WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

Senator TROUBLIN, Committee Substitute for Senate Bill No. 547

(By Senator TROUBLIN, Mr. President, and Clerk, by request of the Executive,

PASSED March 11, 1995
In Effect From Passage
AN ACT to repeal section four, article three-a, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section forty-eight, article three, chapter five-a of said code; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and reenact section four, article twenty-nine, chapter eighteen of said code; to amend and reenact sections one-a, one-b, two, eight and eight-a, article one, chapter eighteen-b of said code; to further amend said article by adding thereto two new sections, designated sections one-c and one-d; to amend and reenact sections one, three and four, article three of said chapter; to further amend said article by adding thereto a new section, designated
section three-a; to amend and reenact section one, article four of said chapter; to amend and reenact sections four, five, six and seven, article five of said chapter; to further amend said article by adding thereto three new sections, designated sections two-b, two-c and eight; to amend and reenact section one, article six of said chapter; to amend and reenact section one, article seven of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections two and twelve, article nine of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact section one, article ten of said chapter; to amend article eleven of said chapter by adding thereto a new section, designated section five; and to amend article fourteen of said chapter by adding thereto a new section, designated section five, all relating to achieving goals for higher education; exempting higher education governing boards and their institutions from rules relating to travel and purchase of vehicles; extending default provision at level one for grievances and requiring dual filing for cases relating to higher education; deleting obsolete language; expressing goals relating to relevance and quality for post-secondary education and expressing goals for student access, entrepreneurial programs and good citizenship; requiring governing boards to report strategic plans relating to salary targets and resource allocation exceptions; increasing flexibility and capacity for change relating to retirement and separation incentives, pilot flexibility initiatives and consolidation of administrative functions; revising definitions; updating powers and duties of governing boards generally and authorizing employment of legal counsel; requiring governing boards to adopt rules providing for the collection, analysis and dissemination of higher education report cards; adding three members to the board of directors of the state college system; establishing community and technical college education; creating positions of vice chancellor for
instructional technology and vice chancellor for community and technical education; updating purchasing and bidding procedures for institutions of higher education; extending terms for members of the institutional board of advisors for faculty and classified employees; retaining bumping rights for classified employees involuntarily transferred; eliminating the five-percent salary provision for probationary employees; providing compensatory time off in lieu of overtime for employees of governing boards; creating an institute for instructional technology; and authorizing governing boards to sell property.

Be it enacted by the Legislature of West Virginia:

That section four, article three-a, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section forty-eight, article three, chapter five-a of said code be amended and reenacted; that section eleven, article three, chapter twelve of said code be amended and reenacted; that section four, article twenty-nine, chapter eighteen of said code be amended and reenacted; that sections one-a, one-b, two, eight and eight-a, article one, chapter eighteen-b of said code be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections one-c and one-d; that sections one, three and four, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three-a; that section one, article four of said chapter be amended and reenacted; that sections four, five, six and seven, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections two-b, two-c and eight; that section one, article six of said chapter be amended and reenacted; that section one, article seven of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven; that sections two and twelve, article nine of said chapter be amended and reenacted; that said article be further amended by adding
thereo a new section, designated section six; that section one, article ten of said chapter be amended and reenacted; that article eleven of said chapter be amended by adding thereto a new section, designated section five; and that article fourteen of said chapter be amended by adding thereto a new section, designated section five, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-48. Travel rules; exceptions.

1 The secretary of administration shall promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned by the state of West Virginia and in the possession of any department, institution or agency thereof: Provided, That the provisions of sections forty-eight through fifty-three of this article shall not apply to the division of highways of the department of transportation, the division of public safety of the department of military affairs and public safety, the division of natural resources, the division of forestry, the department of agriculture and the higher education governing boards and their institutions: Provided, however, That the higher education governing boards and their institutions shall report annually to the secretary of education and the arts and the legislative oversight commission on education accountability in a form and manner as required by the secretary of education and the arts. Such report shall include at least the following: The number of vehicles purchased and the purchase price, the number of donated vehicles, and the cost of lease agreements on leased vehicles.

2 If, in the judgment of the secretary of administration, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or such of them as he or she may designate, to be kept in such garages, and other places of storage, and to be made available in such
manner and under such terms for the official use of such
departments, institutions, agencies, officers, agents and
employees of the state as the secretary may designate by
any such rule as he or she may from time to time promul-
gate. The secretary also has the authority to administer
the travel regulations promulgated by the governor in
accordance with section eleven, article three, chapter
twelve of this code, unless otherwise determined by the
governor.

Provisions of this section relating to the governing
boards of higher education and the institutions under
their jurisdiction shall expire on the first day of July,
two thousand one, unless the continuation thereof is
authorized by the legislative oversight commission on
education accountability.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-11. Travel expenses; rules to be promulgated concern-
ing same; dues to voluntary organizations; recruitment expenses for West Virginia higher
education governing boards; moving expenses of employees of West Virginia higher education
governing boards.

The governor shall promulgate rules and regulations
concerning out-of-state travel by state officials and
employees, except those in the legislative and judicial
branches of the state government and except for the
attorney general, auditor, secretary of state, treasurer,
board of investments, commissioner of agriculture and
their employees, and the higher education governing
boards and institutions under their jurisdiction. The
Legislature, the supreme court of appeals and the
attorney general, auditor, secretary of state, treasurer,
board of investments, commissioner of agriculture and
the higher education governing boards shall promulgate
rules and regulations concerning out-of-state travel for
their respective branches and departments of state
government. Copies of such rules and regulations shall be filed with the auditor, and the secretary of state. It shall be unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless such claim meets all the requirements of the rules and regulations so filed.

Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

It shall be lawful for a higher education governing board to authorize the payment of traveling expenses incurred by any person invited to visit the campus of any state institution of higher education or any other facility under control of the board to be interviewed concerning his possible employment by the board or agent thereof.

It shall be lawful for a higher education governing board to authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by the board in moving his household furniture, effects and immediate family to his place of employment; and (2) all or part of the reasonable expense incurred by an employee of the board in moving his household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interest of the state: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months.

Provisions of this section relating to the governing boards of higher education and the institutions under their control shall expire on the first day of July, two thousand one, unless the continuation thereof is authorized by the legislative oversight commission on educa-
CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-4. Procedural levels and procedure at each level.

1 (a) Level one.

2 (1) Before a grievance is filed and within fifteen days
3 following the occurrence of the event upon which the
4 grievance is based, or within fifteen days of the date on
5 which the event became known to the grievant or within
6 fifteen days of the most recent occurrence of a continue-
7 ing practice giving rise to a grievance, the grievant or the
designated representative shall schedule a conference
9 with the immediate supervisor to discuss the nature of
10 the grievance and the action, redress or other remedy
11 sought.

12 The conference with the immediate supervisor con-
13 cerning the grievance shall be conducted within ten days
14 of the request therefor, and any discussion shall be by
15 the grievant in the grievant's own behalf or by both the
16 grievant and the designated representative.

17 (2) The immediate supervisor shall respond to the
18 grievance within ten days of the conference.

19 (3) Within ten days of receipt of the response from the
20 immediate supervisor following the informal conference,
21 a written grievance may be filed with said supervisor, or
22 in the case where the grievance involves an event under
23 the jurisdiction of a state institution of higher education,
24 the grievance shall be filed with said supervisor and the
25 office of personnel, by the grievant or the designated
26 representative on a form furnished by the employer or
27 agent.

28 (4) The immediate supervisor shall state the decision to
29 such filed grievance within ten days after the grievance
30 is filed.
(b) Level two.

Within five days of receiving the decision of the immediate supervisor, the grievant may appeal the decision to the chief administrator, and such administrator or his or her designee shall conduct a hearing in accordance with section six of this article within five days of receiving the appeal and shall issue a written decision within five days of such hearing. Such decision may affirm, modify or reverse the decision appealed from. Level four hearing examiners or the chief administrator shall have the authority to subpoena witnesses and documents for level two and level three hearings in accordance with the provision of section one, article five, chapter twenty-nine-a of this code, and may issue a subpoena upon the written request of any party to the grievance.

(c) Level three.

Within five days of receiving the decision of the chief administrator, the grievant may appeal the decision to the governing board of the institution or may proceed directly to level four. An appeal to the governing board shall set forth the reasons why the grievant is seeking a level three review of the decision of the chief administrator. Within five days of receiving the appeal, such governing board may conduct a hearing in accordance with section six of this article, may review the record submitted by the chief administrator and render a decision based on such record or may waive the right granted herein and shall notify the grievant of such waiver. Any decision by the governing board, including a decision to waive participation in the grievance, shall be in writing and shall set forth the reasons for such decision, including the decision to waive participation in the grievance. If a hearing is held under the provisions of this subsection, the governing board shall issue a decision affirming, modifying or reversing the decision of the chief administrator within five days of such
(d) Level four.

(1) If the grievant is not satisfied with the action taken by the chief administrator or, if appealed to level three, the action taken by the governing board, within five days of the written decision the grievant may request, in writing, on a form furnished by the employer, that the grievance be submitted to a hearing examiner as provided for in section five of this article, such hearing to be conducted in accordance with section six of this article within ten days following the request therefor: Provided, That such hearing may be held within thirty days following the request or within such time as is mutually agreed upon by the parties, if the hearing examiner gives reasonable cause, in writing, as to the necessity for such delay.

(2) Within thirty days following the hearing, the hearing examiner shall render a decision in writing to all parties setting forth findings and conclusions on the issues submitted. Subject to the provisions of section seven of this article, the decision of the hearing examiner shall be final upon the parties and shall be enforceable in circuit court.

All information and data generated by the board and in its custody relative to level four decisions and copies of such decisions shall be provided at reasonable cost to any individual requesting it.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.


(a) Findings and directives. — The Legislature finds that higher education is a vital force in the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, West Virginia should invest in its people through a strong and dynamic
higher education system.

The Legislature further finds that the people of West Virginia have demonstrated their support for this finding through their involvement and comments at meetings held throughout the state pursuant to Senate Concurrent Resolution No. 30 adopted at the regular session of the West Virginia Legislature, one thousand nine hundred ninety-two. The Legislature, also, endorses the report submitted by the higher education advocacy team pursuant to said resolution and directs the affected educational agencies to implement unified strategies for accomplishing the needed improvements.

