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# **WEST VIRGINIA CODE CHAPTER 18B**

## **ARTICLE 1**

WV Legislature

**§18B-1-1.**

Repealed.

Acts, 2008 Reg. Sess., Ch. 72.

WV Legislature

**§18B-1-1a. Legislative intent; findings; establishment of state goals for higher education and education; creation of partnership to achieve state goals and objectives.**

(a) It is the intent of the Legislature in enacting this section to establish state goals for public higher education which benefit the citizens of the State of West Virginia.

(b) It is further the intent of the Legislature that this section be read and implemented in conjunction with the accountability system established in article one-d of this chapter and that any reference to this section in this code includes the provisions of that article.

(c) Findings. -- The Legislature finds that post-secondary education is vital to the future of West Virginia. For the state to realize its considerable potential in the 21st Century, it must have a system for the delivery of post-secondary education which is competitive in the changing national and global environment, is affordable for the state and its citizenry and has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

The Legislature further finds that it is vitally important for young people entering the workforce to have the education and skills to succeed in today's high-technology, knowledge-based economy. It is equally important for working-age adults who are the majority of the current and potential workforce also to possess the requisite education and skills to compete successfully in the workplace and to have the opportunity to continue learning throughout their lives. The future of the state rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.

The Legislature further finds that providing access to a high-quality and affordable post-secondary education is a state responsibility and, while states spent more than \$70 billion on public higher education in two thousand six, they are not maximizing that investment. The Legislature recognizes the efforts of the National Conference of State Legislatures' Blue Ribbon Commission on Higher Education in producing a report to assist the states in higher education policymaking. According to the commission report, "Transforming Higher Education: National Imperative -- State Responsibility", the United States is losing its competitive advantage in a new, high-tech, highly mobile global economy. This lack of competitiveness is a matter of the highest urgency for federal and state policymakers and higher education is at the center of this discussion. The report further states that "higher education is both the problem and the solution" because the nation has failed to focus on how higher education energizes American competitiveness and revitalizes the states. Pursuant to these findings, the commission made some specific recommendations addressed to the states which include the following:

- (1) Define clear state goals;
- (2) Identify your state's strengths and weaknesses;

- (3) Know your state demographic trends for the next ten to thirty years;
- (4) Identify a place or structure to sustain the public policy agenda;
- (5) Hold institutions accountable for their performance;
- (6) Rethink funding formulas and student aid;
- (7) Make a commitment to access, success and innovation;
- (8) Encourage partnerships;
- (9) Give special attention to adult learners; and
- (10) Focus on productivity.

All of these recommendations are useful in providing policy guidance and have been given careful consideration in the development of this section and article one-d of this chapter.

(d) Establishment of state goals. -- In recognition of its importance to the citizens of West Virginia, the Legislature hereby establishes the following goals for public higher education in the state:

- (1) The ultimate goal of public education is to enhance the quality of life for citizens of the State of West Virginia.
- (2) The overall focus of public education is on developing and maintaining a process of lifelong learning which is as seamless as possible at all levels, encourages citizens of all ages to increase their knowledge and skills and provides ample opportunities for them to participate in public higher education.
- (3) Higher education collaborates with public education and other providers to offer education opportunities:
  - (A) To individuals of all ages and socioeconomic backgrounds in all areas of the state; and
  - (B) To overcome financial barriers to participation for both traditional and nontraditional students.
- (4) Higher education seeks to enhance state efforts to diversify and expand the economy by focusing available resources on programs and courses which best serve students, provide the greatest opportunity for job creation and retention and are most supportive of emerging high-technology and knowledge-based businesses and industries.
- (5) Higher education creates a learning environment that is student-friendly and that encourages and assists students in the completion of degree requirements, certifications or skill sets within a reasonable period of time.

(6) The learning environment expands participation for the increasingly diverse student population and responds to the needs of the current workforce and other nontraditional students.

(7) Through the establishment of innovative curricula and assessment efforts, state institutions of higher education ensure that students graduate from nationally recognized and accredited programs and meet or exceed national and international standards for performance in their chosen fields as evidenced through placement and professional licensure examinations.

(8) Higher education promotes academic research and innovation to achieve measurable growth in West Virginia's knowledge-based economic sector.

