WEST VIRGINIA CODE CHAPTER 18B ARTICLE 2B

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§18B-2B-1. Legislative findings; intent; purpose.

[Repealed].

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§18B-2B-2. Definitions.

The following words when used in this article have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) "Adult basic education" means adult basic skills education designed to improve the basic literacy needs of adults, including information processing skills, communication skills and computational skills, leading to a high school equivalency diploma under the jurisdiction of the state Board of Education.

(b) "Post-secondary vocational-technical-occupational education" means any course or program beyond the high school level that results in, or may result in, the awarding of a two-year associate degree, certificate or other credential from an institution under the jurisdiction of a governing board or other public or private education provider.

(c) "Secondary vocational-technical-occupational education" means any course or program at the high school level that results in, or may result in, a high school diploma or its equivalent under the jurisdiction of the state Board of Education.

(d) "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 section three, article two-b of this chapter. Any reference in this code to the vice chancellor for community and technical college education and workforce development means the chancellor for community and technical college education.

(e) "West Virginia council for community and technical college education" or "council" means the council established pursuant to section three of this article. Any reference in this code to the joint commission for vocational-technical-occupational education means the West Virginia council for community and technical college education.

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§18B-2B-3. West Virginia Council for Community and Technical College Education; supervision of chancellor; chief executive officer.

(a) There is continued the West Virginia Council for Community and Technical College Education. The council has all the powers and duties assigned by law to the joint commission for vocational--technical-occupational education prior to July 1, 2001, and all other powers and duties assigned by law.

(b) The council shall employ a chancellor for community and technical college education. The chancellor serves as chief executive officer of the council at the will and pleasure of the council. The chancellor shall be compensated at a level set by the council not to exceed eighty percent of the average annual salary of chief executive officers of the state systems of community and technical colleges in the states that comprise the membership of the Southern Regional Education Board.

(c) The council shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract not to exceed three years. At the end of each contract period, the council shall review the evaluations and make a determination by vote of its members on continuing employment and level of compensation.

(d) When a vacancy occurs in the position of chancellor, the council shall enter into an initial employment contract for one year with the candidate selected to fill the vacancy. At the end of the initial period, and each contract period thereafter, the council shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the chancellor.

(e) The individual who was serving as Vice Chancellor for Community and Technical College Education and Workforce Development and who became chancellor effective March 13, 2004, maintains all benefits of employment held, accrued and afforded as the Vice Chancellor for Community and Technical College Education and Workforce Development prior to March 13, 2004, These benefits include, but are not limited to, retirement benefits, continued membership in the same retirement system, insurance coverage and sick and annual leave. For the purposes of leave conversion established in section thirteen, article sixteen, chapter five of this code, the chancellor is not a new employee and the prohibition on conversion does not apply if the chancellor was eligible for leave conversion while serving as vice chancellor.

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§18B-2B-4. Appointment, composition and terms of council.

(a) The council is comprised of thirteen members selected as follows:

(1) Eight members appointed by the Governor, with the advice and consent of the Senate:

(A) One member shall be appointed from each community and technical college consortia district as established in this section.

(B) Prior to appointment, the Governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter. The Governor shall invite the President of the Senate, the Speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the Governor may determine to participate in interviewing potential candidates. Each member appointed to the council by the Governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in section one-a, article one of this chapter.

(2) The chairperson of the West Virginia workforce investment council;

(3) The executive director of the West Virginia Development Office, or designee;

(4) The president of the West Virginia AFL-CIO, or a designee;

(5) The chair of the Higher Education Policy Commission who serves as an ex officio, nonvoting member of the council; and

(6) The assistant superintendent for technical and adult education of the state Department of Education who serves as an ex officio, nonvoting member of the council;

(b) Any appointed member shall be a citizen of the state, shall represent the public interest and shall understand and be committed to achieving the goals and objectives set forth in section one-a, article one of this chapter, the essential conditions set forth in article three-c of this chapter, and the goals for secondary and post-secondary vocational-technical-occupational and adult basic education in the state. Any appointed member shall represent the interests of the business, labor and employer communities and demonstrate knowledge of the education needs of the various regions, attainment levels and age groups within the state.

(c) The Governor may not appoint any person to be a member of the council who is an officer, employee or member of an advisory board of any state college or university, the holder of any other public office or public employment under the government of this state or any of its political subdivisions, an appointee or employee of any governing board or an immediate family member of any employee under the jurisdiction of the commission or any governing board. An individual may not serve on the council who is engaged in providing, or

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employed by a person or company whose primary function is to provide, workforce development services and activities.

(d) Members of the council serve for staggered terms of four years. Notwithstanding the provisions of subdivision (1), subsection (a) of this section, on the effective date of this section any current member of the council maintains his or her appointment to the council and continues to serve for the remainder of the term for which originally appointed. Any additional appointment required by the provisions of said subdivision shall represent a consortia district not otherwise represented on the council.