(b) Goals and objectives. — In the pursuance of the above findings, the following goals and objectives are hereby adopted with respect to the investments which are necessary for higher education in West Virginia to contribute fully to the growth, development and quality of life of the state and its citizens:

(1) Students should be better prepared in high school to meet college standards jointly agreed upon by higher education and the public schools as required under subsection (c), section five of this article. Those standards should be conveyed to students prior to entering tenth grade;

(2) More students should obtain education that is both high quality and relevant, beyond the high school level for our individual and collective economic development:

(A) The awareness of post-secondary educational opportunities among the state's citizens should be expanded and their motivation to take advantage of available opportunities should be enhanced;

(B) Assistance in overcoming the financial barriers to post-secondary education should be provided;

(C) A student-friendly environment should be created within post-secondary education to encourage and
expand participation for the increasingly diverse student population;

(D) All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed should have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which is relevant, affordable, allows them to gain transferrable credits and associate or higher level degrees, provides quality technical education and skill training, and is responsive to business, industry, labor and community needs;

(E) The development of entrepreneurial skills through such programs as the rural entrepreneurialship through action learning (REAL) should be encouraged, including skills assessment, needs analysis and business plan development; and

(F) More opportunities should be available for advanced high school students to obtain college credit prior to high school graduation;

(3) Students should be prepared to practice good citizenship to compete in a global economy in which the good jobs will require an advanced education and level of skill which far surpasses former requirements:

(A) Academic preparation should be improved to ensure that students enrolling in programs of post-secondary education are adequately prepared to be successful in their selected fields of study and career plans;

(B) College graduates should meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

(C) College graduates should meet or exceed national
and international standards for performance in their
fields through national accreditation of programs and
through outcomes assessment of graduates;

(D) The faculties in higher education should include
elements of citizenship development across the curricu-
larum in core areas, including practical applications such
as community service, civic involvement and participa-
tion in charitable organizations or in the many opportu-
nities for the responsible exercise of citizenship that
higher education institutions provide;

(4) Resources should be focused on programs and
courses which offer the greatest opportunities for
students and the greatest opportunity for job creation
and retention in the state:

(A) An entrepreneurial spirit and flexibility should be
created within higher education to respond to the needs
of the current work force and other nontraditional
students for college-level skills upgrading and retrain-
ing;

(B) A focus should be created on programs supportive
of West Virginia employment opportunities and the
emerging high technology industries;

(C) Closer linkages should be established among higher
education and business, labor, government, community
and economic development organizations;

(5) Resources should be used to their maximum poten-
tial and faculty and technology should be combined in a
way that makes West Virginia higher education more
productive than similar institutions in other states:

(A) Institutional missions should be clarified and
resources should be shifted to programs which meet the
current and future work force needs of the state;

(B) Program duplication necessary for geographic
access should be determined and unnecessary duplica-
tion should be eliminated;
(C) Systematic ongoing mechanisms should be established for each state institution of higher education to set goals, measure the extent to which those goals are met and use results of quantitative evaluation processes to improve institutional effectiveness;

(D) Institutional productivity and administrative efficiency standards should be established to ensure that state institutions of higher education are more productive and efficient than similar institutions in other states;

and

(6) The compensation of faculty, staff and administrators should be established at competitive levels to attract and keep quality personnel at state institutions of higher education:

(A) Faculty and staff classification and compensation at state institutions of higher education should be competitive with relevant market levels;

(B) Available revenues should be distributed in an equitable fashion which enables each state institution of higher education to fulfill its mission and reward its employees appropriately; and

(C) It is the goal for post-secondary education to move faculty salaries to one hundred percent of peer averages.

As part of this long-term strategy the state should make every effort to provide funds to assist the institutions in moving to that goal.

§18B-1-1b. Implementation of findings, directives, goals and objectives.

The governing boards shall develop a plan for implementation of the legislative findings, directives, goals and objectives set forth in section one-a of this article, including benchmarks to ensure accountability in achieving said findings, directives, goals and objectives, in consultation with the secretary of education and the arts, the president of the state board of education, the
president of the West Virginia association of private colleges, the president of the joint commission for vocational-technical-occupational education and the president of the West Virginia economic development council. A written report of the plan required by this section, including the plans required of the state institutions of higher education pursuant to section one-c of this article and any resource allocation exceptions granted thereunder, shall be submitted to the governor and the legislative oversight commission on education accountability by the first day of December, one thousand nine hundred ninety-five, and thereafter. Progress toward achieving said goals and objectives shall be reported in the higher education report card required pursuant to section eight-a of this article. The secretary shall conduct an ongoing review of the plans submitted by the governing boards and the strategic plans submitted by the institutions and shall annually report to the Legislature his or her opinion as to the progress of the governing boards and institutions in accomplishing the goals and objectives set forth in the plan. The secretary shall also report to the Legislature any plans which do not, in the opinion of the secretary, set appropriate goals and objectives and any institutions which are not in compliance with their plan.

§18B-1-1c. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.

(a) To achieve the goals for post-secondary education as set forth in section one-a of this article, each of the following state institutions of higher education shall prepare a strategic plan of change to refocus its mission and leadership, and restructure its existing resources and programs: Bluefield state college; Concord college; Glenville state college; Fairmont state college; Marshall university; West Virginia northern community college; Potomac state college of West Virginia university; Shepherd college; southern West Virginia community
college; West Liberty state college; the West Virginia
graduate college; West Virginia institute of technology;
West Virginia university at Parkersburg; West Virginia
school of osteopathic medicine; West Virginia state
college; West Virginia university; and all branch cam-
puses of these institutions of higher education. Such
plans shall specifically state how the institution will,
over a five-year period, refocus its mission and leader-
ship and restructure its existing resources and programs
to achieve the goals for post-secondary education
including, but not limited to, the following: (1) Increase
average faculty salaries at the institution, not including
health sciences, to a level at least equal to ninety-five
percent of the average faculty salaries at peer institu-
tions in the southern regional education board region:
Provided, That West Virginia university, excluding West
Virginia university at Parkersburg and Potomac state
college of West Virginia university shall state specifically
how it will increase average faculty salaries at that
institution, not including health sciences, to a level at
least equal to ninety percent of the average faculty
salaries at peer institutions in the southern regional
education board region; (2) achieve full funding of the
uniform employee classification system and salary policy
for classified employees adopted by the respective
governing boards pursuant to section four, article nine of
this chapter; (3) eliminate duplicative programs and
services, acting alone or in conjunction with another
institution, and eliminate under-utilized or unnecessary
programs; (4) may combine administrative functions
among other institutions; and (5) use admission and exit
standards for students, incentives and staff development
for assuring quality teaching and learning and the
critical assessment of programs to meet the goals. The
plan shall also state the manner in which any pay
increases will be funded, the sources of any funds used
for pay increases, and the savings and costs associated
with achieving any other goals specified in the plan and
how the funds are to be redirected. The faculty senate,
classified staff council and the student government association shall be consulted prior to the submission of the plan and their recommendations included in the presidents report to the board. Beginning the first day of July, one thousand nine hundred ninety-six, the budgets of state institutions of higher education shall reflect movement to the salary targets for faculty and classified staff as set forth in this section and any other goals specified in their strategic plan for change.

(b) The president or administrative head of each state institution of higher education shall submit the plan for the institution to its respective governing board on or before the first day of November, one thousand nine hundred ninety-five: Provided, That community and technical college education shall not be required to be segregated in such plan until the first day of November, one thousand nine hundred ninety-six. The governing boards shall approve or disapprove such plans within sixty days of receipt and notify the institution president or administrative head of its decision: Provided however, That if the plan submitted by the institution includes retirement and separation incentives pursuant to section one-d of this article, such portion of the plan shall be submitted by the governing board to the legislative joint standing committee on pensions and retirement, and the time required for review by such committee shall not be included in the sixty days. If disapproved, the governing board shall return the plan to the institution president or administrative head stating its reasons for disapproval. The institution president or administrative head may modify and resubmit a plan which was disapproved at any time and the governing board shall approve or disapprove such resubmitted plan within sixty days and notify the institution president or administrative head as herein provided for the original plan. If such plans have not been approved on or before the first day of March following the November submission date, the board is authorized to develop a plan for such institutions. The
president or administrative head of every state institution of higher education with an approved plan shall update such plan on an annual basis to reflect performance during the preceding year and make any necessary modifications. Such updated plans shall be submitted on the first day of November in each of the subsequent years that the plan is in effect and the governing board shall follow the same procedures for approval or disapproval as herein provided for the original plan. Upon the approval of a plan or plan update which includes the elimination of a program, the institution president or administrative head shall immediately notify affected students, faculty and staff.

(c) Any state institution of higher education with an approved plan may apply to its governing board for an exception under the resource allocation model and policies to retain funding for student enrollments that decline due to planned program reductions or elimination under the strategic plan. The number of student enrollments subject to the exception shall be based on the average full-time equivalent enrollments over the five preceding years in such program. The allocation exception shall become effective in the next ensuing allocation cycle following approval by the governing board and notification of affected faculty, students and staff of the program reduction or elimination, and shall remain effective for the number of years normally required for students to complete the full program from beginning enrollment to graduation, subject to annual review by the governing board of the actual decline in program enrollments. Notwithstanding any other provision of this section, any program suspended or discontinued by action of the governing board on or after the first day of September, one thousand nine hundred ninety-four, and prior to the effective date of this section, which program is being eliminated pursuant to said action, is eligible for an exception under the resource allocation model and policies pursuant to this
section for the fiscal year one thousand nine hundred ninety-six.

(d) Any state institution of higher education with an approved plan may apply to its governing board for an exception under the resource allocation model and policies to retain funding for student enrollments that decline due to the planned reductions for the purpose of enhancing the quality of a particular program. The number of student enrollments subject to the exception shall be based on the average full-time equivalent enrollments over the preceding five years in such program. Money allocated to the institution as a result of this exception shall be used to enhance the quality of that particular program. The allocation exception shall become effective in the next ensuing allocation cycle following approval by the governing board and notification of affected faculty, students and staff of the program reduction and shall remain in effect subject to biennial review by the governing board of the actual decline in program enrollments and enhancements in quality of the program.

(e) The application for an exception in subsections (c) and (d) of this section shall be submitted by the institution president or administrative head and state how the funds will be redirected to achieve the purposes of the institution's approved plan including, but not limited to, salary increases to attract and retain quality faculty and staff, expand and improve the quality of existing programs, make additional investments in technology and increased access, and, in the exemption provided in subsection (c) of this section, begin new programs. The governing board shall approve or disapprove the application within sixty days of receipt and if disapproved, shall return the application to the institution president or administrative head stating the reasons for disapproval. The institution president or administrative head may modify and resubmit an application which was disapproved at any time and the governing board shall
approve or disapprove such resubmitted application
within sixty days and notify the institution president or
administrative head as herein provided for the original
plan.

(f) An exception to the resource allocation model and
policies granted under this section and any differential
approved for an institution by its governing board to
reflect the high costs of a program within the institu-
tion's mission shall be removed from the institutions
base budget and, to the extent included therein, from the
indicated level of state support for the purposes of
subsection (d), section two, article five of this chapter,
and any governing board rule to the contrary is hereby
specifically modified.

(g) It is the expressed intent of the Legislature, subject
to the availability of funds and appropriations therefor,
to increase state appropriated funds for state institutions
of higher education in each of the five fiscal years, one
thousand nine hundred ninety-seven, through and
including, fiscal year two thousand one, at a rate of at
least three and twenty-five one hundredths percent per
year to assist the institutions in achieving their strategic
plan of change, subject to demonstrated effort by the
institutions as determined by the Legislature to refocus
and restructure their missions, leadership, resources and
programs to meet said plans in accordance with this
section. In any fiscal year in which the state appropri-
ated funds are less than such expressed intent, the
governing boards may adjust the targets set forth in the
strategic plans for change by a like proportion. Begin-
ing with legislative appropriations under this subsec-
tion for the fiscal year one thousand nine hundred
ninety-seven—ninety-eight, the Legislature shall appro-
appropriate such funds, if any, to a separate account known as
the "Higher Education Efficiency Fund" in the state
budget. Appropriations to the fund shall be allocated to
the institutions that are in compliance with their strate-
gic plan for change as certified by the secretary of
education and the arts pursuant to section one, article
ten of this chapter. Such allocations shall be made in
accordance with the resource allocation model and
policies. Any portion of the fund which is not so allo-
cated shall be appropriated to the higher education grant
program, pursuant to article five, chapter eighteen-c of
this code, or if such program is fully funded, for expen-
diture among all institutions for scholarships and
student grant programs.

§18B-1-1d. Increasing flexibility and capacity for change.

(a) Retirement and separation incentives. — Notwith-
standing any other provisions of this code to the con-
trary, each state institution of higher education may
include in their strategic plans, pursuant to section one-c
of this article, policies 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 submitted by the
governing board to the legislative joint committee on
pensions and retirement and approved before such
policies are adopted as part of the institution’s strategic
plan. The policies 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 em-
ployee’s hours of employment during the predetermined
period of time;

(3) Continuation of insurance coverage pursuant to the
provisions of article sixteen, chapter five 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 their service with the institution.

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.

No incentive proposed by an institution pursuant to this section shall become a part of the institution's approved strategic plan or 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.

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 their incentive concludes including contract employment in excess of five thousand dollars per fiscal year.