(9) State institutions of higher education emphasize productivity and strive to exceed the performance and productivity levels of peer institutions. In return, and within the constraints of fiscal responsibility, the state seeks to invest in institutions so that they may adequately compensate faculty, classified employees and other employees at a competitive level to attract and retain high quality personnel.

(10) State institutions of higher education are committed to a shared responsibility with faculty, staff, students and their communities to provide access to the knowledge and to promote acquisition of the skills and abilities necessary to establish and maintain physical fitness and wellness.

(A) Programs that encourage healthy lifestyles are essential for the vibrancy of the institutions of higher education, for the well-being of the communities they serve and for the state as a whole.

(B) Increasing the fitness levels of adults on college and university campuses is critically important for the people of West Virginia, not only for disease prevention, but also, and perhaps most importantly, to enhance the overall quality of life.

(C) While individuals must bear the primary responsibility for their own health, it is imperative that the institutions provide appropriate education and support focused on enriching and expanding the short- and long-term views and attitudes towards physical activity, understanding the principles of wellness and their application to a healthy lifestyle, understanding what components are a necessary part of an all-around healthy lifestyle and learning how to set and achieve realistic goals aimed at establishing healthy habits for the benefit of long-term health and well-being.

(e) Education partnership to achieve state goals and objectives. -- If public institutions of higher education are to provide services that meet the needs of state citizens as outlined in this section and article one-d of this chapter, then West Virginia must create and participate in a partnership across various education organizations that recognizes the valuable contributions each member of the group can make. In addition to public education as

outlined in section four, article one, chapter eighteen of this code and in addition to the State of West Virginia, key members of this partnership include the state institutions of higher education, the Council for Community and Technical College Education and the Higher Education Policy Commission.

(1) State institutions of higher education. -- The institutions are the cornerstone of efforts to provide higher education services that meet the needs of state citizens. To varying degrees, and depending upon their missions, these institutions serve the state in three major ways:

(A) Instruction. -- By providing direct instruction to students along with the student services necessary to support the instructional mission. These services have two primary goals:

(i) To produce college graduates who have the knowledge, skills and desire to make valuable contributions to society; and

(ii) To provide opportunities for citizens to engage in life-long learning to enhance their employability and their overall quality of life.

(B) Public service. -- By providing an occupational home for experts in a variety of fields and by serving as the educational home for students. In these capacities, institutions create a large and varied pool of high quality human resources capable of making valuable contributions to business and industry, local and state governments and communities. The following are examples of the types of public service that higher education institutions have to offer:

(i) Workforce development, primarily through community and technical colleges, to meet the immediate and long-term needs of employers and employees;

(ii) Technical assistance to state and local policymakers as they work to address challenges as diverse as ensuring that West Virginia's citizens receive quality health care, assisting in the development of a solid transportation infrastructure and ensuring that public school teachers have enriching professional development opportunities; and

(iii) Opportunities to learn and serve in local communities, to teach civic responsibility and to encourage civic engagement.

(C) Research. -- By conducting research at state institutions of higher education, particularly Marshall University and West Virginia University, to enhance the quality of life in West Virginia in the following ways:

(i) Targeting cutting-edge research toward solving pressing societal problems;

(ii) Promoting economic development by raising the level of education and specialization among the population; and

(iii) Creating jobs through development of new products and services.

(2) The Council for Community and Technical College Education and the Higher Education Policy Commission. -- In their role as state-level coordinating boards, the council and commission function as important partners with state policy leaders in providing higher education that meets state needs. The council and commission provide service to the state in the following ways:

(A) By developing a public policy agenda for various aspects of higher education that is aligned with state goals and objectives and the role and responsibilities of each coordinating board;

(B) By ensuring that institutional missions and goals are aligned with relevant parts of the public policy agenda and that institutions maximize the resources available to them to fulfill their missions and make reasonable progress toward meeting established state goals;

(C) By evaluating and reporting on progress in implementing the public policy agenda;

(D) By promoting system efficiencies through collaboration and cooperation across institutions and through focusing institutional missions as appropriate; and

(E) By conducting research, collecting data and providing objective recommendations to aid elected state officials in making policy decisions.

(3) State of West Virginia. -- Elected state officials represent the citizens of West Virginia and are critical partners in providing quality higher education. In this context, these state-level policymakers serve the state in the following ways:

(A) By establishing goals, objectives and priorities for higher education based on a thoughtful, systematic determination of state needs;

(B) By providing resources necessary to address state goals, objectives and priorities for higher education; and

(C) By providing incentives for and removing barriers to the achievement of state goals, objectives and priorities.