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§18B-2B-5. Meetings and compensation.

(a) The council shall meet as needed at the time and place specified at the call of the chairperson. One meeting each year shall be a public forum for the discussion of the goals and standards for workforce development, economic development and vocational education in the state.

(b) The council shall hold an annual meeting at its final, regularly scheduled meeting of each fiscal year for the purpose of electing officers. At the annual meeting, the council shall elect from its voting members a chairperson and other officers as it may consider necessary or desirable. The chairperson and other officers are elected for one-year terms commencing on July 1, following the annual meeting and ending on June 30 of the following year. The chairperson of the council may serve no more than four consecutive one-year terms as chair.

(c) Members of the council serve without compensation. Members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of their expenses. An ex officio member of the council who is an employee of the state is reimbursed by the employing agency.

(d) A majority of the voting members constitutes a quorum for conducting the business of the council. All action taken by the council shall be by majority vote of the voting members present.

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

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

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

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

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

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

(c) The council may relating to the authority established in subsection (a) of this section:

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

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

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

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

(2) Propose a legislative rule pursuant to subsection (b) of this section and §29A-3A-1 *et seq*.

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of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) In carrying out institutional missions; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Defining faculty roles and personnel policies;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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In distributing funds the council shall use the following guidelines:

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

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

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

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

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

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

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

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

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

(57) Accept and expend any gift, grant, contribution, bequest, endowment, or other money

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for the purposes of this article;

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

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

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

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

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The council has received information, substantiated by independent audit, of significant

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mismanagement or failure to carry out the powers and duties of the Board of Governors according to state law; or

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

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

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

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

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

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

(3) If the receiving body fails to take final action within 60 days, the original proposal stands and is binding on both the commission and the council.

(h) On or after July 1, 2024, nothing in this section provides the authority to 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.

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§18B-2B-6A.

Repealed.

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

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§18B-2B-7. Powers and duties of the chief executive officer.

The chancellor for community and technical college education is the chief executive officer of the council and as such may exercise the powers and duties assigned by the council. The chancellor has the following powers and duties:

(1) To serve as the principal accountability point for the council for implementation of the public policy agenda as it relates to community and technical colleges;

(2) To assume principal responsibility for directing and assisting the work of the council; and

(3) To supervise and direct staff of the council as necessary and appropriate to carry out the duties and responsibilities of this article.

(A) On the effective date of this section, all personnel employed by the commission and under the supervision of the vice chancellor for community and technical college education and workforce development on January 1, 2004, are transferred to the jurisdiction of the council and are under the direct supervision of the chancellor for community and technical college education.

(B) Prior to October 1, 2004, any such employee, including the chief executive officer of the council, may not be terminated or have his or her salary or benefit level reduced as the result of the governance reorganization set forth in this article.

(4) On behalf of the council, the chancellor may enter into agreements with any state agency or political subdivision of the state, any state higher education institution or any other person or entity to enlist staff assistance to implement the powers and duties assigned to the council by state law.

(5) The chancellor is responsible for the day-to-day operations of the council and has the following responsibilities:

(A) To carry out policy and program directives of the council;

(B) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a, article one of this chapter and in the institutional compacts;

(C) To prepare and submit to the council for its approval the proposed budget of the council including the office of the chancellor and necessary staff;

(D) To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. The chancellor is responsible for ensuring that any policy which is required to be uniform across the institutions under the jurisdiction of the council is

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applied in a uniform manner; and

(E) To perform all other duties and responsibilities assigned by the council or by state law.

(6) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

(7) The council is the primary advocate for community and technical college education and, with the chancellor, advises the Legislature on matters of community and technical college education in West Virginia. The chancellor shall work closely with the Legislative Oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about community and technical college education issues and that the council fully understands the goals for higher education that the Legislature has established by law.

(8) The chancellor may design and develop for consideration by the council new statewide or regional initiatives directly related to community and technical college education and in accordance with the goals set forth in section one-a, article one of this chapter and the public policy agenda.

(9) The chancellor shall work closely with members of the state Board of Education and with the State Superintendent of Schools to assure that the following goals are met:

(A) Development and implementation of a seamless kindergarten-through-college system of education; and

(B) Appropriate coordination of missions and programs. To further the goals of cooperation and coordination between the council and the state Board of Education, the chancellor serves as an ex officio, nonvoting member of the state Board of Education.

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§18B-2B-8. State advisory committee of community and technical college presidents.

(a) There is continued the state advisory committee of community and technical college presidents. For the purposes of this section, the state advisory committee of community and technical college presidents is referred to as the "advisory committee".

(b) Each president of a public community and technical college, as defined in section one, article six of this chapter, is a member of the advisory committee. An administrative head of a component, branch, center, regional center or other delivery site with a community and technical college mission may be a member if considered appropriate.

