall meet
27 the following criteria:

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

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

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

38 (D) Evaluate institutions' requests for tuition and fee
39 increases except Marshall University and West Virginia
40 University which are subject to the provisions of section one,
41 article ten of this chapter;

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

44 (A) Developing, building public consensus around and
45 sustaining attention to a long-range public policy agenda. In
46 developing the agenda, the commission and council shall
47 seek input from the Legislature and the Governor and
48 specifically from the State Board of Education and local

49 school districts in order to create the necessary linkages to
50 assure smooth, effective and seamless movement of students
51 through the public education and post-secondary education
52 systems and to ensure that the needs of public school courses
53 and programs can be fulfilled by the graduates produced and
54 the programs offered;

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

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

62 (4) Develop and adopt each institutional compact;

63 (5) Review and adopt the annual updates of the
64 institutional compacts;

65 (6) Serve as the accountability point to state
66 policymakers:

67 (A) The Governor for implementation of the public
68 policy agenda; and

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

72 (7) Jointly with the council, promulgate legislative rules
73 pursuant to article three-a, chapter twenty-nine-a of this code
74 to fulfill the purposes of section five, article one-a of this
75 chapter;

76 (8) Establish and implement a peer group for each
77 institution as described in section three, article one-a of this
78 chapter;

79 (9) Establish and implement the benchmarks and
80 performance indicators necessary to measure institutional
81 progress in achieving state policy priorities and institutional
82 missions pursuant to section seven, article one-d of this
83 chapter;

84 (10) Report to the Legislature and to the Legislative
85 Oversight Commission on Education Accountability annually
86 during the January interim meeting period on a date and at a
87 time and location to be determined by the President of the
88 Senate and the Speaker of the House of Delegates. The
89 report shall address at least the following:

90 (A) The performance of its system of higher education
91 during the previous fiscal year, including, but not limited to,
92 progress in meeting the goals, objectives, and priorities set
93 forth in article one and article one-d of this chapter and in the
94 commission's master plan and institutional compacts;

95 (B) The commission's priorities for new operating and
96 capital investments and the justification for the priority;

97 (C) Recommendations of the commission for statutory
98 changes necessary or expedient to achieve state goals and
99 objectives;

100 (11) Establish a formal process for identifying capital
101 investment needs and for determining priorities for these
102 investments for consideration by the Governor and the
103 Legislature as part of the appropriation request process
104 pursuant to article nineteen of this chapter;

105 (12) Develop standards and evaluate governing board
106 requests for capital project financing in accordance with
107 article nineteen of this chapter;

108 (13) Ensure that governing boards manage capital
109 projects and facilities needs effectively, including review and
110 approval or disapproval of capital projects, in accordance
111 with article nineteen of this chapter;

112 (14) Acquire legal services that are considered necessary,
113 including representation of the commission, its institutions,
114 employees and officers before any court or administrative
115 body, notwithstanding any other provision of this code to the
116 contrary. The counsel may be employed either on a salaried
117 basis or on a reasonable fee basis. In addition, the
118 commission may, but is not required to, call upon the
119 Attorney General for legal assistance and representation as
120 provided by law;

121 (15) Employ a Chancellor for Higher Education pursuant
122 to section five of this article;

123 (16) Employ other staff as necessary and appropriate to
124 carry out the duties and responsibilities of the commission
125 and the council, in accordance with article four of this
126 chapter;

127 (17) Provide suitable offices in Charleston for the
128 chancellor, vice chancellors and other staff;

129 (18) Advise and consent in the appointment of the
130 presidents of the institutions of higher education under its
131 jurisdiction pursuant to section six of this article. The role of
132 the commission in approving an institutional president is to
133 assure through personal interview that the person selected
134 understands and is committed to achieving the goals and

135 objectives as set forth in the institutional compact and in
136 section one-a, article one of this chapter;

137 (19) Approve the total compensation package from all
138 sources for presidents of institutions under its jurisdiction, as
139 proposed by the governing boards. The governing boards
140 shall obtain approval from the commission of the total
141 compensation package both when institutional presidents are
142 employed initially and afterward when any change is made in
143 the amount of the total compensation package;

144 (20) Establish and implement the policy of the state to
145 assure that parents and students have sufficient information
146 at the earliest possible age on which to base academic
147 decisions about what is required for students to be successful
148 in college, other post-secondary education and careers
149 related, as far as possible, to results from current assessment
150 tools in use in West Virginia;

151 (21) Approve and implement a uniform standard jointly
152 with the council to determine which students shall be placed
153 in remedial or developmental courses. The standard shall be
154 aligned with college admission tests and assessment tools
155 used in West Virginia and shall be applied uniformly by the
156 governing boards throughout the public higher education
157 system. The chancellors shall develop a clear, concise
158 explanation of the standard which they shall communicate to
159 the State Board of Education and the State Superintendent of
160 Schools;

161 (22) Jointly with the council, develop and implement an
162 oversight plan to manage systemwide technology by:

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

167 (B) Increasing the delivery of instruction to
168 nontraditional students, to provide services to business and
169 industry and increase the management capabilities of the
170 higher education system;

171 (C) Notwithstanding any other provision of law or this
172 code to the contrary, the council, commission and state
173 institutions of higher education are not subject to the
174 jurisdiction of the Chief Technology Officer for any purpose;

175 (23) Establish and implement policies and procedures to
176 ensure that a student may transfer and apply toward the
177 requirements for a bachelor's degree the maximum number
178 of credits earned at any regionally accredited in-state or out-
179 of-state community and technical college with as few
180 requirements to repeat courses or to incur additional costs as
181 is consistent with sound academic policy;

182 (24) Establish and implement policies and procedures to
183 ensure that a student may transfer and apply toward the
184 requirements for a degree the maximum number of credits
185 earned at any regionally accredited in-state or out-of-state
186 higher education institution with as few requirements to
187 repeat courses or to incur additional costs as is consistent
188 with sound academic policy;

189 (25) Establish and implement policies and procedures to
190 ensure that a student may transfer and apply toward the
191 requirements for a master's degree the maximum number of
192 credits earned at any regionally accredited in-state or out-of-
193 state higher education institution with as few requirements to
194 repeat courses or to incur additional costs as is consistent
195 with sound academic policy;

196 (26) Establish and implement policies and programs, in
197 cooperation with the council and the institutions of higher

198 education, through which a student who has gained
199 knowledge and skills through employment, participation in
200 education and training at vocational schools or other
201 education institutions, or Internet-based education programs,
202 may demonstrate by competency-based assessment that he or
203 she has the necessary knowledge and skills to be granted
204 academic credit or advanced placement standing toward the
205 requirements of an associate's degree or a bachelor's degree
206 at a state institution of higher education;

207 (27) Seek out and attend regional, national and
208 international meetings and forums on education and
209 workforce development-related topics, as in the
210 commission's discretion is critical for the performance of
211 their duties as members, for the purpose of keeping abreast
212 of education trends and policies to aid it in developing the
213 policies for this state to meet the established education goals
214 and objectives pursuant to section one-a, article one of this
215 chapter and article one-d of this chapter;

216 (28) Promulgate and implement a rule for higher
217 education governing boards and institutions to follow when
218 considering capital projects pursuant to article nineteen of
219 this chapter;

220 (29) Consider and submit to the appropriate agencies of
221 the executive and legislative branches of state government an
222 appropriation request that reflects recommended
223 appropriations for the commission and the institutions under
224 its jurisdiction. The commission shall submit as part of its
225 appropriation request the separate recommended
226 appropriation request received from the council, both for the
227 council and the institutions under the council's jurisdiction.
228 The commission annually shall submit the proposed
229 institutional allocations based on each institution's progress
230 toward meeting the goals of its institutional compact;

231 (30) The commission may assess institutions under its
232 jurisdiction, including the state institutions of higher
233 education known as Marshall University and West Virginia
234 University, for the payment of expenses of the commission
235 or for the funding of statewide higher education services,
236 obligations or initiatives related to the goals set forth for the
237 provision of public higher education in the state;

238 (31) Promulgate rules allocating reimbursement of
239 appropriations, if made available by the Legislature, to
240 institutions of higher education for qualifying noncapital
241 expenditures incurred in providing services to students with
242 physical, learning or severe sensory disabilities;

243 (32) Make appointments to boards and commissions
244 where this code requires appointments from the State College
245 System Board of Directors or the University of West Virginia
246 System Board of Trustees which were abolished effective
247 June 30, 2000, except in those cases where the required
248 appointment has a specific and direct connection to the
249 provision of community and technical college education, the
250 appointment shall be made by the council. Notwithstanding
251 any provisions of this code to the contrary, the commission
252 or the council may appoint one of its own members or any
253 other citizen of the state as its designee. The commission and
254 council shall appoint the total number of persons in the
255 aggregate required to be appointed by these previous
256 governing boards;

257 (33) Pursuant to article three-a, chapter twenty-nine-a of
258 this code and section six, article one of this chapter,
259 promulgate rules necessary or expedient to fulfill the
260 purposes of this chapter. The commission and the council
261 shall promulgate a uniform joint legislative rule for the
262 purpose of standardizing, as much as possible, the
263 administration of personnel matters among the state
264 institutions of higher education;

265 (34) Determine when a joint rule among the governing
266 boards of the institutions under its jurisdiction is necessary or
267 required by law and, in those instances, in consultation with
268 the governing boards of all the institutions under its
269 jurisdiction, promulgate the joint rule;

270 (35) Promulgate and implement a rule jointly with the
271 council whereby course credit earned at a community and
272 technical college transfers for program credit at any other
273 state institution of higher education and is not limited to
274 fulfilling a general education requirement;

275 (36) By November 1, 2010, promulgate a rule pursuant
276 to section one, article ten of this chapter, establishing tuition
277 and fee policy for all institutions of higher education under
278 the jurisdiction of the commission, including Marshall
279 University and West Virginia University. The rule shall
280 include, but is not limited to, the following:

281 (A) Comparisons with peer institutions;

282 (B) Differences among institutional missions;

283 (C) Strategies for promoting student access;

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

285 (E) Such other policies as the commission and council
286 consider appropriate;

287 (37) Implement general disease awareness initiatives to
288 educate parents and students, particularly dormitory
289 residents, about meningococcal meningitis; the potentially
290 life-threatening dangers of contracting the infection;
291 behaviors and activities that can increase risks; measures that
292 can be taken to prevent contact or infection; and potential

293 benefits of vaccination. The commission shall encourage
294 institutions that provide medical care to students to provide
295 access to the vaccine for those who wish to receive it; and

296 (38) Notwithstanding any other provision of this code to
297 the contrary, sell, lease, convey or otherwise dispose of all or
298 part of any real property that it owns, in accordance with
299 article nineteen of this chapter.

300 (b) In addition to the powers and duties listed in
301 subsection (a) of this section, the commission has the
302 following general powers and duties related to its role in
303 developing, articulating and overseeing the implementation
304 of the public policy agenda:

305 (1) Planning and policy leadership, including a distinct
306 and visible role in setting the state's policy agenda and in
307 serving as an agent of change;

308 (2) Policy analysis and research focused on issues
309 affecting the system as a whole or a geographical region of
310 the system;

311 (3) Development and implementation of institutional
312 mission definitions, including use of incentive funds to
313 influence institutional behavior in ways that are consistent
314 with public priorities;

315 (4) Academic program review and approval for
316 institutions under its jurisdiction, including the use of
317 institutional missions as a template to judge the
318 appropriateness of both new and existing programs and the
319 authority to implement needed changes. The commission's
320 authority to review and approve academic programs for either
321 the state institution of higher education known as Marshall
322 University or West Virginia University is limited to programs

323 that are proposed to be offered at a new location not presently
324 served by that institution;

325 (5) Distribution of funds appropriated to the commission,
326 including incentive and performance-based funding;

327 (6) Administration of state and federal student aid
328 programs under the supervision of the Vice Chancellor for
329 Administration, including promulgation of any rules
330 necessary to administer those programs;

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

334 (8) Developing, establishing and implementing
335 information, assessment and accountability systems,
336 including maintaining statewide data systems that facilitate
337 long-term planning and accurate measurement of strategic
338 outcomes and performance indicators;

339 (9) Jointly with the council, promulgating and
340 implementing rules for licensing and oversight for both
341 public and private degree-granting and nondegree-granting
342 institutions that provide post-secondary education courses or
343 programs in the state pursuant to the findings and policy
344 recommendations required by section eleven of this article;

345 (10) Developing, implementing and overseeing statewide
346 and regional projects and initiatives related to providing post-
347 secondary education at the baccalaureate level and above
348 such as those using funds from federal categorical programs
349 or those using incentive and performance-based funding from
350 any source; and

351 (11) Quality assurance that intersects with all other duties

352 of the commission particularly in the areas of research, data
353 collection and analysis, planning, policy analysis, program
354 review and approval, budgeting and information and
355 accountability systems.

356 (c) In addition to the powers and duties provided in
357 subsections (a) and (b) of this section and any other powers
358 and duties as may be assigned to it by law, the commission
359 has any other powers and duties necessary or expedient to
360 accomplish the purposes of this article.

