

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 444**

4 (By Senators Plymale, Jenkins and Beach)

5 _____
6 [Originating in the Committee on Education;

7 reported March 28, 2013.]
8 _____

9
10 A BILL to amend and reenact §12-1-12d of the Code of West Virginia,
11 1931, as amended; to amend and reenact §18B-1B-4 of said code;
12 to amend and reenact §18B-2A-1 and §18B-2A-3 of said code; to
13 amend and reenact §18B-7-11 of said code; to amend and reenact
14 §18B-19-10 of said code; and to amend said code by adding
15 thereto a new section, designated §18B-19-19, all relating to
16 higher education generally; increasing the amounts that
17 Marshall University and West Virginia University may have
18 invested with their respective foundations under certain
19 conditions; authorizing certain actions by certain state
20 institutions of higher education regarding capital projects
21 and facilities and capital project financing; exempting
22 compensation packages of certain institutional presidents from
23 certain approval process; clarifying that certain members of
24 institutional governing boards are eligible to succeed
25 themselves under certain conditions; collecting, synthesizing
26 and disseminating data from state institutions of higher

1 education; directing institutional boards of governors to
2 cooperate in certain data-related operations; providing
3 certain privacy protections for data; exempting the West
4 Virginia Policy Commission and West Virginia Council for
5 Community and Technical College Education from meeting certain
6 employee ratios; authorizing the use of proceeds from rentals
7 and leases of real property at state institutions of higher
8 education and providing for the transfer of real property to
9 other public bodies; and exempting certain institutional
10 boards of governors from certain approval process related to
11 capital facilities and requiring certain reports.

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

13 That §12-1-12d of the Code of West Virginia, 1931, as amended,
14 be amended and reenacted; that §18B-1B-4 of said code be amended
15 and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended
16 and reenacted; that §18B-7-11 of said code be amended and
17 reenacted; that §18B-19-10 of said code be amended and reenacted;
18 and that said code be amended by adding thereto a new section,
19 designated §18B-19-19, all to read as follows:

20 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

21 **ARTICLE 1. STATE DEPOSITORIES.**

22 **§12-1-12d. Investments by Marshall University and West Virginia**
23 **University.**

24 (a) Notwithstanding any provision of this article to the
25 contrary, the governing boards of Marshall University and West

1 Virginia University each may invest certain funds with its
2 respective nonprofit foundation that has been established to
3 receive contributions exclusively for that university and which
4 exists on January 1, 2005. ~~Any such~~ The investment is subject to
5 the limitations of this section.

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

11 (c) Moneys of a university that may be invested with its
12 foundation pursuant to this section are those subject to the
13 administrative control of the university that are collected under
14 an act of the Legislature for specific purposes and do not include
15 any funds made available to the university from the State General
16 Revenue Fund or the funds established in sections eighteen or
17 eighteen-a, article twenty-two, chapter twenty-nine of this code.
18 Moneys permitted to be invested under this section may be
19 aggregated in an investment fund for investment purposes.

20 (d) Of the moneys authorized for investment by this section,
21 Marshall University and West Virginia University each,
22 respectively, may have invested with its foundation at any time not
23 more than the greater of:

24 (1) \$18 million for Marshall University and \$25 million for
25 West Virginia University; or

26 (2) Sixty-five percent of its unrestricted net assets as

1 presented in the statement of net assets for the fiscal year end
2 audited financial reports.

3 (3) Notwithstanding subdivisions (1) and (2) of this
4 subsection, with the approval of the Higher Education Policy
5 Commission, Marshall University may increase the amount invested to
6 ~~\$30~~ \$60 million and West Virginia University may increase the
7 amount invested to ~~\$40~~ \$70 million.

8 (e) Investments by foundations that are authorized under this
9 section shall be made in accordance with and subject to the
10 provisions of the Uniform Prudent Investor Act codified as article
11 six-c, chapter forty-four of this code. As part of its fiduciary
12 responsibilities, each governing board shall establish investment
13 policies in accordance with the Uniform Prudent Investor Act for
14 those moneys invested with its foundation. The governing board
15 shall review, establish and modify, if necessary, the investment
16 objectives as incorporated in its investment policies so as to
17 provide for the financial security of the moneys invested with its
18 foundation. The governing boards shall give consideration to the
19 following:

- 20 (1) Preservation of capital;
- 21 (2) Diversification;
- 22 (3) Risk tolerance;
- 23 (4) Rate of return;
- 24 (5) Stability;
- 25 (6) Turnover;
- 26 (7) Liquidity; and

1 (8) Reasonable cost of fees.

