

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 528

BY SENATORS WALTERS, BOSO, CARMICHAEL AND FERNS

[Introduced February 5, 2016;

Referred to the Committee on Education; and then to the
Committee on Government Organization.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69 (13) Ensure that governing boards manage capital projects and facilities needs effectively,
70 including review and approval or disapproval of capital projects, in accordance with article

71 nineteen of this chapter.

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

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

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

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

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

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

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

97 Virginia;

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

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

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

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

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

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

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

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

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

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

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

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

149 progress toward meeting the goals of its compact;

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

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

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

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

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

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

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

182 (A) Comparisons with peer institutions;

183 (B) Differences among institutional missions;

184 (C) Strategies for promoting student access;

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

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

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

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

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

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

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

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

205 ~~(4) Academic program review and approval for governing boards under its jurisdiction. The~~
206 ~~review and approval includes use of institutional missions as a template to judge the~~
207 ~~appropriateness of both new and existing programs and the authority to implement needed~~
208 ~~changes~~ Providing academic program input for institutions under its jurisdiction, including the use
209 of institutional missions as a template to provide input on the appropriateness of both new and
210 existing programs. Approval authority of new academic programs is solely vested in the local
211 governing boards if the new programs are in conformity with the school's accreditation. The
212 commission may review and approve academic programs that are proposed to be offered at a
213 new location that is not on or adjacent to a school's main campus or satellite campus or campuses.

214 (A) The commission's authority to review and approve academic programs for either
215 Marshall University or West Virginia University is limited to programs that are proposed to be
216 offered at a new location not presently served by that institution;

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

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

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

226 (7) Serving as the agent to receive and disburse public funds when a governmental entity

227 requires designation of a statewide higher education agency for this purpose;

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

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

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

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

244 (12) Developing budgets and allocating resources for governing boards under its
245 jurisdiction:

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

250 (B) For the governing boards of Marshall University and West Virginia University, the
251 commission shall distribute incentive and performance-based funds and may review and
252 comment upon the institutional operating budgets and capital budgets. The commission's

253 comments, if any, shall be made part of the governing board's minute record.

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

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

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

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

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

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

NOTE: The purpose of this bill is to alter the power of the Higher Education Policy Commission over academic programs of institutions under its jurisdiction.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.