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2001 MAY -2 P 11: 32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 703

(Originating in the Committee
(By Senator on Education)

PASSED April 14, 2001

In Effect July 1, 2001 **Passage**

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Senate Bill No. 703

(Originating in the Committee on Education)

[Passed April 14, 2001; to take effect July 1, 2001.]

AN ACT to repeal article twenty-six-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal articles three-a and three-f, chapter eighteen-b of said code; to repeal sections six and eleven, article nine of said chapter; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and reenact sections one and three, article eleven-c, chapter eighteen of said code; to amend and reenact section four-a, article twenty-three of said chapter; to amend and reenact sections one-a, three and six, article one, chapter eighteen-b of said code; to amend and reenact sections two and six, article one-a of said chapter; to amend and reenact sections four and five, article one-b of said chapter; to amend and reenact sections one and four, article two-a of said chapter; to further amend said chapter by adding thereto two new articles, designated articles two-b and two-c; to amend and reenact sections seven and eight, article three-c of said chapter; to amend and reenact sections four and eight, article five of said chapter; to amend and reenact sections one, two-

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a and four-a, article six of said chapter; to amend and reenact section four, article seven of said chapter; to amend and reenact sections one, two, three, four, five, seven and eight, article nine of said chapter; to amend and reenact sections one and eight, article ten of said chapter; to further amend said chapter by adding thereto a new article, designated article eleven-a; to amend article fourteen of said chapter by adding thereto a new section, designated section five-a; to amend and reenact section four, article five, chapter eighteen-c of said code; to amend and reenact sections one and twelve, article three-a, chapter twenty-nine-a of said code; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to education; public education; post-secondary education; colleges, universities and community and technical colleges; rules for travel and moving expenses; West Virginia university hospital and West Virginia health system generally; clarifying membership on board of directors; higher education employee retirement plans generally; definitions; contribution levels; establishing a standardized retirement policy for all state higher education employees; requiring higher education policy commission to study vendors of retirement products and report to joint committee on pensions and retirement by certain date; establishing legislative intent; goals for post-secondary education; deleting requirement that classified employee salaries be compared to those in peer institutions; administration; transfer of powers, duties, rules, property and obligations; higher education rule making generally; authorizing transfer of property between commission and governing boards; transferring rules to commission; authorizing commission to transfer all rules, except legislative rules, to governing boards; clarifying authority of commission to promulgate rules; requiring rule to guide rule-making activities of governing boards; authorizing commission to reclassify certain legislative rules; prohibiting any requirement that reclassified rules be refiled unless amended; requiring commission to file proposed rules with legislative oversight

commission on education accountability; designating that certain rules may be refiled as procedural or interpretive rules; changing submission date for institutional compacts; authorizing emergency rule and requiring rule on benchmarks and indicators be filed by certain date; setting specific requirements for rule; clarifying procedure for approval of certain graduate education programs; powers and duties of higher education policy commission; setting limits on certain capital projects; authorizing commission to make certain appointments; directing commission to assume oversight of certain private education institutions; requiring the commission to make a determination of feasibility of certain recommendations; authorizing promulgation of rule for personnel matters; authorizing promulgation of joint rules; requiring joint rule on tuition and fee policy; requiring a method to allow participation in selection of certain administrative heads of community and technical colleges; authorizing promulgation of necessary rules for administration of state and federal student aid programs; additional duties of vice chancellor for community and technical college education and work force development; authority of chancellor and higher education policy commission to employ vice chancellor for state colleges; deleting certain restrictions on state colleges and freestanding community and technical colleges; deleting certain requirements relating to rules of governing boards and clarifying their rule making process; clarifying terms of members of institutional boards of governors; clarifying terms of faculty and classified employees on institutional boards of governors; deleting obsolete language; higher education employee grievances generally; directing prospective employee grievances to be filed under different procedure after certain date; definitions; placing certain restrictions on state division of personnel related to higher education employee grievances; West Virginia council for community and technical college education generally; legislative findings; legislative intent; definitions; reconstituting joint commission for vocational-technical-occupational education; membership; eligibility; terms; chairperson;

reimbursement for expenses; powers and duties of West Virginia council for community and technical college education; chief executive officer; creating state advisory committee of community and technical college presidents and provosts; chair of advisory committee; West Virginia community and technical college generally; legislative findings; legislative intent; definitions; requiring commission to review and analyze progress of community and technical colleges; requiring analysis to be based on benchmarks and indicators; requiring commission to determine existence of certain conditions relative to community and technical colleges; providing that insufficient funds is not valid reason for lack of progress; requiring annual report to legislative oversight commission on education accountability; requiring certain determinations by commission; authorizing creation of West Virginia community and technical college; requiring study and report to legislative oversight commission on education accountability by certain date on procedures, findings and determinations necessary prior to creation of college; requiring notification to governor, president of Senate, speaker of House of Delegates and legislative oversight commission on education accountability; requiring commission to certify necessary legislation; providing for transfer of certain powers, duties, property, obligations, etc. from certain governing boards to the governing board of the college; creating office of president of college; providing for governing board of college; powers and duties; providing for acting president; district consortia committees required to participate in certain work force development activities; clarifying mission of Potomac state college of West Virginia university; approval of institutional compacts and expenditure schedules for certain community and technical colleges; verifying progress toward goals by certain community and technical colleges; clarifying status of certain community and technical colleges; clarifying responsibility district of Marshall university community and technical college; providing exceptions to bid process; authorizing lease-purchase arrangements by governing boards with approval

of the commission; directing the commission to make a annual report on business activities of governing boards; clarifying membership and terms for state advisory council of faculty; clarifying membership and terms for state advisory council of classified employees; providing definition for institution of higher education for purposes of selecting members of advisory council of classified employees; clarifying appointments of members of certain advisory boards; clarifying membership on boards of governors and certain statewide advisory councils; deleting obsolete language relating to appeal by probationary faculty member of nonretention decision; higher education personnel classification system generally; clarifying authority of commission relating to classification system; definitions; legislative purposes; assignment to pay grades; job descriptions and titles; critical employees; merit increases; deleting obsolete language; salaries of classified employees generally; classified employees salary not to be reduced; defining equitable compensation; providing certain restrictions on appropriations; updating classified employee salary schedule; equitable system of job classification; rules; providing method for distributing salary increases; salary policies; authority to grant salary in excess of salary established by schedule in certain instances; deleting obsolete language; eliminating biennial review of equitable system of job classifications; eliminating inconsistent language on personnel classification conferences and placement on salary schedule of newly hired classified employees; eliminating institutional salary policies and salary increase authorization; tuition and fees generally; tuition and fee goals; collection of fees; authority of governing boards regarding additional registration fees; special capital improvements funds; terms for issuance of revenue bonds; use of revenue bonds proceeds; state autism training center generally; definitions; powers and duties of board of governors; responsibilities of autism training center; providing for advisory board and trainee teams; authorizing for governing boards to enter into property sales and lease back arrangements; deleting authority of senior administrator to

promulgate rules for West Virginia higher education grant program; higher education rule making; definitions; recommendations by legislative oversight commission on education accountability approving rules; and rules severability.

Be it enacted by the Legislature of West Virginia:

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

article be further amended by adding thereto a new section, designated section nineteen, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

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

1 (a) The governor shall promulgate rules concerning
2 out-of-state travel by state officials and employees, except
3 those in the legislative and judicial branches of the state
4 government and except for the attorney general, auditor,
5 secretary of state, treasurer, board of investments, com-
6 missioner of agriculture and their employees, the higher
7 education policy commission and the higher education
8 governing boards and institutions under their jurisdiction.
9 The Legislature, the supreme court of appeals and the
10 attorney general, auditor, secretary of state, treasurer,
11 board of investments, commissioner of agriculture, the
12 higher education policy commission and the higher
13 education governing boards shall promulgate rules con-
14 cerning out-of-state travel for their respective branches
15 and departments of state government. Copies of such rules
16 shall be filed with the auditor and the secretary of state. It
17 shall be unlawful for the auditor to issue a warrant in
18 payment of any claim for out-of-state travel expenses
19 incurred by a state officer or employee unless such claim
20 meets all the requirements of the rules so filed.

21 (b) Payment for dues or membership in annual or other
22 voluntary organizations shall be made from the proper
23 item or appropriation after an itemized schedule of such
24 organizations, together with the amount of such dues or

25 membership, has been submitted to the budget director
26 and approved by the governor.

27 (c) It shall be lawful for the higher education policy
28 commission or a higher education governing board to
29 authorize the payment of traveling expenses incurred by
30 any person invited to visit the campus of any state institu-
31 tion of higher education or any other facility under control
32 of a higher education governing board or the higher
33 education policy commission to be interviewed concerning
34 his or her possible employment by a higher education
35 governing board, the higher education policy commission
36 or agent thereof.

37 (d) It shall be lawful for the higher education policy
38 commission or a higher education governing board to
39 authorize payment of: (1) All or part of the reasonable
40 expense incurred by a person newly employed by a higher
41 education governing board or the higher education policy
42 commission in moving his or her household furniture,
43 effects and immediate family to his or her place of employ-
44 ment; and (2) all or part of the reasonable expense in-
45 curred by an employee of a higher education governing
46 board or the higher education policy commission in
47 moving his or her household furniture, effects and immedi-
48 ate family as a result of a reassignment of the employee
49 which is considered desirable, advantageous to and in the
50 best interest of the state: *Provided*, That no part of the
51 moving expenses of any one such employee shall be paid
52 more frequently than once in twelve months.

CHAPTER 18. EDUCATION.

ARTICLE 11C. WEST VIRGINIA UNIVERSITY HOSPITAL AND WEST VIRGINIA HEALTH SYSTEM.

§18-11C-1. Definitions.

1 The following words used in this article shall, unless the
2 context clearly indicates a different meaning, be construed
3 as follows:

4 (a) "Agreement" means the long-term lease and agree-
5 ment to be entered into between the board and the corpo-
6 ration pursuant to section four of this article;

7 (b) "Assets" means all assets of the board constituting
8 tangible and intangible personal property credited to the
9 hospital on the financial ledgers and equipment invento-
10 ries of the university at the transfer date, and as more
11 particularly or additionally identified or supplemented in
12 the agreement, excluding all hospital funds deposited with
13 the state treasurer;

14 (c) For the purposes of this article, "board" or "board of
15 trustees" means the West Virginia university board of
16 governors;

17 (d) "Corporation" means the nonstock, not-for-profit
18 corporation to be established under the general corpora-
19 tion laws of the state, which meets the description pre-
20 scribed by section three of this article;

21 (e) "Corporation employees" means employees of the
22 corporation;

23 (f) "Directors" means the board of directors of the
24 corporation;

25 (g) "Existing facilities" means the West Virginia univer-
26 sity hospital and clinics, other than those used for student
27 health and family practice, presently existing at the West
28 Virginia university medical center in Morgantown and
29 owned and operated by the board;

30 (h) "Health science schools" means the schools of
31 medicine, dentistry, pharmacy and nursing and any other
32 schools at the university considered by the board to be
33 health sciences;

34 (i) "Hospital" means the inpatient and outpatient health
35 care services of the board, other than those used for
36 student health services and family practice clinics, oper-
37 ated in connection with the university, consisting of the

38 existing facilities and any other health care service
39 components of the West Virginia university medical center
40 at Morgantown rendering patient care services and more
41 particularly identified by the agreement;

42 (j) "Liabilities" means all liabilities, except those
43 specifically excluded by section four of this article,
44 credited to the hospital on the financial ledgers of the
45 university at the transfer date and as more particularly or
46 additionally identified, supplemented or limited in the
47 agreement;

48 (k) "Medical personnel" means both university person-
49 nel and corporation employees;

50 (l) "New facilities" means a new hospital facility and
51 out-patient clinics, appurtenant facilities, equipment and
52 necessary services to be acquired, built, operated or
53 contracted for by the corporation on property leased from
54 the board within Monongalia County, West Virginia,
55 pursuant to the agreement;

56 (m) "Transfer date" means the first day of July, one
57 thousand nine hundred eighty-four, or any later date
58 agreed upon by the board and the corporation and filed
59 with the secretary of state;

60 (n) "University" means West Virginia university;

61 (o) "University personnel" means those employees of the
62 board or the university for whose services the corporation
63 contracts with the board or the university, as appropriate;
64 and

65 (p) "West Virginia health system" or "system" means the
66 nonstock, not-for-profit corporation to be established
67 under the general corporation laws of the state, which
68 meets the description set forth in section three-a of this
69 article.

**§18-11C-3. Board authorized to contract with corporation;
description to be met by corporation.**

1 The board is hereby authorized to enter into the agree-
2 ment and any other contractual relationships authorized
3 by this article with the corporation, but only if the corpo-
4 ration meets the following description:

5 (a) The directors of the corporation, all of whom shall be
6 voting, shall consist of the president of the university, who
7 shall serve ex officio as chairman of the directors, the vice
8 chancellor for health sciences of the higher education
9 policy commission, one designee of the board: *Provided*,
10 That if the position of vice chancellor for health sciences
11 has not been filled, the board shall designate one addi-
12 tional member to serve until the position is filled, the vice
13 president for health sciences of the university, the vice
14 president for administration and finance of the university,
15 the chief of the medical staff of the hospital, the dean of
16 the school of medicine of the university, the dean of the
17 school of nursing of the university and the chief executive
18 officer of the corporation, all of whom shall serve as ex
19 officio members of the directors, a representative elected
20 at large by the corporation employees and seven directors
21 to be appointed by the West Virginia health system board.
22 The West Virginia health system board shall select and
23 appoint the seven appointed members in accordance with
24 the provisions of section six-a, article five-b, chapter
25 sixteen of this code: *Provided*, That the current directors
26 of the corporation shall continue to serve until they resign
27 or their term expires. On and after the effective date of
28 this section, the seven appointed directors shall be ap-
29 pointed by the system board for staggered six-year terms.
30 The system board shall select all of the appointed members
31 in a manner which assures geographic diversity and
32 assures that at least two members are from each congress-
33 sional district.

34 (b) The corporation shall report its audited records
35 publicly and to the joint committee on government and
36 finance at least annually.

37 (c) Upon liquidation of the corporation, the assets of the
38 corporation shall be transferred to the board for the
39 benefit of the university.

**ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF
GOVERNING BOARDS OF STATE INSTITUTIONS OF
HIGHER EDUCATION.**

**§18-23-4a. Supplemental and additional retirement plans for
employees; payroll deductions; authority to match
employee contributions; retroactive curative and
technical corrective action.**

1 (a) Any reference in this code to the “additional retire-
2 ment plan” relating to state higher education employees,
3 means the “higher education retirement plan” provided in
4 this section. Any state higher education employee partici-
5 pating in a retirement plan upon the effective date of this
6 section continues to participate in that plan and may not
7 elect to participate in any other state retirement plan. Any
8 such retirement plan continues to be governed by the
9 provisions of law applicable on the effective date of this
10 section.

11 (b) The higher education policy commission, on behalf of
12 the governing boards and itself, shall contract for a
13 retirement plan for its employees, to be known as the
14 “higher education retirement plan”. The governing boards
15 and higher education policy commission shall make
16 periodic deductions from the salary payments due the
17 employees in the amount they are required to contribute to
18 the higher education retirement plan, which deductions
19 shall be six percent.

20 (c) The higher education policy commission and the
21 governing boards, with policy commission approval, may
22 contract for a supplemental retirement plan for any or all
23 of their employees to supplement the benefits the employ-
24 ees otherwise receive. The governing boards and higher
25 education policy commission may make additional peri-
26 odic deductions from the salary payments due the employ-

27 ees in the amount they are required to contribute for the
28 supplemental retirement plan.

29 (d) The higher education policy commission shall
30 conduct a study of the feasibility of offering multiple
31 vendors of retirement products and services to be offered
32 for the benefit of higher education employees. The com-
33 mission shall report the findings of the study, along with
34 a plan for offering multiple vendors for the employees, to
35 the joint committee on pensions and retirement no later
36 than the first day of December, two thousand one. Upon
37 approval by the joint committee on pensions and retire-
38 ment, the commission shall provide a choice of vendors to
39 their employees. Any selection of vendors made by the
40 commission shall be determined according to a request for
41 proposal issued pursuant to the provisions of section four,
42 article five, chapter eighteen-b of this code.

43 (d) Each governing board and the higher education
44 policy commission, by way of additional compensation to
45 their employees, shall pay an amount equal to the contri-
46 butions of the employees into the higher education retire-
47 ment plan from funds appropriated to the board or
48 commission for personal services.

49 (e) Each participating employee has a full and immedi-
50 ate vested interest in the retirement and death benefits
51 accrued from all the moneys paid into the higher education
52 retirement plan or a supplemental retirement plan for his
53 or her benefit. Upon proper requisition of a board or the
54 higher education policy commission, the auditor shall
55 periodically issue a warrant, payable as specified in the
56 requisition, for the total contributions so withheld from
57 the salaries of all participating employees and for the
58 governing board's or higher education policy commission's
59 matching funds.

60 (f) Any person whose employment commences on or
61 after the effective date of this section, and who is eligible
62 to participate in the higher education retirement plan,

63 shall participate in that plan and is not eligible to partici-
64 pate in any other state retirement system. The additional
65 retirement plan contracted for by the governing boards
66 prior to the effective date of this section remains in effect
67 unless changed by the higher education policy commission.
68 Nothing in this section may be construed to consider
69 employees of the governing boards as employees of the
70 higher education policy commission, nor is the higher
71 education policy commission responsible or liable for
72 retirement benefits contracted by, or on behalf of, the
73 governing boards.

74 (g) It is the intent of the Legislature in amending and
75 reenacting this section during its two thousand one regular
76 session solely to:

77 (1) Maintain the current retirement plans offered to state
78 higher education employees in their current form;

79 (2) Clarify that employees of the higher education policy
80 commission are participants in the higher education
81 retirement plan;

82 (3) Codify the current contribution levels of the govern-
83 ing boards, the higher education policy commission and
84 their employees toward the present higher education
85 retirement plan;

86 (4) Make mandatory the contribution levels of the
87 governing boards and higher education policy commission;

88 (5) Establish a standardized retirement policy for all
89 state higher education employees as determined by the
90 policy commission;

91 (6) Clarify the application and purposes of the addi-
92 tional and supplemental retirement plans previously
93 provided for in this section; and

94 (7) Remove obsolete and archaic language.

CHAPTER 18B. HIGHER EDUCATION.**ARTICLE 1. GOVERNANCE.****§18B-1-1a. Goals for post-secondary education.**

1 (a) *Findings.* —The Legislature finds that post-secondary
2 education is vital to the future of West Virginia. For the
3 state to realize its considerable potential in the
4 twenty-first century, it must have a system for the delivery
5 of post-secondary education which is competitive in the
6 changing national and global environment, is affordable
7 within the fiscal constraints of the state and for the state's
8 residents to participate and has the capacity to deliver the
9 programs and services necessary to meet regional and
10 statewide needs.

11 (1) West Virginia leads a national trend toward an aging
12 population wherein a declining percentage of working-age
13 adults will be expected to support a growing percentage of
14 retirees. Public school enrollments statewide have de-
15 clined and will continue to do so for the foreseeable future
16 with a few notable exceptions in growing areas of the
17 state. As the state works to expand and diversify its
18 economy, it is vitally important that young people entering
19 the work force from our education systems have the
20 knowledge and skills to succeed in the economy of the
21 twenty-first century. It is equally important, however, that
22 working-age adults who are the large majority of the
23 current and potential work force also possess the requisite
24 knowledge and skills and the ability to continue learning
25 throughout their lifetimes. The reality for West Virginia is
26 that its future rests not only on how well its youth are
27 educated, but also on how well it educates its entire
28 population of any age.