**§18B-1-1b.**

Repealed.

Acts, 2008 Reg. Sess., Ch. 72.

WV Legislature

**§18B-1-1c.**

Repealed.

Acts, 2008 Reg. Sess., Ch. 72.

WV Legislature

**§18B-1-1d. Retirement and separation incentives.**

(a) Notwithstanding any other provisions of this code to the contrary, each state institution of higher education may develop plans that offer various incentives for voluntary, early, or phased retirement of employees or voluntary separation from employment when necessary to implement programmatic changes effectively pursuant to the findings, directives, goals, and objectives of this article: *Provided*, That such incentives for voluntary, early, or phased retirement of employees or voluntary separation from employment must be approved by the institution's governing board and presented to the legislative Joint Committee on Pensions and Retirement and approved before such plans are implemented by the institution.

(b) The plans may include the following provisions:

- (1) Payment of a lump sum to an employee to resign or retire;
- (2) Continuation of full salary to an employee for a predetermined period of time prior to the employee's resignation or retirement and a reduction in the employee's hours of employment during the predetermined period of time;
- (3) Continuation of insurance coverage pursuant to the provisions of §5-16-1 *et seq.* of this code for a predetermined period;
- (4) Continuation of full employer contributions to an employee's retirement plan during a phased retirement period; and
- (5) That an employee retiring pursuant to an early or phased retirement plan may begin collecting an annuity from the employee's retirement plan prior to the statutorily designated retirement date without terminating his or her service with the institution.

(c) No incentive provided for in this section shall be granted except in furtherance of programmatic changes undertaken pursuant to the findings, directives, goals, and objectives set forth in this article.

(d) No plan proposed by an institution pursuant to this section shall be implemented without approval of the legislative joint committee on pensions and retirement.

Any costs associated with any incentive adopted or implemented in accordance with this section shall be borne entirely by the institutions and no incentive shall be granted that imposes costs on the retirement systems of the state or the Public Employees Insurance Agency unless those costs are paid entirely by the institutions.

(e) The Legislature further finds and declares that there is a compelling state interest in restricting the availability and application of these incentives to individual employees determined by the institutions to be in furtherance of the aims of this section and nothing herein shall be interpreted as granting a right or entitlement of any such incentive to any individual or group of individuals. Any employee granted incentives shall be ineligible for

reemployment by the institutions during or after the negotiated period of his or her incentive concludes, including contract employment in excess of \$25,000 per fiscal year.

(f) The West Virginia network for educational telecomputing may utilize the incentives contained in any plan approved by the legislative Joint Committee on Pensions and Retirement pursuant to this section.

WV Legislature

**§18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.**

(a) *Purpose.* — The purpose of this section is as follows:

(1) To assist students in the planning and preparation for success in college and other post-secondary education if their education major interests require such formal education after high school;

(2) To establish the minimum expected level of knowledge, skill and competency a student must possess to be prepared fully for college and other post-secondary education at state institutions of higher education;

(3) To implement a method for communicating the minimum level of knowledge, skill and competency to students, parents, educators and counselors in the public schools, and admissions officers, advisors and faculty in the higher education institutions; and

(4) To assure that the teacher preparation programs in state institutions of higher education prepare educators to, at a minimum, deliver instruction necessary to prepare students fully for college and other post-secondary education or gainful employment consistent with the provisions of section eight, article two-e, chapter eighteen of this code.

(b) *Joint rule.* — On or before October 1, 1996, the higher education governing boards shall promulgate a joint rule to achieve the purposes of subsection (a) of this section. In the development of such rule, the governing boards shall consult with the state board and the jobs through education employer panel, established pursuant to section eight, article two-e, chapter eighteen of this code, and shall collaborate with the state board in the establishment of compatible practices within their separate systems.

(c) *Assessment of student readiness.* — To provide continuous assessment and program improvement in the preparation of high school students for success in college or other post-secondary education, the higher education governing boards shall communicate to the state board and the Legislative Oversight commission on education accountability by December 1, in each year, beginning in December, 1997, the number of graduates from the public schools in the state by high schools who were accepted in the last calendar year for enrollment at each of the state institutions of higher education within one year of graduation, and whose knowledge, skill and competency were below the minimum expected levels for full preparation as defined by the governing boards. The governing boards also shall report the areas in which the knowledge, skill and competency of the students were below the minimum expected level. The state board shall provide information to each of the high schools of the state for graduates from the high school.