(b) Pilot flexibility initiative. — The board of directors
is directed to submit a plan for a pilot flexibility initiative to the legislative oversight commission on education accountability on or before the first of October one thousand nine hundred ninety-five. The plan shall include at least the following: (1) A system whereby the state institutions of higher education in the state college system may apply to the board of directors for a waiver of board policies and rules; (2) A detailed application for institutions seeking to participate in the pilot flexibility initiative which shall set forth at a minimum: (i) a statement of the specific goals and objectives that the institution proposes to accomplish if the application is approved; (ii) the specific board policies and rules which the institution seeks to have waived for all or a portion of the waiver period; and (iii) proposed rules and policies under which the institution would operate during the period of waiver; (3) The process by which the board of directors will review the application; (4) The person or body who shall have the final authority to approve the application of not more than two institutions; (5) The time period for which the waiver will be granted; (6) The specific board policies and rules which the institution may request to have waived; (7) The process by which the rules and policies of the institutions participating in the pilot flexibility initiative may modify its rules and policies; and (8) The person or body to whom the institutions shall be reporting during the period of waiver.

(c) It is the intent of this Legislature to review the pilot flexibility plan and after such review to establish a pilot flexibility initiative in the legislative session of one thousand nine hundred ninety-six.

§18B-1-2. Definitions.

1 The following words when used in this chapter and chapter eighteen-c of this code shall have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) "Governing board" or "board" means the university
of West Virginia board of trustees or the board of
directors of the state college system, whichever is
applicable within the context of the institution or
institutions referred to in this chapter or in other provi-
sions of law;

(b) "Governing boards" or "boards" means both the
board of trustees and the board of directors;

(c) "Freestanding community colleges" means southern
West Virginia community and technical college and West
Virginia northern community and technical college,
which shall not be operated as branches or off-campus
locations of any other state institution of higher educa-
tion;

(d) "Community college" or "community colleges"
means community and technical college or colleges as
those terms are defined in this section;

(e) "Community and technical college", in the singular
or plural, means the freestanding community and
technical colleges, community and technical education
programs at branch campuses of West Virginia univer-
sity, and divisions of state institutions of higher educa-
tion which have a defined community and technical
college district and offer community and technical
college education in accordance with the provisions of
section three-a, article three of this chapter;

(f) "Community and technical college education"
means the programs, faculty, administration and funding
associated with the mission of community and technical
colleges as provided in section three-a, article three of
this chapter, and also shall include post-secondary
vocational education programs in the state as those
terms are defined in this section. Community and
technical college education shall be delivered through a
system which includes eleven community and technical
college districts assigned to state institutions of higher
education under the jurisdiction of the board of directors
and the board of trustees, respectively;

(g) "Directors" or "board of directors" means the board of directors of the state college system created pursuant to article three of this chapter or the members thereof;

(h) "Higher educational institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) "Post-secondary vocational education programs" means any college-level course or program beyond the high school level provided through an institution of higher education which results in or may result in the awarding of a two-year associate degree, under the jurisdiction of the board of directors;

(j) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(k) "Senior administrator" means the person hired by the governing boards in accordance with section one, article four of this chapter, with such powers and duties as may be provided for in section two of said article;

(l) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college, West Virginia institute of technology or West Virginia state college;

(m) "State college system" means the state colleges and community and technical colleges, and also shall include post-secondary vocational education programs in the state as those terms are defined in this section;

(n) "State college system community and technical colleges" means the freestanding community and technical colleges and community and technical colleges operated on the campuses of state colleges under the
jurisdiction of the board of directors of the state college
system and all of their associated branches, centers and
off-campus locations;

(o) "State institution of higher education" means any
university, college or community and technical college in
the state university system or the state college system as
those terms are defined in this section;

(p) "Trustees" and "board of trustees" means the
university of West Virginia board of trustees created
pursuant to article two of this chapter or the members
thereof;

(q) "University", "university of West Virginia" and
"state university system" means the multi-campus,
integrated university of the state, consisting of West
Virginia university including West Virginia university at
Parkersburg, Potomac state college of West Virginia
university and the West Virginia university school of
medicine; Marshall university including the Marshall
university school of medicine and the Marshall univer-
sity community and technical college; the West Virginia
graduate college; and the West Virginia school of osteo-
pathic medicine.

(r) "University system community and technical
colleges" means Marshall university community and
technical college, community and technical education
programs at West Virginia university at Parkersburg and
community and technical education programs at Poto-
mac state college of West Virginia university under the
jurisdiction of the university of West Virginia board of
trustees and all their associated branches, centers and
off-campus locations.


(a) Each governing board shall separately have the
power and duty to:

(1) Determine, control, supervise and manage the
financial, business and educational policies and affairs
of the state institutions of higher education under its
jurisdiction;

(2) Prepare a master plan for the state institutions of
higher education under its jurisdiction, setting forth the
goals, missions, degree offerings, resource requirements,
physical plant needs, state personnel needs, enrollment
levels and other planning determinates and projections
necessary in such a plan to assure that the needs of the
state for a quality system of higher education are ad-
dressed: Provided, That the master plan for post-sec-
ondary vocational education is subject to approval by the
joint commission for vocational-technical-occupational
education. The plan shall also address the roles and
missions of private post-secondary education providers
in the state. Each board shall involve the executive and
legislative branches of state government and the general
public in the development of all segments of the plan for
post-secondary education in the state. The plan shall be
established for periods of not less than five nor more
than ten years and shall be periodically revised as
necessary, including the addition or deletion of degree
programs as, in the discretion of the boards, may be
necessary. Whenever a state institution of higher
education desires to establish a new degree program,
such program proposal shall not be implemented until
the same is filed with both governing boards. Upon
objection thereto within sixty days by either governing
board, such program proposal shall be filed with the
secretary of education and the arts, who shall approve or
disapprove such proposal within one year of the filing of
said program proposal;

(3) Prescribe and allocate among the state institutions
of higher education under its jurisdiction, in accordance
with its master plan, specific functions and responsibili-
ties to meet the higher education needs of the state and
to avoid unnecessary duplication;
(4) Consult with the executive branch and the Legislature in the establishment of funding parameters, priorities and goals;

(5) Establish guidelines for and direct the preparation of budget requests for each of the state institutions of higher education under its jurisdiction, such requests to relate directly to missions, goals and projections in its state master plan;

(6) Consider, revise and submit to the appropriate agencies of the executive and legislative branches of state government separate budget requests on behalf of the state institutions of higher education under its jurisdiction or a single budget for the state institutions of higher education under its jurisdiction: Provided, That when a single budget is submitted, that budget shall be accompanied by a tentative schedule of proposed allocations of funds to the separate state institutions of higher education under its jurisdiction;

(7) Prepare and submit to the speaker of the House of Delegates and the president of the Senate, no later than the first day of each regular session of the Legislature and to any member of the Legislature upon request, an analysis of the budget request submitted under subdivision (6) of this subsection. The analysis shall summarize all amounts and sources of funds outside of the general revenue fund anticipated to be received by each state institution of higher education under its jurisdiction and the effect of such funds on the budget request;

(8) Prepare and submit to the legislative auditor, no later than the first day of July of each year, the approved operating budgets of each state institution of higher education under its jurisdiction for the fiscal year beginning on that date and, no later than the first day of August, a summary of federal and other external funds received at each such institution during the previous fiscal year;
(9) Establish a system of information and data management that can be effectively utilized in the development and management of higher education policy, mission and goals;

(10) Review, at least every five years, all academic programs offered at the state institutions of higher education under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its master plan and the educational and work force needs of the state. As a part of such review, each governing board shall require each of its institutions to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the educational experience. Where appropriate, these studies should make use of the studies required of many academic disciplines by their accrediting bodies. The governing boards shall also ensure that the sequence and availability of academic programs and courses is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion, that the needs of nontraditional college age students are appropriately addressed, and that core course work completed at any state institution of higher education is transferable to another state institution of higher education for credit with the grade earned. Notwithstanding any other provision of this code to the contrary, after the effective date of this section the appropriate governing board shall have the exclusive authority to approve the teacher education programs offered in the institutions under their control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the boards may select and utilize one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;
(11) Utilize faculty, students and classified staff in institutional level planning and decisionmaking when those groups are affected;

(12) Administer a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators;

(13) Establish a uniform system for the hearing of employee grievances and appeals therefrom, so that aggrieved parties may be assured of timely and objective review;

(14) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the state institutions of higher education;

(15) Appoint a president or other administrative head for each institution of higher education from candidates submitted by the search and screening committees of the institutional boards of advisors pursuant to section one, article six of this chapter;

(16) Conduct written performance evaluations of each institution's president in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board;

(17) Submit to the joint committee on government and finance, no later than the first day of December of each year, an annual report of the performance of the system of higher education under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and budget appropriations for that fiscal year; and

(18) The governing boards shall have the power and authority to enter into contracts or consortium agree-
ments with the public schools, private schools or private
industry to provide technical, vocational, college prepar-
atory, remedial and customized training courses at
locations either on campuses of public institutions of
higher education or at off-campus locations in such
institutions' regional educational service areas. To
accomplish this goal, the boards are permitted to share
resources among the various groups in the community.
The governing boards shall promulgate uniform legisla-
tive rules providing for entering into said contracts and
consortium agreements and for determining and granting
credit for work experience for courses offered by the
consortium.

(b) The power, herein given to each governing board to
prescribe and allocate among the state institutions of
higher education under its jurisdiction specific functions
and responsibilities to meet the higher educational needs
of the state and avoid unnecessary duplication, shall not
be restricted by any provision of law assigning specified
functions and responsibilities to designated state institu-
tions of higher education, and such power shall super-
sede any such provision of law: Provided, That each
governing board may delegate, with prescribed stand-
ards and limitations, such part of its power and control
over the business affairs of a particular state institution
of higher education to the president or other administra-
tive head of such state institution of higher education in
any case where it deems such delegation necessary and
prudent in order to enable such institution to function in
a proper and expeditious manner: Provided, however,
That such delegation shall not be interpreted to include
classification of employees, lawful appeals made by
students in accordance with the appropriate governing
board's policy, lawful appeals made by faculty or staff or
final review of new or established academic or other
programs. Any such delegation of power and control
may be rescinded by the appropriate governing board at
any time, in whole or in part.
(c) The governing boards shall promulgate uniform legislative rules by the first day of September, one thousand nine hundred ninety-three, setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department.

(d) Each governing board and/or an individual appointed by the president of each institution shall consult, cooperate and work with the state treasurer and the state auditor to develop an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds for higher education that ensures that properly submitted requests for payment be paid on or before due date, but in any event, within fifteen days of receipt in the state auditor's office. The system shall be established and implemented as soon as practical and the governing boards shall report to the legislative oversight commission on education accountability prior to the first day of January, one thousand nine hundred ninety-four, regarding the efficacy of the system.

(e) The governing boards in consultation with the secretary of the department of administration shall develop a plan and report such plan to the legislative oversight commission on education accountability by the first day of December, one thousand nine hundred ninety-five. Such plan shall establish a consistent method of conducting personnel transactions including, but not limited to, hiring, dismissal, promotions and transfers at all institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which will be submitted to the respective governing boards,
and the department of finance and administration. Such
plan shall be developed with a contemplated target
implementation date of the first day of July, one thou-
sand nine hundred ninety-six.

(f) Notwithstanding any other provision of this code to
the contrary, the governing boards and the secretary of
education and the arts shall have the authority to
transfer funds from any account specifically appropri-
ated for their use to any corresponding line item in a
general revenue account at any agency or institution
under their jurisdiction as long as such transferred funds
are used for the purposes appropriated. The governing
boards also shall have the authority to transfer funds
from appropriated special revenue accounts for capital
improvements under their jurisdiction to special revenue
accounts at agencies or institutions under their jurisdic-
tion as long as such transferred funds are used for the
purposes appropriated.

(g) Notwithstanding any other provision of this code to
the contrary, the governing boards or senior administra-
tor may acquire such legal services as are deemed
necessary, including representation of the governing
boards, their institutions, employees and officers before
any court or administrative body. Such counsel may be
employed either on a salaried basis or on a reasonable
fee basis. In addition, the governing boards or senior
administrator may, but are not required to, call upon the
attorney general for legal assistance and representation
as provided by law.

§18B-1-8a. Higher education accountability; institutional
and statewide report cards.