361 (d) The commission may withdraw specific powers of a
362 governing board of an institution under its jurisdiction for a
363 period not to exceed two years, if the commission makes a
364 determination that any of the following conditions exist:

365 (1) The governing board has failed for two consecutive
366 years to develop or implement an institutional compact as
367 required in article one-d of this chapter;

368 (2) The commission has received information,
369 substantiated by independent audit, of significant
370 mismanagement or failure to carry out the powers and duties
371 of the board of governors according to state law; or

372 (3) Other circumstances which, in the view of the
373 commission, severely limit the capacity of the board of
374 governors to carry out its duties and responsibilities.

375 Specific powers of a governing board may not be
376 withdrawn for a period exceeding two years. During that time
377 the commission may take all steps necessary to restore sound,
378 stable and responsible institutional governance.

ARTICLE 2A. BOARDS OF GOVERNORS.

§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 the
5 state institution of higher education under its jurisdiction;

6 (b) Develop a master plan for the institution under its
7 jurisdiction.

8 (1) The ultimate responsibility for developing and
9 updating each master plan at the institutional level resides
10 with the board of governors, but the ultimate responsibility
11 for approving the final version of each institutional master
12 plan, including periodic updates, resides with the commission
13 or council, as appropriate.

14 (2) Each institutional master plan shall include, but not be
15 limited to, the following:

16 (A) A detailed demonstration of how the institutional
17 master plan will be used to meet the goals and objectives of
18 the institutional compact;

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

25 (C) Documentation showing how the governing board
26 involved the commission or council, as appropriate,
27 institutional constituency groups, clientele of the institution

28 and the general public in the development of all segments of
29 the institutional master plan.

30 (3) The plan shall be established for periods of not fewer
31 than three nor more than five years and shall be revised
32 periodically as necessary, including adding or deleting degree
33 programs as the governing board in its discretion determines
34 is necessary;

35 (c) Develop a ten-year campus development plan in
36 accordance with article nineteen of this chapter;

37 (d) Prescribe for the institution, under its jurisdiction, in
38 accordance with its master plan and compact, specific
39 functions and responsibilities to achieve the goals, objectives
40 and priorities established in articles one and one-d of this
41 chapter to meet the higher education needs of its area of
42 responsibility and to avoid unnecessary duplication;

43 (e) Direct the preparation of an appropriation request for
44 the institution under its jurisdiction, which relates directly to
45 missions, goals and projections as found in the institutional
46 master plan and the institutional compact;

47 (f) Consider, revise and submit to the commission or
48 council, as appropriate, an appropriation request on behalf of
49 the institution under its jurisdiction;

50 (g) Review, at least every five years, all academic
51 programs offered at the institution under its jurisdiction. The
52 review shall address the viability, adequacy and necessity of
53 the programs in relation to established state goals, objectives
54 and priorities, the institutional master plan, the institutional
55 compact and the education and workforce needs of its
56 responsibility district. As a part of the review, each
57 governing board shall require the institution under its

58 jurisdiction to conduct periodic studies of its graduates and
59 their employers to determine placement patterns and the
60 effectiveness of the education experience. Where
61 appropriate, these studies should coincide with the studies
62 required of many academic disciplines by their accrediting
63 bodies;

64 (h) Ensure that the sequence and availability of academic
65 programs and courses offered by the institution under its
66 jurisdiction is such that students have the maximum
67 opportunity to complete programs in the time frame normally
68 associated with program completion. Each governing board
69 is responsible to see that the needs of nontraditional college-
70 age students are appropriately addressed and, to the extent it
71 is possible for the individual governing board to control, to
72 assure core course work completed at the institution is
73 transferable to any other state institution of higher education
74 for credit with the grade earned;

75 (i) Subject to article one-b of this chapter, approve the
76 teacher education programs offered in the institution under its
77 control. In order to permit graduates of teacher education
78 programs to receive a degree from a nationally accredited
79 program and in order to prevent expensive duplication of
80 program accreditation, the commission may select and use
81 one nationally recognized teacher education program
82 accreditation standard as the appropriate standard for
83 program evaluation;

84 (j) Involve faculty, students and classified employees in
85 institutional-level planning and decisionmaking when those
86 groups are affected;

87 (k) Subject to the provisions of federal law and pursuant
88 to articles seven, eight and nine of this chapter and to rules
89 adopted by the commission and the council, administer a

90 system for the management of personnel matters, including,
91 but not limited to, personnel classification, compensation and
92 discipline for employees at the institution under its
93 jurisdiction;

94 (l) Administer a system for hearing employee grievances
95 and appeals. Notwithstanding any other provision of this
96 code to the contrary, the procedure established in article two,
97 chapter six-c of this code is the exclusive mechanism for
98 hearing prospective employee grievances and appeals;

99 (m) Solicit and use or expend voluntary support,
100 including financial contributions and support services, for the
101 institution under its jurisdiction;

102 (n) Appoint a president for the institution under its
103 jurisdiction subject to section six, article one-b of this
104 chapter;

105 (o) Conduct written performance evaluations of the
106 president pursuant to section six, article one-b of this chapter;

107 (p) Employ all faculty and staff at the institution under its
108 jurisdiction. The employees operate under the supervision of
109 the president, but are employees of the governing board;

110 (q) Submit to the commission or council, as appropriate,
111 any data or reports requested by the commission or council,
112 as appropriate, within the time frame set by the commission
113 or council;

114 (r) Enter into contracts or consortium agreements with the
115 public schools, private schools or private industry to provide
116 technical, vocational, college preparatory, remedial and
117 customized training courses at locations either on campuses
118 of the state institutions of higher education or at off-campus

119 locations in the institution's responsibility district. To
120 accomplish this goal, the boards may share resources among
121 the various groups in the community;

122 (s) Provide and transfer funding and property to certain
123 corporations pursuant to section ten, article twelve of this
124 chapter;

125 (t) Delegate, with prescribed standards and limitations,
126 the part of its power and control over the business affairs of
127 the institution to the president in any case where it considers
128 the delegation necessary and prudent in order to enable the
129 institution to function in a proper and expeditious manner and
130 to meet the requirements of its master plan and compact. If
131 a governing board elects to delegate any of its power and
132 control under this subsection, it shall enter the delegation in
133 the minutes of the meeting when the decision was made and
134 shall notify the commission or council, as appropriate. Any
135 delegation of power and control may be rescinded by the
136 appropriate governing board, the commission or council, as
137 appropriate, at any time, in whole or in part, except that the
138 commission may not revoke delegations of authority made by
139 the governing boards of Marshall University or West Virginia
140 University as they relate to the state institutions of higher
141 education known as Marshall University and West Virginia
142 University;

143 (u) Unless changed by the commission or the council, as
144 appropriate, continue to abide by existing rules setting forth
145 standards for acceptance of advanced placement credit for the
146 institution under its jurisdiction. Individual departments at a state
147 institution of higher education may, upon approval of the
148 institutional faculty senate, require higher scores on the advanced
149 placement test than scores designated by the governing board
150 when the credit is to be used toward meeting a requirement of the
151 core curriculum for a major in that department;

152 (v) Consult, cooperate and work with the State Treasurer
153 and the State Auditor to update as necessary and maintain an
154 efficient and cost-effective system for the financial
155 management and expenditure of appropriated and
156 nonappropriated revenue at the institution under its
157 jurisdiction that ensures that properly submitted requests for
158 payment be paid on or before the due date but, in any event,
159 within fifteen days of receipt in the State Auditor's office;

160 (w) In consultation with the appropriate chancellor and
161 the Secretary of the Department of Administration, develop,
162 update as necessary and maintain a plan to administer a
163 consistent method of conducting personnel transactions,
164 including, but not limited to, hiring, dismissal, promotions
165 and transfers at the institution under its jurisdiction. Each
166 personnel transaction shall be accompanied by the
167 appropriate standardized system or forms, which shall be
168 submitted to the respective governing board and the
169 Department of Finance and Administration;

170 (x) Notwithstanding any other provision of this code to
171 the contrary, transfer funds from any account specifically
172 appropriated for its use to any corresponding line item in a
173 general revenue account at any agency or institution under its
174 jurisdiction as long as the transferred funds are used for the
175 purposes appropriated;

176 (y) Transfer funds from appropriated special revenue
177 accounts for capital improvements under its jurisdiction to
178 special revenue accounts at agencies or institutions under its
179 jurisdiction as long as the transferred funds are used for the
180 purposes appropriated in accordance with article nineteen of
181 this chapter;

182 (z) Notwithstanding any other provision of this code to
183 the contrary, acquire legal services that are necessary,

184 including representation of the governing board, its
 185 institution, employees and officers before any court or
 186 administrative body. The counsel may be employed either on
 187 a salaried basis or on a reasonable fee basis. In addition, the
 188 governing board may, but is not required to, call upon the
 189 Attorney General for legal assistance and representation as
 190 provided by law; and

191 (aa) Contract and pay for disability insurance for a class
 192 or classes of employees at a state institution of higher
 193 education under its jurisdiction.

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

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

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

10 (b) The council shall propose rules pursuant to section six,
 11 article one of this chapter and article three-a, chapter twenty-
 12 nine-a of this code to implement this section and applicable
 13 provisions of article one-d of this chapter. To implement
 14 article one-d of this chapter relevant to community and
 15 technical colleges, the council may propose rules jointly with
 16 the commission or separately and may choose to address all
 17 components of the accountability system in a single rule or
 18 may propose additional rules to cover specific components.

19 (c) The council has the following powers and duties
20 relating to the authority established in subsection (a) of this
21 section:

22 (1) Develop, oversee and advance the public policy
23 agenda for community and technical college education for the
24 purpose of accomplishing the mandates of this section,
25 including, but not limited to, the following:

26 (A) Achieving the goals and objectives established in
27 articles one and one-d of this chapter;

28 (B) Addressing the goals and objectives contained in the
29 institutional compacts created pursuant to section seven,
30 article one-d of this chapter; and

31 (C) Developing and implementing the master plan
32 described in section five, article one-d of this chapter;

33 (2) Propose a legislative rule pursuant to subsection (b)
34 of this section and article three-a, chapter twenty-nine-a of
35 this code to develop and implement a financing policy for
36 community and technical college education in West Virginia.
37 The rule shall meet the following criteria:

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

41 (B) Serve to maintain institutional assets, including, but
42 not limited to, human and physical resources and deferred
43 maintenance;

44 (C) Establish a plan for strategic funding to strengthen
45 capacity for support of community and technical college
46 education;

47 (D) Establish a plan that measures progress and provides
48 performance-based funding to institutions which make
49 significant progress in the following specific areas:

50 (i) Achieving the objectives and priorities established in
51 article one-d of this chapter;

52 (ii) Serving targeted populations, especially working age
53 adults twenty-five years of age and over;

54 (iii) Providing access to high-cost, high-demand technical
55 programs in every region of the state;

56 (iv) Increasing the percentage of functionally literate
57 adults in every region of the state; and

58 (v) Providing high-quality community and technical
59 college education services to residents of every region of the
60 state; and

61 (E) Evaluate institutions' requests for tuition and fee
62 increases subject to section one, article ten of this chapter;

63 (3) Create a policy leadership structure relating to
64 community and technical college education capable of the
65 following actions:

66 (A) Developing, building public consensus around and
67 sustaining attention to a long-range public policy agenda. In
68 developing the agenda, the council shall seek input from the
69 Legislature and the Governor and specifically from the State
70 Board of Education and local school districts in order to
71 create the necessary linkages to assure smooth, effective and
72 seamless movement of students through the public education
73 and post-secondary education systems and to ensure that the
74 needs of public school courses and programs can be fulfilled
75 by the graduates produced and the programs offered;

76 (B) Ensuring that the governing boards of the institutions
77 under the council's jurisdiction carry out their duty
78 effectively to govern the individual institutions of higher
79 education; and

80 (C) Holding each community and technical college and
81 the statewide network of independently accredited
82 community and technical colleges as a whole accountable for
83 accomplishing their missions and achieving the goals and
84 objectives established in articles one, one-d and three-c of
85 this chapter;

86 (4) Develop for inclusion in the statewide public agenda,
87 a plan for raising education attainment, increasing adult
88 literacy, promoting workforce and economic development
89 and ensuring access to advanced education for the citizens of
90 West Virginia;

91 (5) Provide statewide leadership, coordination, support
92 and technical assistance to the community and technical
93 colleges and to provide a focal point for visible and effective
94 advocacy for their work and for the public policy agendas
95 approved by the commission and council.

96 (6) Review and adopt annually all institutional compacts
97 for the community and technical colleges pursuant to section
98 seven, article one-d of this chapter;

99 (7) Fulfill the mandates of the accountability system
100 established in article one-d of this chapter and report on
101 progress in meeting established goals, objectives and
102 priorities to the elected leadership of the state;

103 (8) Propose a legislative rule pursuant to subsection (b)
104 of this section and article three-a, chapter twenty-nine-a of
105 this code to establish benchmarks and indicators in
106 accordance with this subsection;

107 (9) Establish and implement the benchmarks and
108 performance indicators necessary to measure institutional
109 progress:

110 (A) In meeting state goals, objectives and priorities
111 established in articles one and one-d of this chapter;

112 (B) In carrying out institutional missions; and

113 (C) In meeting the essential conditions established in
114 article three-c of this chapter;

115 (10) Collect and analyze data relating to the performance
116 of community and technical colleges in every region of West
117 Virginia and report periodically or as directed to the
118 Legislative Oversight Commission on Education
119 Accountability on the progress in meeting the goals and
120 objectives established in articles one and one-d of this
121 chapter.