29 (2) Post-secondary education is changing throughout the
30 nation. Place-bound adults, employers and communities
31 are demanding education and student services that are
32 accessible at any time, at any place and at any pace.
33 Institutions are seizing the opportunity to provide aca-

34 demic content and support services on a global scale by
35 designing new courseware, increasing information tech-
36 nology-based delivery, increasing access to library and
37 other information resources and developing new methods
38 to assess student competency rather than “seat time” as
39 the basis for recognizing learning, allocating resources and
40 ensuring accountability. In this changing environment,
41 the state must take into account the continuing decline in
42 the public school-age population, the limits of its fiscal
43 resources and the imperative need to serve the educational
44 needs of working-age adults. West Virginia cannot afford
45 to finance quality higher education systems that aspire to
46 offer a full array of programs while competing among
47 themselves for a dwindling pool of traditional applicants.
48 The competitive position of the state and its institutions
49 will depend fundamentally on its capacity to reinforce the
50 quality and differentiation of its institutions through
51 policies that encourage focus and collaboration.

52 (3) The current accountability system is exceptionally
53 complicated and largely defines accountability in terms of
54 institutional procedures. It also is not well equipped to
55 address cross-cutting issues such as regional economic and
56 work force development, community and technical college
57 services, collaboration with the public schools to improve
58 quality and student participation rates, access to graduate
59 education and other broad issues of state interest. Severe
60 fiscal constraints require West Virginia to make maximum
61 use of existing assets to meet new demands. New invest-
62 ments must be targeted to those initiatives designed to
63 enhance and reorient existing capacity, provide incentives
64 for collaboration and focus on the new demands. It must
65 have a single accountability point for developing, building
66 consensus around and sustaining attention to the public
67 policy agenda and for allocating resources consistent with
68 this policy agenda.

69 (4) The state should make the best use of the expertise
70 that private institutions of higher education can offer and

71 recognize the importance of their contributions to the
72 economic, social and cultural well-being of their commu-
73 nities.

74 (5) The system of public higher education should be open
75 and accessible to all persons, including persons with
76 disabilities and other persons with special needs.

77 (b) *Compact with higher education.* – In pursuance of
78 these findings, it is the intent of the Legislature to engage
79 higher education in a statewide compact for the future of
80 West Virginia, as provided in article one-a of this chapter,
81 that focuses on a public policy agenda that includes, but is
82 not limited to, the following:

83 (1) Diversifying and expanding the economy of the state;

84 (2) Increasing the competitiveness of the state's work
85 force and the availability of professional expertise by
86 increasing the number of college degrees produced to the
87 level of the national average and significantly improving
88 the level of adult functional literacy; and

89 (3) Creating a system of higher education that is
90 equipped to succeed at producing these results.

91 (c) *Elements of the compact with higher education.* – It
92 is the intent of the Legislature that the compact with
93 higher education include the following elements:

94 (1) A step-by-step process, as provided in articles one-b
95 and three-c of this chapter, which will enable the state to
96 achieve its public policy agenda through a system of
97 higher education equipped to assist in producing the
98 needed results. This process includes, but is not limited to,
99 separate institutional compacts with state institutions of
100 higher education that describe changes in institutional
101 missions in the areas of research, graduate education,
102 admission standards, community and technical college
103 education and geographical areas of responsibility to
104 accomplish the following:

105 (A) A capacity within higher education to conduct
106 research to enhance West Virginia in the eyes of the larger
107 economic and educational community and to provide a
108 basis for West Virginia's improved capacity to compete in
109 the new economy through research oriented to state needs;

110 (B) Access to stable and continuing graduate level
111 programs in every region of the state, particularly in
112 teacher education related to teaching within a subject area
113 to improve teacher quality;

114 (C) Universities and colleges that have focused missions,
115 their own points of distinction and quality and strong
116 links with the educational, economic and social revitaliza-
117 tion of their regions and the state of West Virginia;

118 (D) Greater access and capacity to deliver technical
119 education, work force development and other higher
120 education services to place-bound adults thus improving
121 the general levels of post-secondary educational attain-
122 ment and literacy;

123 (E) Independently accredited community and technical
124 colleges in every region of the state, to the extent possible,
125 that: (i) Assess regional needs; (ii) ensure access to compre-
126 hensive community and technical college and work force
127 development services within each of their respective
128 regions; (iii) convene and act as a catalyst for local action
129 in collaboration with regional leaders, employers and
130 other educational institutions; (iv) provide and, as neces-
131 sary, broker educational services; (v) provide necessary
132 student services; (vi) fulfill such other aspects of the
133 community and technical college mission and general
134 provisions for community and technical colleges as
135 provided for in article three-c of this chapter; and (vii)
136 make maximum use of existing infrastructure and re-
137 sources within their regions to increase access, including,
138 but not limited to, vocational technical centers, schools,
139 libraries, industrial parks and work sites.

140 (2) Providing additional resources, subject to availabil-
141 ity and appropriation by the Legislature, as provided in
142 article one-a of this chapter, to make the state institutions
143 of higher education more competitive with their peers,
144 assist them in accomplishing the elements of the public
145 policy agenda and ensure the continuity of academic
146 programs and services to students.

147 (3) Establishing a process for the allocation of additional
148 resources which focuses on achieving the elements of the
149 public policy agenda and streamlines accountability for
150 the step-by-step progress toward achieving these elements
151 within a reasonable time frame as provided in article
152 one-a of this chapter.

153 (4) Providing additional flexibility to the state institu-
154 tions of higher education by making permanent the
155 exceptions granted to higher education relating to travel
156 rules and vehicles pursuant to sections forty-eight through
157 fifty-three, inclusive, article three, chapter five-a of this
158 code and section eleven, article three, chapter twelve of
159 this code.

160 (5) Revising the higher education governance structure
161 to make it more responsive to state and regional needs.

162 (d) *General goals for post-secondary education.* – In
163 pursuance of the findings and the development of institu-
164 tional compacts with higher education for the future of
165 West Virginia pursuant to article one-a of this chapter, it
166 is the intent of the Legislature to establish general goals
167 for post-secondary education and to have the commission
168 report the progress toward achieving these goals in the
169 higher education report card required pursuant to section
170 eight, article one-b of this chapter and, where applicable,
171 made a part of the institutional compacts. The Legislature
172 establishes the general goals as follows:

173 (1) The overall focus of education is on a lifelong process
174 which is to be as seamless as possible at all levels and is to

175 encourage citizens of all ages to increase their knowledge
176 and skills. Efforts in pursuit of this goal include, but are
177 not limited to, the following:

178 (A) Collaboration, coordination and interaction between
179 public and post-secondary education to: (i) Improve the
180 quality of public education, particularly with respect to
181 ensuring that the needs of public schools for teachers and
182 administrators is met; (ii) inform public school students,
183 their parents and teachers of the academic preparation
184 that students need to be prepared adequately to succeed in
185 their selected fields of study and career plans; and (iii)
186 improve instructional programs in the public schools so
187 that the students enrolling in post-secondary education are
188 adequately prepared;

189 (B) Collaboration, coordination and interaction between
190 public and post-secondary education, the governor's
191 council on literacy and the governor's work force invest-
192 ment office to promote the effective and efficient utiliza-
193 tion of work force investment and other funds to: (i)
194 Provide greatly improved access to information and
195 services for individuals and employers on education and
196 training programs, financial assistance, labor markets and
197 job placement; (ii) increase awareness among the state's
198 citizens of the opportunities available to them to improve
199 their basic literacy, work force and post-secondary skills
200 and credentials; and (iii) help improve their motivation to
201 take advantage of available opportunities by making the
202 system more seamless and user friendly;

203 (C) Collaboration, coordination and interaction between
204 public and post-secondary education on the development
205 of seamless curriculum in technical preparation programs
206 of study between the secondary and post-secondary levels;
207 and

208 (D) Opportunities for advanced high school students to
209 obtain college credit prior to high school graduation.

210 (2) The number of degrees produced per capita by West
211 Virginia institutions of higher education is at the national
212 average. Efforts in pursuit of this goal include, but are not
213 limited to, the following:

214 (A) Collaboration, coordination and interaction between
215 public and post-secondary education, the governor's
216 council on literacy and the governor's work force invest-
217 ment office to promote to individuals of all ages the
218 benefits of increased post-secondary educational attain-
219 ment;

220 (B) Assistance in overcoming the financial barriers to
221 post-secondary education for both traditional and nontra-
222 ditional students;

223 (C) An environment within post-secondary education
224 that is student-friendly and that encourages and assists
225 students in the completion of degree requirements within
226 a reasonable time frame. The environment also should
227 expand participation for the increasingly diverse student
228 population;

229 (D) A spirit of entrepreneurship and flexibility within
230 post-secondary education that is responsive to the needs of
231 the current work force and other nontraditional students
232 for upgrading and retraining college-level skills; and

233 (E) The expanded use of technology for instructional
234 delivery and distance learning.

235 (3) All West Virginians, whether traditional or nontradi-
236 tional students, displaced workers or those currently
237 employed, have access to post-secondary educational
238 opportunities through their community and technical
239 colleges, colleges and universities which:

240 (i) Are relevant and affordable; (ii) allow them to gain
241 transferrable credits and associate or higher level degrees;
242 (iii) provide quality technical education and skill training;

243 and (iv) are responsive to business, industry, labor and
244 community needs.

245 (4) State institutions of higher education prepare
246 students to practice good citizenship and to compete in a
247 global economy in which good jobs require an advanced
248 level of education and skills which far surpasses former
249 requirements. Efforts in pursuit of this goal include, but
250 are not limited to, the following:

251 (A) The development of entrepreneurial skills through
252 programs such as the rural entrepreneurship through
253 action learning (REAL) program which include practical
254 experience in market analysis, business plan development
255 and operations;

256 (B) Elements of citizenship development are included
257 across the curriculum in core areas, including practical
258 applications such as community service, civic involvement
259 and participation in charitable organizations and in the
260 many opportunities for the responsible exercise of citizen-
261 ship that higher education institutions provide;

262 (C) Students are provided opportunities for internships,
263 externships, work study and other methods to increase
264 their knowledge and skills through practical application
265 in a work environment;

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

270 (E) College graduates meet or exceed national and
271 international standards for performance in their fields
272 through national accreditation of programs and through
273 outcomes assessment of graduates; and

274 (F) Admission and exit standards for students, profes-
275 sional staff development, program assessment and evalua-

276 tion and other incentives are used to improve teaching and
277 learning.

278 (5) State institutions of higher education exceed peer
279 institutions in other states in measures of institutional
280 productivity and administrative efficiency. Efforts in
281 pursuit of this goal include, but are not limited to:

282 (A) The establishment of systematic ongoing mecha-
283 nisms for each state institution of higher education to set
284 goals, to measure the extent to which those goals are met
285 and to use the results of quantitative evaluation processes
286 to improve institutional effectiveness;

287 (B) The combination and use of resources, technology
288 and faculty to their maximum potential in a way that
289 makes West Virginia higher education more productive
290 than its peer institutions in other states while maintaining
291 educational quality; and

292 (C) The use of systemic program review to determine
293 how much duplication is necessary to maintain geographic
294 access and to eliminate unnecessary duplication.

295 (6) Post-secondary education enhances state efforts to
296 diversify and expand the economy of the state. Efforts in
297 pursuit of this goal include, but are not limited to, the
298 following:

299 (A) The focus of resources on programs and courses
300 which offer the greatest opportunities for students and the
301 greatest opportunity for job creation and retention in the
302 state;

303 (B) The focus of resources on programs supportive of
304 West Virginia employment opportunities and the emerging
305 high-technology industries;

306 (C) Closer linkages among higher education and busi-
307 ness, labor, government and community and economic
308 development organizations; and

309 (D) Clarification of institutional missions and shifting of
310 resources to programs which meet the current and future
311 work force needs of the state.

312 (7) Faculty and administrators are compensated on a
313 competitive level with peer institutions to attract and keep
314 quality personnel at state institutions of higher education.

315 (8) The tuition and fee levels for in-state students are
316 competitive with those of peer institutions and the tuition
317 and fee levels for out-of-state students are set at a level
318 which at the least covers the full cost of instruction.

**§18B-1-3. Transfer of powers, duties, property, obligations, etc.,
of prior governing boards to the higher education
policy commission and governing boards.**

1 (a) All powers, duties and authorities transferred to the
2 board of regents pursuant to former provisions of chapter
3 eighteen of this code and transferred to the board of
4 trustees and board of directors which were created as the
5 governing boards pursuant to the former provisions of this
6 chapter and all powers, duties and authorities of the board
7 of trustees and board of directors, to the extent they are in
8 effect on the seventeenth day of June, two thousand, are
9 hereby transferred to the interim governing board created
10 in article one-c of this chapter and shall be exercised and
11 performed by the interim governing board until the first
12 day of July, two thousand one, as such powers, duties and
13 authorities may apply to the institutions under its jurisdic-
14 tion.

15 (b) Title to all property previously transferred to or
16 vested in the board of trustees and the board of directors
17 and property vested in either of the boards separately,
18 formerly existing under the provisions of chapter eigh-
19 teen-b of this code, are hereby transferred to the interim
20 governing board created in article one-c of this chapter
21 until the first day of July, two thousand one. Property
22 transferred to or vested in the board of trustees and board
23 of directors shall include:

24 (1) All property vested in the board of governors of West
25 Virginia university and transferred to and vested in the
26 West Virginia board of regents;

27 (2) All property acquired in the name of the state board
28 of control or the West Virginia board of education and
29 used by or for the state colleges and universities and
30 transferred to and vested in the West Virginia board of
31 regents;

32 (3) All property acquired in the name of the state
33 commission on higher education and transferred to and
34 vested in the West Virginia board of regents; and

35 (4) All property acquired in the name of the board of
36 regents and transferred to and vested in the respective
37 board of trustees and board of directors.

38 (c) Each valid agreement and obligation previously
39 transferred to or vested in the board of trustees and board
40 of directors formerly existing under the provisions of
41 chapter eighteen-b of this code is hereby transferred to the
42 interim governing board until the first day of July, two
43 thousand one, as those agreements and obligations may
44 apply to the institutions under its jurisdiction. Valid
45 agreements and obligations transferred to the board of
46 trustees and board of directors shall include:

47 (1) Each valid agreement and obligation of the board of
48 governors of West Virginia university transferred to and
49 deemed the agreement and obligation of the West Virginia
50 board of regents;

51 (2) Each valid agreement and obligation of the state
52 board of education with respect to the state colleges and
53 universities transferred to and deemed the agreement and
54 obligation of the West Virginia board of regents;

55 (3) Each valid agreement and obligation of the state
56 commission on higher education transferred to and

57 deemed the agreement and obligation of the West Virginia
58 board of regents; and

59 (4) Each valid agreement and obligation of the board of
60 regents transferred to and deemed the agreement and
61 obligation of the respective board of trustees and board of
62 directors.

63 (d) All orders, resolutions and rules adopted or promul-
64 gated by the respective board of trustees and board of
65 directors and in effect immediately prior to the first day of
66 July, two thousand, are hereby transferred to the interim
67 governing board until the first day of July, two thousand
68 one, and shall continue in effect and shall be deemed the
69 orders, resolutions and rules of the interim governing
70 board until rescinded, revised, altered or amended by the
71 commission or the governing boards in the manner and to
72 the extent authorized and permitted by law. Such orders,
73 resolutions and rules shall include:

74 (1) Those adopted or promulgated by the board of
75 governors of West Virginia university and in effect imme-
76 diately prior to the first day of July, one thousand nine
77 hundred sixty-nine, unless and until rescinded, revised,
78 altered or amended by the board of regents in the manner
79 and to the extent authorized and permitted by law;

80 (2) Those respecting state colleges and universities
81 adopted or promulgated by the West Virginia board of
82 education and in effect immediately prior to the first day
83 of July, one thousand nine hundred sixty-nine, unless and
84 until rescinded, revised, altered or amended by the board
85 of regents in the manner and to the extent authorized and
86 permitted by law;

87 (3) Those adopted or promulgated by the state commis-
88 sion on higher education and in effect immediately prior
89 to the first day of July, one thousand nine hundred
90 sixty-nine, unless and until rescinded, revised, altered or
91 amended by the board of regents in the manner and to the
92 extent authorized and permitted by law; and

93 (4) Those adopted or promulgated by the board of
94 regents prior to the first day of July, one thousand nine
95 hundred eighty-nine, unless and until rescinded, revised,
96 altered or amended by the respective board of trustees or
97 board of directors in the manner and to the extent autho-
98 rized and permitted by law.

99 (e) Title to all real property transferred to or vested in
100 the interim governing board pursuant to this section of the
101 code is hereby transferred to the commission effective the
102 first day of July, two thousand one. The board of gover-
103 nors for each institution may request that the commission
104 transfer title to the board of governors of any real property
105 specifically identifiable with that institution or the
106 commission may initiate the transfer. Any such request
107 must be made within two years of the effective date of this
108 section and be accompanied by an adequate legal descrip-
109 tion of the property. The title to any real property that is
110 jointly utilized by institutions or for statewide programs
111 under the jurisdiction of the commission shall be retained
112 by the commission.

113 (f) Ownership of or title to any other property, materials,
114 equipment, or supplies obtained or purchased by the
115 interim governing board or the previous governing boards
116 on behalf of an institution is hereby transferred to the
117 board of governors of that institution effective the first
118 day of July, two thousand one.

119 (g) Each valid agreement and obligation previously
120 transferred or vested in the interim governing board and
121 which was undertaken or agreed to on behalf of an institu-
122 tion or institutions is hereby transferred to the board of
123 governors of the institution or institutions for whose
124 benefit the agreement was entered into or the obligation
125 undertaken, effective the first day of July, two thousand
126 one. The obligations contained in revenue bonds issued by
127 the previous governing boards under the provisions of
128 section eight, article ten, chapter eighteen-b and article
129 twelve-b, chapter eighteen of this code are hereby trans-

130 ferred to the commission and each institution shall trans-
131 fer to the commission those funds the commission deter-
132 mines are necessary to pay that institution's share of
133 bonded indebtedness. The obligations contained in
134 revenue bonds issued on behalf of a state institution of
135 higher education pursuant to any other section of this code
136 is hereby transferred to the board of governors of the
137 institution on whose behalf the bonds were issued.

138 (h) All orders, resolutions, policies and rules adopted or
139 promulgated by the respective board of trustees, board of
140 directors, or interim governing board and in effect imme-
141 diately prior to the first day of July, two thousand one, are
142 hereby transferred to the commission effective the first
143 day of July, two thousand one, and shall continue in effect
144 until rescinded, revised, altered or amended or transferred
145 to the governing boards by the commission as set out in
146 this section and in section six, article one of this chapter.

147 (i) The commission may, in its sole discretion, transfer
148 any rule, other than a legislative rule, to the jurisdiction of
149 the governing boards who may rescind, revise, alter or
150 amend any rule so transferred pursuant to rules adopted
151 by the commission.

152 (j) As to any title, agreement, obligation, order, resolu-
153 tion, rule or any other matter about which there is some
154 uncertainty, misunderstanding or question, the matter
155 shall be summarized in writing and sent to the commission
156 which shall make a determination regarding such matter
157 within thirty days of receipt thereof.

158 (k) Rules or provisions of law which refer to other
159 provisions of law which were repealed, rendered inopera-
160 tive or superseded by the provisions of this section shall
161 remain in full force and effect to such extent as may still
162 be applicable to higher education and may be so inter-
163 preted. Such references include, but are not limited to,
164 references to sections and prior enactments of article
165 twenty-six, chapter eighteen of this code and code provi-

166 sions relating to retirement, health insurance, grievance
167 procedures, purchasing, student loans and savings plans.
168 Any determination which needs to be made regarding
169 applicability of any provision of law shall first be made by
170 the commission.