(a) The governing boards are directed to make informa-
tion available to parents, students, faculty, staff, state
policymakers and the general public on the quality and
performance of public higher education. This informa-
tion shall be consistent and comparable between and
among the state institutions of higher education and, if
applicable, comparable with information from peer
institutions in the region and nation.

(b) On or before the first day of November, one thou-
sand nine hundred ninety-five, the governing boards are
directed to adopt a rule pursuant to the provisions of
article three-a, chapter twenty-nine-a of this code,
providing for the collection, analysis and dissemination
of data and information on the performance of the state
institutions of higher education, including health sci-
ences education, in relation to the findings, directives,
goals and objectives set forth in sections one-a and one-b
of this article and in comparison to their peers in the
region and nation. In developing the rule, the governing
boards shall consult with the governor, the legislative
oversight commission on education accountability and
the state department of education regarding the relevant
areas of data and information deemed necessary for
inclusion in a higher education report card. Upon
approval of the rule by the legislative oversight commis-
sion on education accountability, and the effective date
of the rule, the provisions of subsection (c) of this section
shall be null and void: Provided, That the statewide
report card due on the first day of December, one
thousand nine hundred ninety-five, pursuant to that
section, shall be compiled and disseminated pursuant to
said subsection. Such legislative rules shall provide the
legislative oversight commission on education account-
ability with full and accurate information while mini-
mizing the institutional burden of recordkeeping and
reporting. Such legislative rules shall include uniform
definitions for the various indicators of student and
institutional performance and guidelines for the collect-
ion and reporting of data and the preparation, printing
and distribution of report cards under this section. The
report card forms shall provide for brief, concise report-
ing in nontechnical language of required information.
Any technical or explanatory material which an institu-
tion or governing board wishes to include shall be
contained in a separate appendix available to the general
public upon request.

(c) The president or chief executive officer of each
public college, university or community college shall
prepare and submit annually all requested data to the
appropriate governing board at such time as the govern-
ing board may establish. The governing boards shall
prepare institutional report cards for institutions under
their jurisdiction and systemwide report cards which
shall include the information required in the following
subdivisions:

(1) For all undergraduate students and for all institu-
tions having undergraduate programs, the institution
shall report the following as available and applicable:
Average scores of incoming freshmen and transfer
students on the American college test (ACT) or scholastic
aptitude test (SAT); percentage of incoming freshmen
enrolled in developmental classes; student performance
as measured by grade point average and/or appropriate
testing measures; the graduation or completion rate as
may be defined by federal law or regulation for the
student body as a whole and separately for students at
the institution who received athletically-related student
aid categorized by sex and athletic program; the rate at
which individuals who complete or graduate from the
program of an institution pass applicable licensure or
certification examinations required for employment in a
particular vocation, trade or professional field; student
mobility (transfers in, transfers out and withdrawals);
number and percentage of student body receiving tuition
fee waivers; and number, percentage and dollar value of
tuition fee waivers categorized by whether such waiver
is for athletic participation or is an academic waiver and
by whether the recipient is a resident or nonresident of
this state.

(2) For professional schools, defined for the purposes
of this section as academic programs leading to profes-
sions in which licensing is normally required and for which an undergraduate degree is a general prerequisite, the institution shall report the following as available and applicable: Average scores of beginning students and transfer students on standardized entrance examinations; number and percentage of student body receiving tuition fee waivers; number, percentage and dollar value of tuition fee waivers categorized by whether the recipient is a resident or nonresident of this state; the number of degrees granted; the graduation or completion rate as may be defined by federal law or regulation for the student body as a whole; the rate at which individuals who complete or graduate from the program of an institution pass applicable licensure or certification examinations required for employment in the particular professional field; the total number of students in each program, including the percentage of those students who are state residents, the percentage of students who are nonresidents of the state, the percentage of students who are women and the percentage of students who are minorities as the term is defined by federal law; and the ratio of expenditures per pupil directly attributable to students enrolled in the professional school as compared to expenditures per pupil calculated as to students enrolled in the institution as a whole.

(3) For graduate schools, defined for the purposes of this section as academic programs leading to advanced degrees (masters or doctorates of philosophy in fields for which bachelor's degree programs are available) and for which an undergraduate degree is a general prerequisite, the institution shall report the following as available and applicable: Average scores of beginning students and transfer students on standardized entrance examinations; number and percentage of student body receiving tuition fee waivers; number, percentage and dollar value of tuition fee waivers categorized by whether the recipient is a resident or nonresident of this state; the number of degrees granted; the graduation or completion rate as
may be defined by federal law or regulation for the
student body as a whole; the rate at which individuals
who complete or graduate from the program of an
institution pass applicable licensure or certification
examinations required for employment; and the total
number of students in each program, including the
percentage of those students who are state residents, the
percentage of students who are nonresidents of the state,
the percentage of students who are women and the
percentage of students who are minorities as the term is
defined by federal law.

(4) In addition to any and all information required by
subdivision (2) of this subsection, each health sciences
school shall assist the vice chancellor for health sciences
in providing information for the institutional and
statewide report cards, which shall include reports on
the following:

(A) Information on graduates, including, but not
limited to, placement of interns and residents, retention
rates in the state, retention rates in undeserved areas as
determined by the division of health, the percentage
practicing in primary care in this state to be defined as
family medicine, internal medicine, pediatrics and
obstetrics/gynecology, and other information pertinent
to health sciences education as it relates to health care
delivery in this state such as recruitment programs to
attract health care providers to West Virginia; reasons
obtained from graduate surveys as to why health care
graduates are leaving West Virginia; programs developed
to direct graduates into primary care practices and
specialty shortage areas in this state; and ways in which
the health sciences schools intend to assist in meeting the
projected health care needs of this state, including
specialty and subspecialty health care professional needs
and where such needs are expected to arise, as those
needs are defined by the division of health or such other
state agency as the division of health may deem appro-
priate;
(B) Contractual and financial arrangements between the health sciences schools and such nonprofit and for-profit entities receiving moneys from the health sciences schools that the board of trustees determines have a significant impact on the provision of health sciences education in this state, such report to state the entity, the amount of funds paid to such entity and what the payment is for;

(C) The roles and missions of the health sciences schools and evaluation of each school’s performance in accordance with outcome measures developed to evaluate the attainment of the roles, missions and programs developed for each school;

(D) The annual audit of the expenditures of each health sciences school and any audit received by the board from such nonprofit and for-profit entities determined by the board of trustees to have a significant affiliation to any health sciences school;

(E) Findings regarding management and operation of the health sciences schools, such findings to be based on the annual audits and to include proposals for and barriers to improving efficiency and generating cost savings in health sciences education;

(F) The quality of health sciences education, including, but not limited to, a review of any accrediting agency’s report on health sciences education at any state-funded health sciences school;

(G) The clinical health care services and programs offered or delivered by the health sciences schools, including, but not limited to, programs which use existing state facilities for the purposes of clinical rotations;

(H) Matters relating to the funding and budgeting of health sciences education in this state, including, but not limited to, ways in which such budget effectuates the roles and missions of the health sciences schools;
(I) The financing of health sciences education subse-
quently to an annual, comprehensive review thereof, which
report shall include anticipated capital costs, projected
operating expenses, and future growth and recommenda-
tions on the allocation of any state or other tax dedicated
to the funding of health sciences education; and

(J) Such other administrative, budgetary, financial,
educational and other concerns as the board of trustees
may deem necessary or helpful in providing information
about the health sciences schools pursuant to this
subsection.

(5) For all public institutions of higher education in the
state, the following indicators of institutional perfor-
mance in comparison with the aggregate of all other
institutions in the state, region and nation as applicable
and to the extent comparison data are available:
Student-faculty ratio by school; student-administrator
ratio; faculty turnover by school; educational and
general expenditure per full-time equivalent (FTE)
student; expenditure by fund in graphic display; the
academic rank and years of experience of the faculty and
administrators at the institution; percentage minorities
comprise of faculty and major administrative staff;
percentage women comprise of faculty and major
administrative staff; percentage of classes taught by
adjunct or part-time faculty; statistics concerning the
occurrence on campus during the most recent school year
and during the preceding school years for which data are
available of criminal offenses reported to campus
security authorities or local police; and statistics con-
cerning the number of arrests for crimes occurring on
campus during the most recent school year and during
the preceding school years for which data are available.

The statewide report card shall include the data for
each institution for each separately listed applicable
indicator and the aggregate of the data for all institu-
tions under the jurisdiction of the board of trustees of
the university of West Virginia and for all institutions under the jurisdiction of the board of directors of the state college system for each indicator.

The statewide report cards shall be prepared using actual institutional, state, regional and national data as applicable and available indicating the present performance of the individual institutions and the state systems of higher education and shall also include goals and trends for the institutions and the higher education systems. Each governing board as part of its assessment of the individual institutions under its jurisdiction shall include the number and gross dollar amount of grants received for academic research for each institution and a succinct review of research projects including a brief description of each project and the numbers of faculty, graduate and undergraduate students involved in each project. In assessing progress toward meeting goals and in developing trend information, the governing boards shall review report card data in relation to previously adopted board goals, five-year plans, regional and national higher education trends and the resource allocation model.

(d) The higher education central office staff under the direction of the senior administrator shall provide technical assistance to each institution and governing board in data collection and reporting and shall be responsible for assembling the statewide report card from information submitted by each governing board.

Each governing board shall prepare report card information in accordance with the guidelines set forth in this section and rules promulgated hereunder. The statewide report card shall be presented at a regular board meeting of the appropriate governing board subject to applicable notice requirements.

The statewide report cards shall be completed and disseminated with copies to the legislative oversight commission on education accountability prior to the first
268 day of December, one thousand nine hundred ninety-
269 two, and each year thereafter. Statewide report cards
270 shall be based upon information for the current school
271 year or for the most recent school year for which such
272 information is available, in which case such year shall be
273 clearly footnoted.

274 The governing boards shall make copies of both the
275 institutional and statewide report cards available to any
276 individual requesting them.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of
members; vacancies; eligibility for reappoint-
ment; oath of office; removal from office.

1 (a) The board of directors of the state college system
2 shall consist of twenty persons, of whom one shall be the
3 chancellor of the university of West Virginia board of
4 trustees, ex officio, who shall not be entitled to vote; one
5 shall be the state superintendent of schools, ex officio,
6 who shall not be entitled to vote; one shall be the chair
7 of the joint commission for vocational-technical-occupa-
8 tional education, ex officio, who shall not be entitled to
9 vote; one shall be the chairman of the advisory council of
10 students, ex officio, who shall be entitled to vote; one
11 shall be the chairman of the advisory council of faculty,
12 ex officio, who shall be entitled to vote; and one shall be
13 the chairman of the advisory council of classified em-
14 ployees, ex officio, who shall be entitled to vote. The
15 other fourteen directors shall be citizens of the state,
16 appointed by the governor, by and with the advice and
17 consent of the Senate.

18 Each of the directors appointed to the board by the
19 governor shall represent the public interest and shall be
20 especially qualified in the field of higher education by
21 virtue of the person's knowledge, learning, experience or
22 interest in the field. The relative enrollments of bacca-
23 laureate and community and technical students in the
24 state college system shall be considered by the governor
when making such appointments and the governor shall
use his or her best efforts to achieve a balance among the
members who reflect the various interests, goals and
concerns reflected by the relative enrollments.

Except for the ex officio directors, no person shall be
eligible for appointment to membership on the board of
directors who is an officer, employee or member of an
advisory board of any state college or university, an
officer or member of any political party executive
committee, the holder of any other public office or public
employment under the government of this state or any of
its political subdivisions, or an appointee or employee of
the board of trustees or board of directors: Provided,
That if there are no ethical restrictions under state or
federal law, a federal employee may serve as a member
of the board of directors. Of the fourteen directors
appointed by the governor from the public at large, not
more than seven thereof shall belong to the same politi-
cal party and at least two directors of the board shall be
appointed from each congressional district: Provided,
however, That after the effective date of this section, the
governor shall make appointments so that, as soon as
practicable, at least four directors of the board shall be
appointed from each congressional district.