122 Additionally, the council shall report annually during the
123 January interim meeting period on a date and at a time and
124 location to be determined by the President of the Senate and
125 the Speaker of the House of Delegates.

126 The annual report shall address at least the following:

127 (A) The performance of the community and technical
128 college network during the previous fiscal year, including,
129 but not limited to, progress in meeting the goals, objectives
130 and priorities established in articles one and one-d of this
131 chapter and in the council's master plan and institution
132 compacts;

133 (B) The priorities of the council for new operating and
134 capital investments and the justification for the priority; and

135 (C) Recommendations of the council for statutory
136 changes necessary or expedient to achieve established state
137 goals and objectives;

138 (11) In accordance with article nineteen of this chapter:

139 (A) Establish a formal process for identifying needs for
140 capital investments and for determining priorities for these
141 needs for consideration by the Governor and the Legislature
142 as part of the appropriation request process;

143 (B) Ensure that the governing boards adhere to the capital
144 construction and maintenance provisions of article nineteen
145 of this chapter; and

146 (C) Notwithstanding any other provision of this code to
147 the contrary, sell, lease, convey or otherwise dispose of all or
148 part of any real property that it owns.

149 (12) Draw upon the expertise available within Workforce
150 West Virginia and the West Virginia Development Office as
151 a resource in the area of workforce development and training;

152 (13) Acquire legal services that are considered necessary,
153 including representation of the council, its institutions,
154 employees and officers before any court or administrative
155 body, notwithstanding any other provision of this code to the
156 contrary. The counsel may be employed either on a salaried
157 basis or on a reasonable fee basis. In addition, the council
158 may, but is not required to, call upon the Attorney General
159 for legal assistance and representation as provided by law;

160 (14) Employ a chancellor for community and technical
161 college education pursuant to section three of this article;

162 (15) Employ other staff as necessary and appropriate to
163 carry out the duties and responsibilities of the council
164 consistent with section two, article four of this chapter;

165 (16) Employ other staff as necessary and appropriate to
166 carry out the duties and responsibilities of the council who
167 are employed solely by the council;

168 (17) Provide suitable offices in Charleston for the
169 chancellor and other staff;

170 (18) Approve the total compensation package from all
171 sources for presidents of community and technical colleges,
172 as proposed by the governing boards. The governing boards
173 shall obtain approval from the council of the total
174 compensation package both when presidents are employed
175 initially and subsequently when any change is made in the
176 amount of the total compensation package;

177 (19) Establish and implement policies and procedures to
178 ensure that a student may transfer and apply toward the
179 requirements for a degree the maximum number of credits
180 earned at any regionally accredited in-state or out-of-state
181 higher education institution with as few requirements to
182 repeat courses or to incur additional costs as is consistent
183 with sound academic policy;

184 (20) Establish and implement policies and programs,
185 jointly with the community and technical colleges, through
186 which a student who has gained knowledge and skills
187 through employment, participation in education and training
188 at vocational schools or other education institutions, or
189 Internet-based education programs, may demonstrate by
190 competency-based assessment the necessary knowledge and
191 skills to be granted academic credit or advanced placement
192 standing toward the requirements of an associate's degree or
193 a bachelor's degree at a state institution of higher education;

194 (21) Seek out and attend regional and national meetings
195 and forums on education and workforce development-related
196 topics, that council members consider critical for the

197 performance of their duties. The council shall keep abreast
198 of national and regional community and technical college
199 education trends and policies to aid members in developing
200 the policies for this state that meet the education goals and
201 objectives established in articles one and one-d of this
202 chapter;

203 (22) Assess community and technical colleges for the
204 payment of expenses of the council or for the funding of
205 statewide services, obligations or initiatives related
206 specifically to the provision of community and technical
207 college education;

208 (23) Promulgate rules allocating reimbursement of
209 appropriations, if made available by the Legislature, to
210 community and technical colleges for qualifying noncapital
211 expenditures incurred in the provision of services to students
212 with physical, learning or severe sensory disabilities;

213 (24) Assume the prior authority of the commission in
214 examining and approving tuition and fee increase proposals
215 submitted by community and technical college governing
216 boards as provided in section one, article ten of this chapter.

217 (25) Develop and submit to the commission, a single
218 appropriation request for community and technical college
219 education that reflects recommended appropriations for
220 community and technical colleges and that meets the
221 following conditions:

222 (A) Incorporates the provisions of the financing rule
223 mandated by this section to measure and provide
224 performance funding to institutions that achieve or make
225 significant progress toward achieving established state goals,
226 objectives and priorities;

227 (B) Considers the progress of each institution toward
228 meeting the essential conditions set forth in section three,
229 article three-c of this chapter, including independent
230 accreditation; and

231 (C) Considers the progress of each institution toward
232 meeting the goals, objectives and priorities established in
233 article one-d of this chapter and its approved institutional
234 compact.

235 (26) Administer and distribute the independently
236 accredited community and technical college development
237 account;

238 (27) Establish a plan of strategic funding to strengthen
239 capacity for support and assure delivery of high quality
240 community and technical college education in all regions of
241 the state;

242 (28) Foster coordination among all state-level, regional
243 and local entities providing post-secondary vocational
244 education or workforce development and coordinate all
245 public institutions and entities that have a community and
246 technical college mission;

247 (29) Assume the principal responsibility for oversight of
248 those community and technical colleges seeking independent
249 accreditation and for holding governing boards accountable
250 for meeting the essential conditions pursuant to article three-c
251 of this chapter;

252 (30) Advise and consent in the appointment of the
253 presidents of the community and technical colleges pursuant
254 to section six, article one-b of this chapter. The role of the
255 council in approving a president is to assure through personal
256 interview that the person selected understands and is

257 committed to achieving the goals and objectives established
258 in the institutional compact and in articles one, one-d and
259 three-c of this chapter;

260 (31) Provide a single, statewide link for current and
261 prospective employers whose needs extend beyond one
262 locality;

263 (32) Provide a mechanism capable of serving two or
264 more institutions to facilitate joint problemsolving in areas
265 including, but not limited to, the following:

266 (A) Defining faculty roles and personnel policies;

267 (B) Delivering high-cost technical education programs
268 across the state;

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

271 (D) Providing opportunities for resource-sharing and
272 collaborative ventures;

273 (33) Provide support and technical assistance to develop,
274 coordinate and deliver effective and efficient community and
275 technical college education programs and services in all
276 regions of the state;

277 (34) Assist the community and technical colleges in
278 establishing and promoting links with business, industry and
279 labor in the geographic areas for which each community and
280 technical college is responsible;

281 (35) Develop alliances among the community and technical
282 colleges for resource sharing, joint development of courses and
283 courseware, and sharing of expertise and staff development;

284 (36) Serve aggressively as an advocate for development
285 of a seamless curriculum;

286 (37) Cooperate with all providers of education services in
287 the state to remove barriers relating to a seamless system of
288 public and higher education and to transfer and articulation
289 between and among community and technical colleges, state
290 colleges and universities and public education, preschool
291 through grade twelve;

292 (38) Encourage the most efficient use of available
293 resources;

294 (39) Coordinate with the commission in informing public
295 school students, their parents and teachers of the academic
296 preparation that students need in order to be prepared
297 adequately to succeed in their selected fields of study and
298 career plans, including presentation of academic career fairs;

299 (40) Jointly with the commission, approve and implement
300 a uniform standard, as developed by the chancellors, to
301 determine which students shall be placed in remedial or
302 developmental courses. The standard shall be aligned with
303 college admission tests and assessment tools used in West
304 Virginia and shall be applied uniformly by the governing
305 boards throughout the public higher education system. The
306 chancellors shall develop a clear, concise explanation of the
307 standard which the governing boards shall communicate to
308 the State Board of Education and the State Superintendent of
309 Schools;

310 (41) Develop and implement strategies and curriculum
311 for providing developmental education which shall be
312 applied by any state institution of higher education providing
313 developmental education.

314 (42) Develop a statewide system of community and
315 technical college programs and services in every region of
316 West Virginia for competency-based certification of
317 knowledge and skills, including a statewide competency-
318 based associate degree program;

319 (43) Review and approve all institutional master plans for
320 the community and technical colleges pursuant to section
321 four, article two-a of this chapter;

322 (44) Propose rules for promulgation pursuant to
323 subsection (b) of this section and article three-a, chapter
324 twenty-nine-a of this code that are necessary or expedient for
325 the effective and efficient performance of community and
326 technical colleges in the state;

327 (45) In its sole discretion, transfer any rule under its
328 jurisdiction, other than a legislative rule, to the jurisdiction of
329 the governing boards, which may rescind, revise, alter or
330 amend any rule transferred pursuant to rules adopted by the
331 council, and provide technical assistance to the institutions
332 under its jurisdiction to aid them in promulgating rules;

333 (46) Develop for inclusion in the higher education report
334 card, as defined in section eight, article one-d of this chapter,
335 a separate section on community and technical colleges. This
336 section shall include, but is not limited to, evaluation of the
337 institutions based upon the benchmarks and indicators
338 developed in subdivision (9) of this subsection;

339 (47) Facilitate continuation of the Advantage Valley
340 Community College Network under the leadership and
341 direction of Mountwest Community and Technical College;

342 (48) Initiate and facilitate creation of other regional
343 networks of affiliated community and technical colleges that

344 the council finds to be appropriate and in the best interests of
345 the citizens to be served;

346 (49) Develop with the State Board of Education plans for
347 secondary and post-secondary vocational-technical-
348 occupational and adult basic education, including, but not
349 limited to, the following:

350 (A) Policies to strengthen vocational-technical-
351 occupational and adult basic education; and

352 (B) Programs and methods to assist in the improvement,
353 modernization and expanded delivery of vocational-
354 technical-occupational and adult basic education programs;

355 (50) Distribute federal vocational education funding
356 provided under the Carl D. Perkins Vocational and Technical
357 Education Act of 1998, PL 105-332, with an emphasis on
358 distributing financial assistance among secondary and post-
359 secondary vocational- technical-occupational and adult basic
360 education programs to help meet the public policy agenda.

361 In distributing funds the council shall use the following
362 guidelines:

363 (A) The State Board of Education shall continue to be the
364 fiscal agent for federal vocational education funding;

365 (B) The percentage split between the State Board of
366 Education and the council shall be determined by rule
367 promulgated by the council under article three-a, chapter
368 twenty-nine-a of this code;

369 (51) Collaborate, cooperate and interact with all
370 secondary and post-secondary vocational-technical-
371 occupational and adult basic education programs in the state,

372 including the programs assisted under the federal Carl D.
373 Perkins Vocational and Technical Education Act of 1998, PL
374 105-332, and the Workforce Investment Act of 1998, to
375 promote the development of seamless curriculum and the
376 elimination of duplicative programs;

377 (52) Coordinate the delivery of vocational-technical
378 occupational and adult basic education in a manner designed
379 to make the most effective use of available public funds to
380 increase accessibility for students;

381 (53) Analyze and report to the State Board of Education
382 on the distribution of spending for vocational-technical-
383 occupational and adult basic education in the state and on the
384 availability of vocational-technical-occupational and adult
385 basic education activities and services within the state;

386 (54) Promote the delivery of vocational-technical-
387 occupational education, adult basic education and community
388 and technical college education programs in the state that
389 emphasize the involvement of business, industry and labor
390 organizations;

391 (55) Promote public participation in the provision of
392 vocational-technical-occupational education, adult basic
393 education and community and technical education at the local
394 level, emphasizing programs which involve the participation
395 of local employers and labor organizations;

396 (56) Promote equal access to quality vocational-technical-
397 occupational education, adult basic education and community
398 and technical college education programs to handicapped and
399 disadvantaged individuals, adults in need of training and
400 retraining, single parents, homemakers, participants in programs
401 designed to eliminate sexual bias and stereotyping and criminal
402 offenders serving in correctional institutions;

403 (57) Meet annually between the months of October and
404 December with the Advisory Committee of Community and
405 Technical College Presidents created pursuant to section
406 eight of this article to discuss those matters relating to
407 community and technical college education in which
408 advisory committee members or the council may have an
409 interest;

410 (58) Accept and expend any gift, grant, contribution,
411 bequest, endowment or other money for the purposes of this
412 article;

413 (59) Assume the powers set out in section nine of this
414 article. The rules previously promulgated by the state
415 College System Board of Directors pursuant to that section
416 and transferred to the commission are hereby transferred to
417 the council and shall continue in effect until rescinded,
418 revised, altered or amended by the council;

419 (60) Pursuant to subsection (b) of this section and article
420 three-a, chapter twenty-nine-a of this code, promulgate a
421 uniform joint legislative rule with the commission for the
422 purpose of standardizing, as much as possible, the
423 administration of personnel matters among the institutions of
424 higher education;

425 (61) Determine when a joint rule among the governing
426 boards of the community and technical colleges is necessary
427 or required by law and, in those instances and in consultation
428 with the governing boards, promulgate the joint rule;

429 (62) Subject to section one, article ten of this chapter,
430 promulgate a rule establishing tuition and fee policy for all
431 governing boards under its jurisdiction. The rule shall
432 include, but is not limited to, the following:

- 433 (A) Comparisons with peer institutions;
- 434 (B) Differences among institutional missions;
- 435 (C) Strategies for promoting student access;
- 436 (D) Consideration of charges to out-of-state students; and
- 437 (E) Any other policies the council considers appropriate;

438 (63) In cooperation with the West Virginia Division of
439 Highways, study a method for increasing the signage
440 signifying community and technical college locations along
441 the state interstate highways, and report to the Legislative
442 Oversight Commission on Education Accountability
443 regarding any recommendations and required costs; and

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

449 (d) In addition to the powers and duties listed in
450 subsections (a), (b) and (c) of this section, the council has the
451 following general powers and duties related to its role in
452 developing, articulating and overseeing the implementation
453 of the public policy agenda for community and technical
454 colleges:

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

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

462 (3) Development and implementation of each community
463 and technical college mission definition including use of
464 incentive and performance funds to influence institutional
465 behavior in ways that are consistent with achieving
466 established state goals, objectives and priorities;

467 (4) Academic program review and approval for the
468 institutions under its jurisdiction, including the use of
469 institutional missions as a template to judge the
470 appropriateness of both new and existing programs and the
471 authority to implement needed changes;

472 (5) Development of budget and allocation of resources
473 for institutions delivering community and technical college
474 education, including reviewing and approving institutional
475 operating and capital budgets and distributing incentive and
476 performance-based funding;

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

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

487 (8) Jointly with the commission, development,
488 establishment and implementation of policies for licensing

489 and oversight of both public and private degree-granting and
490 nondegree-granting institutions that provide post-secondary
491 education courses or programs;

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

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

502 (c) The council may withdraw specific powers of a
503 governing board under its jurisdiction for a period not to
504 exceed two years if the council makes a determination that
505 any of the following conditions exist:

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

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

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

516 The period of withdrawal of specific powers may not
517 exceed two years during which time the council may take

518 steps necessary to reestablish the conditions for restoration of
519 sound, stable and responsible institutional governance.