2 (f) A governing board shall report annually by December 31 to
3 the Governor and to the Joint Committee on Government and Finance
4 on the performance of investments managed by its foundation
5 pursuant to this section.

6 (g) The amendments to this section in the second extraordinary
7 session of the Legislature in 2010 ~~shall~~ apply retroactively so
8 that the authority granted by this section shall be construed as if
9 that authority did not expire on July 1, 2010.

10 **CHAPTER 18B. HIGHER EDUCATION.**

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

12 **§18B-1B-4. Powers and duties of Higher Education Policy Commission.**

13 (a) The primary responsibility of the commission is to
14 develop, establish and implement policy that will achieve the
15 goals, objectives and priorities found in section one-a, article
16 one and article one-d of this chapter. The commission shall
17 exercise its authority and carry out its responsibilities in a
18 manner that is consistent and not in conflict with the powers and
19 duties assigned by law to the West Virginia Council for Community
20 and Technical College Education and the powers and duties assigned
21 to the governing boards. To that end, the commission has the
22 following powers and duties relating to the governing boards under
23 its jurisdiction:

24 (1) Develop, oversee and advance the public policy agenda
25 pursuant to article one-d of this chapter to address major

1 challenges facing the state, including, but not limited to, the
2 following:

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

7 (B) Development and implementation of the master plan
8 described in section five, article one-d of this chapter for the
9 purpose of accomplishing the mandates of this section;

10 (2) Develop, oversee and advance the promulgation and
11 implementation of a financing rule for state institutions of higher
12 education under its jurisdiction. The rule shall meet the
13 following criteria:

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

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

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

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

26 (A) Developing, building public consensus around and

1 sustaining attention to a long-range public policy agenda. In
2 developing the agenda, the commission and council shall seek input
3 from the Legislature and the Governor and specifically from the
4 State Board of Education and local school districts in order to
5 create the necessary linkages to assure smooth, effective and
6 seamless movement of students through the public education and
7 post-secondary education systems and to ensure that the needs of
8 public school courses and programs can be fulfilled by the
9 graduates produced and the programs offered;

10 (B) Ensuring that the governing boards carry out their duty
11 effectively to govern the individual institutions of higher
12 education; and

13 (C) Holding the governing boards and the higher education
14 systems as a whole accountable for accomplishing their missions and
15 implementing their compacts;

16 (4) Develop and adopt each compact for the governing boards
17 under its jurisdiction;

18 (5) Review and adopt the annual updates of the institutional
19 compacts;

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

21 (A) The Governor for implementation of the public policy
22 agenda; and

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

26 (7) Jointly with the council, promulgate legislative rules

1 pursuant to article three-a, chapter twenty-nine-a of this code to
2 fulfill the purposes of section five, article one-a of this
3 chapter;

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

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

10 (10) Report to the Legislature and to the Legislative
11 Oversight Commission on Education Accountability annually during
12 the January interim meeting period on a date and at a time and
13 location to be determined by the President of the Senate and the
14 Speaker of the House of Delegates. The report shall address at
15 least the following:

16 (A) The performance of its system of higher education during
17 the previous fiscal year, including, but not limited to, progress
18 in meeting the goals, objectives and priorities set forth in
19 section one-a, article one and article one-d of this chapter and in
20 the commission's master plan and institutional compacts;

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

23 (C) Recommendations of the commission for statutory changes
24 necessary or expedient to achieve state goals, objectives and
25 priorities;

26 (11) Establish a formal process for identifying capital

1 investment needs and for determining priorities for these
2 investments for consideration by the Governor and the Legislature
3 as part of the appropriation request process pursuant to article
4 nineteen of this chapter.

5 (12) Develop standards and evaluate governing board requests
6 for capital project financing in accordance with article nineteen
7 of this chapter, except that Marshall University and West Virginia
8 University are not subject to this subdivision.

9 (13) Ensure that governing boards manage capital projects and
10 facilities needs effectively, including review and approval or
11 disapproval of capital projects, in accordance with article
12 nineteen of this chapter, except that Marshall University and West
13 Virginia University are not subject to this subdivision.

