

# WEST VIRGINIA CODE: §18B-2A-7A

## **§18B-2A-7a. Transfer of orders, resolutions, policies and rules, obligations, etc.**

(a) Effective July 1, 2008, a governing board is established for the following state institutions of higher education pursuant to section one of this article:

(1) Marshall Community and Technical College;

(2) Pierpont Community and Technical College, formerly a division of Fairmont State University;

(3) The Community and Technical College at West Virginia University Institute of Technology;

(4) West Virginia State Community and Technical College; and

(5) West Virginia University at Parkersburg.

(b) All orders, resolutions, policies and rules adopted or promulgated by a governing board of a former administratively linked community and technical college, regional campus, or division within an accredited institution on behalf of an institution named in subsection (a) of this section relating to the community and technical college or community and technical college education, or which the newly-established board of Governors finds necessary or expedient for the exercise of its lawful powers and duties pursuant to the provisions of this chapter, shall continue in effect until rescinded, revised, altered or amended by the newly-established board of Governors. Nothing in this section requires the initial rules or policies of a community and technical college to be promulgated again under the rule adopted by the council pursuant to section six, article one of this chapter unless such rules or policies are rescinded, revised, altered or amended.

(c) Each valid agreement and obligation, undertaken or agreed to by the former sponsoring institution or governing board of a division, regional campus or administratively-linked community and technical college before July 1, 2008, on behalf of a community and technical college named in subsection (a) of this section is hereby transferred to the board of Governors of that community and technical college.

(d) Each newly established board of Governors and each appropriate institution formerly sponsoring a community and technical college shall jointly agree on a division of all assets and liabilities. If the boards of Governors are unable to reach agreement concerning a division of assets and liabilities on or before December 1, 2008, the boards of Governors shall submit a summary of issues in dispute to the commission and the council which shall jointly resolve all outstanding issues concerning the division of assets and liabilities.

(e) For purposes of generating audited financial statements for inclusion in the higher

education fund and state single audits, the division of all assets and liabilities shall be effective retroactively to July 1, 2008.

(f) Any other disputes between an independent community and technical college and its former sponsoring institution, regarding their respective rights and responsibilities under this chapter of the code, which cannot be resolved by the governing boards, shall be resolved as follows:

(1) The matters in dispute shall be summarized in writing and submitted to the chancellors jointly for resolution;

(2) If the matters in dispute cannot be resolved by the chancellors within thirty days, they shall be submitted to the council and commission for resolution;

(3) If the commission and council jointly cannot reach a resolution following their first regularly scheduled meeting or within sixty days, whichever is sooner, the chairpersons of the commission and council respectively shall establish a three-person panel to hear the matters and issue a decision within thirty days:

(A) The three-person panel is comprised of one person appointed by the chairperson of the commission, one person appointed by the chairperson of the council, and one person appointed jointly by the two chairpersons.

(B) The decision rendered by the three-person panel is binding on the governing boards, commission and council, and may not be challenged in the courts of this state.

(g) Each former sponsoring institution and community and technical college shall enter into a comprehensive agreement to address the division of assets and liabilities and the allocation of revenues and expenditures between former sponsoring institutions and newly independent community and technical colleges.

(h) Absent manifest injustice as determined jointly by the council and commission, the following general principles apply to the division of assets and liabilities and allocation of revenues and expenditures between former sponsoring institutions and the newly independent community and technical colleges:

(1) For accounting purposes, the institution that assumes responsibility for any asset also shall assume responsibility for any associated liabilities.

(2) Although one institution may assume responsibility for an asset and associated liabilities for accounting purposes, both institutions shall agree on their respective responsibilities for reducing and ultimately eliminating the liability over time if the asset was originally acquired and/or is being used for the benefit of both institutions.

(A) Any agreement to allocate system and institution educational and general and auxiliary debt service payments shall be consistent with the provisions of all applicable bond

covenants.

(B) Absent a controlling bond covenant or other agreement, debt service payments associated with bonded indebtedness presumptively shall be allocated based on the relative full-time equivalent student enrollment of the two institutions either as a whole or on the campus where the asset is located and may be adjusted annually to reflect enrollment changes at the two institutions.

(3) The institutions shall agree to allocate educational and general and auxiliary capital fees in excess of those needed to cover bonded indebtedness to ensure that assets of both institutions are maintained in proper repair and that the institutions assume responsibility for a reasonable share of the total costs of maintaining the facilities.

(4) The institutions shall develop a plan that ensures the financial stability of auxiliary enterprises, including, but not limited to, student housing, student centers, dining services, parking, and athletics through fiscal year 2012.

(A) If community and technical college students pay a mandatory athletics fee for the benefit of a former sponsoring institution, but receive no direct benefit from that fee, the community and technical college may phase out that fee over a five-year period.

(B) If certain community and technical college students were required to live in institution housing consistent with rules or policies in effect on the effective date of this section, the former sponsoring institution may continue to require these students to live in institution housing for at least one year.

(i) If either institution proposes to reduce the services that it provides or purchases from the other institution by more than ten percent in any one year and the reduction exceeds \$200,000, the institution shall obtain the approval of both the council and the commission before doing so. In evaluating the proposal, the council and commission shall consider the following:

(1) The benefit to be obtained for the institution seeking to reduce the services it provides or purchases;

(2) The impact of the proposed reduction on the institution currently providing the services;

(3) Any additional costs that might be incurred as a result of the reduction in services; and

(4) The adequacy of the transition plan.

(j) To the extent practicable, state financial systems shall be set up for higher education institutions which participate in shared services agreements to facilitate ease of processing while ensuring that data from the two institutions are readily segregable at the state level.