520 (f) In addition to the powers and duties provided in
521 subsections (a), (b), (c) and (d) of this section and any others
522 assigned to it by law, the council has those powers and duties
523 necessary or expedient to accomplish the purposes of this
524 article.

525 (g) When the council and commission, each, is required
526 to consent, cooperate, collaborate or provide input into the
527 actions of the other the following conditions apply:

528 (1) The body acting first shall convey its decision in the
529 matter to the other body with a request for concurrence in the
530 action;

531 (2) The commission or the council, as the receiving body,
532 shall place the proposal on its agenda and shall take final
533 action within sixty days of the date when the request for
534 concurrence is received; and

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

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-6. Regulation of parking, speed flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

1 (a) Notwithstanding any other motor vehicle or traffic
2 law or regulation to the contrary, a governing board may
3 regulate and control at any state institution under its
4 jurisdiction the speed, flow and parking of vehicles on
5 campus roads, driveways and parking facilities or areas.

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

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

11 (3) The governing board shall post in a conspicuous
12 location in each parking facility or area, a summary of the
13 rules governing the use of the facility or area including, but
14 not limited to, the availability of temporary parking permits
15 and where these permits may be obtained and the penalties
16 which may be imposed for violations of the rules.

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

22 (b) Any person parking or operating a vehicle in violation
23 of the rules shall be issued a citation:

24 (1) Describing the offense charged; and

25 (2) Ordering an appearance:

26 (A) Within ten days, excluding Saturdays, Sundays and
27 holidays observed by the state institution, before a designated
28 official of the institution;

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

31 (C) Before the judge of the municipal court, if the state
32 institution is located within a municipality having such an

33 official and the person cited fails to appear within the ten
34 days.

35 (c) The designated official of the state institution has
36 exclusive jurisdiction of the offense during the ten-day period
37 until the citation is forwarded to a magistrate. For the state
38 institutions of higher education under the jurisdiction of the
39 governing board of Marshall University and for the state
40 institution of higher education known as West Virginia
41 University only, the designated official of the institution has
42 exclusive jurisdiction of the offense for thirty days following
43 the violation. After thirty days the official shall forward the
44 citation to a magistrate. Any person cited may plead no
45 contest to the offense and, by so pleading, is subject to a civil
46 penalty to be determined uniformly by the designated official
47 and commensurate with the severity of the offense. For the
48 state institutions under the jurisdiction of the governing board
49 of Marshall University and for the state institution of higher
50 education known as West Virginia University only, the
51 amount imposed may not exceed \$20. For all other
52 institutions the amount may not exceed \$10, for each offense
53 as partial reimbursement to the state institution of higher
54 education for the cost of regulating traffic and parking. In the
55 case of the state institutions under the jurisdiction of the
56 governing board of Marshall University and in the case of the
57 state institution of higher education known as West Virginia
58 University only, the designated official shall determine the
59 penalty uniformly, commensurate with the severity of the
60 offense, and may apply academic restrictions in lieu of
61 requiring a student to appear in court and receive penalties
62 otherwise provided in this section. Moneys derived from
63 civil penalties imposed in this subsection shall be deposited
64 in the institution's auxiliary and auxiliary capital fees fund.

65 (d) Upon expiration of the ten-day or thirty-day period,
66 as applicable, or upon a pleading of not guilty before the

67 designated official of the state institution within the
68 applicable period, the magistrate or judge of the municipal
69 court has jurisdiction of the offense. Any person cited under
70 this section, upon a finding of guilty by the magistrate or
71 municipal judge, is subject to a fine for each offense by the
72 state institutions under the jurisdiction of the governing board
73 of Marshall University and for the state institution of higher
74 education known as West Virginia University only, of up to
75 \$40, and at all other state institutions not less than \$10 nor
76 more than \$20, the amount to be commensurate with the
77 severity of the offense.

78 (e) Each designated official of a state institution presiding
79 over a case under this section shall keep a record of every
80 citation which alleges a violation of the provisions, or the
81 rules promulgated in accordance with this section, and shall
82 keep a record of every official action in reference to the
83 citation including, but not limited to, a record of every plea
84 of no contest, conviction or acquittal, of the offense charged,
85 and the amount of the fine or civil penalty resulting from
86 each citation.

87 (f) Whenever a vehicle is parked on any state institution
88 campus road, driveway or parking facility or area in a manner
89 which violates posted rules and substantially impedes the
90 flow of traffic or endangers the health and safety, in addition
91 to issuing a citation and any procedures set forth in this
92 section, the institution may remove the vehicle, by towing or
93 otherwise, to an area owned by the institution or areas
94 designated for this purpose. The vehicle, having been towed
95 to the designated area or areas, may be rendered immovable
96 by use of locking wheel blocks or other device not damaging
97 to the vehicle. The state institution of higher education shall
98 maintain any vehicle towed in the same condition as it was
99 immediately prior to being towed, but is not liable for any
100 damage to a vehicle towed to, or kept in, a designated area

101 pursuant to this section. The state institution of higher
102 education shall pay for the cost of removing the vehicle and
103 has a right to reimbursement from the owner for this cost and
104 for the reasonable cost of keeping the vehicle in the
105 designated area. Until payment of these costs, the state
106 institution of higher education may retain possession of the
107 vehicle and the institution shall have a lien on the vehicle for
108 the amount due. The state institution of higher education
109 may enforce this lien in the manner provided in section
110 fourteen, article eleven, chapter thirty-eight of this code for
111 the enforcement of other liens. For the state institutions of
112 higher education under the jurisdiction of the governing
113 board of Marshall University and for the state institution of
114 higher education known as West Virginia University only,
115 this subsection also applies when a vehicle is subject to three
116 or more unpaid citations.

117 (g) If, at any time, Mountwest Community and Technical
118 College ceases to share a physical campus location with
119 Marshall University, it may not be included as an institution
120 under the jurisdiction of the governing board of Marshall
121 University for the purposes of subsections (c), (d) and (f) of
122 this section.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

1 (a) The council, commission and each governing board
2 shall purchase or acquire all materials, supplies, equipment,
3 services and printing required for that governing board or the
4 council or commission, as appropriate, and the state
5 institutions of higher education under their jurisdiction,
6 except the governing boards of Marshall University and West

7 Virginia University, respectively, are subject to subsection
8 (d) of this section.

9 (b) The commission and council jointly shall adopt rules
10 governing and controlling acquisitions and purchases in
11 accordance with this section. The rules shall ensure that the
12 following procedures are followed:

13 (1) No person is precluded from participating and making
14 sales thereof to the council, commission or governing board
15 except as otherwise provided in section five of this article.
16 Providing consulting services such as strategic planning
17 services does not preclude or inhibit the governing boards,
18 council or commission from considering a qualified bid or
19 response for delivery of a product or a commodity from the
20 individual providing the services;

21 (2) Specifications are established and prescribed for
22 materials, supplies, equipment, services and printing to be
23 purchased;

24 (3) Purchase order, requisition or other forms as may be
25 required are adopted and prescribed;

26 (4) Purchases and acquisitions in such quantities, at such
27 times and under contract, are negotiated for and made in the
28 open market or through other accepted methods of
29 governmental purchasing as may be practicable in
30 accordance with general law;

31 (5) Bids are advertised on all purchases exceeding
32 \$25,000, and made by means of sealed or electronically-
33 submitted bids and competitive bidding or advantageous
34 purchases effected through other accepted governmental
35 methods and practices. Competitive bids are not required for
36 purchases of \$25,000 or less.

37 (6) Notices for acquisitions and purchases for which
38 competitive bids are being solicited are posted in the
39 purchasing office of the specified institution involved in the
40 purchase, at least two weeks prior to making the purchases.
41 The rules shall ensure that the notice is available to the public
42 during business hours;

43 (7) Purchases are made in the open market;

44 (8) Vendors are notified of bid solicitation and
45 emergency purchasing; and

46 (9) No fewer than three bids are obtained when bidding
47 is required, except if fewer than three bids are submitted, an
48 award may be made from among those received.

49 (c) When a state institution of higher education submits
50 a contract, agreement or other document to the Attorney
51 General for approval as to form as required by this chapter
52 the following conditions apply:

53 (1) "Form" means compliance with the Constitution and
54 statutes of the State of West Virginia;

55 (2) The Attorney General does not have the authority to
56 reject a contract, agreement or other document based on the
57 substantive provisions in the contract, agreement or
58 document or any extrinsic matter as long as it complies with
59 the Constitution and statutes of this state;

60 (3) Within fifteen days of receipt, the Attorney General
61 shall notify the appropriate state institution of higher
62 education in writing that the contract, agreement or other
63 document is approved or disapproved as to form. If the
64 contract, agreement or other document is disapproved as to
65 form, the notice of disapproval shall identify each defect that
66 supports the disapproval; and

67 (4) If the state institution elects to challenge the
68 disapproval by filing a writ of mandamus or other action and
69 prevails, then the Attorney General shall pay reasonable
70 attorney fees and costs incurred.

71 (d) Pursuant to this subsection, the governing boards of
72 Marshall University and West Virginia University,
73 respectively, may carry out the following actions:

74 (1) Purchase or acquire all materials, supplies, equipment,
75 services and printing required for the governing board
76 without approval from the commission or the Vice
77 Chancellor for Administration and may issue checks in
78 advance to cover postage as provided in subsection (f) of this
79 section;

80 (2) Make purchases from cooperative buying groups,
81 consortia, the federal government or from federal government
82 contracts if the materials, supplies, services, equipment or
83 printing to be purchased is available from these groups and
84 if this would be the most financially advantageous manner of
85 making the purchase;

86 (3) Select and acquire by contract or lease all grounds,
87 buildings, office space or other space, and capital
88 improvements, including equipment, if the rental is
89 necessarily required by the governing board; and

90 (4) Use purchase cards under terms approved for the
91 commission, the council and governing boards of state
92 institutions of higher education and participate in any
93 expanded program of use as provided in subsection (u) of this
94 section.

95 (e) The governing boards shall adopt sufficient
96 accounting and auditing procedures and promulgate and

197 adopt appropriate rules subject to section six, article one of
198 this chapter to govern and control acquisitions, purchases,
199 leases and other instruments for grounds, buildings, office or
100 other space, and capital improvements, including equipment,
101 or lease-purchase agreements.

102 (f) The council, commission or each governing board
103 may issue a check in advance to a company supplying
104 postage meters for postage used by that board, the council or
105 commission and by the state institutions of higher education
106 under their jurisdiction.

107 (g) When a purchase is to be made by bid, any or all bids
108 may be rejected. However, all purchases based on advertised
109 bid requests shall be awarded to the lowest responsible bidder
110 taking into consideration the qualities of the articles to be
111 supplied, their conformity with specifications, their suitability
112 to the requirements of the governing boards, council or
113 commission and delivery terms. The preference for resident
114 vendors as provided in section thirty-seven, article three,
115 chapter five-a of this code applies to the competitive bids
116 made pursuant to this section.

117 (h) The governing boards, council and commission shall
118 maintain a purchase file, which shall be a public record and
119 open for public inspection.

120 (1) After the award of the order or contract, the governing
121 boards, council and commission shall indicate upon the
122 successful bid the following information:

123 (A) Designation as the successful bid;

124 (B) The reason any bids were rejected; and

125 (C) The reason for rejection, if the mathematical low
126 vendor was not awarded the order or contract.

127 (2) A record in the purchase file may not be destroyed
128 without the written consent of the Legislative Auditor. Those
129 files in which the original documentation has been held for at
130 least one year and in which the original documents have been
131 reproduced and archived on microfilm or other equivalent
132 method of duplication may be destroyed without the written
133 consent of the Legislative Auditor.

134 (3) All files, no matter the storage method, shall be open
135 for inspection by the Legislative Auditor upon request.

