

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 528

BY SENATORS WALTERS, BOSO, CARMICHAEL AND FERNS

[Originating in the Committee on Education;

Reported on February 28, 2016]

1 A BILL to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating
2 to altering the power of the Higher Education Policy Commission over academic programs
3 of institutions under its jurisdiction.

Be it enacted by the Legislature of West Virginia:

1 That §18B-1B-4 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

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 develop, establish and implement
2 policy that will achieve the goals, objectives and priorities found in section one-a, article one of
3 this chapter and article one-d of this chapter. The commission shall exercise its authority and
4 carry out its responsibilities in a manner that is consistent and not in conflict with the powers and
5 duties assigned by law to the West Virginia Council for Community and Technical College
6 Education and the powers and duties assigned to the governing boards. To that end, the
7 commission has the following powers and duties relating to the governing boards under its
8 jurisdiction:

9 (1) Develop, oversee and advance the public policy agenda pursuant to article one-d of
10 this chapter to address major challenges facing the state, including, but not limited to, the
11 following:

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

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

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

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

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

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

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

29 (A) Developing, building public consensus around and sustaining attention to a long-range
30 public policy agenda. In developing the agenda, the commission and council shall seek input from
31 the Legislature and the Governor and specifically from the State Board of Education and local
32 school districts in order to create the necessary linkages to assure smooth, effective and
33 seamless movement of students through the public education and post-secondary education
34 systems and to ensure that the needs of public school courses and programs can be fulfilled by
35 the graduates produced and the programs offered;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 (11) Establish a formal process for identifying capital investment needs and for
66 determining priorities for these investments for consideration by the Governor and the Legislature
67 as part of the appropriation request process pursuant to article nineteen of this chapter.

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

70 (13) Ensure that governing boards manage capital projects and facilities needs effectively,
71 including review and approval or disapproval of capital projects, in accordance with article
72 nineteen of this chapter.

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

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

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

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

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

89 (19) Approve the total compensation package from all sources for presidents of institutions
90 under its jurisdiction, as proposed by the governing boards. The governing boards must obtain
91 approval from the commission of the total compensation package both when institutional
92 presidents are employed initially and afterward when any change is made in the amount of the
93 total compensation package;

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

99 (21) Approve and implement a uniform standard jointly with the council to determine which
100 students shall be placed in remedial or developmental courses. The standard shall be aligned
101 with college admission tests and assessment tools used in West Virginia and shall be applied
102 uniformly by the governing boards throughout the public higher education system. The
103 chancellors shall develop a clear, concise explanation of the standard which they shall
104 communicate to the State Board of Education and the State Superintendent of Schools;

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

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

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

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

114 (23) Establish and implement policies and procedures to ensure that a student may
115 transfer and apply toward the requirements for a bachelor's degree the maximum number of
116 credits earned at any regionally accredited in-state or out-of-state community and technical
117 college with as few requirements to repeat courses or to incur additional costs as are consistent
118 with sound academic policy;

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

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

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

136 (27) Seek out and attend regional, national and international meetings and forums on
137 education and workforce development-related topics as, in the commission's discretion, are
138 critical for the performance of their duties as members, for the purpose of keeping abreast of
139 education trends and policies to aid it in developing the policies for this state to meet the
140 established education goals, objectives and priorities pursuant to section one-a, article one of this
141 chapter and article one-d of this chapter;

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

144 (29) Consider and submit to the appropriate agencies of the executive and legislative
145 branches of state government an appropriation request that reflects recommended appropriations
146 for the commission and the governing boards under its jurisdiction. The commission shall submit
147 as part of its appropriation request the separate recommended appropriation request it received
148 from the council, both for the council and for the governing boards under the council's jurisdiction.
149 The commission annually shall submit the proposed allocations based on each institution's
150 progress toward meeting the goals of its compact;

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

155 (31) Promulgate rules allocating reimbursement of appropriations, if made available by the
156 Legislature, to governing boards for qualifying noncapital expenditures incurred in providing
157 services to students with physical, learning or severe sensory disabilities;