14 (14) Acquire legal services as considered necessary, including
15 representation of the commission, its governing boards, employees
16 and officers, before any court or administrative body,
17 notwithstanding any other provision of this code to the contrary.
18 The counsel may be employed either on a salaried basis or on a
19 reasonable fee basis. In addition, the commission may, but is not
20 required to, call upon the Attorney General for legal assistance
21 and representation as provided by law;

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

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

1 (17) Provide suitable offices in Kanawha County for the
2 chancellor, vice chancellors and other staff;

3 (18) Advise and consent in the appointment of the presidents
4 of the institutions of higher education under its jurisdiction
5 pursuant to section six of this article. The role of the
6 commission in approving an institutional president is to assure
7 through personal interview that the person selected understands and
8 is committed to achieving the goals, objectives and priorities set
9 forth in the compact, in section one-a, article one and article
10 one-d of this chapter;

11 (19) Approve the total compensation package from all sources
12 for presidents of institutions under its jurisdiction, as proposed
13 by the governing boards, except that the compensation packages of
14 the presidents of Marshall University and West Virginia University,
15 respectively, are not subject to this subdivision. The governing
16 boards must obtain approval from the commission of the total
17 compensation package both when institutional presidents are
18 employed initially and afterward when any change is made in the
19 amount of the total compensation package;

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

26 (21) Approve and implement a uniform standard jointly with the

1 council to determine which students shall be placed in remedial or
2 developmental courses. The standard shall be aligned with college
3 admission tests and assessment tools used in West Virginia and
4 shall be applied uniformly by the governing boards throughout the
5 public higher education system. The chancellors shall develop a
6 clear, concise explanation of the standard which they shall
7 communicate to the State Board of Education and the state
8 superintendent of Schools;

9 (22) Jointly with the council, develop and implement an
10 oversight plan to manage systemwide technology including, but not
11 limited to, the following:

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

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

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

22 (23) Establish and implement policies and procedures to ensure
23 that a student may transfer and apply toward the requirements for
24 a bachelor's degree the maximum number of credits earned at any
25 regionally accredited in-state or out-of-state community and
26 technical college with as few requirements to repeat courses or to

1 incur additional costs as are consistent with sound academic
2 policy;

3 (24) Establish and implement policies and procedures to ensure
4 that a student may transfer and apply toward the requirements for
5 a degree the maximum number of credits earned at any regionally
6 accredited in-state or out-of-state higher education institution
7 with as few requirements to repeat courses or to incur additional
8 costs as are consistent with sound academic policy;

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

15 (26) Establish and implement policies and programs, in
16 cooperation with the council and the governing boards, through
17 which a student who has gained knowledge and skills through
18 employment, participation in education and training at vocational
19 schools or other education institutions, or Internet-based
20 education programs, may demonstrate by competency-based assessment
21 that he or she has the necessary knowledge and skills to be granted
22 academic credit or advanced placement standing toward the
23 requirements of an associate's degree or a bachelor's degree at a
24 state institution of higher education;

25 (27) Seek out and attend regional, national and international
26 meetings and forums on education and workforce development-related

1 topics as, in the commission's discretion, are critical for the
2 performance of their duties as members, for the purpose of keeping
3 abreast of education trends and policies to aid it in developing
4 the policies for this state to meet the established education
5 goals, objectives and priorities pursuant to section one-a, article
6 one and article one-d of this chapter;

7 (28) Promulgate and implement a rule for higher education
8 governing boards and institutions to follow when considering
9 capital projects pursuant to article nineteen of this chapter;

10 (29) Consider and submit to the appropriate agencies of the
11 executive and legislative branches of state government an
12 appropriation request that reflects recommended appropriations for
13 the commission and the governing boards under its jurisdiction.
14 The commission shall submit as part of its appropriation request
15 the separate recommended appropriation request it received from the
16 council, both for the council and for the governing boards under
17 the council's jurisdiction. The commission annually shall submit
18 the proposed allocations based on each institution's progress
19 toward meeting the goals of its compact;

20 (30) The commission may assess institutions under its
21 jurisdiction, including Marshall University and West Virginia
22 University, for the payment of expenses of the commission or for
23 the funding of statewide higher education services, obligations or
24 initiatives related to the goals set forth for the provision of
25 public higher education in the state;

26 (31) Promulgate rules allocating reimbursement of

1 appropriations, if made available by the Legislature, to governing
2 boards for qualifying noncapital expenditures incurred in providing
3 services to students with physical, learning or severe sensory
4 disabilities;

5 (32) Make appointments to boards and commissions where this
6 code requires appointments from the State College System Board of
7 Directors or the University of West Virginia System Board of
8 Trustees which were abolished effective June 30, 2000, except in
9 those cases where the required appointment has a specific and
10 direct connection to the provision of community and technical
11 college education, the appointment shall be made by the council.
12 Notwithstanding any provisions of this code to the contrary, the
13 commission or the council may appoint one of its own members or any
14 other citizen of the state as its designee. The commission and
15 council shall appoint the total number of persons in the aggregate
16 required to be appointed by these previous governing boards;

