WEST virginia legislature

2022 regular session

Introduced

Senate Bill 550

By Senator Tarr

[Introduced February 01, 2022; referred  
to the Committee on Finance]

A BILL to amend and reenact §18B-1-1F of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1B-4 of said code; and to amend and reenact §18B-2B-6 of said code, all relating to funding for institutions of higher education; clarifying the powers and duties of the Higher Education Policy Commission; establishing additional criteria for a state college or university to be considered administratively and programmatically exempt; directing the Higher Education Policy Commission to develop and implement a funding formula model; providing that the funding formula shall govern the appropriation requests to the Legislature regarding distribution of general revenue to the state’s institutions of higher education; providing for rulemaking; setting forth factors to be included in the rule; setting out factors which may not be included in the rule; clarifying the powers and duties of the West Virginia Council for Community and Technical College Education; allowing for an exemption from oversight by the council in certain circumstances, requiring an independent audit; and providing for the audit annually.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. State college and university exemption status.

(a) The Legislature finds that:

(1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling certain goals can be incentivized through the accountability and autonomy associated with exemption status for state colleges and universities based on meeting certain criteria; and

(2) Leading higher education authorities in the nation identify common, key performance indicators as an important measure of institutional effectiveness, including, but not limited to, enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

(b) The following definitions apply to terms used in this section:

(1) “Administratively exempted schools” means state colleges and universities:

(A) That achieve and maintain three out of five of the following:

(i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

(ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

(iii) Credit head count enrollment: A three-year credit head count enrollment increase, or a decrease of not more than five percent over the same period;

(iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved; and

(v) Composite Financial Index: A Composite Financial Index of not less than one as reported in the college and university’s audited financial statements; or

(B) Whose governing board requests a review by the chancellor of any special circumstances and the commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

(2) “Composite Financial Index” means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution’s financial health and inform decision-making processes;

(3) “Credit headcount enrollment” means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

(4) “Days of cash reserved” means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post employment benefit and pension liability expenses;

(5) “Graduation rates” means the proportion of first time in college students who obtain a bachelor’s degree within six years, as further defined by and reported to the commission;

(6) “Retention rates” means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year; and

(7) “State college and university” shall have the same meaning as provided in §18B-1-2 of this code.

(c) Any state college and university may apply to the commission for designation as an administratively exempted school. The commission shall make its determination as to whether to grant or deny exemption designation based on the definition of administratively exempted school. The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this section and that addresses loss of an administratively exempted designation. The rule shall at least include the following:

(1) After the first year an administratively exempted school fails to meet three of the five criteria under the definition of administratively exempted schools, the commission may advise the institution on strategies that may be implemented in order to meet three of the five criteria before the following year;

(2) An institution may not lose its designation as an administratively exempted school until it has failed to meet three of the five criteria under the definition of administratively exempted schools for two consecutive years;

(3) If an institution is administratively exempt based on special circumstances, the commission may revoke the administratively exempted status of a state college and university if it determines that the special circumstance that the state college and university’s administratively exempted status is based on no longer exists; and

(4) The commission shall provide notice to the institution at least 30 days before revoking the institution’s administratively exempted status.

(d) Notwithstanding any other provision of this code to the contrary:

(1) West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are institutions of unique characteristics and their continuing inclusion as a statutorily exempted school is confirmed; and

(2) No other state institution of higher education maintains exempted school status pursuant to any other provision of this code except any exempted school status designated by the commission pursuant to this section: *Provided,* That any university or college shall be a statutorily exempt school if the state appropriation to that school is less than 40 percent of their gross annual revenue for three consecutive years.

(e) Notwithstanding any other provision of this code to the contrary, any state college and university that applies and is designated by the commission as an administratively exempted school is exempt from the following:

(1) The required approval of capital projects to ensure that capital projects and facility needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

(2) The development and approval of institutional mission definitions pursuant to §18B-1B-4(a)(34) of this code;

(3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

(4) The rules providing guidance to the governing boards in filling vacancies in the office of the president pursuant to §18B-1B-6(d) of this code;

(5) The commission’s rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following the procedures for adoption of rules provided for in this code;

(6) The required approval of capital improvement projects exceeding $3 million pursuant to §18B-19-6 of this code;

(7) The required approval of lease-purchase agreements for capital improvements and equipment of $1.5 million or greater pursuant to §18B-19-11 of this code; and

(8) The required approval of real estate transactions, lease purchase, and new building construction exceeding $1 million pursuant to §18B-19-13 of this code.