(d) *Nondiscrimination in admission process.* —

(1) State institutions of higher education may not require a person who has obtained a

diploma or other appropriate credentialing from private, nonpublic, or home schooling, and who has acceptable test results on ACT, SAT or other tests recognized by the institution of higher education which would qualify the person for admission, to submit to alternate testing as a condition of admission.

(2) A person who has obtained a diploma or other appropriate credentialing may not be rejected for admission to an institution of higher education solely because their secondary education was not accredited by the state Board of Education or any accrediting agency approved by the board.

**§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 notwithstanding any provision of this section to the contrary, any college or university shall be exempt from the requirement that the commission approve the establishment of new four-year programs on their own campuses for programs incentivized within the funding formula established in §18B-1B-4 of this code if the state appropriation to that school is less than 40 percent of their operating expenses 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) 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.

**§18B-1-2. Definitions.**

The following words when used in this chapter and chapter 18C of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

“Administratively linked community and technical college” means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

“Advanced technology center” means a facility established under the direction of an independent community and technical college or the council for the purpose of implementing and delivering education and training programs for high-skill, high-performance 21st century workplaces;

“Approve” or “approval”, when used in reference to action by the commission or the council, means action in which the governance rationale of a governing board under its jurisdiction is given due consideration, and the action of the commission is to additionally establish whether the proposed institutional action is consistent with law and established policy and is an appropriate advancement of the public interest;

“Board of visitors” means the advisory board previously appointed for the West Virginia Graduate College and the advisory board previously appointed for West Virginia University Institute of Technology, which provide guidance to the Marshall University Graduate College and West Virginia University Institute of Technology, respectively;

“Broker” or “brokering” means serving as an agent on behalf of students, employers, communities, or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs, or other services contracted through an agreement with a provider of education services either in-state or out of state;

“Chancellor” means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

“Chancellor for Community and Technical College Education” means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to §18B-2B-3 of this code;

“Chancellor for Higher Education” means the chief executive officer of the Higher Education Policy Commission employed pursuant to §18B-1B-5 of this code;

“Collaboration” means entering into an agreement with one or more providers of education

services in order to enhance the scope, quality, or efficiency of education services;

“Community and technical college”, in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

“Community and technical college education” means the programs, faculty, administration, and funding associated with the delivery of community and technical college education programs;

“Community and technical college education program” means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science, and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are under the jurisdiction of the council. Any reference to “post-secondary vocational education programs” means community and technical college education programs as defined in this subdivision;

“Confirm” or “confirmation”, when used in reference to action by the commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the commission is to review whether the proposed institutional action is consistent with law and established policy;

“Council” means the West Virginia Council for Community and Technical College Education created by §18B-2B-1 *et seq.* of this code;

“Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level;

“Essential conditions” means those conditions which shall be met by community and technical colleges as provided in §18B-3C-3 of this code;

“Exempted schools” or “statutorily exempted schools” means 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;

“Governing boards” or “boards” means the institutional boards of governors created by §18B-2A-1 of this code;

“Higher Education Policy Commission”, “policy commission” or “commission” means the commission created by §18B-1B-1 of this code;

“Independent community and technical college” means a state institution of higher education under the jurisdiction of the council, which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

“Institutional operating budget” or “operating budget” means for any fiscal year an institution’s total unrestricted education and general funding from all sources, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

“Rule” or “rules” means a regulation, standard, policy, or interpretation of general application and future effect;

“Sponsoring institution” means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus, or a division delivering community and technical college education and programs;

“State college and university” means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, or West Virginia State University;

“State institution of higher education” means any university, college, or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

“Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and

delivering high quality community and technical education in every region of the state; and

“Vice chancellor for administration” means the person employed in accordance with §18B-4-2 of this code. Any reference in this chapter or chapter 18C of this code to “senior administrator” means vice chancellor for administration.