17 (33) Pursuant to article three-a, chapter twenty-nine-a of
18 this code and section six, article one of this chapter, promulgate
19 rules necessary or expedient to fulfill the purposes of this
20 chapter. The commission and the council shall promulgate a uniform
21 joint legislative rule for the purposes of standardizing, as much
22 as possible, the administration of personnel matters among the
23 state institutions of higher education and implementing the
24 provisions of articles seven, eight, nine and nine-a of this
25 chapter;

26 (34) Determine when a joint rule among the governing boards

1 under its jurisdiction is necessary or required by law and, in
2 those instances, in consultation with the governing boards under
3 its jurisdiction, promulgate the joint rule;

4 (35) Promulgate and implement a rule jointly with the council
5 whereby course credit earned at a community and technical college
6 transfers for program credit at any other state institution of
7 higher education and is not limited to fulfilling a general
8 education requirement;

9 (36) By October 1, 2011, promulgate a rule pursuant to section
10 one, article ten of this chapter, establishing tuition and fee
11 policy for all governing boards under the jurisdiction of the
12 commission, including Marshall University and West Virginia
13 University. The rule shall include, but is not limited to, the
14 following:

15 (A) Comparisons with peer institutions;

16 (B) Differences among institutional missions;

17 (C) Strategies for promoting student access;

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

19 (E) Such other policies as the commission and council consider
20 appropriate;

21 (37) Implement general disease awareness initiatives to
22 educate parents and students, particularly dormitory residents,
23 about meningococcal meningitis; the potentially life-threatening
24 dangers of contracting the infection; behaviors and activities that
25 can increase risks; measures that can be taken to prevent contact
26 or infection; and potential benefits of vaccination. The

1 commission shall encourage governing boards that provide medical
2 care to students to provide access to the vaccine for those who
3 wish to receive it; and

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

8 (b) In addition to the powers and duties listed in subsection
9 (a) of this section, the commission has the following general
10 powers and duties related to its role in developing, articulating
11 and overseeing the implementation of the public policy agenda:

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

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

17 (3) Development and implementation of institutional mission
18 definitions, including use of incentive funds to influence
19 institutional behavior in ways that are consistent with public
20 priorities;

21 (4) Academic program review and approval for governing boards
22 under its jurisdiction. The review and approval includes use of
23 institutional missions as a template to judge the appropriateness
24 of both new and existing programs and the authority to implement
25 needed changes.

26 (A) The commission's authority to review and approve academic

1 programs for either Marshall University or West Virginia University
2 is limited to programs that are proposed to be offered at a new
3 location not presently served by that institution;

4 (B) The commission shall approve or disapprove proposed
5 academic degree programs in those instances where approval is
6 required as soon as practicable, but in any case not later than six
7 months from the date the governing board makes an official request.
8 The commission may not withhold approval unreasonably.

9 (5) Distribution of funds appropriated to the commission,
10 including incentive and performance-based funds;

11 (6) Administration of state and federal student aid programs
12 under the supervision of the vice chancellor for administration,
13 including promulgation of rules necessary to administer those
14 programs;

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

18 (8) Developing, establishing and implementing information,
19 assessment, accountability and personnel systems, including
20 maintaining statewide data systems that facilitate long-term
21 planning and accurate measurement of strategic outcomes and
22 performance indicators;

23 (9) Jointly with the council, promulgating and implementing
24 rules for licensing and oversight for both public and private
25 degree-granting and nondegree-granting institutions that provide
26 post-secondary education courses or programs in the state. The

1 council has authority and responsibility for approval of all
2 post-secondary courses or programs providing community and
3 technical college education as defined in section two, article one
4 of this chapter.

5 (10) Developing, implementing and overseeing statewide and
6 regional projects and initiatives related to providing
7 post-secondary education at the baccalaureate level and above such
8 as those using funds from federal categorical programs or those
9 using incentive and performance-based funds from any source;

10 (11) Quality assurance that intersects with all other duties
11 of the commission particularly in the areas of research, data
12 collection and analysis, personnel administration, planning, policy
13 analysis, program review and approval, budgeting and information
14 and accountability systems; and

15 (12) Developing budgets and allocating resources for governing
16 boards under its jurisdiction:

17 (A) For all governing boards under its jurisdiction, except
18 the governing boards of Marshall University and West Virginia
19 University, the commission shall review institutional operating
20 budgets, review and approve capital budgets and distribute
21 incentive and performance-based funds;

22 (B) For the governing boards of Marshall University and West
23 Virginia University, the commission shall distribute incentive and
24 performance-based funds and may review and comment upon the
25 institutional operating budgets and capital budgets. The
26 commission's comments, if any, shall be made part of the governing

1 board's minute record.