(c) The chancellor serves as chair of the advisory committee. The advisory committee shall meet at least once each quarter and may meet at such other times as called by the chair or by a majority of the members.

(d) The advisory committee shall communicate to the council on matters of importance to the group. It shall meet annually between the months of October and December with the council to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest.

(e) The chancellor shall prepare meeting minutes which shall be made available, upon request, to the public.

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§18B-2B-9. Permits required for correspondence, business, occupational and trade schools; surety bonds amount and method of bonding; fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

(a) The following words when used in this section have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(1) "Proprietary schools that award specialized associate degrees" means institutions of higher education; and

(2) "Specialized associate degrees" means degrees awarded by such institutions pursuant to a program of not fewer than two academic years.

(b) Nothing in this section qualifies proprietary schools for additional state moneys not otherwise qualified under other provisions of this code.

(c) It is unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as these are defined by the council by rule promulgated in accordance with §29A-3A-1 *et seq.* of this code, to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, from the council in the manner and on the terms herein prescribed, except this section does not apply to private organizations which offer only tax return preparation courses. The rule previously promulgated by the state College System Board of Directors and transferred to the council by §18B-2B-6 of this code remains in effect until rescinded or amended by the council.

(1) All private training or educational institutions, schools or academies or other organizations shall apply for a permit from the council on forms provided by the council.

(2) Each initial application shall be accompanied by a nonrefundable fee of $2,000. The council also may assess an additional fee based on any additional expense required to evaluate the application.

(3) The council shall make a determination on the initial permit application within 90 days after receipt of the application and fee.

(4) An applicant for an initial permit shall show proof at the time of filing an application that adequate facilities are available and ready for occupancy and that all instructional equipment, books and supplies and personnel are in place and ready for operation. A representative of the council shall make an on-site visit to the facilities of all new applicants to confirm their readiness for operation prior to issuance of the initial permit if the facilities are located in West Virginia.

(5) A school is considered to be established under the provisions of this article on the date it first begins to operate lawfully. An established school is not required to reapply for a permit as a result of changes in governance; administration; ownership; or form of operation.

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(6) After the first permit year, an annual fee of $500 is imposed on each school for each campus it operates in this state.

(d) Each application for a proprietary school that has its physical facilities in this state shall be accompanied by a penal bond, on a form to be prescribed and furnished by the council, payable to the State of West Virginia and conditioned upon the school faithfully performing all of the requirements of this section, the rules promulgated hereunder, and the permit. The penal amount of the bond, as determined by the council, may not be less than $50,000 nor more than $100,000.

(1) If the school has changed ownership within the last 10 years by transfer of ownership control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the surety bond shall continue in the penal sum as determined by the council. The period of liability for bond coverage begins with the issuance of the permit and continues for the full term of the permit, plus any renewals thereof. The council shall release the bond upon satisfaction that the conditions thereof have been fully performed. Upon release of the bond, any cash or collateral securities deposited by the school shall be returned to the school that deposited the same.

(2) Any school which has operated in West Virginia for fewer than 10 years, excluding those schools which have changed ownership within the last 10 years as provided in subdivision (1) of this section, and any school located in another state which applies for a permit hereunder, shall provide a surety bond as determined by the council. The form of the bond shall be approved by the Chancellor and may include, at the option of the school, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, submission of a letter of credit or a combination of these methods. If collateral bonding is used, the school may elect to deposit cash or collateral securities or certificates as follows: bonds of the United States or its possessions; full faith and credit general obligations bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the council. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The Chancellor shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia, whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The school making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the Chancellor, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(3) Any school may be required to increase its bond to $150,000 if either of the following conditions apply:

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(A) The school's accreditation is terminated for cause; or

(B) The school's institutional eligibility under the Higher Education Act of 1965, as amended, has been terminated for cause. Expiration, nonrenewal or voluntary relinquishment of accreditation or institutional eligibility under the Higher Education Act, or failure to meet the requirements of one or more programs under the Act, are not considered to be a termination for cause.

(4) Any school may be required to increase its bond to an amount not to exceed $400,000 if, in accordance with the standards of the American Institute of Certified Public Accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt and the council determines an increased bond is reasonably necessary to protect the financial obligations legally due the students then enrolled at the institution.

(A) A school may be required to maintain the increased bonding requirements described above until all students attending classes at the date of termination either graduate or withdraw.

(B) The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring the student's enrollment, failure of the school to meet contractual obligations, or failure of the school to meet the requirements of this section.

(C) The bond shall be given by the school itself as a blanket bond covering all of its representatives.

(5) The surety on a bond or other collateral may be released upon giving 30 days' notice in writing to the principal on the bond and to the council and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the release. Upon 10 days' written notice, the council shall suspend the permit when the proprietary school is no longer covered by a surety bond or other collateral as required by this section, and the suspension shall remain in effect until the school obtains another bond or establishes other collateral and posts it in the same manner and like amount as required for the initial bond.