§18B-1-6. Rule Making.

1 (a) Effective the first day of July, two thousand one, the
2 commission is hereby empowered to promulgate, adopt,
3 amend or repeal rules, in accordance with the provisions
4 of article three-a, chapter twenty-nine-a of this code.

5 (b) The commission shall promulgate a rule to guide the
6 development and approval of rules, guidelines and other
7 policy statements made by the governing boards. The rule
8 promulgated by the commission shall include, but is not
9 limited to, the following provisions:

10 (1) A procedure to insure that public notice is given and
11 that the right of interested parties to have a fair and
12 adequate opportunity to respond is protected;

13 (2) Designation of a single location where all proposed
14 and approved rules, guidelines and other policy statements
15 can be accessed by the public;

16 (3) A procedure to maximize internet access to all
17 proposed and approved rules, guidelines and other policy
18 statements, to the extent technically and financially
19 feasible.

20 (c) On and after the effective date of this section, and
21 notwithstanding any other provision of this code to the
22 contrary, no rule heretofore required by law to be promul-
23 gated as a legislative rule may be considered to be a
24 legislative rule for the purposes of article three-a, chapter
25 twenty-nine-a of this code, except for the following:

26 (1) The legislative rule required by subsection (c), section
27 eight, article one of this chapter;

28 (2) The legislative rule required by section eight-a,
29 article one of this chapter;

30 (3) The legislative rule required by section two, article
31 one-a of this chapter;

32 (4) The legislative rule required by section four, article
33 one-b of this chapter;

34 (5) The legislative rule required by section one, article
35 three, chapter eighteen-c of this code;

36 (6) The legislative rule required by section one, article
37 four, chapter eighteen-c of this code;

38 (7) The legislative rule required by section seven, article
39 five, chapter eighteen-c of this code; and

40 (8) The legislative rule required by section one, article
41 six, chapter eighteen-c of this code.

42 (d) On or after the effective date of this section and
43 before the first day of October, two thousand one, notwith-
44 standing any other provision of this code to the contrary,
45 any rule heretofore promulgated as a legislative rule which
46 was not required specifically by law to be promulgated as
47 a legislative rule, or any rule previously required to be a
48 legislative rule by statute but reclassified by subsection (c)
49 of this section, may be reclassified by the commission
50 either as an interpretive rule or as a procedural rule. The
51 commission shall notify in writing the legislative oversight
52 commission on education accountability of such reclassifi-
53 cation and shall file such notice with the office of the
54 secretary of state to be published in the state register.

55 (e) Nothing in this section may be construed to require
56 that any rule reclassified under this section be promul-
57 gated again under the procedures set out in article three-a,
58 chapter twenty-nine-a unless the rule is amended or
59 modified.

60 (f) The commission shall cause a copy of any rule it
61 proposes to promulgate, adopt, amend or repeal under the
62 authority of this article to be filed with the legislative
63 oversight commission on education accountability created
64 in said article three-a, chapter twenty-nine-a of this code.

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE
OF WEST VIRGINIA.**

**§18B-1A-2. Institutional compacts with state institutions of
higher education; establishment and review
process.**

1 (a) Each institution of higher education shall prepare an
2 institutional compact for submission to the commission.
3 When the process herein provided is completed, the
4 institutional compacts shall form the agreement between
5 the institutions of higher education and the commission
6 and, ultimately, between the institutions of higher educa-
7 tion and the people of West Virginia on how the institu-
8 tions will use their resources to address the intent of the
9 Legislature and the goals set forth in section one-a, article
10 one of this chapter. The compacts shall contain the
11 following:

12 (1) A step-by-step process to accomplish the intent of
13 the Legislature and the goals set forth in section one-a,
14 article one of this chapter as organized by the commission.
15 The step-by-step process shall be delineated by objectives
16 and shall set forth a time line for achieving the objectives
17 which shall, where applicable, include benchmarks to
18 measure institutional progress as defined in subsection (e)
19 of this section.

20 (2) A determination of the mission of the institution
21 which specifically addresses changes, as applicable, in the
22 areas of research, graduate education, baccalaureate
23 education, revised admission requirements, community
24 and technical colleges and such other areas as the commis-
25 sion determines appropriate. In the determination of
26 mission, the institutions and the commission shall consider

27 the report completed by the national center for higher
28 education management systems pursuant to the legislative
29 study as provided in section seven, article three of this
30 chapter;

31 (3) A plan which is calculated to make any changes in
32 institutional mission and structure within a six-year
33 period;

34 (4) A statement of the geographic areas of responsibility,
35 where applicable, for each goal to be accomplished as
36 provided in subsection (d) of this section;

37 (5) A detailed statement of how the compact is aligned
38 with and will be implemented in conjunction with the
39 master plan of the institution;

40 (6) Such other items, requirements or initiatives, re-
41 quired by the commission, designed to accomplish the
42 intent of the Legislature and the goals set forth in section
43 one-a, article one of this chapter or other public policy
44 goals established by the commission.

45 (b) Each institutional compact shall be updated annually
46 and shall follow the same general guidelines contained in
47 subsection (a) of this section.

48 (c) Development and updating of the institutional
49 compacts shall be subject to the following:

50 (1) The ultimate responsibility for developing and
51 updating the institutional compacts at the institutional
52 level resides with the institutional board of advisors or the
53 board of governors, as appropriate;

54 (2) The ultimate responsibility for developing and
55 adopting the final version of the institutional compacts
56 resides with the commission;

57 (3) The initial institutional compacts shall be submitted
58 to the commission by the institutions on or before the first
59 day of February, two thousand one. The first annual

60 updates shall be submitted on or before the fifteenth day
61 of November, two thousand one, and succeeding updates
62 shall be submitted on the fifteenth day of November of
63 each year thereafter;

64 (4) The commission shall review the initial institutional
65 compacts and the annual updates and either shall adopt
66 the institutional compact or return it with specific com-
67 ments for change or improvement. The commission shall
68 continue this process as long as it considers advisable;

69 (5) By the first day of May of each year, if the institu-
70 tional compact of any institution as presented by that
71 institution is not adopted by the commission, then the
72 commission is empowered and directed to develop and
73 adopt the institutional compact for the institution and the
74 institution shall be bound by the compact so adopted; and

75 (6) The commission shall, as far as practicable, establish
76 uniform processes and forms for the development and
77 submission of the institutional compacts. As a part of this
78 function, the commission shall organize the statements of
79 legislative intent and goals contained in section one-a,
80 article one of this chapter in a manner that facilitates the
81 purposes of this subdivision and the purposes of this
82 section.

83 (d) The commission shall assign geographic areas of
84 responsibility to the state institutions of higher education
85 as a part of their institutional compacts to ensure that all
86 areas of the state are provided necessary programs and
87 services to achieve the public policy agenda. The
88 benchmarks established in the institutional compacts shall
89 include measures of programs and services by geographic
90 area throughout the assigned geographic area of responsi-
91 bility.

92 (e) The compacts shall contain benchmarks used to
93 determine progress toward meeting the goals established
94 in the compacts. The benchmarks shall meet the following
95 criteria:

96 (1) They shall be as objective as possible;

97 (2) They shall be directly linked to the goals in the
98 compacts;

99 (3) They shall be measured by the indicators described
100 in subsection (f) of this section; and

101 (4) Where applicable, they shall be used to measure
102 progress in geographic areas of responsibility.

103 (f) The commission shall establish by legislative rule
104 indicators which measure the degree to which the goals
105 and objectives set forth in section one-a, article one of this
106 chapter, are being addressed and met. The benchmarks
107 established in subsection (e) of this section shall be
108 measured by the indicators.

109 (1) The Legislature finds that an emergency exists, and
110 therefore the commission shall file as an emergency rule
111 the rule pertaining to benchmarks and indicators that was
112 filed with the office of the secretary of state on the twenty-
113 sixth day of December, two thousand. The commission
114 shall file a legislative rule in accordance with the provi-
115 sions of article three-a, chapter twenty-nine-a of this code
116 to replace the emergency rule no later than the first day of
117 November, two thousand one.

118 (2) The legislative rule shall set forth at the least the
119 following as pertains to all state institutions of higher
120 education:

121 (A) The indicators to be used to measure the degree to
122 which the goals and objectives are being met;

123 (B) Uniform definitions for the various data elements to
124 be used in establishing the indicators;

125 (C) Guidelines for the collection and reporting of data;
126 and

127 (D) Sufficient detail within the benchmarks and indica-
128 tors to:

129 (i) Provide measurable evidence that the pursuits of the
130 institution are targeting the educational needs of the
131 citizens of the state and the components of the compacts
132 and master plans;

133 (ii) Delineate the goals and benchmarks for an institu-
134 tion so that the commission can precisely measure the
135 degree to which progress is being made toward achieving
136 the goals for post-secondary education provided in section
137 one-a, article one of this chapter; and

138 (iii) Distinctly identify specific goals within the master
139 plan or compact of an institution that are not being met, or
140 toward which sufficient progress is not being made.

141 (3) In addition to any other requirement, the legislative
142 rule shall set forth at the least the following as pertains to
143 community and technical college education:

144 (A) Benchmarks and indicators which are targeted to
145 identify:

146 (i) The degree to which progress is being made by
147 institutions toward meeting the goals for post-secondary
148 education and the essential conditions provided in section
149 three, article three-c of this chapter;

150 (ii) Information and data necessary to be considered by
151 the policy commission in making the determination
152 required by section three, article two-c of this chapter;

153 (iii) The degree to which progress is being made in the
154 areas considered by the commission for the purpose of
155 making the determination required by section three,
156 article two-c of this chapter; and

157 (B) Sufficient detail within the benchmarks and indica-
158 tors to provide clear evidence to support an objective
159 determination by the commission that an institution's
160 progress toward achieving the goals for post-secondary
161 education and the essential conditions is so deficient that

162 implementation of the provisions of section four, article
163 two-c of this chapter is warranted and necessary.

164 (g) The commission shall approve the master plans
165 developed by the boards of governors and the institutional
166 boards of advisors pursuant to subsection (b), section four,
167 article two-a of this chapter and subsection (k), section
168 one, article six of this chapter.

§18B-1A-6. Graduate education.

1 (a) *Intent.* – It is the intent of the Legislature to address
2 the need for high quality graduate education programs to
3 be available throughout the state.

4 (b) *Findings.* – The Legislature makes the following
5 findings:

6 (1) Since West Virginia ranks below its competitor states
7 in graduate degree production, particularly in the areas
8 that are important to the state's competitive position in
9 the new economy of the twenty-first century, there is a
10 considerable need for greater access to graduate education,
11 especially at the master's degree level;

12 (2) There is a significant disparity in access to part-time
13 graduate degree programs among the different regions of
14 the state and part-time graduate enrollments are heavily
15 concentrated in the counties immediately surrounding
16 Marshall university and West Virginia university;

17 (3) There is a particular need for increased access to
18 graduate programs linked directly to the revitalization of
19 the regional economies of the state; and

20 (4) There is a particular need for improved quality and
21 accessibility of pre-service and in-service programs for
22 teachers in subject matter fields.

23 (c) In order to meet the need for graduate education, the
24 commission shall be responsible for accomplishing the
25 following:

26 (1) Ensuring that West Virginia university and Marshall
27 university expand access to master's degree programs
28 throughout West Virginia, with a strong emphasis on
29 collaboration with the baccalaureate colleges and commu-
30 nity and technical colleges in each region;

31 (2) Ensuring that any institution providing a master's
32 degree program under the provisions of this section
33 provides a meaningful, coherent program by offering
34 courses in such a way that students, including place-bound
35 adults, have ample opportunity to complete a degree in a
36 reasonable period of time;

37 (3) Focusing on providing courses that enhance the
38 professional skills of teachers in their subject areas; and

39 (4) Ensuring that programs are offered in the most cost-
40 effective manner to expand access throughout the region
41 and the state.

42 (d) Concord college, Fairmont state college, Shepherd
43 college, West Liberty state college and West Virginia state
44 college shall meet the need for graduate education in their
45 regions by following the procedures outlined below.

46 (1) The institutions shall develop as graduate centers for
47 their regions to broker access to graduate programs by
48 contracting with accredited colleges and universities in
49 and out of the state. These programs shall be related
50 directly to each region's education and economic needs.

51 (2) The institutions may begin collaborative programs
52 with other institutions leading to the granting of master's
53 degrees in selected areas that are demonstrated to be
54 related directly to the needs of their regions and that draw
55 on faculty strengths. An institution may continue to offer
56 collaborative programs aimed at meeting the documented
57 needs with the approval of the commission or, if a sus-
58 tained need still exists, the institution may move to the
59 next level.

60 (3) If the graduate education needs of the region have
61 not been met through brokering and collaborative pro-
62 grams, the institution may explore the option of beginning
63 its own graduate-level program leading to the granting of
64 a master's degree. The institution may begin its own
65 master's degree program if it can meet the following
66 conditions as determined by the commission:

67 (A) Demonstrate that the institution has successfully
68 completed each of the steps required before exploring
69 development of its own master's degree program;

70 (B) Provide evidence based on experience gained in the
71 brokering and collaborative arrangements that a sustained
72 demand exists for the program;

73 (C) Demonstrate that the baccalaureate institution has
74 the capacity to provide the program;

75 (D) Demonstrate that the core mission of the baccalau-
76 reate institution will not be impaired by offering the
77 graduate program;

78 (E) Provide evidence that the graduate program has a
79 reasonable expectation of being accredited;

80 (F) Demonstrate that the need documented in subdivi-
81 sion (B) of this subsection is not currently being met by
82 any other state institution of higher education; and

83 (G) The commission may designate one of the institu-
84 tions listed in subsection (d) of this section to develop and
85 implement no more than four of its own masters level
86 programs as a pilot project: *Provided*, That the selected
87 institution shall move toward and achieve regional
88 accreditation of the masters program within a reasonable
89 time as determined by the commission. The institution
90 shall be selected based on the following:

91 (I) Sufficient credentialed faculty to offer quality
92 programs in the areas selected;

93 (II) Sufficient unmet demand for the programs; and

94 (III) Sustainable unmet demand based on generally
95 accepted projections for population growth in the region
96 served by the institution.

97 The programs authorized by this clause may not be
98 restricted by the provisions of subdivisions one, two and
99 three, subsection (d) of this section nor by the provisions of
100 subsection (e) of this section.

101 (e) There is an urgent need for master's degree programs
102 for teachers in disciplines or subject areas, such as mathe-
103 matics, science, history, literature, foreign languages and
104 the arts. Currently, master's-level courses in education
105 that are offered in the regions served by the state universi-
106 ties are primarily in areas such as guidance and counsel-
107 ing, administration, special education and other disci-
108 plines unrelated to teaching in subject areas. If this need
109 is not being met in a region through the procedure estab-
110 lished in subsection (d) of this section, then the graduate
111 center in that region may plan a master's degree program
112 in education focused on teaching in subject area fields in
113 which the demand is not being met. No institution may
114 begin a graduate program under the provisions of this
115 section until the program has been reviewed and approved
116 by the commission. The commission shall approve only
117 those programs, as authorized by this subsection, that
118 emphasize serving the needs of teachers and schools in the
119 colleges' immediate regions. In determining whether a
120 program should be approved, the commission also shall
121 rely upon the recommendations of the statewide task force
122 on teacher quality provided for in section eight, article
123 fourteen of this chapter.

124 (f) The commission shall review all graduate programs
125 being offered under the provisions of this section and,
126 using the criteria established for program startup in
127 subsection (d) of this section, determine which programs
128 should be discontinued.

129 (g) At least annually, the governing boards shall evalu-
130 ate graduate programs developed pursuant to the provi-
131 sions of this section and report to the commission on the
132 following:

133 (1) The number of programs being offered and the
134 courses offered within each program;

135 (2) The disciplines in which programs are being offered;

136 (3) The locations and times at which courses are offered;

137 (4) The number of students enrolled in the program; and

138 (5) The number of students who have obtained master's
139 degrees through each program.

140 The governing boards shall provide the commission with
141 any additional information the commission requests in
142 order to make a determination on the viability of a pro-
143 gram.

144 (h) In developing any graduate program under the
145 provisions of this section, institutions shall consider
146 delivering courses at times and places convenient to adult
147 students who are employed full time. Institutions shall
148 place an emphasis on extended degree programs, distance
149 learning and off-campus centers which utilize the cost-
150 effective nature of extending existing university capacity
151 to serve the state rather than duplicating the core univer-
152 sity capacity and incurring the increased cost of develop-
153 ing master's degree programs at other institutions
154 throughout the state.

155 (i) Brokering institutions shall invite proposals from
156 other public institutions of higher education for service
157 provision prior to contracting with other institutions:
158 *Provided*, That if institutions propose providing graduate
159 programs in service areas other than in their responsibility
160 district, the institution seeking to establish a program
161 shall work through the district's lead institution in provid-
162 ing those services.

163 (j) In addition to the approval required by the commis-
164 sion, authorization for any institution to offer a master's
165 degree program under the provisions of this section is
166 subject to the formal approval processes established by the
167 governing boards.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of higher education policy commission.