WV Legislature

**§18B-1-3. Transfer of powers, duties, property, obligations, etc.**

(a) All powers, duties and authorities transferred to the board of Regents pursuant to former provisions of chapter eighteen of this code and transferred to the board of Trustees and Board of Directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the board of Trustees and Board of Directors, to the extent they are in effect on June 17, 2000, are hereby transferred to the Interim Governing Board created in article one-c of this chapter and shall be exercised and performed by the Interim Governing Board until July 1, 2001, as such powers, duties and authorities may apply to the institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the board of Trustees and the board of Directors and property vested in either of the boards separately, formerly existing under the provisions of this chapter, are hereby transferred to the Interim Governing Board created in article one-c of this chapter until July 1, 2001. Property transferred to or vested in the board of Trustees and Board of Directors shall include:

(1) All property vested in the board of Governors of West Virginia University and transferred to and vested in the West Virginia Board of Regents;

(2) All property acquired in the name of the state Board of Control or the West Virginia Board of Education and used by or for the state colleges and universities and transferred to and vested in the West Virginia Board of Regents;

(3) All property acquired in the name of the state Commission on Higher Education and transferred to and vested in the West Virginia Board of Regents; and

(4) All property acquired in the name of the board of Regents and transferred to and vested in the respective Board of Trustees and Board of Directors.

(c) Each valid agreement and obligation previously transferred to or vested in the board of Trustees and Board of Directors formerly existing under the provisions of this chapter is hereby transferred to the Interim Governing Board until July 1, 2001, as those agreements and obligations may apply to the institutions under its jurisdiction. Valid agreements and obligations transferred to the board of Trustees and Board of Directors shall include:

(1) Each valid agreement and obligation of the board of Governors of West Virginia University transferred to and deemed the agreement and obligation of the West Virginia Board of Regents;

(2) Each valid agreement and obligation of the state Board of Education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia Board of Regents;

(3) Each valid agreement and obligation of the state Commission on Higher Education transferred to and deemed the agreement and obligation of the West Virginia Board of

Regents; and

(4) Each valid agreement and obligation of the board of Regents transferred to and deemed the agreement and obligation of the respective Board of Trustees and Board of Directors.

(d) All orders, resolutions and rules adopted or promulgated by the respective Board of Trustees and Board of Directors and in effect immediately prior to July 1, 2000, are hereby transferred to the Interim Governing Board until July 1, 2001, and shall continue in effect and shall be deemed the orders, resolutions and rules of the Interim Governing Board until rescinded, revised, altered or amended by the Commission or the governing boards in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include:

(1) Those adopted or promulgated by the board of Governors of West Virginia University and in effect immediately prior to July 1, 1969, unless and until rescinded, revised, altered or amended by the board of Regents in the manner and to the extent authorized and permitted by law;

(2) Those respecting state colleges and universities adopted or promulgated by the West Virginia Board of Education and in effect immediately prior to July 1, 1969, unless and until rescinded, revised, altered or amended by the board of Regents in the manner and to the extent authorized and permitted by law;

(3) Those adopted or promulgated by the state Commission on Higher Education and in effect immediately prior to July 1, 1969, unless and until rescinded, revised, altered or amended by the board of Regents in the manner and to the extent authorized and permitted by law; and

(4) Those adopted or promulgated by the board of Regents prior to July 1, 1989, unless and until rescinded, revised, altered or amended by the respective Board of Trustees or Board of Directors in the manner and to the extent authorized and permitted by law.

(e) Title to all real property transferred to or vested in the Interim Governing Board pursuant to this section of the code is hereby transferred to the Commission effective July 1, 2001. The board of Governors for each institution may request that the Commission transfer title to the board of Governors of any real property specifically identifiable with that institution or the Commission may initiate the transfer. Any such request must be made within two years of the effective date of this section and be accompanied by an adequate legal description of the property. In the case of real property that is specifically identifiable with Marshall University or West Virginia University, the Commission shall transfer title to all real property, except real property that is used jointly by institutions or for statewide programs under the jurisdiction of the Commission or the Council, to the board of Governors of Marshall University or West Virginia University, as appropriate, upon receipt of a request from the appropriate governing board accompanied by an adequate legal description of the property.

The title to any real property that is jointly utilized by institutions or for statewide programs under the jurisdiction of the Commission or the Council shall be retained by the Commission.

(f) Ownership of or title to any other property, materials, equipment or supplies obtained or purchased by the Interim Governing Board or the previous governing boards on behalf of an institution is hereby transferred to the board of Governors of that institution effective July 1, 2001.

(g) Each valid agreement and obligation previously transferred or vested in the Interim Governing Board and which was undertaken or agreed to on behalf of an institution or institutions is hereby transferred to the board of Governors of the institution or institutions for whose benefit the agreement was entered into or the obligation undertaken effective July 1, 2001.

