

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 550

BY SENATOR TARR

[Originating in the Committee on Finance; reported on

February 7, 2022]

1 A BILL to amend and reenact §18B-1-1f of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §18B-1B-4 of said code; all relating to funding for institutions of higher
3 education; clarifying the powers and duties of the Higher Education Policy Commission;
4 establishing additional criteria for a state institution of higher education to be considered
5 exempt from the requirement that the council or the commission approve the
6 establishment of new programs on their own campuses for programs incentivized within
7 the funding formula established herein; directing the Higher Education Policy Commission
8 to develop and implement a funding formula model; providing that the funding formula
9 shall govern the appropriation requests to the Legislature regarding distribution of general
10 revenue to the state's institutions of higher education; providing for rulemaking; setting
11 forth factors to be included in the rule; setting out factors which may not be included in the
12 rule and making the rule applicable to the 2024 budget cycle.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

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

- 1 (a) The Legislature finds that:
- 2 (1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling
3 certain goals can be incentivized through the accountability and autonomy associated with
4 exemption status for state colleges and universities based on meeting certain criteria; and
- 5 (2) Leading higher education authorities in the nation identify common, key performance
6 indicators as an important measure of institutional effectiveness, including, but not limited to,
7 enrollment benchmarks, fiscal benchmarks, and student success benchmarks.
- 8 (b) The following definitions apply to terms used in this section:
- 9 (1) "Administratively exempted schools" means state colleges and universities:
- 10 (A) That achieve and maintain three out of five of the following:
- 11 (i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

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

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

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

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

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

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

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

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

33 (5) "Graduation rates" means the proportion of first-time college students who obtain a
34 bachelor's degree within six years, as further defined by and reported to the commission;

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

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

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

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

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

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

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

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

59 (1) West Virginia University, including West Virginia University Potomac State College and
60 West Virginia University Institute of Technology; Marshall University; and the West Virginia School
61 of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are

62 institutions of unique characteristics and their continuing inclusion as a statutorily exempted
63 school is confirmed; and

64 (2) No other state institution of higher education maintains exempted school status
65 pursuant to any other provision of this code except any exempted school status designated by
66 the commission pursuant to this section: Provided, That notwithstanding any provision of this
67 section to the contrary, any state institution of higher education, as that term is defined in §18B-
68 2-1 of this code, shall be exempt from the requirement that the council or the commission approve
69 the establishment of new programs on their own campuses for programs incentivized within the
70 funding formula established in §18B-1B-4 of this code if the state appropriation to that school is
71 less than 40 percent of their operating expenses for three consecutive years.

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

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

77 (2) The development and approval of institutional mission definitions pursuant to §18B-
78 1B-4(a)(34) of this code;

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

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

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

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

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

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

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

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

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

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

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

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

38 (C) ~~Invest and provide incentives for achieving the priority goals in the public policy~~
39 ~~agenda, including, but not limited to, those found in section one-a, article one and article one-d of~~

40 ~~this chapter~~ Incentivize post-secondary results that align with the state's higher education and
41 workforce development priorities;

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

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

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

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

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

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

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

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

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

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

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

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

76 (8) Establish a formal process for recommending capital investment needs and for
77 determining priorities for state colleges and universities for these investments for consideration
78 by the Governor and the Legislature as part of the appropriation request process pursuant to
79 §18B-19-1 *et seq.* of this code;

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

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

87 (11) Acquire legal services as considered necessary, including representation of the
88 commission, the governing boards, employees, and officers before any court or administrative
89 body, notwithstanding any other provision of this code to the contrary. The counsel may be
90 employed either on a salaried basis or on a reasonable fee basis. In addition, the commission

91 may, but is not required to, call upon the Attorney General for legal assistance and representation
92 as provided by law;

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

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

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

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

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

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

117 the standard which they shall communicate to the State Board of Education and the State
118 Superintendent of Schools;

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

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

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

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

133 (19) ~~Establish and implement policies and procedures~~ Propose rules in accordance with
134 §29A-3A-1 et seq. and §18B-1-6 of this code to ensure that, within sound academic policy, a
135 student may transfer and apply toward the requirements ~~for a bachelor's degree~~ of any post-
136 secondary credential the maximum number of credits earned at any regionally accredited in-state
137 or out-of-state ~~community and technical college with as few requirements~~ institution of higher
138 education in a manner that minimizes the need to repeat courses or ~~to~~ incur additional costs. ~~as~~
139 ~~are consistent with sound academic policy~~ This requirement applies to transfer processes for all
140 levels of post-secondary programs delivered at community and technical colleges, baccalaureate-
141 degree-granting institutions, and graduate-degree-granting institutions;