- 1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve
3 the goals and objectives found in section one-a, article one
4 of this chapter. To that end, the commission has the
5 following powers and duties:
- 6 (1) Develop, oversee and advance the public policy
7 agenda to address major challenges facing the state,
8 including, but not limited to, the goals and objectives
9 found in section one-a, article one of this chapter and
10 including specifically those goals and objectives pertaining
11 to the compacts created pursuant to section two, article
12 one-a of this chapter and to develop and implement the
13 master plan described in section ten of this article for the
14 purpose of accomplishing the mandates of this section;
- 15 (2) Develop, oversee and advance the implementation of
16 a financing policy for higher education in West Virginia.
17 The policy shall meet the following criteria:
- 18 (A) Provide an adequate level of education and general
19 funding for institutions pursuant to section five, article
20 one-a of this chapter;
- 21 (B) Serve to maintain institutional assets, including, but
22 not limited to, human and physical resources and deferred
23 maintenance; and
- 24 (C) Invest and provide incentives for achieving the
25 priority goals in the public policy agenda, including, but

26 not limited to, those found in section one-a, article one of
27 this chapter;

28 (3) Create a policy leadership structure capable of the
29 following actions:

30 (A) Developing, building public consensus around and
31 sustaining attention to a long-range public policy agenda.
32 In developing the agenda, the commission shall seek input
33 from the Legislature and the governor and specifically
34 from the state board of education and local school districts
35 in order to create the necessary linkages to assure smooth,
36 effective and seamless movement of students through the
37 public education and post-secondary education systems
38 and to ensure that the needs of public school courses and
39 programs can be fulfilled by the graduates produced and
40 the programs offered;

41 (B) Ensuring that the governing boards carry out their
42 duty effectively to govern the individual institutions of
43 higher education; and

44 (C) Holding the higher education institutions and the
45 higher education system as a whole accountable for
46 accomplishing their missions and implementing the
47 provisions of the compacts;

48 (4) Develop and adopt each institutional compact;

49 (5) Review and adopt the annual updates of the institu-
50 tional compacts;

51 (6) Review the progress of community and technical
52 colleges in every region of West Virginia; such review
53 includes, but is not limited to, evaluating and reporting
54 annually to the legislative oversight commission on
55 education accountability on the step-by-step implementa-
56 tion required in article three-c of this chapter;

57 (7) Serve as the accountability point for the governor for
58 implementation of the public policy agenda and for the
59 Legislature by maintaining a close working relationship

60 with the legislative leadership and the legislative oversight
61 commission on education accountability;

62 (8) Promulgate legislative rules pursuant to article
63 three-a, chapter twenty-nine-a to fulfill the purposes of
64 section five, article one-a of this chapter;

65 (9) Establish and implement a peer group for each public
66 institution of higher education in the state as described in
67 section three, article one-a of this chapter;

68 (10) Establish and implement the benchmarks and
69 performance indicators necessary to measure institutional
70 achievement towards state policy priorities and institu-
71 tional missions;

72 (11) In January, two thousand one, and annually thereaf-
73 ter, report to the Legislature and to the legislative over-
74 sight commission on education accountability during the
75 January interim meetings, on a date and at a time and
76 location to be determined by the president of the Senate
77 and the speaker of the House of Delegates. The report shall
78 address at least the following:

79 (A) The performance of the system of higher education
80 during the previous fiscal year, including, but not limited
81 to, progress in meeting goals stated in the compacts and
82 progress of the institutions and the higher education
83 system as a whole in meeting the goals and objectives set
84 forth in section one-a, article one of this chapter;

85 (B) An analysis of enrollment data collected pursuant to
86 subsection (i), section one, article ten of this chapter and
87 recommendations for any changes necessary to assure
88 access to high-quality, high-demand education programs
89 for West Virginia residents;

90 (C) The priorities established for capital investment
91 needs pursuant to subdivision (12) of this subsection and
92 the justification for such priority;

93 (E) Recommendations of the commission for statutory
94 changes needed to further the goals and objectives set
95 forth in section one-a, article one of this chapter;

96 (12) Establish a formal process for identifying needs for
97 capital investments and for determining priorities for
98 these investments;

99 (13) On or before the first day of October, two thousand,
100 develop, establish and implement guidelines for institu-
101 tions to follow concerning extensive capital projects. The
102 guidelines shall provide a process for developing capital
103 projects, including, but not limited to, the notification by
104 an institution to the commission of any proposed capital
105 project which has the potential to exceed one million
106 dollars in cost. No such project may be pursued by an
107 institution without the approval of the commission nor
108 may an institution participate directly or indirectly with
109 any public or private entity in any capital project which
110 has the potential to exceed one million dollars in cost;

111 (14) Draw upon the expertise available within the
112 governor's work force investment office and the West
113 Virginia development office as a resource in the area of
114 work force development and training;

115 (15) Acquire legal services as are considered necessary,
116 including representation of the commission, its institu-
117 tions, employees and officers before any court or adminis-
118 trative body, notwithstanding any other provision of this
119 code to the contrary. The counsel may be employed either
120 on a salaried basis or on a reasonable fee basis. In addi-
121 tion, the commission may, but is not required to, call upon
122 the attorney general for legal assistance and representa-
123 tion as provided by law;

124 (16) Employ a chancellor for higher education pursuant
125 to section five of this article;

126 (17) Employ other staff as necessary and appropriate to
127 carry out the duties and responsibilities of the commission;

128 (18) Provide suitable offices in Charleston for the
129 chancellor, vice chancellors and other staff;

130 (19) Conduct a study of the faculty tenure system as
131 administered by the governing boards with specific
132 attention to the role of community service and other
133 criteria for achieving tenured status. The commission shall
134 make a report of its findings and recommendations to the
135 legislative oversight commission on education account-
136 ability by the first day of July, two thousand one;

137 (20) Advise and consent in the appointment of the
138 presidents of the institutions of higher education pursuant
139 to section six of this article. The role of the commission in
140 approving an institutional president is to assure through
141 personal interview that the person selected understands
142 and is committed to achieving the goals and objectives as
143 set forth in the institutional compact and in section one-a,
144 article one of this chapter;

145 (21) Approve the total compensation package from all
146 sources for institutional presidents, as proposed by the
147 governing boards. The governing boards must obtain
148 approval from the commission of the total compensation
149 package both when institutional presidents are employed
150 initially and afterward when any change is made in the
151 amount of the total compensation package;

152 (22) Establish and implement the policy of the state to
153 assure that parents and students have sufficient informa-
154 tion at the earliest possible age on which to base academic
155 decisions about what is required for students to be suc-
156 cessful in college, other post-secondary education and
157 careers related, as far as possible, to results from current
158 assessment tools in use in West Virginia;

159 (23) Approve and implement a uniform standard, as
160 developed by the chancellor, to determine which students
161 shall be placed in remedial or developmental courses. The
162 standard shall be aligned with college admission tests and

163 assessment tools used in West Virginia and shall be
164 applied uniformly by the governing boards throughout the
165 public higher education system. The chancellor shall
166 develop a clear, concise explanation of the standard which
167 the governing boards shall communicate to the state board
168 of education and the state superintendent of schools;

169 (24) Review and approve or disapprove capital projects
170 as described in subdivision (12), subsection (a) of this
171 section;

172 (25) Develop and implement an oversight plan to
173 manage system-wide technology such as the following:

174 (A) Expanding distance learning and technology net-
175 works to enhance teaching and learning, promote access to
176 quality educational offerings with minimum duplication
177 of effort, increase the delivery of instruction to nontradi-
178 tional students, provide services to business and industry
179 and increase the management capabilities of the higher
180 education system; and

181 (B) Reviewing courses and programs offered within the
182 state by nonstate public or private institutions of higher
183 education;

184 (26) Establish and implement policies and procedures to
185 ensure that students may transfer and apply toward the
186 requirements for a bachelor's degree the maximum
187 number of credits earned at any regionally accredited
188 in-state or out-of-state community and technical college
189 with as few requirements to repeat courses or to incur
190 additional costs as is consistent with sound academic
191 policy;

192 (27) Establish and implement policies and procedures to
193 ensure that students may transfer and apply toward the
194 requirements for a degree the maximum number of credits
195 earned at any regionally accredited in-state or out-of-state
196 higher education institution with as few requirements to

197 repeat courses or to incur additional costs as is consistent
198 with sound academic policy;

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

206 (29) Establish and implement policies and programs, in
207 cooperation with the institutions of higher education,
208 through which students who have gained knowledge and
209 skills through employment, participation in education and
210 training at vocational schools or other education institu-
211 tions, or internet-based education programs, may demon-
212 strate by competency-based assessment that they have the
213 necessary knowledge and skills to be granted academic
214 credit or advanced placement standing toward the require-
215 ments of an associate degree or a bachelor's degree at a
216 state institution of higher education;

217 (30) Seek out and attend regional, national and interna-
218 tional meetings and forums on education and work force
219 development related topics, as in the commission's discre-
220 tion is critical for the performance of their duties as
221 members, for the purpose of keeping abreast of education
222 trends and policies to aid it in developing the policies for
223 this state to meet the established education goals and
224 objectives pursuant to section one-a, article one of this
225 chapter;

226 (31) Develop, establish and implement guidelines for
227 higher education governing boards and institutions to
228 follow when considering capital projects. The guidelines
229 shall include, but not be limited to, the following:

230 (A) That the governing boards and institutions not
231 approve or promote projects that give competitive advan-

232 tage to new private sector projects over existing West
233 Virginia businesses, unless the commission determines
234 such private sector projects are in the best interest of the
235 students, the institution and the community to be served;
236 and

237 (B) That the governing boards and institutions not
238 approve or promote projects involving private sector
239 businesses which would have the effect of reducing
240 property taxes on existing properties or avoiding, in whole
241 or in part, the full amount of taxes which would be due on
242 newly developed or future properties.

243 The commission shall determine whether the guidelines
244 developed pursuant to this subdivision should apply to any
245 project which a governing board and institution allege to
246 have been planned on or before the seventeenth day of
247 June, two thousand. In making the determination, the
248 commission shall be guided by the best interests of the
249 students, the institution and the community to be served;

250 (32) Certify to the Legislature, on or before the first day
251 of February, two thousand one, the priority funding
252 percentages and other information needed to complete the
253 allocation of funds in section five, article one-a of this
254 chapter;

255 (33) Consider and submit to the appropriate agencies of
256 the executive and legislative branches of state government,
257 a single budget for higher education that reflects recom-
258 mended appropriations: *Provided*, That on the first day of
259 January, two thousand one, and annually thereafter, the
260 commission shall submit the proposed institutional
261 allocations based on each institution's progress toward
262 meeting the goals of its institutional compact;

263 (34) Initiate a full review and analysis of all student fees
264 charged by state institutions of higher education and make
265 recommendations to the legislative oversight commission
266 on education accountability no later than the second day

267 of January, two thousand two. The final report shall
268 contain findings of fact and recommendations for pro-
269 posed legislation to condense, simplify and streamline the
270 fee schedule and the use of fees or other money collected
271 by state institutions of higher education;

272 (35) The commission has the authority to assess institu-
273 tions for the payment of expenses of the commission or for
274 the funding of statewide higher education services,
275 obligations or initiatives;

276 (36) Promulgate rules allocating reimbursement of
277 appropriations, if made available by the Legislature, to
278 institutions of higher education for qualifying noncapital
279 expenditures incurred in the provision of services to
280 students with physical, learning or severe sensory disabili-
281 ties;

282 (37) Make appointments to boards and commissions
283 where this code requires appointments from the state
284 college system board of directors or the university of West
285 Virginia system board of trustees which were abolished
286 effective the thirtieth day of June, two thousand. Notwith-
287 standing any provisions of this code to the contrary, the
288 commission may appoint one of its own members or any
289 other citizen of the state as its designee. The commission
290 shall appoint the total number of persons in the aggregate
291 required to be appointed by these previous governing
292 boards;

293 (38) Assume the powers set out in section five, article
294 three of this chapter. The rules previously promulgated by
295 the state college system board of directors pursuant to that
296 section are hereby transferred to the commission and shall
297 continue in effect until rescinded, revised, altered or
298 amended by the commission;

299 (39) Examine and determine the feasibility of recom-
300 mendations contained in the *Implementation Board*
301 *Report* presented to the commission in January, two

302 thousand one, and, at the discretion of the commission,
303 create the advantage valley community college network to
304 enhance provision of community and technical college
305 education in the responsibility areas of Marshall Univer-
306 sity, West Virginia State College and West Virginia
307 University Institute of Technology;

308 (40) Pursuant to the provisions of article three-a,
309 chapter twenty-nine-a of this code and section six, article
310 one of this chapter, promulgate rules as necessary or
311 expedient to fulfill the purposes of this chapter. The
312 commission may promulgate a new uniform rule for the
313 purpose of standardizing, as much as possible, the admin-
314 istration of personnel matters among the institutions of
315 higher education;

316 (41) Determine when a joint rule among the governing
317 boards is necessary or required by law and, in those
318 instances and in consultation with the governing boards,
319 promulgate the joint rule;

320 (42) Promulgate a joint rule establishing tuition and fee
321 policy. The rule shall include, but is not limited to, the
322 following:

323 (A) Comparisons with peer institutions;

324 (B) Differences among institutional missions;

325 (C) Strategies for promoting student access;

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

328 (E) Such other policies as the commission considers
329 appropriate; and

330 (43) Develop a method for the council, or members
331 thereof, to participate in the selection of administrative
332 heads of the community and technical colleges.

333 (b) In addition to the powers and duties listed in subsec-
334 tion (a) of this section, the commission has the following

335 general powers and duties related to its role in developing,
336 articulating and overseeing the implementation of the
337 public policy agenda:

338 (1) Planning and policy leadership including a distinct
339 and visible role in setting the state's policy agenda and in
340 serving as an agent of change;

341 (2) Policy analysis and research focused on issues
342 affecting the system as a whole or a geographical region
343 thereof;

344 (3) Development and implementation of institutional
345 mission definitions including use of incentive money to
346 influence institutional behavior in ways that are consistent
347 with public priorities;

348 (4) Academic program review and approval including
349 the use of institutional missions as a template to judge the
350 appropriateness of both new and existing programs and
351 the authority to implement needed changes;

352 (5) Development of budget and allocation of resources,
353 including reviewing and approving institutional operating
354 and capital budgets and distributing incentive and perfor-
355 mance-based funding;

356 (6) Administration of state and federal student aid
357 programs, including promulgation of any rules formerly
358 vested in the previous governing boards in relation to
359 those programs;

360 (7) Acting as the agent to receive and disburse public
361 funds when a governmental entity requires designation of
362 a statewide higher education agency for this purpose;

363 (8) Development, establishment and implementation of
364 information, assessment and accountability systems
365 including maintenance of statewide data systems that
366 facilitate long-term planning and accurate measurement
367 of strategic outcomes and performance indicators;

368 (9) Developing, establishing and implementing policies
369 for licensing and oversight for both public and private
370 degree-granting and nondegree-granting institutions that
371 provide post-secondary education courses or programs in
372 the state;

373 (10) Development, implementation and oversight of
374 statewide and regionwide projects and initiatives such as
375 those using funds from federal categorical programs or
376 those using incentive and performance-based funding from
377 any source; and

378 (11) Quality assurance that intersects with all other
379 duties of the commission particularly in the areas of
380 planning, policy analysis, program review and approval,
381 budgeting and information and accountability systems.

382 (c) In addition to the powers and duties provided for in
383 subsections (a) and (b) of this section and any other powers
384 and duties as may be assigned to it by law, the commission
385 has such other powers and duties as may be necessary or
386 expedient to accomplish the purposes of this article.

387 (d) The commission is authorized to withdraw specific
388 powers of any governing board for a period not to exceed
389 two years if the commission makes a determination that:

390 (1) The governing board has failed for two consecutive
391 years to develop an institutional compact as required in
392 article one of this chapter;

393 (2) The commission has received information, substanti-
394 ated by independent audit, of significant mismanagement
395 or failure to carry out the powers and duties of the board
396 of governors according to state law; or

397 (3) Other circumstances which, in the view of the
398 commission, severely limit the capacity of the board of
399 governors to carry out its duties and responsibilities.

400 (4) The period of withdrawal of specific powers may not
401 exceed two years during which time the commission is

402 authorized to take steps necessary to reestablish the
403 conditions for restoration of sound, stable and responsible
404 institutional governance.

405 (e) Notwithstanding the provisions of section six, article
406 one-a of this chapter, the commission shall undertake a
407 study of the most effective and efficient strategies and
408 policies to address the findings and intent of that section.

409 (1) The issues addressed by this study shall include, but
410 not be limited to:

411 (A) Strategies to ensure access to graduate education;

412 (B) The development of state colleges as regional
413 graduate centers with authority to broker access to
414 graduate programs in their responsibility areas;

415 (C) The process by which state colleges obtain authori-
416 zation to grant graduate degrees;

417 (D) The relationship of regional graduate centers at state
418 colleges to graduate programs offered within those regions
419 by state universities; and

420 (E) Other issues related to initiatives to meet each
421 region's need and enhance the quality and competitiveness
422 of graduate programs offered and/or brokered by West
423 Virginia state colleges and universities.

424 (2) The commission shall report the findings of this
425 study along with the recommendations for legislative
426 actions, if any, to address these findings and the intent of
427 this section, to the legislative oversight commission on
428 education accountability by the first day of January, two
429 thousand one.

**§18B-1B-5. Employment of chancellor for higher education;
office; powers and duties generally; employment
of vice chancellors.**

1 (a) The commission, created pursuant to section one of
2 this article, shall employ a chancellor for higher education

3 who shall be the chief executive officer of the commission
4 and who shall serve at its will and pleasure. The vice
5 chancellor for administration shall serve as the interim
6 chancellor until a chancellor is employed.

7 (b) The commission shall set the qualifications for the
8 position of chancellor and shall conduct a thorough
9 nationwide search for qualified candidates. A qualified
10 candidate is one who meets at least the following criteria:

11 (1) Possesses an excellent academic and administrative
12 background;

13 (2) Demonstrates strong communication skills;

14 (3) Has significant experience and an established
15 national reputation as a professional in the field of higher
16 education;

17 (4) Is free of institutional or regional biases; and

18 (5) Holds or retains no other administrative position
19 within the system of higher education while employed as
20 chancellor.

21 (c) The chancellor shall be compensated on a basis in
22 excess of, but not to exceed twenty percent greater than,
23 the base salary of any president of a state institution of
24 higher education or the administrative head of a governing
25 board.

26 (d) With the approval of the commission, the chancellor
27 may employ a vice chancellor for health sciences who shall
28 serve at the will and pleasure of the chancellor. The vice
29 chancellor for health sciences shall coordinate the West
30 Virginia university school of medicine, the Marshall
31 university school of medicine, and the West Virginia school
32 of osteopathic medicine and also shall provide assistance
33 to the governing boards on matters related to medical
34 education and health sciences. The vice chancellor for
35 health sciences shall perform all duties assigned by the
36 chancellor, the commission and state law. In the case of a

37 vacancy in the office of vice chancellor of health sciences,
38 the duties assigned to this office by law are the responsi-
39 bility of the chancellor or a designee;

40 (e) With the approval of the commission, the chancellor
41 shall employ a vice chancellor for community and techni-
42 cal college education and work force development who
43 serves at the will and pleasure of the chancellor. The
44 duties of this position include serving as the chief execu-
45 tive officer of the West Virginia council for community
46 and technical college education created pursuant to article
47 two-b of this chapter, and such other duties as assigned by
48 law or by the commission. Any reference in this code to the
49 vice chancellor for community and technical colleges
50 means the vice chancellor for community and technical
51 college education and work force development, which vice
52 chancellor for community and technical colleges shall
53 become the vice chancellor for community and technical
54 college education and work force development. It is the
55 duty and responsibility of the vice chancellor for commu-
56 nity and technical college education and work force
57 development to:

58 (1) Provide assistance to the commission, the chancellor
59 and the governing boards on matters related to community
60 and technical college education;

61 (2) Advise, assist and consult regularly with the institu-
62 tional presidents; institutional boards of governors or
63 boards of advisors, as appropriate; and district consortia
64 committees of the state institutions of higher education
65 involved in community and technical college education;
66 and

67 (3) Perform all duties assigned by the chancellor, the
68 commission and state law.

69 (f) With the approval of the commission, the chancellor
70 shall employ a vice chancellor for administration pursuant
71 to section two, article four of this chapter;

72 (g) With the approval of the commission, the chancellor
73 may employ a vice chancellor for state colleges who shall
74 serve at the will and pleasure of the chancellor. It is the
75 duty and responsibility of the vice chancellor for state
76 colleges to:

77 (1) Provide assistance to the commission, the chancellor
78 and the state colleges on matters related to or of interest
79 and concern to these institutions;

80 (2) Advise, assist and consult regularly with the institu-
81 tional presidents and institutional boards of governors of
82 each state college;

83 (3) Serve as an advocate and spokesperson for the state
84 colleges to represent them and to make their interests,
85 views and issues known to the chancellor, the commission
86 and governmental agencies;

87 (4) Perform all duties assigned by the chancellor, the
88 commission and state law;

89 In addition, the vice chancellor for state colleges has the
90 responsibility and the duty to provide staff assistance to
91 the institutional presidents and governing boards to the
92 extent practicable;

93 (h) Apart from the offices of the vice chancellors as set
94 forth in this section and section two, article four of this
95 chapter, the chancellor shall determine the organization
96 and staffing positions within the office that are necessary
97 to carry out his or her powers and duties and may employ
98 necessary staff;

99 (i) The chancellor may enter into agreements with any
100 state agency or political subdivision of the state, any state
101 higher education institution or any other person or entity
102 to enlist staff assistance to implement the powers and
103 duties assigned by the commission or by state law;

104 (j) The chancellor shall be responsible for the day-to-day
105 operations of the commission and shall have the following
106 responsibilities:

107 (1) To carry out policy and program directives of the
108 commission;

109 (2) To develop and submit annual reports on the imple-
110 mentation plan to achieve the goals and objectives set
111 forth in section one-a, article one of this chapter and in the
112 institutional compacts;

113 (3) To prepare and submit to the commission for its
114 approval the proposed budget of the commission including
115 the offices of the chancellor and the vice chancellors;

116 (4) On and after the first day of July, two thousand one,
117 to assist the governing boards in developing rules, subject
118 to the provisions of section six, article one of this chapter:
119 *Provided*, That nothing in this chapter requires the rules
120 of the governing boards to be filed pursuant to the rule-
121 making procedures provided in article three-a, chapter
122 twenty-nine-a of this code. The chancellor shall be
123 responsible for ensuring that any policy which is required
124 to be uniform across the institutions is applied in a
125 uniform manner;

126 (5) To perform all other duties and responsibilities
127 assigned by the commission or by state law.