~~(g)~~ (f) Not later than the January interims of each year, the commission shall submit a report to the Legislative Oversight Commission on Education Accountability relating to the administratively exempted schools’ eligibility criteria established by this section, providing the data for each of the three preceding years, as available, and the three-year average thereof, for each of the state institutions of higher education under its jurisdiction. The commission shall share the report with the institutions.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

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

(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the West Virginia Council for Community and Technical College Education, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm or approve certain actions undertaken by institutional governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in §18B-1-1a and in §18B-1D-1 *et seq*. of this code. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to §18B-1D-1 *et seq.* of this code to address major challenges facing the state, including, but not limited to, the goals, objectives, and priorities established in this chapter; ~~and~~

(2) ~~Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction except the exempted schools~~ ~~The rule shall meet the following criteria~~ In conjunction with the council, propose emergency and legislative rules in accordance with §29A-3A-1 *et seq.* and §18B-1-6 of this code to establish a performance-based funding formula model the commission and council shall use, beginning in the fiscal year 2024 budget cycle, in developing their annual budget requests to ensure results-based distribution of appropriations among the state’s institutions of higher education, including the statutorily and administratively exempted schools. This funding formula model shall emphasize outcomes focused on student success and post-secondary educational needs in West Virginia as adopted by the Legislature. The formula shall include a range of variables that shall be weighted in a manner that corresponds to each institution’s mission and provides incentives for productivity improvements consistent with the goal of strengthening the state’s economy and workforce by developing the most competitive and capable graduates in the nation. The rule shall, at a minimum:

(A) ~~Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter~~ Establish a set of objective performance metrics that reflect and support the state’s higher education goals and priorities and the methodology by which those metrics shall be used in the allocation of state funds;

(B) ~~Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance~~ Ensure that a portion of each institution’s base appropriation is allocated based on outcomes achieved over a defined period of time;

(C) ~~Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter~~ Incentivize postsecondary results that align with the state’s higher education and workforce development priorities;

(D) Establish safeguards to ensure stability of the funding formula model including, but not limited to, providing for periodic reviews of and revision to the performance metrics and funding methodology; and

(E) Be based upon student progression metrics that reflect the accumulation of credit hours earned; completion metrics that reflect degrees awarded, academic certificates awarded, workforce certificates awarded, and workforce training or contact hours completed; workforce outcomes, based on data provided by Workforce West Virginia, that reflect the number of graduates working in West Virginia or pursuing further education two years after graduation; efficiency metrics that reflect the number of students earning a postsecondary credential compared to the total number of credit hours produced; research and development metrics that reflect the expenditure of non-state funds and, where applicable, patents licensed or otherwise placed into the market by the private sector; and a premium multiplier to prioritized workforce needs of West Virginia as determined by the West Virginia Department of Commerce.

(F) The rule shall not use simple enrollment or new program developments not tied to workforce needs as factors of consideration in establishing the funding formula.

(3) In collaboration with the council and the governing boards:

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

(B) Assisting governing boards ~~to carry~~ in carrying out their duty effectively to govern the individual institutions of higher education;

(4) Serve as a point of contact to state policymakers:

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

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

(5) Upon request, provide shared services to a state institution of higher education;

(6) Administer scholarship and grant programs as provided for in this code;

(7) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to §18B-1D-7 of this code;

(8) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to §18B-19-1 *et seq.* of this code;

(9) Except the statutorily and administratively exempted schools ~~and the administratively exempted schools~~, develop standards and evaluate governing board requests for capital project financing in accordance with §18B-19-1 *et seq.* of this code;

(10) Except the statutorily and administratively exempted schools ~~and the administratively exempted schools~~, ensure that governing boards manage capital projects and facilities needs effectively, including review and approval of capital projects, in accordance with §18B-19-1 *et seq.* of this code;

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

(12) Employ a chancellor ~~for Higher Education~~ pursuant to §18B-1B-5 of this code;

(13) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with §18B-4-1 *et seq.* of this code;

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

(15) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, except the exempted schools, as proposed by the governing boards. The governing boards, except the governing boards of the statutorily exempted schools, must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: *Provided*, That the commission ~~will~~ shall receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

(16) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other postsecondary education, and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