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

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

152 ~~(22)~~(20) ~~Establish and implement policies and programs, in cooperation with the council~~
153 ~~and the governing boards, through which~~ Propose rules in accordance with §29A-3A-1 et seq.
154 and §18B-1-6 of this code to develop a program through which a student who has gained
155 knowledge and skills through employment, participation in education and training at vocational
156 schools or other education institutions or Internet-based education programs may demonstrate,
157 by competency-based assessment, that he or she has the necessary knowledge and skills to be
158 granted academic credit or advanced placement standing toward the requirements of an
159 associate's degree or a bachelor's degree at a state institution of higher education;

160 ~~(23)~~(21) Seek out and attend regional, national, and international meetings and forums on
161 education and workforce development-related topics as, in the commission's discretion, are
162 critical for the performance of their duties as members, for the purpose of keeping abreast of
163 education trends and policies to aid it in developing the policies for this state to meet the
164 established education goals, objectives and priorities pursuant to §18B-1-1a and §18B-1D-1 *et*
165 *seq.* of this code;

166 ~~(24)~~(22) Promulgate and implement a rule for ~~higher education governing boards and~~
167 ~~institutions except the statutorily exempted schools and administratively exempted schools to~~

168 follow when considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule
169 shall provide for appropriate deference to the value judgments of governing boards ~~under the~~
170 ~~jurisdiction of the commission~~ and may not apply to the statutorily or administratively exempted
171 schools;

172 ~~(25)~~ (23) Submit to the appropriate agencies of the executive and legislative branches of
173 state government an appropriation request that reflects recommended appropriations for the
174 commission and the governing boards under its jurisdiction, including the statutorily and
175 administratively exempted schools. The commission shall submit as part of its appropriation
176 request the separate recommended appropriation request it received from the council, both for
177 the council and for the governing boards under the council's jurisdiction. The commission annually
178 shall submit the proposed allocations based on ~~subsection (d) of this section~~ the funding formula
179 model required by subdivision (a)(2) of this section;

180 ~~(26)~~ (24) Promulgate rules allocating reimbursement of appropriations, if made available
181 by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing
182 services to students with physical, learning, or severe sensory disabilities;

183 ~~(27)~~ (25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules
184 necessary or expedient to fulfill the purposes of this chapter and chapter 18C of this code;

185 ~~(28)~~ (26) Determine when a joint rule among the governing boards under its jurisdiction is
186 necessary or required by law and, in those instances, in consultation with the governing boards
187 under its jurisdiction, promulgate the joint rule;

188 ~~(29)~~ (27) Promulgate and implement a rule jointly with the council whereby course credit
189 earned at a community and technical college transfers for program credit at any other state
190 institution of higher education and is not limited to fulfilling a general education requirement;

191 ~~(30)~~ (28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee
192 policy for all governing boards under the jurisdiction of the commission, except the statutorily and
193 administratively exempted schools. The rule shall include, but is not limited to, the following:

- 194 (A) Differences among institutional missions;
- 195 (B) Strategies for promoting student access;
- 196 (C) Consideration of charges to out-of-state students; and
- 197 (D) Such other policies as the commission and council consider appropriate;
- 198 ~~(31) Assist governing boards in actions to implement general disease awareness~~
199 ~~initiatives to educate parents and students, particularly dormitory residents, about meningococcal~~
200 ~~meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and~~
201 ~~activities that can increase risks; measures that can be taken to prevent contact or infection; and~~
202 ~~potential benefits of vaccination. The commission shall encourage governing boards that provide~~
203 ~~medical care to students to provide access to the vaccine for those who wish to receive it; and~~
- 204 ~~(32)~~(29) Notwithstanding any other provision of this code to the contrary sell, lease,
205 convey or otherwise dispose of all or part of any real property that it owns, in accordance with
206 §18B-19-1 *et seq.* of this code.
- 207 ~~(33)~~(30) Policy analysis and research focused on issues affecting institutions of higher
208 education generally or a geographical region thereof;
- 209 ~~(34)~~(31) Development and approval of institutional mission definitions, except the
210 statutorily and administratively exempted schools ~~and administratively exempted schools~~:
211 *Provided*, That the commission may use funds appropriated by the Legislature for incentive funds
212 to influence institutional behavior in ways that are consistent with public priorities, including the
213 statutorily and administratively exempted schools ~~and administratively exempted schools~~;
- 214 ~~(35)~~(32) Academic program review and approval for governing boards under its
215 jurisdiction, except the statutorily and administratively exempted schools. The review and
216 approval includes use of institutional missions as a template to judge the appropriateness of both
217 new and existing programs and the authority to implement needed changes.
- 218 (A) The commission's authority to review and approve academic programs for the
219 statutorily and administratively exempted ~~and administratively exempted~~ schools is limited to