Except as provided in this section, no other person may
be appointed to the board.

(b) The governor shall appoint twelve directors as soon
after the first day of July, one thousand nine hundred
eighty-nine, as is practicable, and the original terms of
all directors shall commence on that date. The terms of
the directors appointed by the governor shall be for
overlapping terms of six years, except, of the original
appointments, four shall be appointed to terms of two
years, four shall be appointed to terms of four years and
four shall be appointed to terms of six years: Provided,
That the governor shall appoint two additional directors
on or before the first day of July, one thousand nine
hundred ninety-five, and their original terms shall
commence on the first day of July, one thousand nine
hundred ninety-five and be for five years. Each subse-
quent appointment which is not for the purpose of filling
a vacancy in an unexpired term shall be appointed to a
term of six years.

The governor shall appoint a director to fill any
vacancy among the twelve directors appointed by the
governor, by and with the advice and consent of the
Senate, which director appointed to fill such vacancy
shall serve for the unexpired term of the vacating
director. The governor shall fill the vacancy within sixty
days of the occurrence of the vacancy.

All directors appointed by the governor shall be
eligible for reappointment: Provided, That a person who
has served as a director or trustee during all or any part
of two consecutive terms shall be ineligible to serve as a
director for a period of three years immediately follow-
ing the second of the two consecutive terms.

The chairman of the advisory council of students, ex
officio; the chairman of the advisory council of faculty,
ex officio; and the chairman of the advisory council of
classified employees, ex officio, shall serve the terms for
which they were elected by their respective advisory
councils. These members shall be eligible to succeed
themselves.

(c) Before exercising any authority or performing any
duties as a director, each director shall qualify as such
by taking and subscribing to the oath of office pre-
scribed by section five, article IV of the constitution of
West Virginia, and the certificate thereof shall be filed
with the secretary of state.

(d) No director appointed by the governor shall be
removed from office by the governor except for official
misconduct, incompetence, neglect of duty or gross
immorality, and then only in the manner prescribed by
law for the removal by the governor of the state elective officers.

§18B-3-3. Additional duties of board of directors.

(a) The board of directors of the state college system shall govern the state college system.

(b) The board of directors shall determine programs to be offered by state institutions of higher education under its jurisdiction, shall clarify the missions of the institutions under its jurisdiction and, in so doing, ensure that Fairmont state and West Virginia institute of technology are given primary responsibility for technical preparation teacher training programs.

(c) The board of directors shall govern state college system community and technical colleges in accordance with the provisions of section three-a of this article.

(d) The board of directors shall adopt a faculty salary program with an overall goal of attaining salaries equal to the average faculty salaries within similar groups of disciplines and program levels at comparable peer institutions within member states of the southern regional education board.

§18B-3-3a. Community and technical college education; establishment; state level governance; formation of districts; college level administration and governance; programs; district consortia; implementation process; and implementation team.

(a) General. — The purpose of this section is to establish community and technical college education that is well articulated with the public schools and four year colleges; that makes maximum use of shared facilities, faculty, staff, equipment and other resources; that encourages traditional and nontraditional students and adult learners to pursue a life-time of learning; that serves as an instrument of economic development; and
that has the independence and flexibility to respond
quickly to changing needs. The respective governing
boards shall provide for community and technical college
education at state institutions of higher education under
their jurisdiction to have the administrative, program-
matic and budgetary control necessary to allow maxi-
mum flexibility and responsiveness to district and
community needs consistent with the goal of sharing
facilities, faculty, staff, equipment and other resources
within and among the districts, the other systems of
public and higher education and other education and
training programs.

(b) State level governance. — The board of directors
and the board of trustees shall jointly employ a vice
chancellor for community and technical college educa-
tion. The vice chancellor for community and technical
college education shall report directly to and provide
assistance to the board of directors and the board of
trustees on matters related to community and technical
college education and shall serve at their will and
pleasure. The vice chancellor for community and
technical college education shall advise, assist and
consult regularly with the administrative heads, institu-
tional boards of advisors, and district consortia commit-
tees of each state institution of higher education in-
volved in community and technical college education.

In appointing members to the institutional boards of
advisors within the state college system pursuant to
section one, article six of this chapter, the board of
directors shall consider the relative distribution of
baccalaureate and community and technical college
enrollments of the respective institutions and shall make
up to three of such appointments from the membership
of district consortia committee on the basis of such
proportional enrollments. All appointments shall be
reflective of the economic, industrial, educational,
community and employment characteristics of the
institution’s region and be geographically dispersed to
the extent practical.

c) Formation of community and technical college districts. — The eleven community and technical college districts shall be comprised of contiguous areas of the state which have similar economic, industrial, educational, community and employment characteristics to facilitate specialization in mission and programming. For the purposes of initial implementation and organization, the districts shall be comprised as follows:

(1) Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel counties;

(2) Wood, Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

(3) Kanawha, Putnam and Clay counties;

(4) Cabell, Mason, Putnam and Wayne counties;

(5) Fayette, Clay, Kanawha, Raleigh and Nicholas counties;

(6) Logan, Boone, Lincoln, McDowell, Mingo, Raleigh and Wyoming counties;

(7) Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh and Summers counties;

(8) Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas, Upshur and Webster counties;

(9) Marion, Doddridge, Harrison, Monongalia, Preston, Randolph, Taylor, Barbour and Tucker counties;

(10) Jefferson, Berkeley, Grant, Hardy and Morgan counties;

(11) Mineral, Grant, Hampshire, Hardy and Pendleton counties.

It is the intent of the Legislature that counties which are listed in more than one district shall be served by the associated community and technical colleges as a coop-
operative service area, or shall be divided as the board of
directors determines. The boundaries of the eleven
districts may be modified from time to time by the board
of directors upon request of the affected community and
technical colleges to better serve the needs within the
districts. Such modifications are not required to follow
county boundaries.

Subject to any restrictions imposed by the board of
directors, the district boundaries shall not be employed
to restrict other state institutions of higher education
from offering programs of strength to meet underserved
needs, consistent with the objective of not duplicating
efforts as determined by the governing boards: Pro-
vided, That nothing herein shall be construed to prevent
state institutions of higher education from offering
courses at off-campus centers or locations now operating
or established in the future which are not duplicative.
Distance learning technology, resource networking and
other cooperative and collaborative efforts shall be used
to the maximum extent prudent and practical to avoid
unnecessary duplication of program development and
delivery.

The main campus of the community and technical
college shall be identified under the name of the commu-
nity and technical college for the district and the district
shall be known as the “community and technical college
district”. In addition, the name of all branches, centers
and programs shall reflect the name of the district.

(d) Allocation of resources and budgets. — All funds for
community and technical college education shall be
appropriated by the Legislature in an institutional
control account under the jurisdiction of the board of
directors. The board of directors shall establish by rule
a formula for the allocation of such funds to the individ-
ual university system and state college system commu-
nity and technical colleges, which rule shall include
uniform guidelines for the allocation and reporting of
student enrollments, costs, reimbursements and revenues for community and technical colleges located on the campus of another state institution of higher education.

(e) College level administration and governance. — The administrative head of a state college system community and technical college shall be the president, in the case of the freestanding community and technical colleges, and the provost of the community and technical college in the case of all other state college system community and technical colleges. Such provost shall be employed by the president of the state institution of higher education upon which the main campus of the community and technical college is located and the provost shall serve at the will and pleasure of the president. The administrative head shall be responsible for coordination and other administrative arrangements with the host institution and other duties assigned pursuant to this section. Nothing in this section shall prohibit a current employee in community and technical education from being employed as a provost. The administrative and business offices and functions of community and technical colleges, except freestanding, shall be consolidated with those of the host institution to the extent practical. To enhance program flexibility and mobility, to enhance program coordination and delivery in the public schools and to take advantage of the expertise and experience of persons in business and industry, community and technical colleges shall make extensive use of combined courses with four-year colleges and universities, employ by contract or other arrangements college and university faculty to teach community and technical college courses, employ qualified public school teachers as adjunct professors and employ qualified business, industry and labor persons as adjunct professors in technical areas.

(f) Community and technical college programs. — The mission of each community and technical college shall include the following programs which may be offered on or off campus, at the work site, in the public schools and
at other locations at times that are convenient for the intended population:

(1) Career and technical education certificate, associate of applied science and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills; occupational development, skill enhancement and career mobility;

(2) Transfer education associate of arts and associate of science degree programs for students whose educational goal is to transfer into a baccalaureate degree program;

(3) Developmental/remedial education courses, tutorials, skills development labs and other services for students who need to improve their skills in mathematics, English, reading, study skills, computers and other basic skill areas;

(4) Work force training and retraining contract education with business and industry to train or retrain employees;

(5) Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure and literacy training; and

(6) Community service workshops, lectures, seminars, clinics, concerts, theatrical performances and other noncredit activities to meet the cultural, civic and personal interests and needs of the community.

All administrative, programmatic and budgetary control over community and technical education within the district shall be vested in the administrative head and the institutional board of advisors of state college system community and technical colleges, subject to rules adopted by the board of directors. The administrative head and institutional board of advisors shall be responsible for the regular review, revision, elimination
and establishment of programs within the district to assure that the needs of the district for community and technical college programs are met. It is the intent of the Legislature that the program review and approval process for community and technical education be separate and distinct from baccalaureate education. The administrative head and institutional board of advisors shall seek assistance from and utilize a district consortia committee in fulfilling this responsibility.

(g) District consortia committee. — The administrative head of each university system and state college system community and technical college shall form a district consortia committee which shall include representatives distributed geographically to the extent practical of the major community college branches, vocational technical centers, comprehensive high schools, four-year colleges and universities, community service or cultural organizations, economic development organizations, business, industry, labor, elected public officials and employment and training programs and offices within the district. The consortia committee shall be chaired by the administrative head or his or her designee and shall advise and assist the administrative head with the following:

(1) Completing a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short and long term work force development needs of the district;

(2) Coordinating efforts with regional labor market information systems that identify the ongoing needs of business and industry, both current and projected, and provide information to assist in an informed program of planning and decisionmaking;

(3) Planning and development of a unified effort to meet the documented work force development needs of the district through individual and cooperative programs, shared facilities, faculty, staff, equipment and other resources and the development and use of distance
learning and other educational technologies;

(4) Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including the planning and implementation of a comprehensive school-to-work transition system that helps students focus on career objectives, builds upon current programs such as high schools that work, tech prep associate degree programs, registered apprenticeships and rural entrepreneurship through action learning and addresses the needs of at-risk students and school dropouts;

(5) Planning and implementation of integrated professional development activities for secondary and post-secondary faculty, staff and administrators and other consortia partners throughout the district;

(6) Ensuring that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialling;

(7) Performance assessment of student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance more rapidly without repeating coursework in which they already possess competency;

(8) Establishing one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training and secure employment and employers to locate available workers;

(9) Increasing the integration of adult literacy, adult basic education, federal job opportunities and basic skills, and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment; and
(10) Establish a single point of contact for employers and potential employers to access education and training programs throughout the district.

(h) Implementation process. — The implementation of community and technical college education as set forth in this article shall be accomplished over a three-year period. Major program elements shall be accomplished within the following time frames:

(1) One thousand nine hundred ninety-five—ninety-six.

(i) Form necessary governance structures and make necessary appointments;

(ii) Form consortia committees and complete a survey of the educational and training needs of the community college district;

(iii) Establish the information necessary to separately budget the community and technical college education for fiscal year one thousand nine hundred ninety-six—ninety-seven, including the rules required pursuant to subsection (d) of this section;

(iv) Establish an ongoing method of providing funding for appropriate staff from the public schools and the community and technical colleges for personnel and other costs related to shared facility projects, including recommendations for any necessary legislative enactments;

(v) Make recommendations to the governor and Legislature as may be necessary.

(2) One thousand nine hundred ninety-six—ninety-seven.

(i) Begin separate budgeting;

(ii) Begin full operations of the community and technical colleges as provided in this article.

(3) One thousand nine hundred ninety-seven—ninety-
eight.

(i) Review and evaluation.