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

(18) Jointly with the council and in conjunction with the West Virginia Network, ~~develop and implement an oversight plan to manage systemwide technology, except the exempted schools~~ support the technology needs of the commission, the council, and the institutions by making available leveraged consortium purchasing, software, database and networking support, and other services including, but not limited to, the following:

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

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

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

(19) ~~Establish and implement policies and procedures~~ Propose rules in accordance with §29A-3A-1 *et seq.* and §18B-1-6 of this code to ensure that, within sound academic policy, a student may transfer and apply toward the requirements ~~for a bachelor’s degree~~ of any postsecondary credential the maximum number of credits earned at any regionally accredited in-state or out-of-state ~~community and technical college with as few requirements~~ institution of higher education in a manner that minimizes the need to repeat courses or ~~to~~ incur additional costs. ~~as are consistent with sound academic policy~~ This requirement applies to transfer processes for all levels of postsecondary programs delivered at community and technical colleges, baccalaureate-degree-granting institutions, and graduate-degree-granting institutions;

~~(20) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for any degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;~~

~~(21) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;~~

~~(22)~~(20) ~~Establish and implement policies and programs, in cooperation with the council and the governing boards, through which~~ Propose rules in accordance with §29A-3A-1 *et seq.* and §18B-1-6 of this code to develop a program through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions or Internet-based education programs may demonstrate, by competency-based assessment, that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate’s degree or a bachelor’s degree at a state institution of higher education;

~~(23)~~(21) Seek out and attend regional, national, and international meetings and forums on education and workforce development-related topics as, in the commission’s discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives and priorities pursuant to §18B-1-1a and §18B-1D-1 *et seq.* of this code;

~~(24)~~(22) Promulgate and implement a rule for ~~higher education~~ governing boards and institutions ~~except the statutorily exempted schools and administratively exempted schools~~ to follow when considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule shall provide for appropriate deference to the value judgments of governing boards ~~under the jurisdiction of the commission~~ and may not apply to the statutorily or administratively exempted schools;

~~(25)~~ (23) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction, including the statutorily and administratively exempted schools. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council’s jurisdiction. The commission annually shall submit the proposed allocations based on ~~subsection (d) of this section~~ the funding formula model required by subdivision (a)(2) of this section;

~~(26)~~(24) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning, or severe sensory disabilities;

~~(27)~~(25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules necessary or expedient to fulfill the purposes of this chapter and Chapter 18C of this code;

~~(28)~~(26) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

~~(29)~~(27) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

~~(30)~~(28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the statutorily and administratively exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

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

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

~~(31) Assist governing boards in actions to implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and~~

~~(32)~~(29) Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-1 *et seq.* of this code.

~~(33)~~(30) Policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

~~(34)~~(31) Development and approval of institutional mission definitions, except the statutorily and administratively exempted schools ~~and administratively exempted schools~~: *Provided*, That the commission may use funds appropriated by the Legislature for incentive funds to influence institutional behavior in ways that are consistent with public priorities, including the statutorily and administratively exempted schools ~~and administratively exempted schools~~;

~~(35)~~(32) Academic program review and approval for governing boards under its jurisdiction, except the statutorily and administratively exempted schools. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission’s authority to review and approve academic programs for the statutorily and administratively exempted ~~and administratively exempted~~ schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: *Provided*, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission’s authority as provided in §18B-1C-2 of this code;

(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:

(i) New programs ~~should~~ may not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;

(ii) New programs which ~~will~~ require significant additional expense investments for implementation ~~should~~ may not be implemented unless the institution demonstrates that:

(I) The expenses ~~will~~ shall be addressed by effective reallocations of existing institutional resources; or

(II) The expenses can be legitimately spread out over future years and ~~will~~ shall be covered by reasonably anticipated additional net revenues from new enrollments;

(iii) A new undergraduate program which is significantly similar to an existing program already in the geographic service area ~~should~~ may not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: *Provided,* That the academic programs of the statutorily and administratively exempted ~~and administratively exempted~~ schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may re-file the request for approval with the commission to address any identified deficiencies. Within 30 days after the chancellor’s confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.