220 programs that are proposed to be offered at a new location not presently served by that institution:
221 *Provided*, That West Virginia University and the West Virginia University Institute of Technology
222 are subject to the commission's authority as provided in §18B-1C-2 of this code;

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

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

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

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

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

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

240 (C) The commission shall approve or disapprove proposed academic degree programs in
241 those instances where approval is required as soon as practicable. The commission shall
242 maintain by rule a format model by which a new program approval shall be requested by an
243 institution. When a request for approval of a new program is submitted to the commission, the
244 chancellor shall provide notice within two weeks as to whether the submission meets the required
245 format, and if it does not the chancellor shall identify each specific deficiency and return the

246 request to the institution. The institution may re-file the request for approval with the commission
247 to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the
248 request meets the required format, the commission shall either approve or disapprove the request
249 for the new program. The commission may not withhold approval unreasonably.

250 ~~(36)~~(33) Distribution of funds appropriated to the commission, including incentive and
251 performance-based funds;

252 ~~(37)~~(34) Administration of state and federal student aid programs under the supervision of
253 the vice chancellor for administration, including promulgation of rules necessary to administer
254 those programs;

255 ~~(38)~~(35) Serving as the agent to receive and disburse public funds when a governmental
256 entity requires designation of a statewide higher education agency for this purpose;

257 ~~(39)~~(36) Developing and distributing information, assessment, accountability, and
258 personnel systems for state colleges and universities, including maintaining statewide data
259 systems that facilitate long-term planning and accurate measurement of strategic outcomes and
260 performance indicators;

261 ~~(40)~~(37) Jointly with the council, promulgating and implementing rules for licensing and
262 oversight for both public and private degree-granting and nondegree-granting institutions that
263 provide post-secondary education courses or programs in the state. The council has authority
264 and responsibility for approval of all post-secondary courses or programs providing community
265 and technical college education as defined in §18B-1-2 of this code;

266 ~~(41)~~(38) Developing, facilitating, and overseeing statewide and regional projects and
267 initiatives related to providing post-secondary education at the baccalaureate level and above
268 such as those using funds from federal categorical programs or those using incentive and
269 performance-based funds from any source;

270 ~~(42)~~(39) (A) For all governing boards under its jurisdiction, except for the statutorily
271 exempted schools, the commission shall review institutional operating budgets, review and
272 approve capital budgets, and distribute incentive and performance-based funds.

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

278 ~~(43)~~(40) May provide information, research, and recommendations to state colleges and
279 universities relating to programs and vocations with employment rates greater than 90 percent
280 within six months post-graduation; and

281 ~~(44)~~(41) May provide information, research and recommendations to state colleges and
282 universities on coordinating with the West Virginia State Board of Education about complimentary
283 programs.

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

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

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

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

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

300 ~~(d) The Higher Education Policy Commission shall examine the question of general~~
301 ~~revenue appropriations to individual higher education institutions per student, and per credit hour,~~
302 ~~and by other relevant measures at all higher education institutions, including four-year~~
303 ~~baccalaureate institutions and the community and technical colleges, and on or before January~~
304 ~~1, 2018, the commission shall deliver its report to the Joint Committee on Government and~~
305 ~~Finance and the Legislative Oversight Commission on Education Accountability. This report shall~~
306 ~~include a recommendation to the Legislature on a formula for the allocation of general revenue to~~
307 ~~be appropriated to such institutions that provides for ratable funding across all four-year~~
308 ~~institutions and community and technical colleges on a ratable basis, by enrolled student, by credit~~
309 ~~hour or by other relevant measures. On such basis, the commission shall make a~~
310 ~~recommendation to the Legislature as to the amounts that each such institution should have~~
311 ~~appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general~~
312 ~~revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal~~
313 ~~year 2018~~