128 (k) The chancellor shall be reimbursed for all actual and
129 necessary expenses incurred in the performance of all
130 assigned duties and responsibilities;

131 (l) The chancellor is the primary advocate for higher
132 education and, with the commission, advises the Legisla-
133 ture on matters of higher education in West Virginia. As
134 the primary advocate for higher education, the chancellor
135 shall work closely with the legislative oversight commis-
136 sion on education accountability and with the elected
137 leadership of the state to ensure that they are fully in-
138 formed about higher education issues and that the com-
139 mission fully understands the goals for higher education
140 that the Legislature has established by law;

141 (m) The chancellor may design and develop for consider-
142 ation by the commission new statewide or regional initia-
143 tives in accordance with the goals set forth in section
144 one-a, article one of this chapter and the public policy
145 agenda articulated by the commission.

146 (n) The chancellor shall work closely with members of
147 the state board of education and with the state superinten-
148 dent of schools to assure that the following goals are met:

149 (1) Development and implementation of a seamless
150 kindergarten-through-college system of education; and

151 (2) Appropriate coordination of missions and programs.
152 To further the goals of cooperation and coordination
153 between the commission and the state board of education,
154 the chancellor shall serve as an ex officio, nonvoting
155 member of the state board of education.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) Effective the thirtieth day of June, two thousand one,
2 the institutional boards of advisors at Bluefield state
3 college, Concord college, eastern West Virginia community
4 and technical college, Fairmont state college, Glenville
5 state college, Marshall university, Shepherd college,
6 southern West Virginia community and technical college,
7 West Liberty state college, West Virginia northern commu-
8 nity and technical college, the West Virginia school of
9 osteopathic medicine, West Virginia state college and West
10 Virginia university are abolished.

11 (b) Effective the first day of July, two thousand one, a
12 board of governors is established at each of the following
13 institutions: Bluefield state college, Concord college,
14 eastern West Virginia community and technical college,
15 Fairmont state college, Glenville state college, Marshall

16 university, Shepherd college, southern West Virginia
17 community and technical college, West Liberty state
18 college, West Virginia northern community and technical
19 college, the West Virginia school of osteopathic medicine,
20 West Virginia state college and West Virginia university.

21 Each board of governors shall consist of twelve persons:
22 *Provided*, That the institutional boards of governors for
23 Marshall university and West Virginia university shall
24 consist of fifteen persons. Each board of governors shall
25 include:

26 (1) A full-time member of the faculty with the rank of
27 instructor or above duly elected by the faculty;

28 (2) A member of the student body in good academic
29 standing, enrolled for college credit work and duly elected
30 by the student body;

31 (3) A member from the institutional classified employees
32 duly elected by the classified employees; and

33 (4) Nine lay members appointed by the governor by and
34 with the advice and consent of the Senate pursuant to
35 section one-a, article six of this chapter: *Provided*, That
36 for the institutional boards of governors at Marshall
37 university and West Virginia university, twelve lay
38 members shall be appointed by the governor by and with
39 the advice and consent of the Senate pursuant to section
40 one-a, article six of this chapter: *Provided, however*, That
41 of the appointed lay members, the governor shall appoint
42 one superintendent of a county board of education from
43 the area served by the institution: *Provided further*, That
44 in making the initial appointments to the institutional
45 boards of governors, the governor shall appoint, except in
46 the case of death, resignation or failure to be confirmed by
47 the Senate, those persons who are lay members of the
48 institutional boards of advisors for those institutions
49 named in subsection (a) on the thirtieth day of June, two
50 thousand one, and appointed pursuant to section one-a,
51 article six of this chapter.

52 (c) Of the nine members appointed by the governor, no
53 more than five may be of the same political party: *Pro-*
54 *vided*, That of the twelve members appointed by the
55 governor to the governing boards of Marshall university
56 and West Virginia university, no more than seven may be
57 of the same political party. At least six of the members
58 shall be residents of the state: *Provided, however*, That of
59 the twelve members appointed by the governor to the
60 governing boards of Marshall university and West Virginia
61 university, at least eight of the members shall be residents
62 of the state.

63 (d) The student member shall serve for a term of one
64 year. The term beginning in July, two thousand one, shall
65 end on the thirtieth day of June, two thousand two.
66 Thereafter, the term shall begin on the first day of July.

67 (e) The faculty member shall serve for a term of two
68 years. The term beginning in July, two thousand one, ends
69 on the thirtieth day of June, two thousand three. Thereaf-
70 ter, the term shall begin on the first day of July. Faculty
71 members are eligible to succeed themselves for three
72 additional terms, not to exceed a total of eight consecutive
73 years.

74 (f) The member representing classified employees shall
75 serve for a term of two years. The term beginning in July,
76 two thousand one, shall end on the thirtieth day of June,
77 two thousand three. Thereafter, the term shall begin on
78 the first day of July. Members representing classified
79 employees are eligible to succeed themselves for three
80 additional terms, not to exceed a total of eight consecutive
81 years.

82 (g) The appointed lay citizen members shall serve terms
83 of four years each and shall be eligible to succeed them-
84 selves for no more than one additional term.

85 (h) A vacancy in an unexpired term of a member shall be
86 filled for the unexpired term within thirty days of the

87 occurrence of the vacancy in the same manner as the
88 original appointment or election. Except in the case of a
89 vacancy, all elections shall be held and all appointments
90 shall be made no later than the thirtieth day of June
91 preceding the commencement of the term, except the
92 election of officers for the term beginning in July, two
93 thousand one shall be made that July. Each board of
94 governors shall elect one of its appointed lay members to
95 be chairperson in June of each year. No member may serve
96 as chairperson for more than two consecutive years.

97 (i) The appointed members of the institutional boards of
98 governors shall serve staggered terms. Of the initial
99 appointments by the governor to each of the institutional
100 boards of governors, two shall be appointed for terms of
101 one year, two shall be appointed for terms of two years,
102 two shall be appointed for terms of three years and three
103 shall be appointed for terms of four years: *Provided*, That
104 for the initial appointments to the governing boards of
105 Marshall university and West Virginia university, three
106 shall be appointed for terms of one year, three shall be
107 appointed for terms of two years, three shall be appointed
108 for terms of three years and three shall be appointed for
109 terms of four years. After the initial appointments, all
110 appointees shall serve for terms of four years.

111 (j) No person shall be eligible for appointment to mem-
112 bership on a board of governors who is an officer, em-
113 ployee or member of any other board of governors, a
114 member of an institutional board of advisors of any public
115 institution of higher education, an employee of any
116 institution of higher education, an officer or member of
117 any political party executive committee, the holder of any
118 other public office or public employment under the
119 government of this state or any of its political subdivisions
120 or a member of the commission: *Provided*, That this
121 subsection shall not be construed to prevent the represen-
122 tative from the faculty, classified employees, or students or
123 the superintendent of a county board of education from
124 being members of the governing boards.

125 (k) Before exercising any authority or performing any
126 duties as a member of a governing board, each member
127 shall qualify as such by taking and subscribing to the oath
128 of office prescribed by section five, article IV of the
129 constitution of West Virginia and the certificate thereof
130 shall be filed with the secretary of state.

131 (l) No member of a governing board appointed by the
132 governor may be removed from office by the governor
133 except for official misconduct, incompetence, neglect of
134 duty or gross immorality and then only in the manner
135 prescribed by law for the removal of the state elective
136 officers by the governor.

137 (m) The president of the institution shall make available
138 resources of the institution for conducting the business of
139 its board of governors. The members of the board of
140 governors shall serve without compensation, but shall be
141 reimbursed for all reasonable and necessary expenses
142 actually incurred in the performance of their official
143 duties under this article upon presentation of an itemized
144 sworn statement of their expenses. All expenses incurred
145 by the board of governors and the institution under this
146 section shall be paid from funds allocated to the institu-
147 tion for that purpose.

§18B-2A-4. Powers and duties of governing boards generally.

1 Effective the first day of July, two thousand one, each
2 governing board shall separately have the following
3 powers and duties:

4 (a) Determine, control, supervise and manage the
5 financial, business and education policies and affairs of
6 the state institutions of higher education under its juris-
7 diction;

8 (b) Develop a master plan for the institutions under its
9 jurisdiction; except the administratively linked community
10 and technical colleges shall develop their master plans
11 subject to the provisions of section one, article six of this

12 chapter. The ultimate responsibility for developing and
13 updating the master plans at the institutional level resides
14 with the board of governors or board of advisors, as
15 applicable, but the ultimate responsibility for approving
16 the final version of the institutional master plans, includ-
17 ing periodic updates, resides with the commission. Each
18 master plan shall include, but not be limited to, the
19 following:

20 (1) A detailed demonstration of how the master plan will
21 be used to meet the goals and objectives of the institu-
22 tional compact;

23 (2) A well-developed set of goals outlining missions,
24 degree offerings, resource requirements, physical plant
25 needs, personnel needs, enrollment levels and other
26 planning determinates and projections necessary in such
27 a plan to assure that the needs of the institution's area of
28 responsibility for a quality system of higher education are
29 addressed;

30 (3) Documentation of the involvement of the commis-
31 sion, institutional constituency groups, clientele of the
32 institution and the general public in the development of all
33 segments of the institutional master plan.

34 The plan shall be established for periods of not less than
35 three nor more than six years and shall be revised periodi-
36 cally as necessary, including the addition or deletion of
37 degree programs as, in the discretion of the appropriate
38 governing board, may be necessary.

39 (c) Prescribe for the state institutions of higher educa-
40 tion under its jurisdiction, in accordance with its master
41 plan and the compact for each institution, specific func-
42 tions and responsibilities to meet the higher education
43 needs of its area of responsibility and to avoid unnecessary
44 duplication;

45 (d) Direct the preparation of a budget request for the
46 state institutions of higher education under its jurisdic-

47 tion, such request to relate directly to missions, goals and
48 projections as found in the institutional master plans and
49 the institutional compacts;

50 (e) Consider, revise and submit to the commission a
51 budget request on behalf of the state institutions of higher
52 education under its jurisdiction;

53 (f) Review, at least every five years, all academic pro-
54 grams offered at the state institutions of higher education
55 under its jurisdiction. The review shall address the viabil-
56 ity, adequacy and necessity of the programs in relation to
57 its institutional master plan, the institutional compact and
58 the education and work force needs of its responsibility
59 district. As a part of the review, each governing board
60 shall require the institutions under its jurisdiction to
61 conduct periodic studies of its graduates and their employ-
62 ers to determine placement patterns and the effectiveness
63 of the education experience. Where appropriate, these
64 studies should coincide with the studies required of many
65 academic disciplines by their accrediting bodies;

66 (g) The governing boards also shall ensure that the
67 sequence and availability of academic programs and
68 courses offered by the institutions under their jurisdiction
69 is such that students have the maximum opportunity to
70 complete programs in the time frame normally associated
71 with program completion. Each governing board also is
72 responsible to see that the needs of nontraditional col-
73 lege-age students are appropriately addressed and, to the
74 extent it is possible for the individual governing board to
75 control, to assure core coursework completed at state
76 institutions of higher education under its jurisdiction is
77 transferable to any other state institution of higher
78 education for credit with the grade earned.

79 (h) Subject to the provisions of article one-b of this
80 chapter, the appropriate governing board has the exclusive
81 authority to approve the teacher education programs
82 offered in the institution under its control. In order to

83 permit graduates of teacher education programs to receive
84 a degree from a nationally accredited program and in
85 order to prevent expensive duplication of program accred-
86 itation, the chancellor may select and utilize one nation-
87 ally recognized teacher education program accreditation
88 standard as the appropriate standard for program evalua-
89 tion;

90 (i) Utilize faculty, students and classified employees in
91 institutional-level planning and decision making when
92 those groups are affected;

93 (j) Subject to the provisions of federal law and pursuant
94 to the provisions of article nine of this chapter and to rules
95 adopted by the commission, administer a system for the
96 management of personnel matters, including, but not
97 limited to, personnel classification, compensation, and
98 discipline for employees of the institutions under their
99 jurisdiction;

100 (k) Administer a system for the hearing of employee
101 grievances and appeals therefrom: *Provided*, That after the
102 first day of July, two thousand, one and notwithstanding
103 any other provisions of this code to the contrary, the
104 procedure established in article six-a, chapter twenty-nine
105 of this code shall be the exclusive mechanism for hearing
106 prospective employee grievances and appeal: *Provided*
107 *further*, That in construing the application of article six-a,
108 chapter twenty-nine to grievances of higher education
109 employees, the following shall apply:

110 (1) "Chief administrator" means the president of a state
111 institution of higher education as to those employees
112 employed by the institution and the chancellor as to those
113 employees employed by the commission;

114 (2) The state division of personnel shall not be a party to
115 nor have any authority regarding a grievance initiated by
116 a higher education employee; and

117 (3) The provisions of this section supersede and replace
118 the grievance procedure set out in article twenty-nine,
119 chapter eighteen of this code for any grievance initiated by
120 a higher education employee after the first day of July,
121 two thousand one.

122 (l) Solicit and utilize or expend voluntary support,
123 including financial contributions and support services, for
124 the state institutions of higher education under its juris-
125 diction;

126 (m) Appoint a president or other administrative head for
127 the institutions of higher education under its jurisdiction
128 subject to the provisions of section six, article one-b of this
129 chapter;

130 (n) Conduct written performance evaluations of each
131 institution's president pursuant to section six, article
132 one-b of this chapter;

133 (o) Submit to the commission no later than the first day
134 of November of each year an annual report of the perfor-
135 mance of the institutions of higher education under its
136 jurisdiction during the previous fiscal year as compared to
137 stated goals in its master plan and institutional compact;

138 (p) Enter into contracts or consortium agreements with
139 the public schools, private schools or private industry to
140 provide technical, vocational, college preparatory, reme-
141 dial and customized training courses at locations either on
142 campuses of the public institution of higher education or
143 at off-campus locations in the institution's responsibility
144 district. To accomplish this goal, the boards are permitted
145 to share resources among the various groups in the com-
146 munity;

147 (q) Delegate, with prescribed standards and limitations,
148 the part of its power and control over the business affairs
149 of a particular state institution of higher education under
150 its jurisdiction to the president or other administrative
151 head of the state institution of higher education in any

152 case where it considers the delegation necessary and
153 prudent in order to enable the institution to function in a
154 proper and expeditious manner and to meet the require-
155 ments of its institutional compact. If a governing board
156 elects to delegate any of its power and control under the
157 provisions of this subsection, it shall notify the chancellor.
158 Any such delegation of power and control may be re-
159 scinded by the appropriate governing board or the chan-
160 cellor at any time, in whole or in part;

161 (r) Unless changed by the interim governing board or the
162 chancellor, the governing boards shall continue to abide by
163 existing rules setting forth standards for acceptance of
164 advanced placement credit for their respective institutions.
165 Individual departments at institutions of higher education
166 may, upon approval of the institutional faculty senate,
167 require higher scores on the advanced placement test than
168 scores designated by the appropriate governing board
169 when the credit is to be used toward meeting a require-
170 ment of the core curriculum for a major in that depart-
171 ment;

172 (s) Each governing board, or its designee, shall consult,
173 cooperate and work with the state treasurer and the state
174 auditor to update as necessary and maintain an efficient
175 and cost-effective system for the financial management
176 and expenditure of special revenue and appropriated state
177 funds at the institutions under its jurisdiction that ensures
178 that properly submitted requests for payment be paid on
179 or before due date, but in any event, within fifteen days of
180 receipt in the state auditor's office;

181 (t) The governing boards in consultation with the
182 chancellor and the secretary of the department of adminis-
183 tration shall develop, update as necessary and maintain a
184 plan to administer a consistent method of conducting
185 personnel transactions, including, but not limited to,
186 hiring, dismissal, promotions and transfers at the institu-
187 tions under their jurisdiction. Each such personnel trans-
188 action shall be accompanied by the appropriate standard-

189 ized system or forms which will be submitted to the
190 respective governing board and the department of finance
191 and administration;

192 (u) Notwithstanding any other provision of this code to
193 the contrary, the governing boards shall have the authority
194 to transfer funds from any account specifically appropri-
195 ated for their use to any corresponding line item in a
196 general revenue account at any agency or institution under
197 their jurisdiction as long as such transferred funds are
198 used for the purposes appropriated. The governing boards
199 also shall have the authority to transfer funds from
200 appropriated special revenue accounts for capital im-
201 provements under their jurisdiction to special revenue
202 accounts at agencies or institutions under their jurisdic-
203 tion as long as such transferred funds are used for the
204 purposes appropriated; and

205 (v) Notwithstanding any other provision of this code to
206 the contrary, the governing boards may acquire legal
207 services as are considered necessary, including representa-
208 tion of the governing boards, their institutions, employees
209 and officers before any court or administrative body. The
210 counsel may be employed either on a salaried basis or on
211 a reasonable fee basis. In addition, the governing boards
212 may, but are not required to, call upon the attorney
213 general for legal assistance and representation as provided
214 by law.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

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

1 (a) The Legislature hereby finds that:

2 (1) The goals, objectives and purposes contained in
3 Senate Bill 653, passed during the regular legislative
4 session in two thousand, reflected the research findings
5 available to the Legislature at the time; since then, how-
6 ever, additional research indicates that, while Senate Bill

7 653 moves in the appropriate direction of independent
8 accreditation and meeting essential conditions for public
9 community and technical colleges, the legislation does not
10 take the final steps that are considered to be necessary by
11 independent researchers. This position is clearly demon-
12 strated by the recent research findings and recommenda-
13 tions cited below:

14 (A) "West Virginia: A Vision Shared! Economic Devel-
15 opment: A Plan for West Virginia's Future", hereinafter
16 cited in this article and article two-c of this chapter as the
17 *Market Street Report*, is a research document commis-
18 sioned by the West Virginia council for community and
19 economic development to assess the economic competitive-
20 ness of the state. The report makes a number of findings
21 and recommendations important to public community and
22 technical college education:

23 (i) The state needs to adopt and implement a specific
24 focus on technical education; in particular, it needs to
25 move away from the traditionally isolated and limited
26 vocational programming towards a systematic approach of
27 teaching technical skills that employers need today;

28 (ii) The state needs to establish a strong technical
29 education system that is separate from the university
30 system and is responsive to the needs of business through-
31 out the state;

32 (iii) The state needs to establish as a high level priority
33 the training and retraining of its working age adults to
34 help them acquire and maintain the competitive skills they
35 need to succeed in today's economy; and

36 (iv) The state needs to emphasize the role of lifelong
37 learning as a critical piece of its overall education and
38 training system if the state is to make the transition to the
39 new economy.