136 (i) The commission and council, also jointly, shall
137 promulgate rules to prescribe qualifications to be met by any
138 person who is to be employed as a buyer pursuant to this
139 section. These rules shall require that a person may not be
140 employed as a buyer unless that person, at the time of
141 employment has one of the following qualifications:

142 (1) Is a graduate of an accredited college or university; or

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

146 (j) Any person making purchases and acquisitions
147 pursuant to this section shall execute a bond in the penalty of
148 \$50,000, payable to the State of West Virginia, with a
149 corporate bonding or surety company authorized to do
150 business in this state as surety thereon, in form prescribed by
151 the Attorney General and conditioned upon the faithful
152 performance of all duties in accordance with this section and
153 sections five through eight, inclusive, of this article and the
154 rules of the governing board and the council and commission.
155 In lieu of separate bonds for these buyers, a blanket surety
156 bond may be obtained. The bond shall be filed with the
157 Secretary of State and the cost of the bond shall be paid from

158 funds appropriated to the applicable governing board or the
159 council or commission.

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

176 (l) The governing boards, council and commission may
177 make requisitions upon the State Auditor for a sum to be
178 known as an advance allowance account, not to exceed five
179 percent of the total of the appropriations for the governing
180 board, council or commission, and the State Auditor shall
181 draw a warrant upon the Treasurer for those accounts. All
182 advance allowance accounts shall be accounted for by the
183 applicable governing board or the council or commission
184 once every thirty days or more often if required by the State
185 Auditor.

186 (m) Contracts entered into pursuant to this section shall
187 be signed by the applicable governing board or the council or
188 commission in the name of the state and shall be approved as
189 to form by the Attorney General. A contract which requires
190 approval as to form by the Attorney General is considered

191 approved if the Attorney General has not responded within
192 fifteen days of presentation of the contract. A contract or a
193 change order for that contract and notwithstanding any other
194 provision of this code to the contrary, associated documents
195 such as performance and labor/material payments, bonds and
196 certificates of insurance which use terms and conditions or
197 standardized forms previously approved by the Attorney
198 General and do not make substantive changes in the terms
199 and conditions of the contract do not require approval as to
200 form by the Attorney General. The Attorney General shall
201 make a list of those changes which he or she considers to be
202 substantive and the list, and any changes to the list, shall be
203 published in the State Register. A contract that exceeds the
204 dollar amount requiring competitive sealed bids in this
205 section shall be filed with the State Auditor. If requested to
206 do so, the governing boards, council or commission shall
207 make all contracts available for inspection by the State
208 Auditor. The governing board, council or commission, as
209 appropriate, shall prescribe the amount of deposit or bond to
210 be submitted with a bid or contract, if any, and the amount of
211 deposit or bond to be given for the faithful performance of a
212 contract.

213 (n) If the governing board, council or commission
214 purchases or contracts for materials, supplies, equipment,
215 services and printing contrary to sections four through seven
216 of this article or the rules pursuant to this article, the purchase
217 or contract is void and of no effect.

218 (o) A governing board or the council or commission, as
219 appropriate, may request the director of purchasing to make
220 available the facilities and services of that department to the
221 governing boards, council or commission in the purchase and
222 acquisition of materials, supplies, equipment, services and
223 printing. The director of purchasing shall cooperate with that
224 governing board, council or commission, as appropriate, in
225 all such purchases and acquisitions upon that request.

226 (p) Each governing board or the council or commission,
227 as appropriate, may permit private institutions of higher
228 education to join as purchasers on purchase contracts for
229 materials, supplies, services and equipment entered into by
230 that governing board or the council or commission. A private
231 institution desiring to join as purchaser on purchase contracts
232 shall file with that governing board or the council or
233 commission, as appropriate, an affidavit signed by the
234 president or designee of the private institution requesting that
235 it be authorized to join as purchaser on purchase contracts of
236 that governing board or the council or commission, as
237 appropriate. The private institution shall agree that it is
238 bound by such terms and conditions as that governing board
239 or the council or commission may prescribe and that it will
240 be responsible for payment directly to the vendor under each
241 purchase contract.

242 (q) Notwithstanding any other provision of this code to
243 the contrary, the governing boards, council and commission,
244 as appropriate, may make purchases from cooperative buying
245 groups, consortia, the federal government or from federal
246 government contracts if the materials, supplies, services,
247 equipment or printing to be purchased is available from that
248 source, and purchasing from that source would be the most
249 financially advantageous manner of making the purchase.

250 (r) An independent performance audit of all purchasing
251 functions and duties which are performed at any state
252 institution of higher education, except Marshall University
253 and West Virginia University, shall be performed each fiscal
254 year. The Joint Committee on Government and Finance shall
255 conduct the performance audit and the governing boards,
256 council and commission, as appropriate, are responsible for
257 paying the cost of the audit from funds appropriated to the
258 governing boards, council or commission.

259 (1) The governing boards of Marshall University and
260 West Virginia University, respectively, shall provide for
261 independent performance audits of all purchasing functions
262 and duties on their campuses at least once in each three-year
263 period.

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

266 (3) Copies of all appropriate documents relating to any
267 audit performed by the governing boards of Marshall
268 University and West Virginia University shall be furnished
269 to the Joint Committee on Government and Finance and the
270 Legislative Oversight Commission on Education
271 Accountability within thirty days of the date the audit report
272 is completed.

273 (s) The governing boards shall require each institution
274 under their respective jurisdictions to notify and inform every
275 vendor doing business with that institution of section fifty-
276 four, article three, chapter five-a of this code, also known as
277 the Prompt Pay Act of 1990.

278 (t) Consultant services, such as strategic planning
279 services, do not preclude or inhibit the governing boards,
280 council or commission from considering any qualified bid or
281 response for delivery of a product or a commodity because of
282 the rendering of those consultant services.

283 (u) Purchasing card use may be expanded by the council,
284 commission and state institutions of higher education
285 pursuant to this subsection.

286 (1) The council and commission jointly shall establish
287 procedures to be implemented by the council, commission
288 and any institution under their respective jurisdictions using

289 purchasing cards. The procedures shall ensure that each
290 meets the following conditions:

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

292 (B) Full compliance with article three, chapter twelve of
293 this code relating to the purchasing card program; and

294 (C) Sufficient accounting and auditing procedures for all
295 purchasing card transactions.

296 (2) Notwithstanding any other provision of this code to
297 the contrary, the council, commission and any institution
298 authorized pursuant to subdivision (3) of this subsection may
299 use purchasing cards for the following purposes:

300 (A) Payment of travel expenses directly related to the job
301 duties of the traveling employee, including, but not limited
302 to, fuel and food; and

303 (B) Payment of any routine, regularly scheduled
304 payment, including, but not limited to, utility payments and
305 real property rental fees.

306 (3) The commission and council each shall evaluate the
307 capacity of each institution under its jurisdiction for
308 complying with the procedures established pursuant to
309 subdivision (2) of this subsection. The commission and
310 council each shall authorize expanded use of purchasing
311 cards pursuant to that subdivision for any institution it
312 determines has the capacity to comply.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER
EDUCATION.**

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

1 (a) This section and any rules adopted by the
2 commission, council or both, in accordance with this section
3 and article three-a, chapter twenty-nine-a of this code, govern
4 the collection, disposition and use of the capital and auxiliary
5 capital fees authorized by section one of this article. The
6 statutory provisions governing collection and disposition of
7 capital funds in place prior to the enactment of this section
8 remain in effect.

9 (b) *Fees for full-time students.* -- The governing boards
10 shall fix capital and auxiliary capital fees for full-time
11 students at each state institution of higher education per
12 semester. For institutions under its jurisdiction, a governing
13 board may fix the fees at higher rates for students who are not
14 residents of this state.

15 (c) *Fees for part-time students.* -- For all part-time
16 students and for all summer school students, the governing
17 boards shall impose and collect the fees in proportion to, but
18 not exceeding, the fees paid by full-time students. Refunds
19 of the fees may be made in the same manner as any other fee
20 collected at state institutions of higher education.

21 (d) There is continued in the State Treasury a special
22 capital improvements fund and special auxiliary capital
23 improvements fund for each state institution of higher
24 education and the commission into which shall be paid all
25 proceeds, respectively, of the following:

26 (1) The capital and auxiliary capital fees collected from
27 students at all state institutions of higher education pursuant
28 to this section; and

29 (2) The fees collected from the students pursuant to
30 section one of this article. The fees shall be expended by the
31 commission and governing boards for the payment of the
32 principal of or interest on any revenue bonds issued by the
33 board of regents or the succeeding governing boards for
34 which the fees were pledged prior to the enactment of this
35 section.

36 (e) The governing boards may make expenditures from
37 any of the special capital improvements funds or special
38 auxiliary capital improvement funds established in this
39 section to finance or fund on a cash basis, in whole or in part,
40 in combination with any federal, state or other grants or
41 contributions, for any one or more of the following projects:

42 (1) The acquisition of land or any rights or interest in
43 land;

44 (2) The construction or acquisition of new buildings;

45 (3) The renovation or construction of additions to existing
46 buildings;

47 (4) The acquisition of furnishings and equipment for the
48 buildings; and

49 (5) The construction or acquisition of any other capital
50 improvements or capital education facilities at the state
51 institutions of higher education, including any roads, utilities
52 or other properties, real or personal, or for other purposes
53 necessary, appurtenant or incidental to the construction,
54 acquisition, financing and placing in operation of the
55 buildings, capital improvements or capital education
56 facilities, including student unions, dormitories, housing
57 facilities, food service facilities, motor vehicle parking
58 facilities and athletic facilities.

59 (f) The commission, when singly or jointly requested by
60 the council or governing boards, periodically may issue
61 revenue bonds of the state as provided in this section to
62 finance all or part of the purposes and pledge all or any part
63 of the moneys in the special funds for the payment of the
64 principal of and interest on the revenue bonds, and for
65 reserves for the revenue bonds. Any pledge of the special
66 funds for the revenue bonds shall be a prior and superior
67 charge on the special funds over the use of any of the moneys
68 in the funds to pay for the cost of any of the purposes on a
69 cash basis. Any expenditures from the special funds, other
70 than for the retirement of revenue bonds, may be made by the
71 commission or governing boards only to meet the cost of a
72 predetermined capital improvements program for one or
73 more of the state institutions of higher education, in the order
74 of priority agreed upon by the governing board or boards and
75 the commission and for which the aggregate revenue
76 collections projected are presented to the Governor for
77 inclusion in the annual budget bill, and are approved by the
78 Legislature for expenditure. Any expenditure made pursuant
79 to subsection (e) of this section shall be part of the ten-year
80 campus development plan approved by the governing board
81 pursuant to section three, article nineteen of this chapter.

82 (g) The revenue bonds periodically may be authorized
83 and issued by the commission or governing boards to
84 finance, in whole or in part, the purposes provided in this
85 section in an aggregate principal amount not exceeding the
86 amount which the commission determines can be paid as to
87 both principal and interest and reasonable margins for a
88 reserve therefor from the moneys in the special funds.

89 (h) The issuance of the revenue bonds shall be authorized
90 by a resolution adopted by the governing board receiving the
91 proceeds and the commission, and the revenue bonds shall
92 bear the date or dates; mature at such time or times not

93 exceeding forty years from their respective dates; be in such
94 form either coupon or registered, with such exchangeability
95 and interchangeability privileges; be payable in such medium
96 of payment and at such place or places, within or without the
97 state; be subject to such terms of prior redemption at such
98 prices not exceeding one hundred five per centum of the
99 principal amount thereof; and have the other terms and
100 provisions determined by the governing board receiving the
101 proceeds and by the commission. The revenue bonds shall be
102 signed by the Governor and by the chancellor of the
103 commission or the chair of the governing boards authorizing
104 the issuance of the revenue bonds, under the Great Seal of the
105 State, attested by the Secretary of State, and the coupons
106 attached to the revenue bonds shall bear the facsimile
107 signature of the chancellor of the commission or the chair of
108 the appropriate governing boards. The revenue bonds shall
109 be sold in the manner the commission or governing board
110 determines is in the best interests of the state.

111 (i) The commission or governing boards may enter into
112 trust agreements with banks or trust companies, within or
113 without the state, and in the trust agreements or the
114 resolutions authorizing the issuance of the bonds may enter
115 into valid and legally binding covenants with the holders of
116 the revenue bonds as to the custody, safeguarding and
117 disposition of the proceeds of the revenue bonds, the moneys
118 in the special funds, sinking funds, reserve funds or any other
119 moneys or funds; as to the rank and priority, if any, of
120 different issues of revenue bonds by the commission or
121 governing boards under this section; as to the maintenance or
122 revision of the amounts of the fees; as to the extent to which
123 swap agreements, as defined in subsection (h), section two,
124 article two-g, chapter thirteen of this code shall be used in
125 connection with the revenue bonds, including such provisions
126 as payment, term, security, default and remedy provisions as
127 the commission considers necessary or desirable, if any,

128 under which the fees may be reduced; and as to any other
129 matters or provisions which are considered necessary and
130 advisable by the commission or governing boards in the best
131 interests of the state and to enhance the marketability of the
132 revenue bonds.