2 (c) In addition to the powers and duties provided in
3 subsections (a) and (b) of this section and any other powers and
4 duties assigned to it by law, the commission has other powers and
5 duties necessary or expedient to accomplish the purposes of this
6 article.

7 (d) The commission may withdraw specific powers of a governing
8 board under its jurisdiction for a period not to exceed two years,
9 if the commission determines that any of the following conditions
10 exist:

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

14 (2) The commission has received information, substantiated by
15 independent audit, of significant mismanagement or failure to carry
16 out the powers and duties of the governing board according to state
17 law; or

18 (3) Other circumstances which, in the view of the commission,
19 severely limit the capacity of the governing board to exercise its
20 powers or carry out its duties and responsibilities.

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

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

26 **§18B-2A-1. Findings; composition of boards; terms and**

1 **qualifications of members; vacancies; eligibility for**
2 **reappointment.**

3 (a) *Findings.* -

4 The Legislature finds that the State of West Virginia is
5 served best when the membership of each governing board includes
6 the following:

7 (1) The academic expertise and institutional experience of
8 faculty members and a student of the institution governed by the
9 board;

10 (2) The technical or professional expertise and institutional
11 experience of a classified employee of the institution governed by
12 the board;

13 (3) An awareness and understanding of the issues facing the
14 institution governed by the board; and

15 (4) The diverse perspectives that arise from a membership that
16 is balanced in terms of gender and varied in terms of race and
17 ethnic heritage.

18 (b) *Boards of governors established.* -

19 A board of governors is continued at each of the following
20 institutions: Bluefield State College, Blue Ridge Community and
21 Technical College, Bridgemont Community and Technical College,
22 Concord University, Eastern West Virginia Community and Technical
23 College, Fairmont State University, Glenville State College,
24 Kanawha Valley Community and Technical College, Mountwest Community
25 and Technical College, Marshall University, New River Community and

1 Technical College, Pierpont Community and Technical College,
2 Shepherd University, Southern West Virginia Community and Technical
3 College, West Liberty University, West Virginia Northern Community
4 and Technical College, the West Virginia School of Osteopathic
5 Medicine, West Virginia State University, West Virginia University
6 and West Virginia University at Parkersburg.

7 (c) *Board membership.* -

8 (1) An appointment to fill a vacancy on the board or
9 reappointment of a member who is eligible to serve an additional
10 term is made in accordance with the provisions of this section.

11 (2) The Board of Governors for Marshall University consists of
12 sixteen persons. The Board of Governors for West Virginia
13 University consists of seventeen persons. The boards of governors
14 of the other state institutions of higher education consist of
15 twelve persons.

16 (3) Each board of governors includes the following members:

17 (A) A full-time member of the faculty with the rank of
18 instructor or above duly elected by the faculty of the respective
19 institution;

20 (B) A member of the student body in good academic standing,
21 enrolled for college credit work and duly elected by the student
22 body of the respective institution; and

23 (C) A member from the institutional classified employees duly
24 elected by the classified employees of the respective institution;

25 (4) For the Board of Governors at Marshall University,
26 thirteen lay members appointed by the Governor, by and with the

1 advice and consent of the Senate, pursuant to this section;

2 (5) For the Board of Governors at West Virginia University,
3 twelve lay members appointed by the Governor, by and with the
4 advice and consent of the Senate, pursuant to this section, and
5 additionally:

6 (A) The Chairperson of the Board of Visitors of West Virginia
7 University Institute of Technology;

8 (B) A full-time faculty member representing the extension
9 service at the institution or a full-time faculty member
10 representing the health sciences, selected by the faculty senate.

11 (6) For each board of governors of the other state
12 institutions of higher education, nine lay members appointed by the
13 Governor, by and with the advice and consent of the Senate,
14 pursuant to this section.

15 (A) Of the nine members appointed by the Governor, no more
16 than five may be of the same political party. Of the thirteen
17 members appointed by the Governor to the governing board of
18 Marshall University, no more than eight may be of the same
19 political party. Of the twelve members appointed by the Governor
20 to the governing board of West Virginia University, no more than
21 seven may be of the same political party.