(i) Implementation team. — There is hereby established an implementation team to monitor and oversee implementation of the community and technical college education in accordance with the provisions of this article. The implementation team shall report to the governor and the legislative oversight commission on education accountability no later than the first day of December, in the years one thousand nine hundred ninety-five, one thousand nine hundred ninety-six and one thousand nine hundred ninety-seven on the status of such implementation and any further needs for legislative enactment. The implementation oversight team shall be composed of the secretary of education and the arts, one representative of public education, one representative of community and technical colleges, one representative of four-year colleges, one representative of the private sector, one representative of employment and training programs, one representative of vocational-technical-occupational education, four members of the Senate and four members of the House of Delegates, all appointed by the governor. The secretary of education and the arts shall be responsible for staffing the implementation oversight team utilizing existing personnel, equipment and offices of the affected agencies.

§18B-3-4. Community and technical colleges; tuition and fees; memoranda of agreements; and joint administrative boards.

(a) Effective the first day of July, one thousand nine hundred eighty-nine, the following institutions are hereby established or continued as freestanding community and technical colleges: Southern West Virginia community and technical college and West Virginia northern community and technical college. Such freestanding community and technical colleges shall not be operated as branches or off-campus locations of any
other state institution of higher education.

(b) The directors, in accordance with article two-b, chapter eighteen of this code, shall cooperate with the state board of education, the state council of vocational-technical education and the joint commission for vocational-technical-occupational education to develop a comprehensive system of academic, vocational, technical and career development programs to serve the educational needs of adults for college preparatory, two-year associate degree, continuing education, work force training and retraining and other such programs within the state. The board of directors shall delegate such authority as they deem prudent to the community and technical college presidents, provosts or other administrative heads, to work with district consortia committees to assess the work force needs of business and industry within their service areas, regularly review and revise curricula to ensure that the work force needs are met, develop new programs and phase out or modify existing programs as appropriate to meet such needs, provide professional development opportunities for faculty and staff, establish cooperative programs and student internships with business and industry, streamline procedures for designing and implementing customized training programs and to accomplish such other complements of a quality comprehensive community and technical college. In developing such a system, the various educational agencies shall establish cooperative relationships to utilize existing community and technical colleges and programs, public school vocational centers and other existing facilities to serve the identified needs within the community and technical college district.

(c) A separate division of community and technical colleges shall be established under the board of directors. Unless approved by the board, programs at community and technical colleges shall be two years or less in duration.
(d) The board of directors may fix tuition and establish and set such other fees to be charged students at state college system community and technical colleges as it deems appropriate, and shall pay such tuition and fees collected into a revolving fund for the partial or full support, including the making of capital improvements, of any state college system community and technical college. Funds collected at any such community and technical college may be used only for the benefit of that community and technical college. The board of directors may also establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes. Such special fees shall be paid into special funds in the state treasury and used only for the purposes for which collected.

(e) The board of directors may allocate funds from the appropriations for the state college system for the operation of individual university system and state college system community and technical colleges in accordance with rules adopted by the board pursuant to the provisions of subsection (d), section three-a of this article, and for the capital improvement of any state college system community and technical college. The board of directors may accept federal grants and funds from county boards of education, other local governmental bodies, corporations or persons. The directors may enter into memoranda of agreements with such governmental bodies, corporations or persons for the use or acceptance of local facilities and/or the acceptance of grants or contributions toward the cost of the acquisition or construction of such facilities. Such local governmental bodies may convey capital improvements, or lease the same without monetary consideration, to the board of directors for the use by the community and technical college and the board of directors may accept such facilities, or the use or lease thereof, and grants or contributions for such purposes from such governmental
bodies, the federal government or any corporation or
person.

(f) To facilitate the administration, operation and
financing of programs in shared facilities of the state
college system or the university of West Virginia system
and a county board or boards of education, the affected
governing board and county board or boards of educa-
tion may appoint a joint administrative board consisting
of such membership and possessing such delegated
authorities as the respective boards deem necessary and
prudent for the operation of such shared facilities. Such
joint administrative board may consist of five members
to be appointed as follows: The county board of educa-
tion shall appoint two members in consultation with the
county superintendent of schools; the appropriate
governing board shall appoint two members in consulta-
tion with the president of the affected state institution of
higher education; and one at-large member, who shall
chair the joint administrative board, shall be appointed
by mutual agreement of the respective boards in consul-
tation with their superintendent and president. When
two or more county boards of education are participating
in such shared program, such county board appoint-
ments shall be made by mutual agreement of each of the
participating county boards in consultation with their
respective superintendents. Members shall serve for
staggered terms of three years. With respect to initial
appointments, one member appointed by the county
board or boards of education and one member appointed
by the governing board shall serve for one year, one
member appointed by the county board or boards of
education and one member appointed by the governing
board shall serve for two years and the at-large member
shall serve for three years. Subsequent appointments
shall be for three years. A member may not serve more
than two consecutive terms. Members shall be reim-
bursed for reasonable and necessary expenses actually
incurred in the performance of their duties as board
122 members from funds allocated to the shared facility,
123 except that members who are employed by a board of
124 education, governing board or state institution of higher
125 education shall be reimbursed by their employer.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

1  (a) At its annual meeting in June of each year, each
governing board shall elect from its members appointed
by the governor a president and such other officers as it
may deem necessary or desirable: Provided, That the
initial annual meeting shall be held during July, one
thousand nine hundred eighty-nine. The president and
such other officers shall be elected for a one-year term
commencing on the first day of July following the annual
meeting and ending on the thirtieth day of June of the
following year. The president of the board shall serve no
more than two consecutive terms.

12  (b) Each governing board shall employ a chancellor
who shall serve at the will and pleasure of the employing
board and shall assist the governing board in the perform-
ance of its duties and responsibilities. No chancellor
may hold or retain any other administrative position
within the system of higher education while employed as
chancellor. Each chancellor is responsible for carrying
out the directives of the governing board by which
employed and shall work with such board in developing
policy options. For the purpose of developing or evaluat-
ing policy options, the chancellors may request the
assistance of the presidents and other administrative
heads of the institutions under their jurisdiction and
their staffs. The respective chancellors shall jointly
agree to and shall hire one senior administrator who
shall serve at their will and pleasure in accordance with
section two of this article.

29  (c) The director of health shall serve as the vice chan-
cellor for health affairs, who shall coordinate the West
Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine. The vice chancellor for health affairs shall conduct a special study of the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine to determine the role and mission of said institutions in the reorganized system of higher education in the state. The special study shall include, but is not limited to, coordinating medical education, training and delivery of health services in the state; preparing nurse-midwives, nurse practitioners, medical technologists and other members of the allied health professions; and providing for rural health care. The vice chancellor shall submit a report on said study to the governor and to the Legislature by the first day of December, one thousand nine hundred eighty-nine.

(d) Suitable offices for the senior administrator and other staff shall be provided in Charleston.

(e) The governing boards shall jointly employ a vice chancellor for instructional technology to establish a plan and funding recommendations for development and implementation of a multifaceted instructional technology strategy that includes, but is not limited to, a goal that every full-time freshman student beginning in the fall semester, one thousand nine hundred ninety-six, and thereafter, and as many other students and faculty as possible will own or lease a computer, and alternatively that computers be available for part-time students through on-site labs; integrating computer usage into all course work; involving faculty in the development and use of technology-based instruction and instructional courseware for community and technical colleges, colleges and universities; and expanding distance learning and technology networks throughout the higher education systems to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort, increase the delivery of
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69 instruction to nontraditional students, provide services
70 to business and industry, and increase the management
71 capabilities of the higher education system. The plan
72 shall be submitted to the Legislature on or before the
73 first day of January, one thousand nine hundred ninety-
74 six.

75 The vice chancellor for instructional technology shall
76 supervise the administration, oversight, coordination and
77 implementation of such plan, or portions thereof, subject
78 to the availability of funds and the direction of the
79 governing boards. In addition, the vice chancellor shall
80 review all technology related matters within the depart-
81 ment of education and the arts and suggest appropriate
82 integration and compatibility of the technology systems
83 within the department and the institutions governed by
84 the board.

85 (f) The governing boards shall jointly employ a vice
86 chancellor for community and technical education
87 pursuant to the terms of section three-a, article three of
88 this chapter.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-2b. Resource allocation policy relief.

1 For fiscal year one thousand nine hundred ninety-six
2 only, the board of directors of the state college system
3 may use all special priority funds, as identified and
4 distributed by legislative rule title 131, series 5, effective
5 the twenty-eighth day of March, one thousand nine
6 hundred ninety-four, to help relieve state institutions of
7 higher education of the financial obligation created by
8 the requirement that each institution increase faculty
9 salaries pursuant to section three-a, article eight of this
10 chapter, and increase classified employee salaries
11 pursuant to section eleven, article nine of this chapter.

§18B-5-2c. Review of resource allocation model and policies.

1 The Legislature hereby finds that the establishment
2 and development of community and technical education,
the restructuring and refocusing of institutional missions
and programs to respond to change and the necessity of
achieving the goals established for post-secondary
education by the citizens of West Virginia will require a
review of the methods for distributing higher education
funding.

It is the intent of the Legislature that increased state
appropriated funds shall be allocated using the resource
allocation model and resource allocation policies in
effect at the time of each appropriation. Given the
changes of institutional missions, leadership, resources
and programs as well as the establishment of targets and
goals for faculty and staff salaries, the Legislature
recognizes the need for a comprehensive review of the
resource allocation model and resource allocation
policies. The governing boards shall review and recom-
mend changes to the resource allocation model and
resource allocation policies contained in article five of
this chapter. The governing boards shall submit a
written report describing this review and the recom-
mended changes to the legislative oversight commission
on education accountability by the first day of Decem-
ber, one thousand nine hundred ninety-five.

§18B-5-4. Purchase or acquisition of materials, supplies,
equipment and printing.

(a) Each governing board, through the senior adminis-
trator, shall purchase or acquire all materials, supplies,
equipment and printing required for that board, and the
state institutions of higher education under its jurisdic-
tion. The governing boards shall adopt rules governing
and controlling acquisitions and purchases in accor-
dance with the provisions of this section. Such rules
shall assure that the governing board: (1) Shall not
preclude any person from participating and making sales
thereof to the board except as otherwise provided in
section five of this article: Provided, That the providing
of consultant services such as strategic planning services
will not preclude or inhibit the governing boards from
considering any qualified bid or response for delivery of
a product or a commodity because of the rendering of
those consultant services; (2) shall establish and pre-
scribe specifications, in all proper cases, for materials,
supplies, equipment and printing to be purchased; (3)
shall adopt and prescribe such purchase order, requisi-
tion or other forms as may be required; (4) shall negoti-
ate for and make purchases and acquisitions in such
quantities, at such times and under contract, in the open
market or through other accepted methods of govern-
mental purchasing as may be practicable in accordance
with general law; (5) shall advertise for bids on all
purchases exceeding fifteen thousand dollars, to pur-
chase by means of sealed bids and competitive bidding
or to effect advantageous purchases through other
accepted governmental methods and practices: Pro-
vided, however, That for printing services, bids shall be
advertised by written notification of such bids to any
print shop, affiliated with an institution of higher
education and operated by classified employees, on all
purchases exceeding five thousand dollars; (6) shall post
notices of all acquisitions and purchases for which
competitive bids are being solicited in the purchasing
office of the specified institution involved in the pur-
chase, at least two weeks prior to making such purchases
and ensure that the notice is available to the public
during business hours; (7) shall provide for purchasing in
the open market; (8) shall make provision for vendor
notification of bid solicitation and emergency purchas-
ing; and (9) provide that competitive bids shall not be
required for purchases of one thousand dollars or less.

(b) Each governing board, through the senior adminis-
trator may issue a check in advance to a company
supplying postage meters for postage used by that board
and by the state institutions of higher education under
its jurisdiction.