40 (B) *The Report to the Legislative Oversight Commission*
41 *on Education Accountability*, hereinafter cited in this

42 article and article two-c as the *McClenney Report*, is a
43 study required by provisions of Senate Bill 653 and
44 conducted by Dr. Kay McClenney. The research found
45 that:

46 (i) The participation rate in West Virginia community
47 and technical college education is substantially lower than
48 will be necessary if the state is to achieve its goals for
49 economic development and prosperity for its citizens;

50 (ii) The low visibility of the component community and
51 technical colleges effectively restricts access for the West
52 Virginians who most need encouragement to participate in
53 post-secondary education and training;

54 (iii) It is not clear that the parent institutions of the
55 component community colleges actually embrace the
56 community college mission;

57 (iv) The community and technical college developmental
58 education programs are under serving by far the evident
59 needs of the population, especially as that service relates
60 to nontraditional students;

61 (v) Adults over age twenty-five are under represented in
62 the community and technical college student populations;

63 (vi) Technical education program development and
64 enrollment are not at the levels necessary to serve the
65 needs of the state;

66 (vii) Independent accreditation and the essential condi-
67 tions required by Senate Bill 653 are necessary, but not
68 sufficient alone to provide a strong enough tool to accom-
69 plish the state's goal to strengthen community and techni-
70 cal college education; and therefore,

71 (viii) The state needs to create a community college
72 support capacity at the state level that will bring leader-
73 ship, coordination, technical support, advocacy and
74 critical mass to a statewide network of local community
75 and technical college campuses.

76 (C) The *Report and Recommendations of the Implemen-*
77 *tation Board to the West Virginia Higher Education Policy*
78 *Commission*, hereinafter cited in this article and article
79 two-c of this chapter as the *Implementation Board Report*,
80 is a study required by Senate Bill 653 to determine the
81 most effective and efficient method to deliver community
82 and technical college services in the responsibility areas of
83 Marshall university, West Virginia state college and West
84 Virginia university institute of technology. The *Implemen-*
85 *tation Board Report* states its goals and vision for commu-
86 nity and technical college education in the advantage
87 valley region as one of a dynamic, vital and vibrant
88 community college network which offers:

89 (i) Affordable, quality training and education to stu-
90 dents;

91 (ii) Represents a recognized path of choice to success in
92 the knowledge economy for thousands of West Virginians;
93 and

94 (iii) Provides West Virginia businesses with the highly
95 skilled work force necessary to meet their evolving needs
96 in the global knowledge economy.

97 (D) In furtherance of their goals, the *Implementation*
98 *Board Report* recommended formation of the advantage
99 valley community college network:

100 (i) To enhance economic development through coordi-
101 nated leadership and a delivery system for education and
102 training initiatives;

103 (ii) To provide accountability through a separate com-
104 pact and through independent accreditation of each of the
105 affected community and technical colleges; and

106 (iii) To enhance education opportunities for the citizens
107 of the area and assist in overcoming the barrier of accessi-
108 bility in higher education.

109 (b) Based on the recent research cited above, the Legisla-
110 ture further finds that:

111 (1) The recommendations of the *Market Street Report*
112 clearly point out the shortcomings of the state's current
113 approach to providing post-secondary education and
114 programs and show the consequences of failing to change
115 appropriately;

116 (2) The research, findings, vision and goals set forth in
117 the *McClenney Report* and the *Implementation Board*
118 *Report* are noteworthy and, although written, in part, to
119 address specific institutions, have broad application
120 statewide for community and technical colleges;

121 (3) The research shows that:

122 (A) A need exists to enhance community and technical
123 college education in West Virginia through the delivery of
124 services that meet the goals of this chapter and that are
125 delivered pursuant to the process for meeting the essential
126 conditions established in section three, article three-c of
127 this chapter;

128 (B) A need exists for statewide leadership, coordination,
129 and support for the work of the community and technical
130 colleges and for advocacy for the public priorities these
131 institutions are charged to address;

132 (C) Community and technical colleges need to be effi-
133 cient, avoiding duplication and the burden of bureaucracy
134 while recognizing fiscal realities;

135 (D) Community and technical colleges need a high
136 degree of flexibility and local autonomy to preserve and
137 expand their ability to respond rapidly and effectively to
138 local or regional needs;

139 (E) Community and technical colleges need state-level
140 support and leadership that recognize differences among
141 regions of the state and among institutions and accept the
142 reality that institutions are at different stages in their

143 development and have different challenges and capabili-
144 ties;

145 (F) Clear benchmarks and regular monitoring are
146 required to assess the progress of community and technical
147 colleges toward meeting the established goals and for
148 meeting the essential conditions, including independent
149 accreditation, established in this chapter;

150 (4) Certain acts to streamline accountability, to make
151 maximum use of existing assets to meet new demands and
152 target funding to initiatives designed to enhance and
153 reorient existing capacity, and to provide incentives for
154 brokering and collaboration require that the role of the
155 joint commission for vocational-technical-occupational
156 education be reexamined.

157 (c) *Legislative intent.* – The intent of the Legislature in
158 enacting this article is to address the research findings
159 cited above by reconstituting the joint commission for
160 vocational-technical-occupational education as the West
161 Virginia council for community and technical college
162 education in order to reorient the mission, role and
163 responsibilities consistent with and supportive of the
164 mission, role and responsibilities of the commission, the
165 goals for post-secondary education and accountability for
166 assisting the public community and technical colleges,
167 branches, centers, regional centers, and other delivery sites
168 with a community and technical college mission in achiev-
169 ing the state’s public policy agenda.

170 (d) *Purpose.* – The purpose of this article is to provide
171 for the development of a leadership and support mecha-
172 nism for the community and technical colleges, branches,
173 centers, regional centers, and other delivery sites with a
174 community and technical college mission to assist them in
175 meeting the essential conditions and in the step-by-step
176 implementation process for achieving the goals for com-
177 munity and technical college education as provided for in
178 article three-c of this chapter, and to promote coordination

179 and collaboration among secondary and post-secondary
180 vocational-technical-occupational and adult basic educa-
181 tion programs as provided for in this chapter and chapter
182 eighteen of this code.

183 The focus of this leadership and support mechanism is to
184 encourage development of a statewide mission to raise
185 education attainment, increase adult literacy, promote
186 work force and economic development, and ensure access
187 to secondary and post-secondary education for the citizens
188 of the state while maintaining the local autonomy and
189 flexibility necessary to the success of community and
190 technical education.

§18B-2B-2. Definitions.

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

4 (a) "Adult basic education" means adult basic skills
5 education designed to improve the basic literacy needs of
6 adults, including information processing skills, communi-
7 cation skills and computational skills, leading to a high
8 school equivalency diploma, under the jurisdiction of the
9 state board of education.

10 (b) "Post-secondary vocational-technical-occupational
11 education" means any course or program beyond the high
12 school level that results in, or may result in, the awarding
13 of a two-year associate degree, certificate or other creden-
14 tial from an institution under the jurisdiction of a govern-
15 ing board or other public or private education provider.

16 (c) "Secondary vocational-technical-occupational edu-
17 cation" means any course or program at the high school
18 level that results in, or may result in, a high school di-
19 ploma or its equivalent, under the jurisdiction of the state
20 board of education.

21 (d) "Vice chancellor" means the vice chancellor for
22 community and technical college education and work force

23 development pursuant to section five, article one-b of this
24 chapter.

25 (e) “West Virginia Council for Community and Technical
26 College Education” or “council” means the council
27 established pursuant to section three of this article. On
28 and after the effective date of this article, any reference in
29 this code to the joint commission for vocational-technical-
30 occupational education means the West Virginia council
31 for community and technical college education.

§18B-2B-3. Joint commission for vocational-technical-occupational education reconstituted as West Virginia council for community and technical college education; jurisdiction of higher education policy commission; supervision of chancellor; chief executive officer.

1 (a) Effective the first day of July, two thousand one, the
2 West Virginia joint commission for vocational-technical-occupational education is reconstituted as
3 the West Virginia council for community and technical
4 college education. Any reference in this code to the joint
5 commission for vocational-technical-occupational education means the West Virginia council for community and
6 technical college education. The council has all the powers
7 and duties assigned by law to the joint commission for
8 vocational-technical-occupational education prior to the
9 effective date of this section and such other powers and
10 duties as may be assigned by law or by the commission.
11

12
13 (b) The council is subject to the jurisdiction of the
14 commission established in article one-b of this chapter.
15 The vice chancellor serves as chief executive officer of the
16 council.

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

1 (a) On the effective date of this section, the joint com-
2 mission for vocational-technical-occupational education
3 is reconstituted as the West Virginia council for commu-

4 nity and technical college education and all terms of
5 members appointed by the governor prior to the effective
6 date of this section expire upon the appointment by the
7 governor of all the members required to be appointed by
8 this section.

9 (b) The council is comprised of eight members selected
10 as follows:

11 (1) Three members appointed by the governor, with the
12 advice and consent of the Senate;

13 (2) Two members appointed by the governor from a list
14 of six persons nominated by the president of the Senate:
15 *Provided*, That no more than two nominees may be from
16 the same congressional district and no more than three
17 may be from the same political party;

18 (3) Two members appointed by the governor from a list
19 of six persons nominated by the speaker of the House of
20 Delegates: *Provided*, That no more than two nominees
21 may be from the same congressional district and no more
22 than three may be from the same political party; and

23 (4) The assistant superintendent for technical and adult
24 education of the state department of education who serves
25 as an ex officio, nonvoting member of the council;

26 (c) The governor may, but is not required to, reappoint
27 any person who was a member of the joint commission
28 immediately prior to the effective date of this section:
29 *Provided*, That the individual selected is otherwise eligible
30 to serve.

31 (d) All appointed members shall be citizens of the state,
32 shall represent the public interest and shall be persons
33 who understand and are committed to achieving the goals
34 and objectives set forth in section one-a, article one of this
35 chapter, the essential conditions for community and
36 technical college education programs and services set forth
37 in article three-c of this chapter, and the goals for second-

38 ary and post-secondary vocational-technical-occupational
39 and adult basic education in the state. The appointed
40 members shall represent the interests of the business, labor
41 and employer communities and demonstrate knowledge of
42 the education needs of the various regions, attainment
43 levels and age groups within the state.

44 (e) The governor may not appoint any person to be a
45 member of the council who is an officer, employee or
46 member of an advisory board of any state college or
47 university, the holder of any other public office or public
48 employment under the government of this state or any of
49 its political subdivisions, an appointee or employee of any
50 governing board or an immediate family member of any
51 employee under the jurisdiction of the commission or any
52 governing board. No individual may serve on the council
53 who is engaged in providing, or employed by a person or
54 company whose primary function is to provide, work force
55 development services and activities. Of the members
56 appointed by the governor, no more than four thereof may
57 belong to the same political party and no more than three
58 may be appointed from any congressional district.

59 (f) Members of the council shall serve for terms of four
60 years, except that of the original appointments, one
61 member shall be appointed for one year; two members
62 shall be appointed for two years; two members shall be
63 appointed for three years; and two members shall be
64 appointed for four years. No member may serve more than
65 two consecutive full terms nor may any member be
66 appointed to a term which results in the member serving
67 more than eight consecutive years.

§18B-2B-5. Meetings and compensation.

1 (a) The vice chancellor shall call the initial meeting of
2 the council and preside until a chairperson is selected. The
3 members shall elect a chairperson from among the persons
4 appointed by the governor. The council shall hold at least
5 eight meetings annually and may meet more often at the

6 call of the chairperson. One such meeting shall be a public
7 forum for the discussion of the goals and standards for
8 work force development, economic development, and
9 vocational education in the state.

10 (b) The council shall hold an annual meeting each June
11 for the purpose of electing officers for the next fiscal year.
12 At the annual meeting, the council shall elect from its
13 appointed members a chairperson and other officers as it
14 may consider necessary or desirable: *Provided*, That the
15 initial meeting for the purpose of selecting the first
16 chairperson and other officers shall be held during July,
17 two thousand one, or as soon thereafter as practicable.
18 The chairperson and other officers shall be elected for a
19 one-year term commencing on the first day of July follow-
20 ing the annual meeting: *Provided, however*, That the
21 terms of officers elected in July, two thousand one, begin
22 upon election and end on the thirtieth day of June, two
23 thousand two. The chairperson of the board may serve no
24 more than two consecutive terms as chair.

25 (c) Members of the council shall serve without compen-
26 sation, but shall be reimbursed for all reasonable and
27 necessary expenses actually incurred in the performance
28 of their official duties under this article upon presentation
29 of an itemized sworn statement of their expenses, except
30 that the ex officio member of the council who is an
31 employee of the state shall be reimbursed by the employ-
32 ing agency.

33 (d) A majority of the members constitutes a quorum for
34 conducting the business of the council.

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

1 (a) The council has all the powers and duties assigned to
2 the joint commission prior to the effective date of this
3 article as set forth in the provisions of section two, article
4 two-b, chapter eighteen of this code and such other powers
5 and duties as may be assigned by law or by the commis-

6 sion. Authority granted under that section to the joint
7 commission as the sole agency responsible for the adminis-
8 tration of vocational-technical-occupational education in
9 the state is hereby transferred to the council.

10 (b) Under the supervision of the commission, the council
11 has the following powers and duties:

12 (1) To develop and recommend to the commission for
13 inclusion in the statewide public agenda, a plan for rais-
14 ing education attainment, increasing adult literacy,
15 promoting work force and economic development and
16 ensuring access to advanced education for the citizens of
17 West Virginia;

18 (2) To provide statewide leadership, coordination,
19 support, and technical assistance to the community and
20 technical colleges and to provide a focal point for visible
21 and effective advocacy for their work and for the public
22 agenda adopted by the commission;

23 (3) To review and approve all institutional compacts for
24 the community and technical colleges prior to their
25 submission to the commission for final approval;

26 (4) To consider and submit to the commission a budget
27 for community and technical colleges that:

28 (A) Includes recommended appropriations;

29 (B) Considers the progress of each institution toward
30 meeting the essential conditions set forth in section three,
31 article three-c of this chapter, including independent
32 accreditation; and

33 (C) Considers the progress of each institution toward
34 meeting the goals established in its institutional compact;

35 (5) To make recommendations to the commission for
36 approval of the administration and distribution of the
37 independently-accredited community and technical college
38 development account;

39 (6) To design and recommend to the commission a plan
40 of strategic funding to strengthen capacity for support of
41 community and technical college education in all areas of
42 the state;

43 (7) To foster coordination among all state-level, regional
44 and local entities providing post-secondary vocational
45 education or work force development and to coordinate all
46 public institutions and entities that have a community and
47 technical college mission;

48 (8) To assume on behalf of the commission the principal
49 responsibility for overseeing the implementation of the
50 step-by-step process for achieving independent accredita-
51 tion and for meeting the essential conditions pursuant to
52 article three-c of this chapter;

53 (9) To participate in the selection of administrative
54 heads of the community and technical colleges as directed
55 by the commission;

56 (10) To provide a single, statewide link for current and
57 prospective employers whose needs extend beyond one
58 locality;

59 (11) To provide a mechanism that serves two or more
60 institutions to facilitate joint problem solving in areas
61 including, but not limited to:

62 (A) Defining faculty roles and personnel policies;

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

65 (C) Providing one-stop service for work force training to
66 be delivered by multiple institutions; and

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

69 (12) To provide support and technical assistance to
70 develop, coordinate, and deliver effective and efficient

71 community and technical college education programs and
72 services in the state;

73 (13) To assist the community and technical colleges in
74 establishing and promoting links with business, industry
75 and labor in the geographic areas for which each of the
76 community and technical colleges is responsible;

77 (14) To develop alliances among the community and
78 technical colleges for resource sharing, joint development
79 of courses and courseware, and sharing of expertise and
80 staff development;

81 (15) To serve aggressively as an advocate for develop-
82 ment of a seamless curriculum, to cooperate with the
83 governor's p-20 council of West Virginia to remove
84 barriers relating to transfer and articulation between and
85 among community and technical colleges, state colleges
86 and universities, and public education, preschool through
87 grade twelve, and to encourage the most efficient utiliza-
88 tion of available resources. The council for community
89 and technical college education is responsible for advising
90 the commission on these issues and making appropriate
91 recommendations;

92 (16) To assist the commission in informing public school
93 students, their parents and teachers of the academic
94 preparation that students need in order to be prepared
95 adequately to succeed in their selected fields of study and
96 career plans;

97 (17) To assist the commission in developing a statewide
98 system of community and technical college programs and
99 services in every region of West Virginia for competency-
100 based certification of knowledge and skills, including a
101 statewide competency-based associate degree program;

102 (18) To review and approve all institutional master plans
103 for the community and technical colleges prior to their
104 submission to the commission for final approval;

105 (19) To recommend to the commission policies or rules
106 for promulgation that are necessary or expedient for the
107 effective and efficient performance of community and
108 technical colleges in the state;

109 (20) To recommend to the commission a set of
110 benchmarks and performance indicators to apply to
111 community and technical colleges to measure institutional
112 progress toward meeting the goals as outlined in section
113 one-a, article one of this chapter and in meeting the
114 essential conditions established in article three-c of this
115 chapter;

116 (21) To assist the commission staff in developing a
117 separate section on community and technical colleges for
118 inclusion in the higher education report card as defined in
119 section eight, article one-b of this chapter. This section
120 shall include, but is not limited to, evaluation of the
121 institutions based upon the benchmarks and indicators
122 developed in subdivision (20) of this subsection;

123 (22) If approved by the commission, to facilitate creation
124 of the advantage valley community college network
125 recommended by the *Implementation Board Report* as well
126 as any other regional networks of affiliated community
127 and technical colleges if requested by all affected institu-
128 tions in that region as the commission finds to be appro-
129 priate and in the best interests of the citizens to be served;

130 (23) To advise and assist the state board of education
131 and the commission on state plans for secondary and post-
132 secondary vocational-technical-occupational and adult
133 basic education, including, but not limited to:

134 (A) Policies to strengthen vocational-technical-occupa-
135 tional and adult basic education;

136 (B) Programs and methods to assist in the improvement,
137 modernization and expanded delivery of vocational-
138 technical-occupational and adult basic education pro-
139 grams;

140 (24) To distribute federal vocational education funding
141 provided under the Carl D. Perkins Vocational and
142 Technical Education Act of 1998, PL 105-332, with an
143 emphasis on the distribution of financial assistance among
144 secondary and post-secondary vocational-technical-
145 occupational and adult basic education programs to help
146 meet the public policy agenda.

147 In distributing funds the council shall use the following
148 guidelines:

149 (A) The board of education shall continue to be the fiscal
150 agent for federal vocational education funding;

151 (B) For the fiscal years beginning on the first day of July,
152 two thousand one and two thousand two, the percentage
153 split of the federal allocation for vocational education
154 between the West Virginia board of education and the
155 commission shall remain the same as the percentage split
156 that was distributed to the board of education and the
157 commission for the fiscal year that began on the first day
158 of July, two thousand;

159 (C) For the fiscal year beginning on the first day of July,
160 two thousand three and thereafter, the percentage split
161 between the board of education and the commission shall
162 be determined by rule promulgated by the council under
163 the provisions of article three-a, chapter twenty-nine-a of
164 this code: *Provided*, That the council shall first obtain the
165 approval of the board of education before proposing a rule;

166 (25) To collaborate, cooperate and interact with all
167 secondary and post-secondary vocational-technical-
168 occupational and adult basic education programs in the
169 state, including the programs assisted under the federal
170 Carl D. Perkins Vocational and Technical Education Act
171 of 1998, PL 105-332, and the Work Force Investment Act
172 of 1998, to promote the development of seamless curricu-
173 lum and the elimination of duplicative programs;

174 (26) To coordinate the delivery of voca-
175 tional-technical-occupational and adult basic education in
176 a manner designed to make the most effective use of
177 available public funds to increase accessibility for stu-
178 dents;

179 (27) To analyze and report to the commission and the
180 West Virginia board of education on the distribution of
181 spending for vocational-technical-occupational and adult
182 basic education in the state and on the availability of
183 vocational-technical-occupational and adult basic educa-
184 tion activities and services within the state.