22 (B) Of the nine members appointed by the Governor, at least
23 five shall be residents of the state. Of the thirteen members
24 appointed by the Governor to the governing board of Marshall
25 University, at least eight shall be residents of the state. Of the
26 twelve members appointed by the Governor to the governing board of

1 West Virginia University, at least seven shall be residents of the
2 state.

3 (7) In making lay appointments, the Governor shall consider
4 the institutional mission and membership characteristics including
5 the following:

6 (A) The need for individual skills, knowledge and experience
7 relevant to governing the institution;

8 (B) The need for awareness and understanding of institutional
9 problems and priorities, including those related to research,
10 teaching and outreach;

11 (C) The value of gender, racial and ethnic diversity; and

12 (D) The value of achieving balance in gender and diversity in
13 the racial and ethnic characteristics of the lay membership of each
14 board.

15 (d) *Board member terms.* -

16 (1) The student member serves for a term of one year. Each
17 term begins on July 1.

18 (2) The faculty member serves for a term of two years. Each
19 term begins on July 1. Faculty members are eligible to succeed
20 themselves for three additional terms, not to exceed a total of
21 eight consecutive years.

22 (3) The member representing classified employees serves for a
23 term of two years. Each term begins on July 1. Members
24 representing classified employees are eligible to succeed
25 themselves for three additional terms, not to exceed a total of
26 eight consecutive years.

1 (4) The appointed lay citizen members serve terms of ~~up to~~
2 four years each and are eligible to succeed themselves for no more
3 than one additional term, except that citizen members who are
4 appointed to fill unexpired terms are eligible to succeed
5 themselves for two full terms after completing an unexpired term.

6 (5) A vacancy in an unexpired term of a member shall be filled
7 for the unexpired term within thirty days of the occurrence of the
8 vacancy in the same manner as the original appointment or election.
9 Except in the case of a vacancy, all elections are held and all
10 appointments are made no later than June 30 preceding the
11 commencement of the term. Each board of governors shall elect one
12 of its appointed lay members to be chairperson in June of each
13 year. A member may not serve as chairperson for more than four
14 consecutive years.

15 (6) The appointed members of the boards of governors serve
16 staggered terms of up to four years except that four of the initial
17 appointments to the governing boards of community and technical
18 colleges that became independent July 1, 2008, are for terms of two
19 years and five of the initial appointments are for terms of four
20 years.

21 (e) *Board member eligibility, expenses.* -

22 (1) A person is ineligible for appointment to membership on a
23 board of governors of a state institution of higher education under
24 the following conditions:

25 (A) For a baccalaureate institution or university, a person is
26 ineligible for appointment who is an officer, employee or member of

1 any other board of governors; an employee of any institution of
2 higher education; an officer or member of any political party
3 executive committee; the holder of any other public office or
4 public employment under the government of this state or any of its
5 political subdivisions; an employee of any affiliated research
6 corporation created pursuant to article twelve of this chapter; an
7 employee of any affiliated foundation organized and operated in
8 support of one or more state institutions of higher education; or
9 a member of the council or commission. This subsection does not
10 prevent the representative from the faculty, classified employees,
11 students or the superintendent of a county board of education from
12 being members of the governing boards.

13 (B) For a community and technical college, a person is
14 ineligible for appointment who is an officer, employee or member of
15 any other board of governors; a member of a board of visitors of
16 any public institution of higher education; an employee of any
17 institution of higher education; an officer or member of any
18 political party executive committee; the holder of any other public
19 office, other than an elected county office, or public employment,
20 other than employment by the county board of education, under the
21 government of this state or any of its political subdivisions; an
22 employee of any affiliated research corporation created pursuant to
23 article twelve of this chapter; an employee of any affiliated
24 foundation organized and operated in support of one or more state
25 institutions of higher education; or a member of the council or
26 commission. This subsection does not prevent the representative

1 from the faculty, classified employees or students from being
2 members of the governing boards.

3 (2) Before exercising any authority or performing any duties
4 as a member of a governing board, each member shall qualify as such
5 by taking and subscribing to the oath of office prescribed by
6 section five, article IV of the Constitution of West Virginia and
7 the certificate thereof shall be filed with the Secretary of State.

8 (3) A member of a governing board appointed by the Governor
9 may not be removed from office by the Governor except for official
10 misconduct, incompetence, neglect of duty or gross immorality and
11 then only in the manner prescribed by law for the removal of the
12 state elective officers by the Governor.

13 (4) The members of the board of governors serve without
14 compensation, but are reimbursed for all reasonable and necessary
15 expenses actually incurred in the performance of official duties
16 under this article upon presentation of an itemized sworn statement
17 of expenses.