(c) When a purchase is to be made by bid, any or all
bids may be rejected. However, all purchases based on
advertised bid requests shall be awarded to the lowest
responsible bidder taking into consideration the quali-
ties of the articles to be supplied, their conformity with
specifications, their suitability to the requirements of the
governing boards and delivery terms: Provided, That the
preference for resident vendors as provided in section
thirty-seven, article three, chapter five-a of this code
shall apply to the competitive bids made pursuant to this
section.

(d) The governing boards shall maintain a purchase
file, which shall be a public record and open for public
inspection. After the award of the order or contract, the
governing boards shall indicate upon the successful bid
that it was the successful bid, and shall further indicate
why bids are rejected and, if the mathematical low
vendor is not awarded the order or contract, the reason
therefor. No records in the purchase file shall be de-
destroyed without the written consent of the legislative
auditor. Those files in which the original documentation
has been held for at least one year and in which the
original documents have been reproduced and archived
on microfilm or other equivalent method of duplication
may be destroyed without the written consent of the
legislative auditor. All files, no matter the storage
method, shall be open for inspection by the legislative
auditor upon request.

(e) The governing boards shall also adopt rules to
 prescribe qualifications to be met by any person who is
to be employed as a buyer pursuant to this section.
These rules shall require that no person shall be em-
ployed as a buyer unless that person, at the time of
employment, either is: (1) A graduate of an accredited
college or university; or (2) has at least four years’
experience in purchasing for any unit of government or
for any business, commercial or industrial enterprise.
Any person making purchases and acquisitions pursuant
to this section shall execute a bond in the penalty of fifty
thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with sections four through eight of this article and the rules of the governing boards. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond or bonds shall be filed with the secretary of state. The cost of any such bond or bonds shall be paid from funds appropriated to the applicable governing board.

(f) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code, relating to expenditure schedules and quarterly allotments of funds.

(g) The governing boards may make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for the board, and the auditor shall draw a warrant upon the treasurer for such accounts; and all such advance allowance accounts shall be accounted for by the applicable governing board once every thirty days or more often if required by the state auditor. Such authority shall not be delegated to any state institution under the control and supervision of the board.

(h) Contracts entered into pursuant to this section shall be signed by the applicable governing board in the name of the state and shall be approved as to form by the attorney general: Provided, That a contract or a change order for that contract which in total does not exceed fifteen thousand dollars and which uses terms and conditions or standardized forms previously approved by the attorney general and does not make substantive
changes in the terms and conditions of the contract does not require approval by the attorney general: Provided, however, That the attorney general shall make a list of those changes which he or she deems to be substantive and the list, and any changes thereto, shall be published in the state register. A contract that exceeds fifteen thousand dollars shall be filed with the state auditor: Provided further, That upon request, the governing boards shall make all contracts available for inspection by the state auditor. The governing board shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract. If the governing board purchases or contracts for materials, supplies, equipment and printing contrary to the provisions of sections four through seven of this article or the rules pursuant thereto, such purchase or contract shall be void and of no effect.

(i) Either governing board may request the director of purchases to make available, from time to time, the facilities and services of that department to the board in the purchase and acquisition of materials, supplies, equipment and printing, and the director of purchases shall cooperate with that governing board in all such purchases and acquisitions upon such request.

(j) Each governing board shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies and equipment entered into by that governing board. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board and agreeing that it will be bound by such terms and conditions as that governing board may prescribe, and that it will be responsible for payment directly to the vendor under each purchase contract.
(k) Notwithstanding any other provision of this code to the contrary, the governing boards may make purchases from the federal government or from federal government contracts if the materials, supplies, equipment or printing to be purchased is available from the federal government or from a federal contract and purchasing from the federal government or from a federal government contract would be the most financially advantageous manner of making the purchase.

(l) An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards shall be responsible for paying the cost of the audit from funds appropriated to the governing boards.

(m) The governing boards shall require each institution under their respective jurisdiction to notify and inform every vendor doing business with that institution of the provisions of section fifty-four, article three, section five-a of this code, also known as the "Prompt Pay Act of 1990".

(n) Consultant services, such as strategic planning services, shall not preclude or inhibit the governing boards from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

(a) Every person, firm or corporation selling or offering to sell to the governing boards, upon competitive bids or otherwise, any materials, equipment or supplies in excess of fifteen thousand dollars shall comply with all of the provisions of section twelve, article three, chapter five-a of this code and shall file with the director of the purchasing division of the state of West Virginia the
affidavit required herein: Provided, That every such
person, firm or corporation who is presently in compli-
ance with said section shall not be required to requalify
thereunder to be able to transact business with the
governing boards.

(b) Any person, firm or corporation failing or refusing
to comply with said statute as herein required shall be
ineligible to sell or offer to sell commodities or printing
to the governing boards as hereinafter set forth: Pro-
vided, That any person suspended under the provisions
of section thirty-nine, of said article three, shall not be
eligible to sell or offer to sell commodities or printing to
the governing boards: Provided, however, That the
governing boards shall have the power and authority to
suspend, for a period not to exceed one year, the right
and privilege of a person to bid on purchases of the
governing boards when there is reason to believe that
such person has violated any of the provisions in sections
four through seven of this article or the rules of the
governing boards pursuant thereto. Every person whose
right to bid has been so suspended shall be notified
thereof by a letter posted by registered mail containing
the reason for such suspension and shall have the right
to have the appropriate governing board's action re-
viewed in accordance with section forty, article three,
chapter five-a of this code.

§18B-5-6. Other code provisions relating to purchasing not
controlling; exceptions; criminal provisions and
penalties; financial interest of governing
boards, etc.; receiving anything of value from
interested party and penalties therefor; appli-
cation of bribery statute.

The provisions of article three, chapter five-a of this
code shall not control or govern the purchase, acquisi-
tion or other disposition of any equipment, materials,
supplies or printing by the governing boards, except as
provided in sections four through seven of this article:
Provided, That sections twenty-nine, thirty and thirty-one, article three of said chapter five-a shall apply to all purchasing activities of the governing boards.

Neither the governing boards, nor any employee of the governing boards, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the governing boards nor any employee of said boards shall accept or receive directly or indirectly from any person, firm or corporation, known by the governing boards or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.

A person who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both imprisoned and fined, in the discretion of the court. Provided, That any person who violates any of such provisions by receiving money or other thing of value under circumstances constituting the crime of bribery under the provisions of section three, article five-a, chapter sixty-one of this code, shall, upon conviction of bribery, be punished as provided in section nine of said article.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.

The governing boards shall dispose of obsolete and unusable equipment, surplus supplies and other unneeded materials, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The governing boards shall
adopt rules governing and controlling the disposition of
all such equipment, supplies and materials. At least ten
days prior to the disposition, the governing boards shall
advertise, by newspaper publication as a Class II legal
advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, in the
county in which the equipment, supplies and materials
are located the availability or sales of such disposable
equipment, supplies and materials and may sell the
disposable equipment, supplies and materials, in whole
or in part, at public auction or by sealed bid, or may
transfer, exchange or trade same to other governmental
agencies or institutions (if by exchange or trade, then
without advertising), in whole or in part, as sound
business practices may warrant under existing circum-
stances and conditions.

§18B-5-8. Report card on West Virginia business.

The governing boards shall make an annual report to
the finance committees of the House of Delegates and the
Senate regarding the entities with which the governing
boards contracted in the previous year. This report shall
be submitted on or before the fifteenth day of January of
each year and shall be cumulative in nature. The report
shall include, but not be limited to, information regard-
ing the number of out-of-state entities with which the
governing board contracted, the number of in-state firms
with which the governing board contracted, the dollar
amount of each contract; the equipment, commodity or
service for which the contract was let; the governing
board's recommendations, if any, on the manner in
which the purchasing procedures could be improved.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors.

(a) There shall be established at each state institution
of higher education, hereinafter referred to as the
"institution", excluding centers and branches thereof, an
institutional board of advisors. The board of advisors
shall consist of eleven members, including an administrative officer of the institution appointed by the president of the institution; a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and, appointed by the appropriate governing board, seven lay citizens of the state who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of its population and fields of study, including at least two alumni of the institution. Of the seven lay citizen members, no more than four may be of the same political party.

The administrative officer and student member shall serve for a term of one year; the faculty member and the classified staff member shall serve for a term of two years and the seven lay citizen members shall serve terms of four years each. All members, except the administrative officer, shall be eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled within sixty days of the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term.

Each board of advisors shall hold a regular meeting at least quarterly, commencing in July of each year. Additional meetings may be held upon the call of the chairman, president of the institution or upon the written request of at least four members. A majority of the members shall constitute a quorum for conducting the business of the board of advisors.

(b) One of the seven lay citizen members shall be
elected as chairman by the board of advisors in July of each year: Provided, That no member shall serve as chairman for more than two consecutive years at a time.

The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the board of advisors and the institution under this section shall be paid from funds allocated to the institution for such purpose.

(c) The board of advisors shall review, prior to the submission by the president to its governing board, all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it deems proper. Such written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include such comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(d) The board of advisors shall review, prior to their implementation by the president, all proposals regarding institution-wide personnel policies. The board of advisors may comment on such proposals in writing.

(e) The board of advisors shall provide advice and assistance to the president in establishing closer connections between higher education and business, labor,
government, community and economic development
organizations to give students greater opportunities to
experience the world of work, such as business and
community service internships, apprenticeships and
cooperative programs; to communicate better and serve
the current work force and work force development
needs of their service area, including the needs of
nontraditional students for college-level skills upgrading
and retraining and the needs of employers for specific
programs of limited duration; and to assess the perfor-
mance of the institution's graduates and assist in job
placement. The administrative officer of the institution
serving on the advisory council may be assigned the
responsibility for coordinating the institution's activities
related to economic development.

(f) Upon the occurrence of a vacancy in the office of
president of the institution, the board of advisors shall
serve as a search and screening committee for candidates
to fill the vacancy under guidelines established by its
governing board. When serving as a search and screen-
ing committee, the board of advisors and its governing
board are each authorized to appoint up to three addi-
tional persons to serve on the committee as long as the
search and screening process is in effect. The three
additional appointees of the board of advisors shall be
faculty members of the institution. Only for the pur-
poses of the search and screening process, such addi-
tional members shall possess the same powers and rights
as the regular members of the board of advisors, includ-
ing reimbursement for all reasonable and necessary
expenses actually incurred. Following the search and
screening process, the committee shall submit the names
of at least three candidates to the governing board for
consideration and appointment. If the governing board
rejects all candidates so submitted, the committee shall
submit the names of at least three additional candidates,
and this process shall be repeated until the governing
board appoints one of the candidates so submitted. The
SECTION 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

(a) Definitions for terms used in this section shall be in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, shall accumulate to a minimum total of one thousand forty hours during a calendar year and extend over at least nine months of a calendar year: Provided, That this section shall also apply for one year to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply.

(b) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution must demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a
position in a lower job class, such employee shall retain all rights of recall hereinafter provided. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classification(s) in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list shall not forfeit the right to recall by the institution if compelling reasons require such employee to refuse an offer of reemployment by the institution.

The institution shall be required to notify all employees maintaining active listings on the preferred recall list of all position openings that from time to time exist. Such notice shall be sent by certified mail to the last known address of the employee. It shall be the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(d) A nonexempt classified employee, including a nonexempt employee who has not accumulated a mini-
mum total of one thousand forty hours during the
calendar year or whose contract does not extend over at
least nine months of a calendar year, who meets the
minimum qualifications for a job opening at the institu-
tion where the employee is currently employed, whether
the job be a lateral transfer or a promotion, and applies
for same shall be transferred or promoted before a new
person is hired unless such hiring is affected by man-
dates in affirmative action plans or the requirements of
Public Law 101-336, the Americans with Disabilities
Act. If more than one qualified, nonexempt classified
employee applies, the best-qualified nonexempt classi-
fied employee shall be awarded the position. In in-
stances where such classified employees are equally
qualified, the nonexempt classified employee with the
greatest amount of continuous seniority at that state
institution of higher education shall be awarded the
position. A nonexempt classified employee is one to
whom the provisions of the federal Fair Labor Standards
Act, as amended, apply.