133 (j) After the issuance of any revenue bonds, the fees at
134 the state institutions of higher education pledged to the
135 payment of the revenue bonds may not be reduced as long as
136 any of the revenue bonds are outstanding and unpaid except
137 under the terms, provisions and conditions contained in the
138 resolution, trust agreement or other proceedings under which
139 the revenue bonds were issued. The revenue bonds are and
140 constitute negotiable instruments under the Uniform
141 Commercial Code of this state; together with the interest
142 thereon, be exempt from all taxation by the State of West
143 Virginia, or by any county, school district, municipality or
144 political subdivision thereof; and the revenue bonds may not
145 be considered to be obligations or debts of the state and the
146 credit or taxing power of the state may not be pledged
147 therefor, but the revenue bonds shall be payable only from
148 the revenue pledged therefor as provided in this section.

149 (k) Additional revenue bonds may be issued by the
150 commission or governing boards pursuant to this section and
151 financed by additional revenues or funds dedicated from
152 other sources. The special revenue fund in the State Treasury
153 known as the Community and Technical College Capital
154 Improvement Fund into which shall be deposited the amounts
155 specified in subsection (j), section eighteen, article twenty-
156 two, chapter twenty-nine of this code is continued. All
157 amounts deposited in the fund shall be pledged to the
158 repayment of the principal, interest and redemption premium,
159 if any, on any revenue bonds or refunding revenue bonds
160 authorized by the commission for community and technical
161 college capital improvements or used by the council on a

162 cash basis as provided under subdivision (4), subsection (j),
163 section eighteen, article twenty-two, chapter twenty-nine of
164 this code for community and technical college capital
165 improvements or capital projects.

166 (l) Funding of systemwide and campus-specific revenue
167 bonds under any other section of this code is continued and
168 authorized pursuant to the terms of this section. Revenues of
169 any state institution of higher education pledged to the
170 repayment of any revenue bonds issued pursuant to this code
171 shall remain pledged.

172 (m) Any revenue bonds for state institutions of higher
173 education proposed to be issued under this section or other
174 sections of this code first must be approved by the
175 commission.

176 (n) Revenue bonds issued pursuant to this code may be
177 issued by the commission or governing boards, either singly
178 or jointly.

179 (o) Fees pledged for repayment of revenue bonds issued
180 under this section or article twelve-b, chapter eighteen prior
181 to or after the effective date of this section shall be
182 transferred to the commission in a manner prescribed by the
183 commission. The commission may transfer funds from the
184 accounts of institutions pledged for the repayment of revenue
185 bonds issued prior to the effective date of this section or
186 issued subsequently by the commission upon the request of
187 institutions, if an institution fails to transfer the pledged
188 revenues to the commission in a timely manner.

189 (p) Effective July 1, 2004, the capital and auxiliary
190 capital fees authorized by this section and section one of this
191 article are in lieu of any other fees set out in this code for
192 capital and auxiliary capital projects to benefit public higher

193 education institutions. Notwithstanding any other provisions
194 of this code to the contrary, in the event any capital, tuition,
195 registration or auxiliary fees are pledged to the payment of
196 any revenue bonds issued pursuant to any general bond
197 resolutions of the commission, any of its predecessors or any
198 institution, adopted prior to the effective date of this section,
199 the fees shall remain in effect in amounts not less than the
200 amounts in effect as of that date, until the revenue bonds
201 payable from any of the fees have been paid or the pledge of
202 the fees is otherwise legally discharged.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-1. Legislative findings and intent.

1 (a) The Legislature makes the following findings:

2 (1) State institutions of higher education vary widely in
3 the conditions of their facilities infrastructure.

4 (2) State institutions of higher education vary widely in
5 their ability to incur debt for capital improvements. It is
6 nearly impossible for community and technical colleges and
7 some smaller baccalaureate institutions to fund significant
8 capital improvements in the absence of state funding.

9 (3) A student enrolled at a community and technical
10 college that previously was administratively linked to another
11 state institution of higher education pays substantially higher
12 tuition and mandatory fees than a student enrolled at a
13 freestanding community and technical college. This cost
14 discrepancy is due in large part to the significantly higher
15 capital fees charged to these students to pay debt service for
16 capital improvements.

17 (4) The substantial amount of capital fees that students
18 must pay at the institution level contributes significantly to

19 the poor grade the state receives in the category of
20 “Affordability” in *Measuring Up: The National Report Card*
21 *on Higher Education*.

22 (5) It is beneficial for the state to provide additional
23 ongoing capital funding to reduce the obligation of students
24 and parents to bear the cost of higher education capital
25 improvements and facilities maintenance.

26 (6) West Virginia is one of only a few states that does not
27 address higher education capital improvements and facilities
28 maintenance needs through a statewide plan.

29 (7) State funding for capital improvements should align
30 with state and system higher education goals, objectives and
31 priorities as set forth in article one-d of this chapter.

32 (8) State capital funding should focus primarily on
33 educational and general capital improvements, not auxiliary
34 capital improvements.

35 (9) Renovations of existing buildings generally deserve
36 greater consideration for state funding than new construction.
37 However, new construction may deserve greater
38 consideration than renovation when a state or system goal,
39 objective or priority is implicated.

40 (10) As the Legislature increases funding for new
41 educational and general capital improvements and major
42 renovations, and supplants existing educational and general
43 debt, institutions should target funds for maintenance and
44 deferred maintenance needs.

45 (11) If community and technical colleges are to keep the
46 cost of education affordable, they cannot be expected to fund
47 maintenance obligations entirely from student capital fees.

48 (12) The commission and council should scrutinize
49 carefully all requests from institutions to incur additional debt
50 in order to determine their effect on institution debt capacity
51 and the impact that incurring additional debt will have on
52 students.

53 (13) State institutions of higher education ultimately
54 should target adequate state capital contributions and capital
55 fees to address maintenance and deferred maintenance needs.

56 (14) Until institutions are able to generate sufficient
57 revenue to address maintenance and deferred maintenance
58 needs, the Legislature should provide periodic funding to
59 assist institutions in addressing these needs. Funding priority
60 should be given to projects that address building code
61 requirements and critical maintenance needs.

62 (15) In supporting future high priority capital needs, the
63 Legislature, commission and council should not reward
64 institutions with state funding if they neglect to address
65 facilities maintenance needs or do not prudently manage their
66 capital resources.

67 (16) Once an institution's capital development plan has
68 been approved by the governing board and the commission
69 or council, as appropriate, project priorities should not
70 change significantly from year to year.

71 (17) Commission and council staff should participate to
72 a greater extent in managing capital projects at smaller
73 institutions than at larger institutions since smaller
74 institutions often lack the expertise necessary to plan, design
75 and complete projects at or under budget.

76 (b) The intent of the Legislature relating to this article
77 includes, but is not limited to, the following:

78 (1) Dedicated state funding sources shall be designated to
79 finance construction and renovation of educational and
80 general facilities at state institutions of higher education from
81 time to time;

82 (2) Capital project lists submitted by institutions to the
83 commission or council, as appropriate, and capital project
84 lists submitted by the commission and council to the state
85 budget office, Legislative Oversight Commission on
86 Education Accountability, and Joint Committee on
87 Government and Finance for consideration for state funding
88 shall be reasonable requests that align with state and system
89 goals, objectives and priorities and ones which reasonably
90 could be funded if approved;

91 (3) As the Legislature increases its responsibility for
92 financing new educational and general facilities and major
93 renovations, the commission, council and institutions shall
94 ensure that sufficient capital revenues are available for
95 maintenance and that the facilities are maintained adequately;

96 (4) Ongoing state funding shall be dedicated to
97 supplement capital fees available for maintenance at
98 community and technical colleges; and

99 (5) Once a system capital plan is in place, institutions
100 shall set aside adequate funding annually to ensure that
101 ongoing facilities maintenance needs are met.

§18B-19-2. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them.

3 (a) "ADA" means the Americans with Disabilities Act of
4 1990, 42 U.S.C. §12101, *et seq.*

5 (b) "Auxiliary enterprise" means an entity that exists to
6 furnish goods or services to students, faculty, staff or others;
7 charges a fee directly related to, although not necessarily
8 equal to, the cost of the goods or services; and is managed as
9 essentially self-supporting.

10 (c) "Auxiliary facility" means a building or structure that
11 is used for an auxiliary enterprise including, but not limited
12 to, residence halls, food services, parking, intercollegiate
13 athletics, faculty and staff housing, student unions,
14 bookstores and other service centers.

15 (d) "Auxiliary fees" means funds derived from, but not
16 limited to, the following sources:

17 (1) Parking fees received from any source;

18 (2) Revenues received from athletic events, including
19 ticket sales, television revenues and skybox fees;

20 (3) Bookstore revenues;

21 (4) Student union vendor and user fees;

22 (5) Donations or grants from any external source;

23 (6) Facility rental fees; and

24 (7) Fees assessed to students to support auxiliary
25 enterprises.

26 (e) "Capital planning" means a purposeful activity that
27 focuses attention on long term physical plant objectives
28 which should be accomplished in a logical sequence over
29 time as opportunities arise and resources become available.

30 (f) “Capital project management” means planning,
31 designing, bidding and providing construction administration
32 and oversight of architectural, engineering and construction
33 contracts and projects.

34 (g) “Deferred maintenance” means repair, maintenance
35 and renewal of capital facilities which should be part of
36 normal maintenance management, but which have been
37 postponed to a future budget cycle or until funds become
38 available.

39 (h) “Educational and general capital fees” means the fees
40 collected from students to pay debt service for capital
41 improvement bonds issued by the commission and governing
42 boards for educational and general facilities, for the
43 maintenance of those facilities and to fund capital
44 improvements in those facilities on a cash basis.

45 (i) “Educational and general facility” means a building or
46 structure used for instruction and instructional support
47 purposes, and includes classroom, laboratory, library,
48 computer laboratory, faculty and administrative office and
49 other academic support spaces.

50 (j) “Extraordinary circumstance” or “extraordinary
51 circumstances” means, a situation involving life-safety
52 issues, issues that would result in extensive damage to a
53 facility if not addressed immediately, any unforeseen
54 opportunity to use external funds and any other situation the
55 commission or council determines should warrant special
56 consideration.

57 (k) “Life-safety” means a condition existing on a campus
58 that, if not corrected immediately, would jeopardize the
59 safety and property of students, faculty, staff and the visiting
60 public.

61 (l) "Maintenance" means the work necessary within a
62 budget cycle to realize the originally anticipated life of a
63 fixed asset, including buildings, fixed equipment and
64 infrastructure.

65 (m) "Governing board", "state institution of higher
66 education" and "institution under the jurisdiction of the
67 commission" means all state institutions of higher education
68 including Marshall University and West Virginia University
69 and their respective governing boards.

§18B-19-3. System capital development planning.

1 (a) By December 31, 2011, the commission and council,
2 jointly or separately, shall develop a system capital
3 development plan for approval by the Legislative Oversight
4 Commission on Education Accountability. At a minimum
5 the initial plan shall include the following:

6 (1) System goals for capital development;

7 (2) An explanation of how system capital development
8 goals align with state goals, objectives and priorities
9 established in articles one and one-d of this chapter and with
10 system master plans;

11 (3) A process for prioritizing capital projects for state
12 funding based on their ability to further state goals, objectives
13 and priorities and system capital development goals;

14 (4) A building renewal formula to calculate a dollar
15 benchmark that shall be collected annually and invested in
16 facilities to minimize deferred maintenance and to provide
17 the commission and council objective information to
18 determine if the investments in maintenance are occurring;

19 (5) A process for governing boards to follow in
20 developing and submitting campus development plans to the
21 commission or council, as appropriate, for approval;

22 (6) A process for governing boards to follow to ensure
23 that sufficient revenue is generated for and applied toward
24 facilities maintenance; and

25 (7) A discussion addressing how capital fees dedicated to
26 debt service for the bond issue to be paid off in 2012 will be
27 used after the payoff date.

28 (b) The system capital development plan shall be
29 developed in consultation with governing boards and
30 appropriate institution staff. Before approving the capital
31 development plan, the commission and council shall afford
32 interested parties an opportunity to comment on the plan
33 through a notice-and-comment period of at least thirty days.

34 (c) The commission and council shall update its system
35 capital development plan at least once in each ten-year
36 period.

§18B-19-4. Campus development plans.

1 (a) Each governing board shall update its current campus
2 development plan and submit the updated plan to the
3 commission or council, as appropriate, for approval by June
4 30, 2013. A campus development plan shall be developed for
5 a ten-year period and shall align with criteria specified in the
6 following sources:

7 (1) The system capital development plan;

8 (2) The institution's approved master plan and compact;
9 and

10 (3) The current campus development plan objectives.

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

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

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

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

24 (4) A comprehensive list of deferred maintenance
25 projects that need to be addressed for each campus by
26 building or facility including an estimated cost for each;

27 (5) A list of existing buildings and facilities in need of
28 renovations, additions, demolition or any combination
29 thereof;

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

33 (7) A list of telecommunications, utilities and other
34 infrastructure improvements that are needed;

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

- 37 (9) A list of proposed new facilities and building sites;
- 38 (10) A list of capital projects in priority order;
- 39 (11) Estimates of the timing, phasing and projected costs
40 associated with individual projects;
- 41 (12) If an institution has multiple campuses in close
42 proximity, a delineation of how the campuses should interact
43 and support each other to minimize duplication of facilities,
44 improve efficiency and be aesthetically compatible;
- 45 (13) A statement of the impact of the plan upon the local
46 community and the input afforded local and regional
47 government entities and the public with respect to its
48 implementation; and
- 49 (14) Any other requirement established by the
50 commission and council in the rules required by section
51 seventeen of this article.
- 52 (c) Campus development plans shall incorporate all
53 current and proposed facilities, including educational and
54 general and auxiliary facilities.
- 55 (d) At the next regularly scheduled meeting of the
56 commission or council, as applicable, following the fifth
57 anniversary date after the commission or council approves
58 the development plan of a governing board, the governing
59 board shall report on the progress made in the first five years
60 to implement the campus development plan for each campus
61 under its jurisdiction. In addition, the governing board shall
62 report on its plans to implement the remaining five-year
63 period of its campus development plan.
- 64 (e) Each governing board shall update its campus
65 development plan at least once during each ten-year period

66 and any update is subject to the approval of the commission
67 or council, as appropriate.