18 (5) The president of the institution shall make available
19 resources of the institution for conducting the business of its
20 board of governors. All expenses incurred by the board of
21 governors and the institution under this section are paid from
22 funds allocated to the institution for that purpose.

23 **§18B-2A-3. Supervision of governing boards; promulgation of rules;**
24 **data collection and dissemination.**

25 (a) The governing boards are subject to the supervision of the
26 commission or the council, as appropriate, except in those

1 instances where specific statutory exceptions are granted by law to
2 the governing boards of Marshall University and West Virginia
3 University.

4 (b) The governing boards of all state institutions of higher
5 education are subject to the provisions of law that relate to the
6 administration of personnel matters including, specifically,
7 articles seven, eight, nine and nine-a of this chapter and to rules
8 promulgated and adopted in accordance with these provisions.

9 (c) The Chancellor for Higher Education and the Chancellor for
10 Community and Technical College Education, under the supervision of
11 their respective boards, are responsible for the coordination of
12 policies, purposes and rules of the governing boards and shall
13 provide for and facilitate sufficient interaction among the
14 governing boards and between the governing boards and the State
15 Board of Education to meet the goals and objectives provided in the
16 compacts and in section one-a, article one and article one-d of
17 this chapter.

18 (d) The governing boards and the State Board of Education
19 shall provide all information requested by the commission and the
20 council, whether the request is made separately or jointly, in an
21 appropriate format and in a timely manner.

22 (1) Each governing board shall cooperate with the West
23 Virginia Network for Educational Telecomputing (WVNET) in designing
24 appropriate interfaces with the databases of institutions under its
25 jurisdiction and shall grant WVNET direct access to these
26 databases.

1 (2) WVNET, on behalf of the commission or council or both,
2 shall generate reports from the data accessed for the purposes set
3 forth in section five, article one-a and sections eight and ten,
4 article one-d of this chapter.

5 (3) All data accessed or received from an institution shall be
6 treated in a manner consistent with the privacy protections
7 outlined in section ten, article one-d of this chapter.

8 **ARTICLE 7. PERSONNEL GENERALLY.**

9 **§18B-7-11. Employees designated as nonclassified; limits;**
10 **exceptions; reports required.**

11 (a) Notwithstanding any provision of this code to the
12 contrary, by July 1, 2015, the percentage of personnel placed in
13 the category of nonclassified at a higher education organization
14 may not exceed twenty percent of the total number of classified and
15 nonclassified employees of that organization as those terms are
16 defined in section two, article nine-a of this chapter and who are
17 eligible for membership in a state retirement system of the State
18 of West Virginia or other retirement plan authorized by the state.

19 A higher education organization which has more than twenty
20 percent of its employees placed in the nonclassified category as
21 defined by this subsection on July 1, 2011, shall reduce the number
22 of nonclassified employees to no more than twenty-five percent by
23 July 1, 2013, and to no more than twenty percent by July 1, 2015,
24 except as set forth in subsections (b) and (c) of this section.

25 (b) For the purpose of determining the ratio of nonclassified

1 employees pursuant to this section, the following conditions apply:

2 (1) Employees of the commission and the chancellor for higher
3 education and employees of the council and the chancellor for
4 community and technical college education are considered as one
5 organization;

6 (2) Organizations may count as faculty or classified
7 employees, respectively, administrators who retain the right to
8 return to faculty or classified employee positions; and

9 (3) Athletic coaches are excluded from calculation of the
10 ratio. The commission and the council shall include consideration
11 of this employee category in each review required by section nine
12 of this article and shall monitor organizations' use of this
13 category and include this information in the reports required by
14 subsections (a) and (b), section eight of this article.

15 (c) An organization may place up to twenty-five percent of the
16 total number of classified and nonclassified employees of that
17 organization as defined by this section in the nonclassified
18 category under the following conditions:

19 (1) The governing board of an institution votes to approve any
20 percentage or fraction of a percentage number above twenty percent
21 and seeks and receives the approval of the commission or council,
22 as appropriate, before increasing the total above twenty percent.

23 ~~(2) In the case of personnel employed by the commission and~~
24 ~~the council, the chancellors jointly shall agree to increase the~~
25 ~~percentage number or fraction of a number of nonclassified~~
26 ~~employees beyond twenty percent and shall recommend this action to~~

1 ~~their respective boards for approval.~~

2 (A) The commission and council each shall approve or
3 disapprove the increase and shall include the vote, as well as
4 details of the position and justification for placing the position
5 in the nonclassified category, in its minute record.