§18B-7-11. Compensatory time off in lieu of overtime; writ-
ten agreement; other conditions.

(a) Notwithstanding any other provision of this code to
the contrary, employees of the governing boards may
receive in lieu of overtime compensation, compensatory
time off at a rate not less than one and one-half hours for
each hour of employment. Said employees may receive
compensatory time only pursuant to written agreements
arrived at between the employer and the employee
before the performance of the work, and recorded in the
employer's record of hours worked, and if the employee
has not accrued compensatory time in excess of the
limits prescribed herein. Any written agreement may be
modified at the request of either the employer or em-
ployee, but under no circumstances shall changes in the
agreement deny an employee compensatory time hereto-
fore acquired.
(b) An employee may accrue up to four hundred eighty hours of compensatory time if the employee’s work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work for the governing board may accrue up to two hundred forty hours of compensatory time. Any such employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may be, shall, for additional overtime hours of work, be paid overtime compensation. If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee received such payment.

(c) An employee who has accrued compensatory time off pursuant to this section, shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than:

(1) The average regular rate received by such employee during the first three years of the employee’s employment; or

(2) The final regular rate received by such employee, whichever is higher.

(d) An employee of the governing boards who has accrued compensatory time off authorized to be provided under this section, and who has requested the use of compensatory time, shall be permitted by the employee’s employer to use such time within a reasonable time after making the request if the use of the compensatory time does not unduly disrupt the operation of the employing agency. Compensatory time must be used within one year from the time it is accrued.

(e) For purposes of this section, the terms “compensatory time” and “compensatory time off” mean hours during which the employee is not working, which are not counted as hours worked toward during the applicable
52 work week or other work period for purposes of overtime
53 compensation, and for which the employee is compen-
54 sated at the employee’s regular rate.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFI-
CATION SYSTEM.


1 As used in this article:

2 (a) “Classified employee or employee” means any
3 regular full-time or regular part-time employee of a
4 governing board, including all employees of the West
5 Virginia network for educational telecomputing and
6 beginning the first day of July, one thousand nine
7 hundred ninety, includes employees at the central office
8 of the governing boards, who hold a position that is
9 assigned a particular job title and pay grade in accord-
10 ance with the personnel classification system estab-
11 lished by the appropriate governing board and shall
12 include all employees of the West Virginia network for
13 educational telecomputing;

14 (b) “Nonclassified employee” means an individual who
15 is responsible for policy formation at the department or
16 institutional level or reports directly to the president:
17 Provided, That the percentage of personnel placed in the
18 category of “nonclassified” at any given institution shall
19 not exceed ten percent of the total number of employees
20 of that institution who are eligible for membership in
21 any state retirement system of the state of West Virginia
22 or other retirement plan authorized by the state. Final
23 approval of such placement shall be with the appropriate
24 governing board;

25 (c) “Job description” means the specific listing of
26 duties and responsibilities as determined by the appro-
27 priate governing board and associated with a particular
28 job title;

29 (d) “Job title” means the name of the position or job as
defined by the appropriate governing board;

(e) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions in accordance with rules established by the appropriate governing board;

(f) "Pay grade" means the number assigned by the appropriate governing board to a particular job title and refers to the vertical column heading of the salary schedule established in section three of this article;

(g) "Personnel classification system" means the process of job categorization adopted by the appropriate governing board by which job title, job description, pay grade and placement on the salary schedule are determined;

(h) "Salary" means the amount of compensation paid through the state treasury per annum to a classified employee;

(i) "Schedule" or "salary schedule" means the grid of annual salary figures established in section three of this article; and

(j) "Years of experience" means the number of years a person has been an employee of the state of West Virginia and refers to the horizontal column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule pursuant to said section, employment for nine months or more shall equal one year of experience, but no classified employee may accrue more than one year of experience during any given fiscal year. Employment for less than full time or less than nine months during any fiscal year shall be prorated. For the purpose of determining the amount of annual salary increase pursuant to subsection (b), section five of this article, employment for less than twelve months during any fiscal year shall be prorated. In accordance with rules established by the appropriate governing board, a classified employee may
be granted additional years of experience not to exceed
the actual number of years of prior, relevant work or
experience at accredited institutions of higher education
other than state institutions of higher education.

§18B-9-6. Biennial review of equitable system of job classifi-
cations.

1 The secretary of education and the arts shall, on or
2 before the first day of July, one thousand nine hundred
3 ninety-six, conduct a review of the progress made on
4 implementation of the equitable system of job classifica-
tions established by board rule pursuant to the provi-
sions of section four of this article. A similar review
shall be conducted biennially thereafter until the secre-
tary determines that the goals of the rule establishing the
system have been achieved.

§18B-9-12. Probationary employees.

1 Each full-time classified employee hired by the gov-
erning boards shall serve an initial six-month probation-
ary period. At the end of said probationary period the
employee shall receive a written evaluation of his or her
performance. The employee’s supervisor shall meet with
the employee and explain the contents of said evaluation
and whether the employee is being offered regular
employment.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITU-
ITIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at educational
institutions; refund of fees.

1 (a) Each governing board shall fix tuition and other
fees for each school term for the different classes or
categories of students enrolling at each state institution
of higher education under its jurisdiction and may
include among such fees any one or more of the follow-
ing: (1) Health service fees; (2) infirmary fees; (3) student
activities, recreational, athletic and extracurricular fees,
which said fees may be used to finance a student’s
9 attorney to perform legal services for students in civil
10 matters at such institutions: Provided, That such legal
11 services shall be limited to only those types of cases,
12 programs or services approved by the administrative
13 head of such institution where such legal services are to
14 be performed; and (4) graduate center fees and branch
15 college fees, or either, if the establishment and opera-
16 tions of graduate centers or branch colleges are other-
17 wise authorized by law. All fees collected at any gradu-
18 ate center or at any branch college shall be paid into
19 special funds and shall be used solely for the mainte-
20 nance and operation of the graduate center or branch
21 college at which they were collected: Provided, however,
22 That the governing boards shall use the median of the
23 average tuition and required fees at similarly classified
24 institutions in member states of the southern regional
25 education board as a goal in establishing tuition and
26 required fee levels for residents at state institutions of
27 higher education under their jurisdiction: Provided
28 further, That the governing boards shall use the actual
29 instructional cost as the same shall be determined in
30 accordance with board rule, in establishing nonresident
31 undergraduate fees, with the goal of having tuition and
32 fees cover the actual cost by fiscal year one thousand
33 nine hundred ninety-six: And provided further, That
34 students enrolled in undergraduate courses offered at
35 off-campus locations shall pay an off-campus instruction
36 fee and shall not pay the athletic fee and the student
37 activity fee. The off-campus instruction fee shall be used
38 solely for the support of off-campus courses offered by
39 the institution. Off-campus locations for each institu-
40 tion shall be defined by the appropriate governing board.
41 The schedule of all fees, and any changes therein, shall
42 be entered in the minutes of the meeting of the appropri-
43 ate governing board, and the board shall file with the
44 legislative auditor a certified copy of such schedule and
45 changes.

46 (b) In addition to the fees mentioned in the preceding
paragraph, each governing board may impose and collect
a student union building fee. All such building fees
collected at an institution shall be paid into a special
student union building fund for such institution, which
is hereby created in the state treasury, and shall be used
only for the construction, operation and maintenance of
a student union building or a combination student union
and dining hall building or for the payment of the
principal of and interest on any bond issued to finance
part or all of the construction of a student union building
or a combination student union and dining hall building
or the renovation of an existing structure for use as a
student union building or a combination student union
and dining hall building, all as more fully provided in
section ten of this article. Any moneys in such funds not
immediately needed for such purposes may be invested
in any such bonds or other securities as are now or
hereafter authorized as proper investments for state
funds.

(c) The boards shall establish the rates to be charged
full-time students enrolled during a regular academic
term. For fee purposes a full-time undergraduate
student shall be one enrolled for twelve or more credit
hours in a regular term, and a full-time graduate student
shall be one enrolled for nine or more credit hours in a
regular term. Undergraduate students taking fewer than
twelve credit hours in a regular term shall have their fees
reduced pro rata based upon one twelfth of the full-time
rate per credit hour, and graduate students taking fewer
than nine credit hours in a regular term shall have their
fees reduced pro rata based upon one ninth of the full-
time rate per credit hour.

Fees for students enrolled in summer terms or other
nontraditional time periods shall be prorated based upon
the number of credit hours for which the student enrolls
in accordance with the above provisions.

(d) All fees are due and payable by the student upon
enrollment and registration for classes except as provided for in this subsection:

(1) The governing boards shall permit fee payments to be made in up to three installments over the course of the academic term. The payments shall include interest at a rate set by the governing board: Provided, That all fees must be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards shall also authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees: Provided, That the governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that any student was adversely, financially affected by a legal work stoppage that commenced on or after the first day of January, one thousand nine hundred ninety-three, it may allow the student an additional six months to pay the fees for any academic term: Provided, That the governing board shall determine if a student was adversely, financially affected on a case-by-case basis.

(e) The governing boards shall establish legislative rules regarding the refund of any fees upon the voluntary or involuntary withdrawal from classes of any student which rules shall comply with all applicable state and federal laws and shall be uniformly applied throughout the systems.

(f) The governing boards shall establish legislative rules using the fee structure or other penalties to provide a disincentive for students to register for classes in excess of the typical full-time course load, that being from twelve to eighteen credit hours for an undergraduate student and from nine to fifteen credit hours for a graduate student, and then to withdraw from such
excess classes after the semester has begun.

(g) In addition to the fees mentioned in the preceding subsections, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group: Provided, That the students at such institution demonstrate support for the increased fee in a manner and method established by that institution’s elected student government: Provided, however, That such fees shall not be used to finance litigation against the institution.

(h) Any proposed fee increase which would become effective on or after the first day of July, one thousand nine hundred ninety-seven, which has been approved by the governing boards, shall then be submitted by the governing boards to the secretary of education and the arts for approval. Such approval shall only be granted upon the certification that such institution requesting a fee increase is in compliance with the strategic plans required to be submitted, pursuant to section one-b, article one of this chapter. Notice, in the form of a report, shall be provided by the secretary to the legislative oversight commission on education accountability describing such fee increases and showing of how such increases compare with the average tuition and fees charged at comparable peer institutions in member states of the southern regional education board.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-5. Institute for instructional technology.

The governing boards are hereby authorized to create an institute for instructional technology which shall be located within the higher education central office. The governing boards are hereby authorized to enter into research agreements pursuant to article twelve of this chapter with respect to the institute for instructional technology. The vice chancellor for instructional technology shall perform such functions, tasks and duties as may be prescribed by law and shall share resources with
10 the higher education central office, the state institutions
11 of higher education and other agencies to the extent
12 practical to avoid unnecessary duplication of staff and
13 other administrative efforts.

ARTICLE 14. MISCELLANEOUS.

§18B-14-5. Authorization to sell property generally.

1 Notwithstanding any other provisions of this code to
2 the contrary, the governing boards are hereby authorized
3 and empowered to sell any surplus real property and
4 deposit the net proceeds into a special revenue account
5 in the state treasury to be appropriated by the Legisla-
6 ture for the purchase of additional real property or
7 technology, or for capital improvements at the institu-
8 tion that sold the surplus real property: Provided, That
9 prior to such action the appropriate governing board
10 shall have the property appraised by two licensed
11 appraisers and shall not sell the property for less than
12 the average of the two appraisals: Provided, however,
13 That before such action, the governing boards shall
14 provide notice to the public by a Class II legal advertise-
15 ment as defined in section two, article three, chapter
16 fifty-nine of this code and shall hold a public hearing on
17 the issue.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\[\text{Chairman Senate Committee}\]

\[\text{Chairman House Committee}\]

Originated in the Senate.

In effect from passage.

\[\text{Clerk of the Senate}\]

\[\text{Clerk of the House of Delegates}\]

\[\text{President of the Senate}\]

\[\text{Speaker House of Delegates}\]

The within is approved this the 24th day of March, 1995.

\[\text{Governor}\]