~~(36)~~(33) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

~~(37)~~(34) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

~~(38)~~(35) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

~~(39)~~(36) Developing and distributing information, assessment, accountability, and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

~~(40)~~(37) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide postsecondary education courses or programs in the state. The council has authority and responsibility for approval of all postsecondary courses or programs providing community and technical college education as defined in §18B-1-2 of this code;

~~(41)~~(38) Developing, facilitating, and overseeing statewide and regional projects and initiatives related to providing postsecondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

~~(42)~~(39) (A) For all governing boards under its jurisdiction, except for the statutorily exempted schools, the commission shall review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds.

(B) For the governing boards of the statutorily exempted schools, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission’s comments, if any, shall be made part of the governing board’s minute record and shall be filed with the Legislative Oversight Commission on Education Accountability;

~~(43)~~(40) May provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than 90 percent within six months post-graduation; and

~~(44)~~(41) May provide information, research and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in ~~subsections (a) and (b) of~~ this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this ~~article~~ chapter and Chapter 18C of this code: *Provided*, That the provisions of this subsection ~~shall~~ may not be construed to shift management authority from the governing boards to the commission.

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

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

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

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

~~(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at all higher education institutions, including four-year baccalaureate institutions and the community and technical colleges, and on or before January 1, 2018, the commission shall deliver its report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. This report shall include a recommendation to the Legislature on a formula for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. On such basis, the commission shall make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal year 2018~~

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

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

(a) The council is the sole agency responsible for administration of vocational-technical-occupational education and community and technical college education in the state. The council has jurisdiction and authority over the community and technical colleges and the statewide network of independently accredited community and technical colleges as a whole, including community and technical college education programs as defined in §18B-1-2 of this code.

(b) The council shall propose rules pursuant to §18B-1-6 of this code and §29A-3A-1 *et seq.* of this code to implement the provisions of this section and applicable provisions of §18B-1D-1 *et seq.* of this code:

(1) To implement the provisions of §18B-1D-1 *et seq.* of this code relevant to community and technical colleges, the council may propose rules jointly with the commission, or separately, and may choose to address all components of the accountability system in a single rule or may propose additional rules to cover specific components;

(2) The rules pertaining to financing policy and benchmarks and indicators required by this section shall be filed with the Legislative Oversight Commission on Education Accountability by October 1, 2008. Nothing in this subsection requires other rules of the council to be promulgated again under the procedure set forth in §29A-3A-1 *et seq.* of this code unless such rules are rescinded, revised, altered or amended; and

(3) The Legislature finds that an emergency exists and, therefore, the council shall propose an emergency rule or rules to implement the provisions of this section relating to the financing policy and benchmarks and indicators in accordance with §18B-1-6 of this code and §29A-3A-1 *et seq.* of this code by October 1, 2008. The emergency rule or rules may not be implemented without prior approval of the Legislative Oversight Commission on Education Accountability.

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

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

(A) Achieving the goals and objectives established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this chapter;

(B) Addressing the goals and objectives contained in the institutional compacts created pursuant to in §18B-1D-7 of this code; and

(C) Developing and implementing the master plan described in §18B-1D-5 of this code;

(2) Propose a legislative rule pursuant to subsection (b) of this section and §29A-3A-1 *et seq.*  of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to §18B-1A-5 of this code;

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

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

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

(i) Achieving the objectives and priorities established in §18B-1D-1 *et seq.* of this code;

(ii) Serving targeted populations, especially working age adults 25 years of age and over;

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

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

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

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

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

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

(C) Holding each community and technical college and the statewide network of independently accredited community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in §18B-1-1 *et seq.,* §18B-1D-1 *et seq.,* and §18B-3C-1 *et seq.* of this code of this code;

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

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

(6) Review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of §18B-1D-7 of this code;

(7) Fulfill the mandates of the accountability system established in §18B-1D-1 *et seq.* of this code and report on progress in meeting established goals, objectives, and priorities to the elected leadership of the state;

(8) Propose a legislative rule pursuant to subsection (b) of this section and §29A-3A-1 *et seq.* of this code to establish benchmarks and indicators in accordance with the provisions of this subsection;

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

(A) In meeting state goals, objectives, and priorities established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code;

(B) In carrying out institutional missions; and

(C) In meeting the essential conditions established in §18B-3C-1 *et seq.* of this code;

(10) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. Notwithstanding the language in §18B-1B-4(11) of this code, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges;

(11) Draw upon the expertise available within the Governor’s Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training;

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

(13) Employ a chancellor for community and technical college education pursuant to §18B-2B-3 of this code;