6 (B) The number of nonclassified personnel may not be increased
7 above twenty percent unless the increase is approved by both the
8 commission and the council.

9 ~~(3)~~ (2) *Powers and duties of commission and council regarding*
10 *nonclassified staff ratios. -*

11 (A) It is the duty of the commission and council jointly to
12 establish criteria for the purpose of making decisions on approving
13 or disapproving requests by organizations to exceed the twenty
14 percent limit for personnel placed in the nonclassified category;

15 (B) The commission and council shall provide technical
16 assistance to organizations under their respective jurisdictions in
17 collecting and interpreting data to ensure that they fulfill the
18 requirements established by this section. Consideration of these
19 issues shall be made part of each review required by section nine
20 of this article and information from the review included in the
21 reports required by subsections (a) and (b), section eight of this
22 article;

23 (C) The chancellors shall monitor the progress of the
24 organizations in meeting the deadlines established in this section
25 and shall report periodically to the council and commission. The
26 commission and council shall make a preliminary compliance report

1 to the Legislative Oversight Commission on Education Accountability
2 by September 1, 2013, and a final report on organization compliance
3 to that body by September 1, 2015.

4 (D) Subject to a joint recommendation by the commission and
5 the council and subsequent affirmative action by the Legislature to
6 extend the authority beyond the specified date of termination, the
7 authority of an organization to place more than twenty percent of
8 its personnel in the nonclassified category pursuant to this
9 section expires on July 1, 2016.

10 (d) The current annual salary of a nonclassified employee may
11 not be reduced if his or her position is redefined as a classified
12 position solely to meet the requirements of this section. If such
13 a nonclassified employee is reclassified, his or her salary does
14 not constitute evidence of inequitable compensation in comparison
15 to other employees in the same paygrade.

16 (e) For the purposes of this section only the commission and
17 council are not considered a higher education organization.

18 **ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.**

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

20 (a) Notwithstanding any other provision of law or this code to
21 the contrary, the commission, council and governing boards each may
22 ~~sell lease, convey or otherwise dispose of~~ all or part of any real
23 property that it owns, either by contract or at public auction, and
24 retain the proceeds of the transaction.

25 The commission, council and governing boards may not sell
26 ~~lease, convey or otherwise dispose of~~ any real property without

1 first performing the following steps:

2 (1) Providing for property appraisal by two independent
3 licensed appraisers. The property may not be sold for less than
4 the average of the two appraisals;

5 (2) Providing notice to the public in the county in which the
6 real property is located by a Class II legal advertisement pursuant
7 to section two, article three, chapter fifty-nine of this code;

8 (3) Holding a public hearing on the issue in the county in
9 which the real property is located; and

10 (4) In the case of the commission, notifying the Joint
11 Committee on Government and Finance.

12 ~~(b)~~ (5) The commission, council or a governing board shall
13 deposit the net proceeds from the sale ~~lease, conveyance or other~~
14 ~~disposal~~ of real property into a special revenue account in the
15 State Treasury to be appropriated by the Legislature in the annual
16 budget bill for the purchase of additional real property, equipment
17 or technology, or for capital improvements or maintenance at the
18 institution that sold the surplus real property.

19 (b) Notwithstanding any other provision of law or this code to
20 the contrary, the commission, council and governing boards each may
21 lease, as lessor, for purposes that further the state goals,
22 objectives and priorities for higher education set out in this
23 code, particularly section one-a, article one and article one-d of
24 this chapter, any real property that it owns, either by contract or
25 at public auction, and retain the proceeds of the lease.

26 (c) Notwithstanding any other provision of law or this code to

1 the contrary, the commission, council and governing boards may
2 convey, transfer or exchange any real property it owns to any other
3 public body.

4 **§18B-19-19. Exemptions from approval process; reports required.**

5 Notwithstanding any provision of this chapter to the contrary,
6 the governing boards of Marshall University and West Virginia
7 University each may take any action described or set forth in this
8 article that requires the approval of the commission without
9 seeking commission approval subject to the following conditions:

10 (a) Each governing board shall provide notice of any proposed
11 action to the commission at least thirty days prior to taking the
12 action;

13 (b) Each governing board shall provide any additional
14 information related to the proposed action requested by the
15 commission within thirty days of receiving the commission's
16 request; and

17 (c) Each governing board shall comply with all the mandates in
18 this article, other than commission approval, including the
19 mandates and requirements of section eight, article ten of this
20 chapter regarding the issuance of revenue bonds.