158 (32) Make appointments to boards and commissions where this code requires
159 appointments from the State College System Board of Directors or the University of West Virginia
160 System Board of Trustees which were abolished effective June 30, 2000, except in those cases
161 where the required appointment has a specific and direct connection to the provision of
162 community and technical college education, the appointment shall be made by the council.
163 Notwithstanding any provisions of this code to the contrary, the commission or the council may
164 appoint one of its own members or any other citizen of the state as its designee. The commission
165 and council shall appoint the total number of persons in the aggregate required to be appointed
166 by these previous governing boards;

167 (33) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article
168 one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter.
169 The commission and the council shall promulgate a uniform joint legislative rule for the purposes
170 of standardizing, as much as possible, the administration of personnel matters among the state
171 institutions of higher education and implementing the provisions of articles seven, eight, nine and
172 nine-a of this chapter;

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

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

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

183 (A) Comparisons with peer institutions;

184 (B) Differences among institutional missions;

185 (C) Strategies for promoting student access;

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

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

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

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

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

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

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

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

206 ~~(4) Academic program review and approval for governing boards under its jurisdiction. The~~
207 ~~review and approval includes use of institutional missions as a template to judge the~~
208 ~~appropriateness of both new and existing programs and the authority to implement needed~~
209 ~~changes~~ Providing academic program input for institutions under its jurisdiction, including the use
210 of institutional missions as a template to provide input on the appropriateness of both new and
211 existing programs. Approval authority of new academic programs is solely vested in the local
212 governing boards if the new programs are in conformity with the school's accreditation, subject to
213 the following:

214 (A) The commission shall review and approve academic programs that are proposed to
215 be offered at a new location that is not on or adjacent to a school's main campus or satellite
216 campus or campuses;

217 (B) That until December 31, 2026, Bluefield State College, Concord University, West
218 Virginia University Institute of Technology and West Virginia University shall obtain approval of
219 the commission to offer new programs in Raleigh County, including any proposal by West Virginia
220 University to offer programs in Raleigh County that it has previously offered in another location;
221 and

222 (C) That commission approval is not required if Bluefield State College, Concord
223 University, West Virginia University Institute of Technology and West Virginia University all agree
224 in writing that the institution proposing the offering may offer the proposed new program.

225 ~~(A)~~(D) The commission's authority to review and approve academic programs for either
226 Marshall University or West Virginia University is limited to programs that are proposed to be
227 offered at a new location not presently served by that institution; Provided, That for program

228 offerings in Raleigh County and West Virginia University shall comply with the provisions of this
229 subdivision.

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

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

236 (6) Administration of state and federal student aid programs under the supervision of the
237 vice chancellor for administration, including promulgation of rules necessary to administer those
238 programs;

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

241 (8) Developing, establishing and implementing information, assessment, accountability
242 and personnel systems, including maintaining statewide data systems that facilitate long-term
243 planning and accurate measurement of strategic outcomes and performance indicators;

244 (9) Jointly with the council, promulgating and implementing rules for licensing and
245 oversight for both public and private degree-granting and nondegree-granting institutions that
246 provide post-secondary education courses or programs in the state. The council has authority
247 and responsibility for approval of all post-secondary courses or programs providing community
248 and technical college education as defined in section two, article one of this chapter.

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

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

257 (12) Developing budgets and allocating resources for governing boards under its
258 jurisdiction:

259 (A) For all governing boards under its jurisdiction, except the governing boards of Marshall
260 University and West Virginia University, the commission shall review institutional operating
261 budgets, review and approve capital budgets, and distribute incentive and performance-based
262 funds;

263 (B) For the governing boards of Marshall University and West Virginia University, the
264 commission shall distribute incentive and performance-based funds and may review and
265 comment upon the institutional operating budgets and capital budgets. The commission's
266 comments, if any, shall be made part of the governing board's minute record.

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

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

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

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

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

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