68 (f) A governing board may not implement a campus
69 development plan or plan update that has not been approved
70 by the commission or council, as appropriate.

§18B-19-5. Capital appropriation requests.

1 (a) The commission and council each shall submit a
2 prioritized capital appropriation request annually to the state
3 budget office as required by article two, chapter eleven-b of
4 this code consisting of major capital projects and
5 maintenance projects.

6 (b) The commission and council each shall develop a
7 process for governing boards to follow in submitting a list of
8 major educational and general capital projects so that a
9 prioritized major capital project list, approved by the
10 commission or council, as appropriate, may be submitted to
11 the state budget office by the applicable deadline.

12 (1) The governing board's major capital project list shall
13 include the following items:

14 (A) Projects identified in the governing board's approved
15 campus development plan or plans. A project may not be
16 included which is not contained in the approved plan, except
17 when extraordinary circumstances otherwise warrant;

18 (B) A current estimate of each project's estimated cost
19 accounting for inflation since completion of the campus
20 development plan. The size and scope of the project may not
21 change unless the campus development plan has been
22 updated and approved as provided in section three of this
23 article; and

24 (C) Any additional information required to be provided
25 by the commission, council or state budget office.

26 (2) The commission and council each shall rank the
27 major capital projects submitted by the governing boards
28 according to priority consistent with the criteria outlined in
29 the system capital development plan. The council and
30 commission may not submit to the state budget office a
31 request for an institution which the commission or council
32 determines reasonably could not secure funding through the
33 appropriation process during the following fiscal year.

34 (c) The commission and council each shall develop a
35 process for governing boards to follow in submitting a list of
36 maintenance projects so that a prioritized maintenance project
37 list, approved by the commission or council, as appropriate,
38 may be submitted to the state budget office by the applicable
39 deadline.

40 (1) No later than April 1, 2011, and annually thereafter,
41 the commission and council, as appropriate, shall provide
42 each governing board a building renewal calculation that
43 identifies the funds that should be collected and invested in
44 its buildings and facilities during the next fiscal year to
45 maintain them and minimize deferred maintenance.

46 (2) As soon as it receives the building renewal
47 calculation, each governing board shall make realistic
48 revenue estimates of the funds available for maintenance
49 projects from educational and general capital fees, from
50 auxiliary and auxiliary capital fees and from any other
51 revenue that may be used for maintenance projects, as well as
52 any anticipated reserves. The governing boards then shall
53 identify and submit proposed maintenance projects,
54 consistent with its campus development plan or plans, to be
55 funded from these revenues.

56 (3) The commission and council each shall report to the
57 Legislative Oversight Commission on Education
58 Accountability on the revenue available to governing boards
59 for educational and general and auxiliary maintenance
60 projects, as well as any shortfalls based on building renewal
61 formula calculation, and major maintenance projects that
62 institutions propose to undertake during the upcoming fiscal
63 year.

64 (4) The commission shall work with institutions under its
65 jurisdiction to ensure that adequate funds are generated to
66 fund maintenance and build adequate reserves from
67 educational and general and auxiliary capital fees and other
68 revenue consistent with the building renewal formula. The
69 Legislature recognizes that it may take several years for this
70 to be accomplished fully.

71 (5) The council shall work with the Legislature and
72 institutions under its jurisdiction to ensure that a combination
73 of appropriated and nonappropriated revenue is available to
74 fund maintenance and build adequate reserves at community
75 and technical colleges consistent with the building renewal
76 formula.

§18B-19-6. Capital project financing.

1 (a) The commission and governing boards, jointly or
2 singly, may issue revenue bonds for capital project financing
3 in accordance with section eight, article ten of this chapter.

4 (b) A governing board may seek funding for and initiate
5 construction or renovation work only for projects contained
6 in an approved campus development plan.

7 (c) A governing board may fund capital improvements on
8 a cash basis, through bonding or through another financing

9 method that is approved by the commission and by the
10 council, if appropriate.

11 (1) If the cost of an improvement project for any
12 institution, except Marshall University or West Virginia
13 University, exceeds \$1 million, the governing board first
14 shall obtain the approval of the commission or council, as
15 appropriate. If the cost of an improvement project for
16 Marshall University or West Virginia University exceeds \$15
17 million, the governing board first shall obtain the approval of
18 the commission.

19 (2) Prior to approving bonding or any alternative
20 financing method, the commission, and council if
21 appropriate, shall evaluate the following issues:

22 (A) The institution's debt capacity and ability to meet the
23 debt service payments for the full term of the financing;

24 (B) The institution's capacity to generate revenue
25 sufficient to complete the project;

26 (C) The institution's ability to fund ongoing operations
27 and maintenance;

28 (D) The impact of the financing arrangement on students;
29 and

30 (E) Any other factor considered appropriate.

31 (d) A governing board shall notify the Joint Committee
32 on Government and Finance at least thirty days before
33 beginning construction or renovation work on any capital
34 project in excess of \$1 million.

35 (e) The commission may pledge all or part of the fees of
36 any or all state institutions of higher education as part of a
37 system bond issue.

38 (f) Any fee or revenue source pledged prior to the
39 effective date of this section for payment of any outstanding
40 debt remains in effect until the debt is fully repaid or
41 refunded.

§18B-19-7. Capital project management.

1 (a) The commission, council and governing boards shall
2 ensure that capital funds are spent appropriately and that
3 capital projects are managed effectively. Project
4 management shall be conducted in all respects according to
5 sound business practices and applicable laws, and rules.

6 (b) The commission shall employ a sufficient number of
7 competent facilities staff experienced in capital project
8 development and management that is suitable for the number,
9 size and complexity of the capital projects being managed.
10 By December 31, 2011, and continuing thereafter, at least
11 one employee shall be Leadership in Energy and
12 Environmental Design (LEED) certified.

13 (c) An institution that has entered into construction
14 contracts averaging more than \$50 million over the most
15 recent rolling five-year period is responsible for capital
16 project management at that institution if it meets the
17 following additional conditions:

18 (1) The governing board shall employ a facilities staff
19 experienced in capital project development and management
20 that is suitable for the number, size and complexity of the
21 capital projects being managed and, by December 31, 2011,
22 and continuing thereafter, at least one of these employees

23 shall be Leadership in Energy and Environmental Design
24 (LEED) certified;

25 (2) The governing board shall promulgate and adopt a
26 capital project management rule in accordance with section
27 six, article one of this chapter which is consistent with the
28 capital management rules of the commission and council.
29 The capital project management rule shall include at least the
30 following items:

31 (A) Delineation of the governing board's responsibilities
32 with respect to capital project management and the
33 responsibilities delegated to the institution's president;

34 (B) A requirement for the use of the state's standard
35 contract documents for architectural, engineering,
36 construction, construction management and design-build
37 services as appropriate to a particular project;

38 (C) The governing board's requirements for the following
39 procedures:

40 (i) Monitoring and approving project designs to ensure
41 conformance with the state and system goals, objectives and
42 priorities and the governing board's master plan, compact
43 and campus development plan;

44 (ii) Approving project budgets, including a reasonable
45 contingency reserve for unknown or unexpected expenses
46 and for bidding;

47 (iii) Approving architectural, engineering and
48 construction contracts exceeding an amount to be determined
49 by the governing board;

50 (iv) Approving contract modifications and construction
51 change orders; and

52 (v) Providing a method for project closeout and final
53 acceptance of the project by the governing board.

54 (3) The institutional capital project management rule
55 shall be filed with the commission no later than one hundred
56 eighty days following the effective date of the rule required
57 of the commission and council in section seventeen of this
58 article.

59 (4) The commission may review or audit projects greater
60 than \$5 million periodically to ascertain that appropriate
61 capital project management practices are being employed.

62 (d) For institutions that have entered into construction
63 contracts averaging at least \$20 million, but not more than
64 \$50 million, over the most recent rolling five-year period:

65 (1) The governing board, with assistance as requested
66 from the commission, shall manage all capital projects if the
67 governing board meets the following conditions:

68 (A) Employs at least one individual experienced in
69 capital project development and management; and

70 (B) Promulgates and adopts a capital project management
71 rule in accordance with section six, article one of this chapter
72 that is approved by the commission. The capital project
73 management rule may be amended at the discretion of the
74 governing board, but amendments shall be submitted to the
75 commission for review and approval before becoming effective.

76 (2) The capital project management rule of the governing
77 board shall include at least the following items:

78 (A) Delineation of the governing board's responsibilities
79 with respect to capital project management and the
80 responsibilities delegated to the institution's president;

81 (B) A requirement for the use of the state's standard
82 contract documents for architectural, engineering,
83 construction, construction management and design-build
84 services as appropriate to a particular project; and

85 (C) The governing board's requirements for the following
86 procedures:

87 (i) Monitoring and approving project designs to ensure
88 conformance with the state and system goals, objectives and
89 priorities and the governing board's master plan, compact
90 and campus development plan;

91 (ii) Approving project budgets, including a reasonable
92 contingency reserve for unknown or unexpected expenses
93 and for bidding;

94 (iii) Approving architectural, engineering, construction
95 and other capital contracts exceeding an amount to be
96 determined by the governing board;

97 (iv) Approving contract modifications and construction
98 change orders; and

99 (v) Providing a method for project closeout and final
100 acceptance of the project by the governing board.

101 (3) If an institution does not meet the provisions of this
102 subsection, the commission shall manage all capital projects
103 exceeding \$1 million.

104 (4) The commission staff shall review and audit
105 periodically all projects greater than \$1 million to ascertain
106 that appropriate project management practices are being
107 employed. If serious deficiencies are identified and not
108 addressed sufficiently within ninety days, commission staff
109 may assume management of all projects.

110 (e) For institutions that have entered into construction
111 contracts averaging less than \$20 million over the most
112 recent rolling five-year period and for all community and
113 technical colleges, the commission and council shall manage
114 capital projects exceeding \$1 million. In the rule required by
115 section seventeen of this article, the commission and council,
116 as appropriate, shall adopt procedures to afford participation
117 by the governing boards and staff in the planning,
118 development and execution of capital projects.

§18B-19-8. Maintenance.

1 (a) Each governing board shall ensure that facilities under
2 its jurisdiction are maintained and that a listing of any major
3 deferred maintenance projects is provided annually to the
4 commission or council, as appropriate.

5 (b) Each governing board shall strive to invest annually
6 an amount for maintenance that is consistent with the
7 building renewal formula developed and approved by the
8 commission and council and to generate a reserve sufficient
9 to address unexpected maintenance needs.

10 (c) The commission and council shall determine whether
11 a governing board is devoting sufficient resources for
12 maintenance based on the following criteria:

13 (1) The amount of maintenance expenditures compared
14 to building renewal formula estimates of appropriate
15 expenditures; and

16 (2) Periodic evaluations of the conditions of facilities at
17 the institution and its performance and effectiveness in
18 maintaining its facilities.

§18B-19-9. Higher education facilities information system.

1 (a) The commission and council jointly shall develop and
2 maintain a higher education facilities information system.
3 The higher education facilities information system shall serve
4 as a vehicle for carrying out the following functions:

5 (1) Acquisition of statewide data;

6 (2) Statewide standardization of space use and
7 classification based on nationally recognized standards and
8 measurements to facilitate comparisons among post-
9 secondary education institutions within the state and in the
10 region and nation; and

11 (3) Other purposes as determined by the commission and
12 council.

13 (b) At a minimum the higher education facilities
14 information system shall serve the following purposes:

15 (1) Develop and maintain a statewide inventory of higher
16 education facilities, including those acquired by long-term
17 lease, lease-purchase or other arrangement whereby the
18 institution has long-term beneficial use. The inventory shall
19 include, but is not limited to, the institution and campus
20 location of the facility, the construction date, the original
21 cost, square footage, floor plans, type of construction,
22 ownership status, the purposes for which it is used, the
23 current replacement cost and any other data the commission
24 and council consider appropriate;

25 (2) Develop and maintain an inventory of all rooms
26 within each facility, which includes, but is not limited to, the
27 room number, the square footage, room usage, number of
28 student stations and any other data the commission and
29 council consider appropriate;

30 (3) Provide a vehicle for institutions to submit capital
31 appropriation requests to the commission and council;

32 (4) Provide a vehicle to track the status and cost of
33 institution capital projects from inception to completion,
34 including major maintenance and deferred maintenance
35 projects; and

36 (5) Provide information on facilities needed to calculate
37 the building renewal formula.

38 (c) The commission and council shall establish
39 benchmarks for classroom and class laboratory use including
40 an analysis of utilization for the fall and spring semesters of
41 each academic year. The efficient use of classrooms and
42 class laboratories is a factor in determining whether an
43 institution needs additional classroom and laboratory
44 facilities.