(14) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of §18B-4-2 of this code;

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

(16) Provide suitable offices in Charleston for the chancellor and other staff: *Provided,* That the offices may be located outside of Charleston at a technology and research center: *Provided, however,* That the current employees of WVNET shall not be moved from Monongalia County without legislative approval;

(17) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

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

(19) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor’s degree at a state institution of higher education;

(20) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code;

(21) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;

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

(23) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in§18B-10-1 of this code;

(24) Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:

(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;

(B) Considers the progress of each institution toward meeting the essential conditions set forth in §18B-3C-3 of this code, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals, objectives, and priorities established in §18B-1D-1 *et seq.* of this code and its approved institutional compact.

(25) Administer and distribute the independently accredited community and technical college development account;

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

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

(28) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to §18B-3C-1 *et seq.*  of this code;

(29) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to §18B-1B-6 of this code. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in §18B-1-1 *et seq.*, §18B-1D-1 *et seq.*, and §18B-3C-1 *et seq.*  of this code;

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

(31) Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following:

(A) Defining faculty roles and personnel policies;

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

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

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

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

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

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

(35) Serve aggressively as an advocate for development of a seamless curriculum;

(36) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulate between and among community and technical colleges, state colleges and universities and public education, preschool through grade 12;

(37) Encourage the most efficient use of available resources;

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

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

(40) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education;

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

(42) Review and approve all institutional master plans for the community and technical colleges pursuant to §18B-2A-4 of this code;

(43) Propose rules for promulgation pursuant to subsection (b) of this section and §29A-3A-1 *et seq.* of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

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

(45) Develop for inclusion in the higher education report card, as defined in §18B-1D-8 of this code, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

(46) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College;

(47) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

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

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

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

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

In distributing funds the council shall use the following guidelines:

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

(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of §29A-3A-1 *et seq.*  of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;

(50) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

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

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

(53) Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations;

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

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

(56) Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to §18B-2B-8 of this code to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

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

(58) Assume the powers set out in §18B-2B-9 of this code. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(59) Pursuant to the provisions of subsection (b) of this section and §29A-3A-1 *et seq.* of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

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

(61) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

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

(E) Any other policies the commission and council consider appropriate;

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

(63) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.

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

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

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

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

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

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

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

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

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs;

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

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

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

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in §18B-1D-7 of this code;

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

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

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

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

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

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

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within 60 days of the date when the request for concurrence is received; and

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

(h) Any community and technical college or free-standing community and technical college as those terms are defined in §18B-1-2 of this code that has a state appropriation to that school which is less than 40 percent of the school’s gross annual revenue for the three immediately preceding consecutive years shall be statutorily exempt from oversight of the council as that term is defined in §18B-1-2 of this code. To certify their status as exempt, a community and technical college or free-standing community and technical college shall have an independent accountant prepare an audit of the gross revenue of the community and technical college or free-standing community and technical college for the three immediately preceding consecutive years. The independent accountant shall take into consideration all revenue sources contributing to the gross revenue of the community and technical college or free-standing community and technical college in the audit over that three-year period. Once the audit is complete, the independent accountant shall certify the percentage of the funding of the community and technical college or free-standing community and technical college that is attributable to state appropriations over that three-year period. The school may then provide the results to the council. Upon receipt, the council shall examine the audit. Should this figure for that three immediately preceding consecutive year period clearly demonstrate that the state appropriation of the school is less than 40 percent of the gross annual revenue of the community and technical college or free-standing community and technical college, the council shall exempt the community and technical college or free-standing community and technical college from oversight by the council. To maintain this exemption status, the community and technical college or free-standing community and technical college shall provide the audit described in this subsection annually by December 31 of each year. Failure to do so would render the exemption void and the school would be subject to oversight by the council.

NOTE: The purpose of this bill is to clarify the powers and duties of the Higher Education Policy Commission, establish additional criteria for a state college or university to be considered administratively and programmatically exempt; direct the Higher Education Policy Commission to develop and implement a funding formula model; provide that the funding formula shall govern the appropriation requests to the Legislature regarding distribution of general revenue to the state’s institutions of higher education; provide for rulemaking; set forth factors to be included in the rule; set out factors which may not be included in the rule; clarify the powers and duties of the West Virginia Council for Community and Technical College Education; allow for an exemption from oversight by the council in certain circumstances; require an independent audit; and provide for the audit annually.

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