(1) The obligations contained in revenue bonds issued by the previous governing boards under the provisions of section eight, article ten of this chapter and article twelve-b, chapter eighteen of this code are hereby transferred to the Commission and each institution shall transfer to the Commission those funds the Commission determines are necessary to pay that institution's share of bonded indebtedness.

(2) The obligations contained in revenue bonds issued on behalf of a state institution of higher education pursuant to any other section of this code is hereby transferred to the board of Governors of the institution on whose behalf the bonds were issued.

(h) All orders, resolutions, policies and rules:

(1) Adopted or promulgated by the respective Board of Trustees, Board of Directors or Interim Governing Board and in effect immediately prior to July 1, 2001, are hereby transferred to the Commission effective July 1, 2001, and continue in effect until rescinded, revised, altered, amended or transferred to the governing boards by the Commission as provided in this section and in section six of this article.

(2) Adopted or promulgated by the Commission relating solely to community and technical colleges or community and technical college education, or rules which the Council finds necessary for the exercise of its lawful powers and duties pursuant to the provisions of this chapter, may be adopted by the Council and continue in effect until rescinded, revised, altered, amended or transferred to the governing boards under the jurisdiction of the Council pursuant to section six of this article. Nothing in this section requires the initial rules of the Commission that are adopted by the Council to be promulgated again under the procedure set forth in article three-a, chapter twenty-nine-a of this code unless such rules are rescinded, revised, altered or amended.

(3) Adopted or promulgated by the Commission relating to multiple types of public institutions of higher education or community and technical college education as well as baccalaureate and post-baccalaureate education are transferred to the Council in part as

follows:

(A) That portion of the rule relating solely to community and technical colleges or community and technical college education is transferred to the Council and continues in effect until rescinded, revised, altered, amended or transferred to the governing boards by the Council as provided in this section and in section six of this article;

(B) That portion of the rule relating to institutions or education other than community and technical colleges is retained by the Commission and continues in effect until rescinded, revised, altered, amended or transferred to the governing boards by the Commission as provided in this section and in section six of this article.

(i) The Commission may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the Commission pursuant to section six of this article.

The Council may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the Council pursuant to section six of this article.

(j) As to any title, agreement, obligation, order, resolution, rule or any other matter about which there is some uncertainty, misunderstanding or question, the matter shall be summarized in writing and sent to the Commission which shall make a determination regarding such matter within thirty days of receipt thereof.

(k) Rules or provisions of law which refer to other provisions of law which were repealed, rendered inoperative or superseded by the provisions of this section shall remain in full force and effect to such extent as may still be applicable to higher education and may be so interpreted. Such references include, but are not limited to, references to sections and prior enactments of article twenty-six, chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding applicability of any provision of law shall first be made by the Commission.

**§18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.**

(a) All the powers, duties and authorities which the board of Governors of West Virginia University, previously established by article eleven of chapter eighteen of the code or by any other provisions of law, may have had immediately prior to July 1, 1969, shall be the powers, duties and authorities of the West Virginia board of regents until July 1, 1989. Until such date, all of the policies and affairs of West Virginia University shall be determined, controlled, supervised and managed by the West Virginia board of regents, who shall exercise and perform all such powers, duties and authorities.

All powers, duties and authorities which the West Virginia Board of Education may have had with respect to state colleges and universities immediately prior to July 1, 1969, shall be the powers, duties and authorities of the West Virginia board of regents until July 1, 1989. Until such date, all of the policies and affairs of the state colleges and universities shall be determined, controlled, supervised and managed by the West Virginia board of regents, who shall exercise and perform all such powers, duties and authorities: Provided, That the standards for education of teachers and teacher preparation programs at the state colleges and universities shall continue to be under the general direction and control of the West Virginia Board of Education, and the West Virginia Board of Education shall have sole authority to continue, as authorized by section six, article two, chapter eighteen of this code, to enter into agreements with county boards of education for the use of the public schools to give prospective teachers teaching experience.

All powers, duties and authorities vested in the state commission on higher education by previous provisions of chapter eighteen of this code or by any other provisions of law shall be the powers, duties and authorities of the West Virginia board of regents until July 1, 1989. Until such date, all of the powers, duties, and authorities of the state commission on higher education shall be exercised and performed by the West Virginia board of regents.