45 (d) Each governing board and any institution under its
46 jurisdiction shall participate and cooperate with the
47 commission and council in all respects in the development
48 and maintenance of the higher education facilities
49 information system.

50 (e) The higher education facilities information system
51 may be used for other purposes set forth by the commission
52 and council in the rules required by section seventeen of this
53 article.

§18B-19-10. Authorization to sell property; use of proceeds.

1 (a) Notwithstanding any other provision of law or this
2 code to the contrary, the commission, council and governing
3 boards each may sell, lease, convey or otherwise dispose of
4 all or part of any real property that it owns, either by contract

5 or at public auction, and retain the proceeds of the
6 transaction.

7 (1) The commission, council and governing boards may
8 not sell, lease, convey or otherwise dispose of any real
9 property without first performing the following steps:

10 (A) Providing for property appraisal by two independent
11 licensed appraisers. The property may not be sold for less
12 than the average of the two appraisals;

13 (B) Providing notice to the public in the county in which
14 the real property is located by a Class II legal advertisement
15 pursuant to section two, article three, chapter fifty-nine of
16 this code;

17 (C) Holding a public hearing on the issue in the county in
18 which the real property is located; and

19 (D) In the case of the commission, notifying the Joint
20 Committee on Government and Finance.

21 (2) Any proceeds from the sale, lease, conveyance or
22 other disposal of real property that is used jointly by
23 institutions or for statewide programs under the jurisdiction
24 of the commission or the council shall be transferred to the
25 General Revenue Fund of the state.

26 (b) The commission, council or a governing board shall
27 deposit the net proceeds from the sale, lease, conveyance or
28 other disposal of real property into a special revenue account
29 in the State Treasury to be appropriated by the Legislature in
30 the annual budget bill for the purchase of additional real
31 property, equipment or technology, or for capital
32 improvements or maintenance at the institution that sold the
33 surplus real property.

§18B-19-11. Authorization to lease-purchase.

1 (a) The commission or council may enter into lease-
2 purchase agreements for capital improvements, including
3 equipment, on behalf of, or for the benefit of, a state
4 institution of higher education, the commission or council.

5 (b) After the commission or council, as appropriate, has
6 granted approval for a lease-purchase agreement by a
7 governing board, the board may enter into a lease-purchase
8 agreement for capital improvements, including equipment.

9 (c) The governing boards of Marshall University and
10 West Virginia University may enter into lease-purchase
11 agreements without seeking the approval of the commission.

12 (d) A lease purchase agreement constitutes a special
13 obligation of the State of West Virginia. The obligation may
14 be met from any funds legally available to the commission,
15 council or the institution and shall be cancelable at the option
16 of the commission, council, or governing board at the end of
17 any fiscal year. The obligation, or any assignment or
18 securitization of the obligation, never constitutes an
19 indebtedness of the State of West Virginia or any department,
20 agency or political subdivision of the state, within the
21 meaning of any constitutional provision or statutory
22 limitation, and may not be a charge against the general credit
23 or taxing powers of the state or any political subdivision of
24 the state. The facts shall be plainly stated in any lease-
25 purchase agreement.

26 (e) A lease-purchase agreement shall prohibit assignment
27 or securitization without consent of the lessee and the
28 approval of the agreement as to form by the Attorney
29 General. Proposals for any agreement shall be requested in
30 accordance with the requirements of this section and rules of

31 the commission and council. In addition, any lease-purchase
32 agreement that exceeds \$100,000 total shall be approved as
33 to form by the Attorney General.

34 (f) The interest component of any lease-purchase
35 obligation is exempt from all taxation of the State of West
36 Virginia, except inheritance, estate and transfer taxes. It is
37 the intent of the Legislature that if the requirements set forth
38 in the Internal Revenue Code of 1986, as amended, and any
39 regulations promulgated pursuant thereto are met, the interest
40 component of any lease-purchase obligation also is exempt
41 from the gross income of the recipient for purposes of federal
42 income taxation and may be designated by the governing
43 board or the president of the institution as a bank-qualified
44 obligation.

§18B-19-12. Authorization to lease.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, the commission, council and governing boards
3 may lease, or offer to lease, as lessee, any grounds, buildings,
4 office or other space in the name of the state.

5 (b) The commission, council and governing boards have
6 sole authority to select and to acquire by contract or lease all
7 grounds, buildings, office space or other space, the rental of
8 which is required necessarily by the commission, council or
9 institutions.

10 (c) Before executing any rental contract or lease, the
11 commission, council or a governing board shall determine the
12 fair market value for the rental of the requested grounds,
13 buildings, office space or other space, in the condition in
14 which they exist, and shall contract for or lease the premises
15 at a price not to exceed the fair market value.

16 (d) The commission, council and each governing board
17 may enter into long-term agreements for buildings land and
18 space for periods longer than one fiscal year but not to
19 exceed forty years.

20 (e) Any lease shall contain, in substance, all the following
21 provisions:

22 (1) The commission, council or governing board, as
23 lessee, has the right to cancel the lease without further
24 obligation on the part of the lessee upon giving thirty days'
25 written notice to the lessor at least thirty days prior to the last
26 day of the succeeding month;

27 (2) The lease is considered canceled without further
28 obligation on the part of the lessee if the Legislature or the
29 federal government fails to appropriate sufficient funds for
30 the lease or otherwise acts to impair the lease or cause it to be
31 canceled; and

32 (3) The lease is considered renewed for each ensuing
33 fiscal year during the term of the lease unless it is canceled
34 by the commission, council or governing board before the
35 end of the then-current fiscal year.

36 (f) The commission, council or institution that is granted
37 any grounds, buildings, office space or other space leased in
38 accordance with this section may not order or make
39 permanent changes of any type thereto, unless the
40 commission, council or governing board, as appropriate, has
41 first determined that the change is necessary for the proper,
42 efficient and economically sound operation of the institution.
43 For purposes of this section, a "permanent change" means
44 any addition, alteration, improvement, remodeling, repair or
45 other change involving the expenditure of state funds for the
46 installation of any tangible thing that cannot be economically

47 removed from the grounds, buildings, office space or other
48 space when vacated by the institution.

49 (g) Leases and other instruments for grounds, buildings,
50 office or other space, once approved by the commission,
51 council or governing board, may be signed by the chief
52 executive officer, or designee, of the commission, council or
53 institution.

54 (h) Any lease or instrument exceeding \$100,000 annually
55 shall be approved as to form by the Attorney General. A
56 lease or other instrument for grounds, buildings, office or
57 other space that contains a term, including any options, of
58 more than six months for its fulfillment shall be filed with the
59 State Auditor.

§18B-19-13. Real property contracts and agreements.

1 (a) Except as provided elsewhere in this article, any
2 purchase of real estate, any lease-purchase agreement and
3 any construction of new buildings or other acquisition of
4 buildings, office space or grounds resulting from these
5 transactions, shall be approved by the commission or council,
6 as appropriate, and provided to the Joint Committee on
7 Government and Finance for prior review, if the transaction
8 exceeds \$1 million.

9 (b) The commission, council and each governing board
10 shall provide the following to the Joint Committee on
11 Government and Finance:

12 (1) A copy of any contract or agreement to which it is a
13 party for real property if the contract or agreement exceeds
14 \$1 million; and

15 (2) A report setting forth a detailed summary of the terms
16 of the contract or agreement, including the name of the
17 property owner and the agent involved in the sale.

18 (c) The copy and report required by subsection (b) of this
19 section shall be provided at least thirty days before any sale,
20 exchange, transfer, purchase, lease-purchase, lease or rental
21 of real property, refundings of lease-purchases, leases or
22 rental agreements, construction of new buildings, and any
23 other acquisition or lease of buildings, office space or
24 grounds.

25 (d) A contract or agreement that is for the lease purchase,
26 lease or rental of real property, where the costs of real
27 property acquisition and improvements are to be financed, in
28 whole or in part, with bond proceeds, may contain a
29 preliminary schedule of rents and leases for purposes of
30 review by the committee.

31 (e) For renewals of contracts or agreements required by
32 this section to be reported, the commission, council or
33 governing board shall provide a report setting forth a detailed
34 summary of the terms of the contract or agreement, including
35 the name of the property owner.

36 (f) The Joint Committee on Government and Finance
37 shall meet and review any contract, agreement or report
38 within thirty days of receipt.

39 (g) Each governing board shall provide to the
40 commission or council, as appropriate, a copy of any contract
41 or agreement submitted to the Joint Committee on
42 Government and Finance pursuant to this section.

§18B-19-14. Authorization for sale lease-back.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, a governing board may sell any building that is
3 on unencumbered real property to which the board holds title
4 and may lease back the same building if the governing board

5 obtains approval of the commission or council, as
6 appropriate, before incurring any obligation. The board shall
7 deposit the net proceeds of the transaction into a special
8 revenue account in the State Treasury to be appropriated by
9 the Legislature for the use of the institution at which the real
10 property is located. Prior to such action, the board shall take
11 the following steps:

12 (1) Provide for the property to be appraised by two
13 licensed appraisers. The board may not sell the property for
14 less than the average of the two appraisals; and

15 (2) Retain independent financial and legal services to
16 examine fully all aspects of the transaction.

17 (b) The sale may be made only to a special purpose entity
18 that exists primarily for the purpose of supporting the
19 institution at which the building is located.

**§18B-19-15. Construction and operation of auxiliary facilities;
fees for auxiliary enterprises.**

1 (a) A governing board may provide, construct, erect,
2 improve, equip, maintain and operate auxiliary facilities, as
3 defined in section two of this article, for students, employees
4 and visitors on land it owns or leases.

5 (b) The cost of construction, erection, improvement or
6 equipment may be paid with the proceeds of revenue bonds
7 authorized by this code or by any other financing method
8 provided in this article.

9 (c) A governing board may engage experts in
10 engineering, architecture and construction and other experts
11 as it considers necessary and may specify the payment and
12 contract terms which are included in the cost of the project.

13 (d) A governing board may promulgate and adopt rules
14 and charge fees for use of its facilities. The fees charged
15 shall be structured so as to generate funds sufficient for the
16 following purposes:

17 (1) To maintain payment of the principal of and interest
18 on any revenue bonds, and for reserves for the revenue
19 bonds;

20 (2) To operate the auxiliary enterprise;

21 (3) To satisfy annual building renewal formula
22 requirements; and

23 (4) To build a reserve for major renovation or
24 replacement.

25 (e) All moneys collected for the use of auxiliary facilities
26 shall be paid to the credit of and expended by the governing
27 board of that institution in accordance with section thirteen,
28 article ten of this chapter.

§18B-19-16. Condemnation generally.

1 (a) The commission, council and governing boards each
2 may acquire land or buildings by condemnation for the use
3 and benefit of any state institution under its jurisdiction. A
4 condemnation proceeding conducted pursuant to this section
5 is governed by chapter fifty-four of this code.

6 (b) The commission, council and governing boards each
7 may condemn any interest, right or privilege, land or
8 improvement, which in its opinion is necessary, in the
9 manner provided by law for the acquisition by this state of
10 property for public purposes. The state is under no obligation
i i to accept and pay for any property condemned and may pay

12 for the property only from the funds provided for that
13 purpose.

14 (c) In any proceeding to condemn, the order shall be
15 made by the court having jurisdiction of the suit, action or
16 proceedings. A bond or other security may be required by
17 the court securing the property owner against any loss or
18 damage to be sustained by reason of the state's failure to
19 accept and pay for the property. The bond or security may
20 not impose liability or debt on or of the state as contemplated
21 by the Constitution of the State in relation to state debt.

§18B-19-17. Legislative rule.

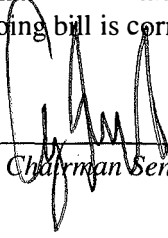
1 The commission and council jointly shall propose a rule
2 or rules for legislative approval in accordance with article
3 three-a, chapter twenty-nine-a of this code, to implement this
4 article.

§18B-19-18. Reporting.

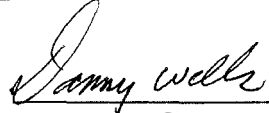
1 (a) By July 1, 2013, and annually thereafter, the
2 commission and council shall provide a general status report
3 to the Legislative Oversight Commission on Education
4 Accountability on the progress being made in implementing
5 the state-wide capital development plan and on the progress
6 of the governing boards in implementing the objectives of
7 institutions' campus development plans.

8 (b) The process required by the commission and council
9 for reporting by the governing boards shall be included in the
10 rules required by section seventeen of this article.

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



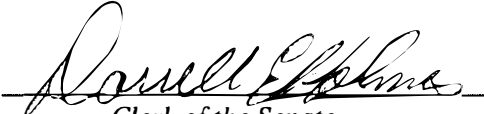
Chairman Senate Committee



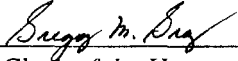
Chairman House Committee

Originating in the House.

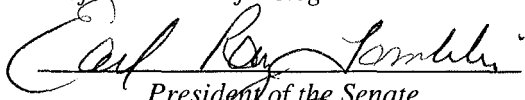
In effect ninety days from passage.



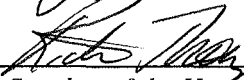
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is appended this the 23rd
day of March, 2010



Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2010

Time 3:08p