185 (28) To promote the delivery of vocational-technical-
186 occupational, adult basic education and community and
187 technical college education programs in the state which
188 emphasize the involvement of business, industry and labor
189 organizations;

190 (29) To promote public participation in the provision of
191 vocational-technical-occupational, adult basic education
192 and community and technical education at the local level,
193 with an emphasis on programs which involve the partici-
194 pation of local employers and labor organizations;

195 (30) To promote equal access to quality vocational-
196 technical-occupational, adult basic education and commu-
197 nity and technical college education programs to handi-
198 capped and disadvantaged individuals, adults who are in
199 need of training and retraining, individuals who are single
200 parents or homemakers, individuals participating in
201 programs designed to eliminate sexual bias and stereotyp-
202 ing, and criminal offenders serving in correctional institu-
203 tions;

204 (31) To meet annually between the months of October
205 and December with the advisory committee of community
206 and technical college presidents and provosts created
207 pursuant to section eight, of this article to discuss those
208 matters relating to community and technical college

209 education in which advisory committee members or the
210 council may have an interest; and

211 (32) To accept and expend any gift, grant, contribution,
212 bequest, endowment or other money for the purposes of
213 this article.

214 (c) In addition to the powers and duties provided for in
215 subsections (a) and (b) of this section and any other powers
216 and duties as may be assigned to it by law or by the
217 commission, the council has such other powers and duties
218 as may be necessary or expedient to accomplish the
219 purposes of this article.

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

1 The vice chancellor is the chief executive officer of the
2 council and as such may exercise the powers and duties
3 assigned pursuant to subsection three, section five, article
4 one-b of this chapter. The vice chancellor has all powers
5 and duties assigned by law or by the commission and, in
6 addition, has the following powers and duties:

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

10 (2) To serve on behalf of the commission as the liaison to
11 the council and to the community and technical colleges;

12 (3) To assume on behalf of the commission the principal
13 responsibility for directing and assisting the work of the
14 council; and

15 (4) With the approval of the commission and the chan-
16 cellor, to employ and direct staff as necessary and appro-
17 priate to carry out the duties and responsibilities of this
18 article. On the first day of July, two thousand one, all
19 personnel employed on the thirtieth day of June, two
20 thousand one, within the joint commission for vocational-
21 technical-occupational education are hereby transferred

22 to the jurisdiction of the commission and are under the
23 direct supervision of the vice chancellor and the chancel-
24 lor: *Provided*, That prior to the first day of October, two
25 thousand one, no employee shall be terminated or have his
26 or her salary or benefit levels reduced as the sole result of
27 the governance reorganization set forth in this article.

**§18B-2B-8. State advisory committee of community and techni-
cal college presidents and provosts.**

1 (a) Effective the first day of July, two thousand one,
2 there is hereby created the state advisory committee of
3 community and technical college presidents and provosts.
4 For the purposes of this section, the state advisory com-
5 mittee of community and technical college presidents and
6 provosts shall be referred to as the “advisory committee”.

7 (b) Each president or other administrative head of a
8 public community and technical college, as defined in
9 section four, article three-c of this chapter shall be a
10 member of the advisory committee. An administrative
11 head of a component, branch, center, regional center or
12 other delivery site with a community and technical college
13 mission may be a member if considered appropriate.

14 (c) The vice chancellor serves as chair of the advisory
15 committee and shall convene the initial meeting during the
16 month of July, two thousand one. Thereafter, the advisory
17 committee shall meet at least once each quarter.

18 (d) The advisory committee shall communicate to the
19 council, through the vice chancellor, on matters of impor-
20 tance to the group and shall meet annually between the
21 months of October and December with the council to
22 discuss those matters relating to community and technical
23 college education in which advisory committee members
24 or the council may have an interest.

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

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.**§18B-2C-1. Legislative findings; intent.**

1 (a) *Legislative findings.* –

2 (1) The Legislature hereby finds that for more than a
3 decade legislation has been enacted having as a principal
4 goal creation of a strong, effective system of community
5 and technical education capable of meeting the needs of
6 the citizens of the state. In furtherance of that goal, the
7 Legislature has passed the following major pieces of
8 legislation:

9 (A) Senate Bill 420, passed during the regular session of
10 one thousand nine hundred eighty-nine, reorganized the
11 governance structure of public higher education and
12 created the joint commission for voca-
13 tional-technical-occupational education to bridge the gap
14 between secondary and post-secondary vocational,
15 technical, and occupational education;

16 (B) Senate Bill 377, passed during the regular session of
17 one thousand nine hundred ninety-three, adopted goals
18 and objectives for public post-secondary education,
19 addressed the needs of nontraditional students, directed
20 the institutions to include an assessment of work force
21 development needs in their master plans and established
22 the resource allocation model and policies to aid governing
23 boards and institutions in meeting the established goals
24 and objectives;

25 (C) Senate Bill 547, passed during the regular session of
26 one thousand nine hundred ninety-five, established goals
27 and funding for faculty and staff salaries, required the
28 governing boards to establish community and technical
29 education with the administrative, programmatic and
30 budgetary control necessary to respond to local needs and
31 provided that community and technical college budgets be
32 appropriated to a separate control account;

33 (D) Senate Bill 653, passed during the regular session of
34 two thousand, established the commission to develop a
35 public policy agenda for higher education in conjunction
36 with state leaders, set forth the essential conditions that
37 must be met by each community and technical college in
38 the state, and mandated that most component community
39 and technical colleges move to independent accreditation.

40 (2) The *Market Street Report*, the *McClenney Report*,
41 and the *Implementation Board Report*, cited in article
42 two-b of this chapter, each reflects recent research and
43 indicates that, while these legislative actions cited above
44 have helped the state to make progress in certain areas of
45 higher education, they have not offered a complete solu-
46 tion to the problems of community and technical colleges.

47 (b) *Intent.* – It is the intent of the Legislature:

48 (1) That this article and article two-b of this chapter be
49 seen as additional steps in the process of developing strong
50 institutions capable of delivering community and technical
51 education to meet the needs of the state and that they be
52 viewed as building blocks added to the foundation laid by
53 earlier legislation.

54 (2) To create a mechanism whereby the commission, if
55 necessary, can assure through its own direct action that
56 the goals established pursuant to section one-a, article one
57 of this chapter are met.

58 (3) To authorize the commission to create the West
59 Virginia community and technical college to serve the
60 interests of the people of West Virginia by advancing the
61 public policy agenda developed pursuant to article one-b
62 of this chapter. Specifically, the focus of the college and
63 its governing board is:

64 (A) To encourage development of a statewide mission
65 that:

66 (i) Raises education attainment;

- 67 (ii) Increases adult literacy;
- 68 (iii) Promotes work force and economic development;
69 and
- 70 (iv) Ensures access to post-secondary education for the
71 citizens of the state;
- 72 (B) To provide oversight or governance of the commu-
73 nity and technical colleges, branches, centers, regional
74 centers, and other delivery sites with a community and
75 technical college mission;
- 76 (C) To provide leadership, support and coordination; and
- 77 (D) To protect and expand the local autonomy and
78 flexibility necessary for community and technical colleges
79 to succeed.

§18B-2C-2. Definitions.

- 1 The following words when used in this article and
2 article two-b of this chapter have the meaning hereinafter
3 ascribed to them unless the context clearly indicates a
4 different meaning:
- 5 (a) “Adult basic education” means adult basic skills
6 education designed to improve the basic literacy needs of
7 adults, including information processing skills, communi-
8 cation skills and computational skills, leading to a high
9 school equivalency diploma, under the jurisdiction of the
10 state board of education.
- 11 (b) “Governing board” means the West Virginia council
12 for community and technical college education when
13 acting as the governing board for the West Virginia
14 community and technical college created pursuant to the
15 provisions of this article.
- 16 (c) “Post-secondary vocational-technical-occupational
17 education” means any course or program beyond the high
18 school level that results in, or may result in, the awarding

19 of a two-year associate degree, certificate or other creden-
20 tial from an institution under the jurisdiction of a govern-
21 ing board or other public or private education provider.

22 (d) "Secondary vocational-technical-occupational
23 education" means any course or program at the high
24 school level that results in, or may result in, a high school
25 diploma or its equivalent, under the jurisdiction of the
26 state board of education.

27 (e) "Vice chancellor" means the vice chancellor for
28 community and technical college education and work force
29 development pursuant to section five, article one-b of this
30 chapter.

31 (f) "West Virginia council for community and technical
32 college education" or "council" means the council estab-
33 lished pursuant to section three, article two-b of this
34 chapter.

35 (g) "West Virginia community and technical college" or
36 "college" means the statewide, accredited entity created
37 pursuant to the provisions of this article.

**§18-2C-3. Authority and duty of commission to determine
progress of community and technical colleges;
conditions; authority to create West Virginia
community and technical college.**

1 (a) Beginning on the first day of July, two thousand one,
2 and at least annually thereafter, the commission shall
3 review and analyze all the public community and technical
4 colleges, branches, centers, regional centers, and other
5 delivery sites with a community and technical college
6 mission to determine their progress toward meeting the
7 goals and objectives set forth in section one-a, article one
8 of this chapter and toward advancing the purposes, goals
9 and objectives set forth in article three-c of this chapter.

10 (b) The analysis required in subsection (a) of this section
11 shall be based, in whole or in part, upon the findings made

12 pursuant to the rule establishing benchmarks and indica-
13 tors required to be promulgated by the commission in
14 section two, article one-a of this chapter.

15 (c) Based upon their analysis in subsections (a) and (b) of
16 this section, the commission shall make a determination
17 whether any one or more of the following conditions exist:

18 (1) One or more of the component community and
19 technical colleges required to do so has not achieved, or is
20 not making sufficient, satisfactory progress toward
21 achieving the essential conditions, including independent
22 accreditation;

23 (2) One or more of the public community and technical
24 colleges, branches, centers, regional centers, and other
25 delivery sites with a community and technical college
26 mission requires financial assistance or other support to
27 meet the goals and essential conditions set forth in this
28 chapter;

29 (3) It is in the best interests of the people of the state or
30 a region within the state to have a single, accredited
31 institution which can provide an umbrella of statewide
32 accreditation;

33 (4) It is in the best interests of the people of the state or
34 a region of the state to have one accredited institution able
35 to extend accreditation to institutions and entities re-
36 quired to seek independent accreditation;

37 (5) One or more of the public community and technical
38 colleges, branches, centers, regional centers, or other
39 delivery sites with a community and technical college
40 mission request from the commission the type of assistance
41 which can best be delivered through implementation of the
42 provisions of section four of this article. Institutional
43 requests that may be considered by the commission
44 include, but are not limited to, assistance in seeking and/or
45 attaining independent accreditation, in meeting the goals
46 for post secondary education established in section one-a,

47 article one of this chapter, in meeting the essential condi-
48 tions set forth in section three, article three-c of this
49 chapter, or in establishing and implementing regional
50 networks.

51 (6) One or more public community and technical col-
52 leges, branches, centers, regional centers, or other delivery
53 sites with a community and technical college mission, has
54 not met, or is not making sufficient, satisfactory progress
55 toward meeting, the goals set forth in section one-a, article
56 one of this chapter; and

57 (7) The council makes a recommendation to the commis-
58 sion that it is in the best interests of the people of the state
59 or a region of the state to create a statewide, independ-
60 ently accredited community and technical college.

61 (d) The commission may not make a determination
62 subject to the provisions of subsection (c) of this section
63 that a condition does not exist based upon a finding that
64 the higher education entity lacks sufficient funds to make
65 sufficient, satisfactory progress.

66 (e) The commission shall prepare a written report on the
67 findings and determinations required by this section for
68 the legislative oversight commission on education account-
69 ability by the first day of December, two thousand one,
70 and each year thereafter, together with a detailed history
71 of any actions taken by the commission under the author-
72 ity of this article.

**§18B-2C-4. Authority of commission in creating West Virginia
community and technical college.**

1 (a) Subject to the provisions of subsection (c), section
2 three of this article, if the commission makes a determina-
3 tion that one or more of the conditions exist, then the
4 commission is authorized to create the West Virginia
5 community and technical college.

6 (b) As soon as practicable after the commission deter-
7 mines that the college should be created, the commission

8 shall notify the governor, the president of the Senate, the
 9 speaker of the House of Delegates and the legislative
 10 oversight commission on education accountability of the
 11 proposed actions: *Provided*, That the commission shall
 12 conduct a study regarding the procedures, findings and
 13 determinations considered necessary prior to any creation
 14 of the college and shall report its findings to the legislative
 15 oversight commission on education accountability no later
 16 than the first day of December, two thousand one: *Pro-*
 17 *vided, however*, That the commission may not create the
 18 college prior to the report being received by the legislative
 19 oversight commission on education accountability.

20 (c) The commission shall certify to the legislative
 21 oversight commission on education accountability, on or
 22 before the first day of December of the year in which the
 23 college is created, proposed legislation to accomplish the
 24 purposes of this article for those matters requiring statu-
 25 tory change.

**§18B-2C-5. Transfer of powers, duties, property, obligations,
 etc., of prior governing boards to the governing
 board of West Virginia community and technical
 college.**

1 If the commission determines that any of the conditions
 2 provided for in section three of this article have been met,
 3 then as to those entities to whom the conditions apply, the
 4 commission may:

5 (1) Designate the governing boards that shall become
 6 institutional boards of advisors and transfer governing
 7 authority of that board to the governing board of the
 8 college;

9 (2) Transfer as appropriate, consistent with state law, all
 10 powers, duties, property, obligations, contracts, rules,
 11 orders, resolutions or any other matters which should be
 12 transferred or vested in the governing board;

13 (3) Assign powers and duties to the governing board and
 14 the college as may be necessary or expedient to accomplish
 15 the purposes of this article;

16 (4) Create the office of president of the college; and

17 (5) Take such other action as necessary or expedient to
18 accomplish the purposes of this chapter.

**§18B-2C-6. Powers and duties of governing board for the West
Virginia community and technical college.**

1 (a) The council created pursuant to article two-b of this
2 chapter is the governing board for the West Virginia
3 community and technical college.

4 (b) The powers and duties of the governing board are as
5 follows:

6 (1) To assist the public community and technical col-
7 leges, branches, centers, regional centers and other deliv-
8 ery sites with a community and technical college mission
9 in any way practicable to meet the goals and objectives set
10 forth in section one-a, article one of this chapter;

11 (2) To assist in meeting any other goals or objectives
12 adopted by the commission as part of its public policy
13 agenda;

14 (3) To accept and expend any gift, grant, contribution,
15 bequest, endowment or other money for the purposes of
16 this article;

17 (4) To exercise all the powers and duties ascribed to
18 governing boards in section four, article two-a of this
19 chapter; and

20 (5) To meet annually between the months of October and
21 December with the advisory committee of community and
22 technical college presidents and provosts created pursuant
23 to section eight, article two-b of this chapter to discuss
24 those matters relating to community and technical college
25 education in which advisory committee members or the
26 council may have an interest.

27 (c) The governing board has the following powers and
28 duties as to all institutions:

29 (1) To coordinate public community and technical
30 colleges, branches, centers, regional centers, and other
31 delivery sites with a community and technical college
32 mission including, but not limited to, those that are free-
33 standing or administratively-linked to a sponsoring
34 institution.

35 (2) To negotiate arrangements with individual entities
36 who may elect to become units of the college for academic
37 and accreditation purposes while retaining certain admin-
38 istrative links to a sponsoring institution;

39 (3) To develop the college as a statewide, accredited
40 institution through which multiple, affiliated entities and
41 sites may achieve accreditation;

42 (4) To provide directly to community and technical
43 colleges, branches, centers, regional centers and other
44 delivery sites with a community and technical college
45 mission, certain support services including, but not limited
46 to, student information systems, registration, financial and
47 accounting systems and employee recordkeeping; and

48 (5) To exercise all the powers and duties assigned to the
49 council pursuant to the provisions of article two-b of this
50 chapter or by the commission.

51 (d) Subject to the supervision of the commission, the
52 governing board has the following powers and duties as to
53 any entity meeting the conditions of transfer pursuant to
54 section four of this article:

55 (1) To govern and have direct academic and administra-
56 tive responsibility for any public community and technical
57 college, branch, center, regional center, or other delivery
58 site with a community and technical college mission.

59 (2) To require the entities to seek independent accredita-
60 tion through the college.

61 (3) To allocate state budgetary resources to the entity;
62 and

63 (4) With the advice and consent of the commission, to
64 appoint the administrative heads of institutions governed
65 by the governing board.

§18B-2C-7. Powers and duties of Vice Chancellor as president of the West Virginia community and technical college.

1 The vice chancellor serves as the acting president of the
2 college until such time as a president is selected as pre-
3 scribed by law. As acting president, the vice chancellor
4 has all the powers and duties assigned by law, by the
5 commission or by the governing board. In addition, the
6 vice chancellor shall continue to exercise all other powers
7 and duties assigned by law or by the commission.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-7. District consortia committees.

1 (a) The president or provost of each community and
2 technical college shall form a district consortium commit-
3 tee which shall include representatives, distributed
4 geographically to the extent practicable, of the major
5 community and technical college branches, voca-
6 tional-technical centers, comprehensive high schools,
7 four-year colleges and universities, community service or
8 cultural organizations, economic development organiza-
9 tions, business, industry, labor, elected public officials and
10 employment and training programs and offices within the
11 district. The consortium committee shall be chaired by the
12 president or provost, or his or her designee, and shall
13 advise and assist the president or provost with the follow-
14 ing:

15 (1) Completing a comprehensive assessment of the
16 district to determine what education and training pro-
17 grams are necessary to meet the short and long-term work
18 force development needs of the district;

19 (2) Coordinating efforts with regional labor market
20 information systems to identify the ongoing needs of
21 business and industry, both current and projected, and to
22 provide information to assist in an informed program of
23 planning and decision making;

24 (3) Planning and development of a unified effort to meet
25 the documented work force development needs of the
26 district through individual and cooperative programs,
27 shared facilities, faculty, staff, equipment and other
28 resources and the development and use of distance learn-
29 ing and other education technologies;

30 (4) Regularly reviewing and revising curricula to ensure
31 that the work force needs are met, developing new pro-
32 grams and phasing out or modifying existing programs as
33 appropriate to meet such needs, streamlining procedures
34 for designing and implementing customized training
35 programs and accomplishing such other complements
36 of a quality comprehensive community and technical
37 college;

38 (5) Increasing the integration of secondary and
39 post-secondary curriculum and programs that are targeted
40 to meet regional labor market needs, including implemen-
41 tation of a comprehensive school-to-work transition
42 system that accomplishes the following:

43 (A) Helps students focus on career objectives;

44 (B) Establishes cooperative programs and student
45 internships with business and industry;

46 (C) Builds upon current programs such as high schools
47 that work, tech prep associate degree programs, registered
48 apprenticeships and rural entrepreneurship through action
49 learning; and

50 (D) Addresses the needs of at-risk students and school
51 dropouts;

52 (6) Planning and implementation of integrated profes-
53 sional development activities for secondary and
54 post-secondary faculty, staff and administrators and other
55 consortium partners throughout the district;

56 (7) Ensuring that program graduates have attained the
57 competencies required for successful employment through
58 the involvement of business, industry and labor in estab-
59 lishing student credentialing;

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

65 (9) Cooperating with work force development invest-
66 ment councils in establishing one-stop-shop career centers
67 with integrated employment and training and labor
68 market information systems that enable job seekers to
69 assess their skills, identify and secure needed education
70 training and secure employment and employers to locate
71 available workers;

72 (10) Increasing the integration of adult literacy, adult
73 basic education, federal work force investment act and
74 community and technical college programs and services to
75 expedite the transition of adults from welfare to gainful
76 employment; and

77 (11) Establishing a single point of contact for employers
78 and potential employers to access education and training
79 programs throughout the district.