(b) The board of regents shall be abolished on July 1, 1989.

**§18B-1-5.**

Repealed.

Acts, 2000 Reg. Sess., Ch. 100.

WV Legislature

§18B-1-5a

Repealed

Acts, 2017 Reg. Sess., Ch.. 122.

WV Legislature

**§18B-1-6. Rulemaking.**

(a) The commission may promulgate, adopt, amend, or repeal rules, in accordance with §29A-3A-1 *et seq.* of this code, subject to §18B-1-3 of this code. This grant of rule-making authority does not limit, overrule, restrict, supplant, or supersede the rule-making authority provided to the exempted schools.

(b) The council may promulgate, adopt, amend, or repeal rules in accordance with §29A-3A-1 *et seq.* of this code, subject to §18B-1-3 of this code. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing boards of state institutions of higher education to promulgate, adopt, amend, or repeal any rule under this code:

(1) "Rule" means any regulation, guideline, directive, standard, statement of policy, or interpretation of general application which has institution-wide effect or which affects the rights, privileges, or interests of employees, students, or citizens. Any regulation, guideline, directive, standard, statement of policy, or interpretation of general application that meets this definition is a rule for the purposes of this section.

(2) Regulations, guidelines, or policies established for individual units, divisions, departments, or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department, or school or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

(3) The commission shall promulgate a rule to guide the development of rules made by the governing boards, including a process for comment by the commission as appropriate, except the exempted schools, who shall each promulgate their own rules. The council shall promulgate a rule to guide the development and approval of rules made by the governing boards. The commission and council shall provide technical assistance in rulemaking as requested. The rules promulgated by the exempted schools, the commission and council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a 30 day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines, and other policy statements are posted and can be accessed by the public;

(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines, and other policy statements to the extent technically and financially feasible; and

(D) Except for the exempted schools, a procedure for the governing board to follow in submitting its rules for review and comment by the commission and approval by the council, as appropriate:

(i) The governing boards shall submit rules for review and comment to the commission.

(ii) The commission shall return to the governing board its comments and suggestions within 15 business days of receiving the rule.

(iii) If a governing board receives comments or suggestions on a rule from the commission, it shall record them as part of the minute record. The rule is not effective and may not be implemented until the governing board holds a meeting and places on the meeting agenda the comments it has received from the commission.

(d) Nothing in this section requires that any rule reclassified or transferred by the commission or the council under this section be promulgated again under the procedures set out in §29A-3A-1 *et seq.* of this code unless the rule is amended or modified.

(e) The commission and council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend, or repeal under the authority of this article.

(f) The governing boards shall promulgate and adopt any rule which they are required to adopt by this chapter or chapter 18C of this code no later than July 1, 2011, unless a later date is specified. On and after this date:

(1) Any rule of a governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

(2) Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with this section.

(g) Within 15 business days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended, or repealed by the governing board. For all rules adopted, amended, or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when each listed rule was promulgated and adopted.

(i) Any rule of the commission or council in effect at the time of the re-enactment of this

section or approved by the Legislature during its 2017 Regular Session shall remain in effect and applicable to an institution of higher education under the jurisdiction of the commission or council until an institution exercises its authority to adopt a rule pursuant to this chapter.

(j) On or after July 1, 2024, a rule adopted pursuant to the provisions of this section may not restrict or regulate the carrying of a concealed pistol or revolver by a person who holds a current and valid license to carry a concealed deadly weapon except as expressly authorized in §18B-4-5b of this code.

WV Legislature

**§18B-1-7.**

Repealed.

Acts, 2008 Reg. Sess., Ch. 87.

WV Legislature

**§18B-1-8. Student rights when institutional affiliations or governance structures change.**

[Repealed].

WV Legislature

**§18B-1-8a.**

Repealed.

Acts, 2000 Reg. Sess., Ch. 100.

WV Legislature

**§18B-1-8b. Marshall university graduate college.**

[Repealed].

WV Legislature

**§18B-1-9.**

Repealed.

Acts, 2005 Reg. Sess., Ch. 86.

WV Legislature

§18B-1-10

Repealed

Acts, 2017 Reg. Sess., Ch. .122.

WV Legislature

**§18B-1-11. Colleges and universities to provide appropriate services to meet needs of students with handicapping conditions.**

[Repealed].

WV Legislature