(e) A permit is valid for one year corresponding to the effective date of the bond and may be renewed upon application, accompanied by the required fee and the surety bond as herein required. All fees collected for the issuance or renewal of a permit shall be deposited in the State Treasury to the credit of the council.

(f) The council may refuse a permit to any school if the council finds that the school engages in practices which are inconsistent with this section or with rules issued pursuant thereto.

(g) A permit issued hereunder may be suspended or revoked by the council for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its

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contract with one or more students who are residents of West Virginia or for violation of or failure to comply with any provision of this section or with any regulation of the council pertinent thereto.

(1) Before taking any action to suspend or revoke a school's permit, the council shall give the school 15 days' notice and convene a hearing, if a hearing is requested by the school.

(2) Prior to the council taking any adverse action, including refusal, suspension or revocation of a permit, the council shall give the school reasonable opportunity to take corrective measures.

(3) Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

(h) All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the council on forms furnished by the council and shall provide such appropriate information as the council reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the council a list of its official representatives. Each school shall be issued a certificate of identification by the council for each of its official representatives.

(i) The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school, nor any representative of a school, may make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the State of West Virginia, council or any other department or agency of the state.

(j) The council may adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas, associate degrees and specialized associate degrees.

(1) These standards may include curriculum, personnel, facilities, materials and equipment.

(2) For accredited correspondence, business, occupational and trade schools under permit on July 1, 1979, which have their physical facilities located in this state and which are accredited by the appropriate nationally recognized accrediting agency or association approved by the United States Department of Education, the accrediting agency's standards, procedures and criteria are accepted as meeting applicable laws, standards and rules of the council.

(3) Institutions which are institutionally accredited by accrediting agencies recognized by the United States Department of Education to establish academic standards for post-secondary education may offer post-secondary educational programs leading to certificates, diplomas and associate degrees and may award certificates, diplomas and associate degrees

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to graduates who successfully complete required programs in accordance with the academic standards required by such accrediting agency.

(4) If a review undertaken by the council indicates there may be deficiencies in the academic standards the institution maintains in its educational programs and if such deficiencies are of such a material nature that they jeopardize continued accreditation, the council shall notify the institution. If the council and the institution are unable to agree on the deficiencies or the steps necessary to correct the deficiencies, the council shall consult with the institution's accrediting agency regarding an academically appropriate resolution which may include a joint on-site review by the council and the accrediting agency.

(5) The council also may review the academic standards of unaccredited institutions and may require such institutions to maintain recognized academic standards that are reasonably appropriate to the nature of the institution and the training offered.

(k) The council may authorize an investigation of written student complaints alleging a violation of this section, council rules or accreditation standards and may take appropriate action based on the findings of such an investigation.

(l) All evaluations or investigations of correspondence, business, occupational and trade schools and actions resulting from such evaluations or investigations shall be made in accordance with rules promulgated by the council pursuant to §29A-3A-1 *et seq.* of this code.

(m) In regard to private, proprietary educational institutions operating under this section of the code, accredited by a national or regional accrediting agency or association recognized by the United States Department of Education and which provide training at a campus located in this state:

(1) Any rule or standard which is authorized by this or any section of the code or other law and which is now in effect or promulgated hereafter by the council (or other agency with jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed enabling law and shall be unenforceable and without legal effect unless authorized by an Act of the Legislature under the provisions of §29A-3A- 1 *et seq*. of this code.

(2) Notwithstanding any other provision of this section or other law to the contrary, the institution's accrediting agency standards, procedures and criteria shall be accepted as the standards and rules of the council (or other agency with jurisdiction) and as meeting other law or legal requirements relating to the operation of proprietary institutions which such council or other agency has the legal authority to enforce under any section of the code or other law. Nothing in this section denies students the use of remedies that would otherwise be available under state or federal consumer laws or federal law relating to federal college financial assistance programs.

(3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress is measured and reported in credit hours and all reports/documents are

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filed on a credit-hour basis unless the institution notifies the council that it utilizes clock hours as its unit of measurement.

(n) A representative of any school who solicits, sells or offers to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200 per day per violation, or confined in jail not more than 60 days, or both fined and confined. No correspondence, business, occupational or trade school may maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time the contract was signed by any of the parties thereto. The Attorney General or any county prosecuting attorney, at the request of the council or upon his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

(o) In regard to institutions operating under this section, all substantive standards and procedural requirements established by the council (or the West Virginia state program review entity or other agency with jurisdiction over institutions operating hereunder) shall meet all substantive and procedural standards of due process relating to the protection of an individual citizen’s property rights as provided under the United States Constitution and shall follow the substantive standards and procedural requirements established by or under authority of this section.

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