80 (b) The district consortium committee shall cooperate
81 with the regional work force investment board in the
82 responsibility area of its institution and shall participate
83 in any development or amendment to the regional work
84 force investment plan.

§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

1 (a) Over a six-year period beginning the first day of July,
2 two thousand one, West Virginia shall move from having
3 “component” community and technical colleges to having
4 a statewide network of independently-accredited commu-
5 nity and technical colleges serving every region of the
6 state. This section does not apply to the freestanding
7 community and technical colleges, West Virginia univer-
8 sity at Parkersburg and Potomac state college of West
9 Virginia university: *Provided*, That Potomac state college
10 of West Virginia university shall serve as a comprehensive
11 two-year institution for the delivery of transfer education,
12 may offer career programs in the area of agriculture, and
13 may offer nontraditional outreach and work force devel-
14 opment programs as a collaborative effort in a region with
15 the local community and technical college whose mission
16 and charge encompasses outreach and work force develop-
17 ment programs.

18 (b) To be eligible for funds appropriated to develop
19 independently accredited community and technical
20 colleges, a state institution of higher education shall
21 demonstrate the following:

22 (1) That it has as a part of its institutional compact
23 approved by the council and the commission a step-by-
24 step plan with measurable benchmarks for developing an
25 independently accredited community and technical college
26 that meets the essential conditions set forth in section
27 three of this article, except as limited in subdivisions (1),
28 (2) and (4), subsection (c) of this section;

29 (2) That it is able to offer evidence annually to the
30 satisfaction of the council and the commission that it is
31 making progress toward accomplishing the benchmarks
32 established in its institutional compact for developing an
33 independently accredited community and technical
34 college; and

35 (3) That it has submitted an expenditure schedule
36 approved by the council and the commission which sets
37 forth a proposed plan of expenditures for funds allocated
38 to it from the fund.

39 (c) The following are recommended strategies for
40 moving from the current arrangement of "component"
41 community and technical colleges to the legislatively
42 mandated statewide network of independently accredited
43 community and technical colleges serving every region of
44 the state. The Legislature recognizes that there may be
45 other means to achieve this ultimate objective; however, it
46 is the intent of the Legislature that the move from the
47 current arrangement of "component" community and
48 technical colleges to the legislatively mandated statewide
49 network of independently accredited community and
50 technical colleges serving every region of the state shall be
51 accomplished. The following recommendations are
52 designed to reflect significant variations among regions
53 and the potential impacts on the sponsoring institutions.

54 (1) *Bluefield state community and technical college.* –
55 Bluefield state community and technical college, including
56 the Lewisburg center, should retain its relationship as a
57 component of Bluefield state college. The president and
58 the board of governors of Bluefield state college are
59 accountable to the commission for ensuring that the full
60 range of community and technical college services is
61 available throughout the region and that the community
62 and technical college adheres, as nearly as possible, to the
63 essential conditions pursuant to section three of this
64 article with the possible exception of independent accredi-
65 tation.

66 (2) *Center for higher education and work force develop-*
67 *ment at Beckley.* – The president of Bluefield state college
68 and the institutional board of advisors are responsible,
69 according to a plan approved by the commission, for the
70 step-by-step implementation of a new independently
71 accredited community and technical college administra-

72 tively linked to Bluefield state college, known as the center
73 for higher education and work force development, which
74 adheres to the essential conditions pursuant to section
75 three of this article. As an independently accredited
76 community and technical college, the center also shall
77 serve as higher education center for its region by brokering
78 with other colleges, universities and other providers, in-
79 state and out-of-state, both public and private, to ensure
80 the coordinated access of students, employers, and other
81 clients to needed programs and services. The new commu-
82 nity and technical college shall serve Raleigh, Summers
83 and Fayette counties and be headquartered in Beckley.
84 The commission shall appoint an institutional board of
85 advisors for the center at Beckley which is separate from
86 the institutional board of advisors of Bluefield state
87 college but may have some overlap in membership to
88 facilitate coordination. In addition, the president of the
89 center shall appoint a district consortium committee to
90 advise the president on a comprehensive assessment of the
91 needs in the region, on coordinating efforts with regional
92 labor market information systems, and on other areas as
93 provided for in section seven of this article relating to the
94 duties of district consortia committees. The center shall
95 facilitate the planning and development of a unified effort
96 involving multiple providers and facilities, including, but
97 not limited to, Concord college, the college of West Vir-
98 ginia, Marshall university, West Virginia university, West
99 Virginia university institute of technology and other
100 entities to meet the documented work force development
101 needs in the region: *Provided*, That nothing in this
102 subdivision prohibits or limits any existing, or the contin-
103 uation of any existing, affiliation between the college of
104 West Virginia, West Virginia university institute of
105 technology and West Virginia university. The center for
106 higher education and work force development at Beckley
107 also shall provide the facilities and support services for
108 other public and private institutions delivering courses,
109 programs and services in Beckley. The objective would be

110 to assure students and employers in the area that there
111 would be coordination and efficient use of resources
112 among the separate programs and facilities, existing and
113 planned, in the Beckley area. If, at a future time, the
114 commission believes it appropriate, it may recommend to
115 the Legislature that the Beckley institution be created as
116 a freestanding institution.

117 (3) *Glenville state community and technical college.* –
118 Glenville state community and technical college, including
119 the centers in Nicholas, Lewis and Roane counties, should
120 retain its relationship as a component of Glenville state
121 college. The president of Glenville state college and the
122 governing board are accountable to the commission for
123 ensuring that the full range of community and technical
124 college services is available throughout the region and that
125 the community and technical college adheres as nearly as
126 possible to the essential conditions pursuant to section
127 three of this article, with the possible exception of inde-
128 pendent accreditation.

129 (4) *Fairmont state community and technical college.* –
130 Fairmont state community and technical college shall be
131 an independently accredited community and technical
132 college serving Marion, Doddridge, Barbour, Harrison,
133 Monongalia, Preston, Randolph and Taylor counties. The
134 community and technical college is developed on the base
135 of the existing component community and technical
136 college of Fairmont state college. Subject to the provisions
137 of this section, the president and the governing board of
138 Fairmont state college are responsible, according to a plan
139 approved by the commission, for step-by-step implementa-
140 tion of the independently accredited community and
141 technical college which adheres to the essential conditions
142 pursuant to section three of this article. Subject to the
143 provisions of section twelve of this article, the community
144 and technical college will remain administratively linked
145 to Fairmont state college. Nothing herein shall be con-
146 strued to require Fairmont state college to discontinue any

147 associate degree program in areas of particular institu-
148 tional strength which are closely articulated to their
149 baccalaureate programs and missions or which are of a
150 high-cost nature and can best be provided in direct
151 coordination with a baccalaureate institution.

152 (5) *Marshall university community and technical college.*
153 – Senate Bill 653 created an implementation board
154 charged with the responsibility to develop a plan, to be
155 recommended to the commission, for the most effective
156 and efficient method to deliver comprehensive community
157 and technical college education to the citizens and employ-
158 ers of the responsibility areas of Marshall university, West
159 Virginia state college and West Virginia university insti-
160 tute of technology. Pursuant to the recommendation of the
161 implementation board and of the commission, Marshall
162 university community and technical college shall become
163 an independently accredited community and technical
164 college. It should serve Cabell, Kanawha, Mason, Putnam
165 and Wayne counties. The new community and technical
166 college is developed on the base of the existing component
167 community and technical college of Marshall University.
168 Subject to the provisions of this section, the president and
169 the governing board of Marshall University are responsi-
170 ble, according to a plan approved by the commission, for
171 step-by-step implementation of the new independently
172 accredited community and technical college which adheres
173 to the essential conditions pursuant to section three of this
174 article. Subject to the provisions of section twelve of this
175 article, the community and technical college will remain
176 administratively linked to Marshall University. Nothing
177 herein shall be construed to require Marshall University to
178 discontinue any associate degree program in areas of
179 particular institutional strength which are closely articu-
180 lated to their baccalaureate programs and missions or
181 which are of a high-cost nature and can best be provided
182 in direct coordination with a baccalaureate institution.

183 (6) *Shepherd community and technical college.* –
184 Shepherd community and technical college shall become
185 an independently accredited community and technical
186 college. It should serve Jefferson, Berkeley and Morgan
187 counties. The new community and technical college is
188 developed on the base of the existing component commu-
189 nity and technical college of Shepherd college. Subject to
190 the provisions of this section, the president and the
191 governing board of Shepherd college are responsible,
192 according to a plan approved by the commission, for
193 step-by-step implementation of the new independently
194 accredited community and technical college which adheres
195 to the essential conditions pursuant to section three of this
196 article. Subject to the provisions of section twelve of this
197 article, the community and technical college will remain
198 administratively linked to Shepherd college. Nothing
199 herein shall be construed to require Shepherd college to
200 discontinue any associate degree program in areas of
201 particular institutional strength which are closely articu-
202 lated to their baccalaureate programs and missions or
203 which are of a high-cost nature and can best be provided
204 in direct coordination with a baccalaureate institution.

205 (7) *West Virginia state community and technical college.*
206 – Senate Bill 653 created an implementation board
207 charged with the responsibility to develop a plan, to be
208 recommended to the commission, for the most effective
209 and efficient method to deliver comprehensive community
210 and technical college education to the citizens and employ-
211 ers of the responsibility areas of Marshall university, West
212 Virginia state college and West Virginia university insti-
213 tute of technology. Pursuant to the recommendation of the
214 implementation board and of the commission, West
215 Virginia state community and technical college shall
216 become an independently accredited community and
217 technical college. It should serve Kanawha, Putnam and
218 Clay counties. The new community and technical college
219 is developed on the base of the existing component com-
220 munity and technical college of West Virginia State

221 College. Subject to the provisions of this section, the
222 president and the governing board of West Virginia state
223 college are responsible, according to a plan approved by
224 the commission, for step-by-step implementation of the
225 new independently accredited community and technical
226 college which adheres to the essential conditions pursuant
227 to section three of this article. Subject to the provisions of
228 section twelve of this article, the community and technical
229 college will remain administratively linked to West
230 Virginia state college. Nothing herein shall be construed
231 to require West Virginia state college to discontinue any
232 associate degree program in areas of particular institu-
233 tional strength which are closely articulated to their
234 baccalaureate programs and missions or which are of a
235 high-cost nature and can best be provided in direct
236 coordination with a baccalaureate institution.

237 (8) *West Virginia university institute of technology.* –
238 Senate Bill 653 created an implementation board charged
239 with the responsibility to develop a plan, to be recom-
240 mended to the commission, for the most effective and
241 efficient method to deliver comprehensive community and
242 technical college education to the citizens and employers
243 of the responsibility areas of Marshall university, West
244 Virginia state college and West Virginia university insti-
245 tute of technology. Pursuant to the recommendation of the
246 implementation board and of the commission, West
247 Virginia university institute of technology community and
248 technical college shall become an independently accredited
249 community and technical college. It should serve Fayette,
250 Clay, Kanawha, Raleigh and Nicholas counties. The new
251 community and technical college is developed on the base
252 of the existing component community and technical
253 college of West Virginia university institute of technology.
254 Subject to the provisions of this section, the president and
255 the governing board of West Virginia university institute
256 of technology are responsible, according to a plan ap-
257 proved by the commission, for step-by-step implementa-
258 tion of the new independently accredited community and

259 technical college which adheres to the essential conditions
260 pursuant to section three of this article. Subject to the
261 provisions of section twelve of this article, the community
262 and technical college will remain administratively linked
263 to West Virginia university institute of technology.
264 Nothing herein shall be construed to require West Virginia
265 university institute of technology to discontinue any
266 associate degree program in areas of particular institu-
267 tional strength which are closely articulated to their
268 baccalaureate programs and missions or which are of a
269 high-cost nature and can best be provided in direct
270 coordination with a baccalaureate institution.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

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

1 (a) The commission and each governing board, through
2 the vice chancellor for administration, shall purchase or
3 acquire all materials, supplies, equipment and printing
4 required for that governing board or the commission, as
5 appropriate, and the state institutions of higher education
6 under their jurisdiction. The commission shall adopt rules
7 governing and controlling acquisitions and purchases in
8 accordance with the provisions of this section. Such rules
9 shall assure that the governing boards:

10 (1) Do not preclude any person from participating and
11 making sales thereof to the governing board or to the
12 commission except as otherwise provided in section five of
13 this article: *Provided*, That the providing of consultant
14 services such as strategic planning services will not
15 preclude or inhibit the governing boards or the commis-
16 sion from considering any qualified bid or response for
17 delivery of a product or a commodity because of the
18 rendering of those consultant services;

19 (2) Shall establish and prescribe specifications, in all
20 proper cases, for materials, supplies, equipment and
21 printing to be purchased;

22 (3) Shall adopt and prescribe such purchase order,
23 requisition or other forms as may be required;

24 (4) Shall negotiate for and make purchases and acquisi-
25 tions in such quantities, at such times and under contract,
26 in the open market or through other accepted methods of
27 governmental purchasing as may be practicable in accor-
28 dance with general law;

29 (5) Shall advertise for bids on all purchases exceeding
30 twenty-five thousand dollars, to purchase by means of
31 sealed bids and competitive bidding or to effect advanta-
32 geous purchases through other accepted governmental
33 methods and practices: *Provided, however,* That for
34 printing services, bids shall be advertised by written
35 notification of such bids to any print shop, affiliated with
36 an institution of higher education and operated by classi-
37 fied employees, on all purchases exceeding five thousand
38 dollars;

39 (6) Shall post notices of all acquisitions and purchases
40 for which competitive bids are being solicited in the
41 purchasing office of the specified institution involved in
42 the purchase, at least two weeks prior to making such
43 purchases and ensure that the notice is available to the
44 public during business hours;

45 (7) Shall provide for purchasing in the open market;

46 (8) Shall make provision for vendor notification of bid
47 solicitation and emergency purchasing; and

48 (9) Shall provide that competitive bids are not required
49 for purchases of five thousand dollars or less.

50 (b) The commission or each governing board, through
51 the vice chancellor for administration, may issue a check
52 in advance to a company supplying postage meters for
53 postage used by that board, the commission and by the
54 state institutions of higher education under their jurisdic-
55 tion.

56 (c) When a purchase is to be made by bid, any or all bids
57 may be rejected. However, all purchases based on adver-
58 tised bid requests shall be awarded to the lowest responsi-
59 ble bidder taking into consideration the qualities of the
60 articles to be supplied, their conformity with specifica-
61 tions, their suitability to the requirements of the governing
62 boards, the commission and delivery terms: *Provided*, That
63 the preference for resident vendors as provided in section
64 thirty-seven, article three, chapter five-a of this code shall
65 apply to the competitive bids made pursuant to this
66 section.

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

84 (e) The commission also shall adopt rules to prescribe
85 qualifications to be met by any person who is to be em-
86 ployed as a buyer pursuant to this section. These rules
87 shall require that no person may be employed as a buyer
88 unless that person, at the time of employment, either is:

89 (1) A graduate of an accredited college or university; or

90 (2) Has at least four years' experience in purchasing for
91 any unit of government or for any business, commercial or
92 industrial enterprise.

93 (f) Any person making purchases and acquisitions
94 pursuant to this section shall execute a bond in the penalty
95 of fifty thousand dollars, payable to the state of West
96 Virginia, with a corporate bonding or surety company
97 authorized to do business in this state as surety thereon, in
98 form prescribed by the attorney general and conditioned
99 upon the faithful performance of all duties in accordance
100 with sections four through eight of this article and the
101 rules of the interim governing board and the commission.
102 In lieu of separate bonds for such buyers, a blanket surety
103 bond may be obtained. Any such bond or bonds shall be
104 filed with the secretary of state. The cost of any such bond
105 or bonds shall be paid from funds appropriated to the
106 applicable governing board or commission.

107 (g) All purchases and acquisitions shall be made in
108 consideration and within limits of available appropri-
109 ations and funds and in accordance with applicable provi-
110 sions of article two, chapter five-a of this code, relating to
111 expenditure schedules and quarterly allotments of funds.

112 (h) The governing boards and the commission may make
113 requisitions upon the auditor for a sum to be known as an
114 advance allowance account, in no case to exceed five
115 percent of the total of the appropriations for the governing
116 board or the commission, and the auditor shall draw a
117 warrant upon the treasurer for such accounts; and all such
118 advance allowance accounts shall be accounted for by the
119 applicable governing board or commission once every
120 thirty days or more often if required by the state auditor.

121 (i) Contracts entered into pursuant to this section shall
122 be signed by the applicable governing board or the com-
123 mission in the name of the state and shall be approved as
124 to form by the attorney general: *Provided*, That a contract
125 in which the total does not exceed five thousand dollars
126 and for which the attorney general has not responded
127 within fifteen days of presentation of the contract, the
128 contract shall be deemed approved: *Provided, however*,
129 That a contract or a change order for that contract which

130 in total does not exceed fifty thousand dollars and which
131 uses terms and conditions or standardized forms previ-
132 ously approved by the attorney general and does not make
133 substantive changes in the terms and conditions of the
134 contract does not require approval by the attorney general:
135 *Provided further*, That the attorney general shall make a
136 list of those changes which he or she deems to be substan-
137 tive and the list, and any changes thereto, shall be pub-
138 lished in the state register. A contract that exceeds fifteen
139 thousand dollars shall be filed with the state auditor: *And*
140 *provided further*, That upon request, the governing boards
141 or the commission shall make all contracts available for
142 inspection by the state auditor. The governing board or the
143 commission, as appropriate, shall prescribe the amount of
144 deposit or bond to be submitted with a bid or contract, if
145 any, and the amount of deposit or bond to be given for the
146 faithful performance of a contract.

147 (j) If the governing board or the commission purchases
148 or contracts for materials, supplies, equipment and
149 printing contrary to the provisions of sections four through
150 seven of this article or the rules pursuant thereto, such
151 purchase or contract shall be void and of no effect.

152 (k) Any governing board or the commission, as appropri-
153 ate, may request the director of purchases to make avail-
154 able, from time to time, the facilities and services of that
155 department to the governing boards or the commission in
156 the purchase and acquisition of materials, supplies,
157 equipment and printing and the director of purchases shall
158 cooperate with that governing board or the commission, as
159 appropriate, in all such purchases and acquisitions upon
160 such request.

161 (l) Each governing board or the commission, as appro-
162 priate, shall permit private institutions of higher education
163 to join as purchasers on purchase contracts for materials,
164 supplies and equipment entered into by that governing
165 board or the commission. Any private school desiring to
166 join as purchasers on such purchase contracts shall file

167 with that governing board or the commission an affidavit
168 signed by the president of the institution of higher educa-
169 tion or a designee requesting that it be authorized to join
170 as purchaser on purchase contracts of that governing
171 board or the commission, as appropriate, and agreeing that
172 it will be bound by such terms and conditions as that
173 governing board or the commission may prescribe and that
174 it will be responsible for payment directly to the vendor
175 under each purchase contract.

176 (m) Notwithstanding any other provision of this code to
177 the contrary, the governing boards and the commission, as
178 appropriate, may make purchases from the federal govern-
179 ment or from federal government contracts if the materi-
180 als, supplies, equipment or printing to be purchased is
181 available from the federal government or from a federal
182 contract and purchasing from the federal government or
183 from a federal government contract would be the most
184 financially advantageous manner of making the purchase.

185 (n) An independent performance audit of all purchasing
186 functions and duties which are performed at any institu-
187 tion of higher education shall be performed each fiscal
188 year. The joint committee on government and finance shall
189 conduct the performance audit and the governing boards
190 and the commission, as appropriate, shall be responsible
191 for paying the cost of the audit from funds appropriated to
192 the governing boards or the commission.

193 (o) The governing boards shall require each institution
194 under their respective jurisdictions to notify and inform
195 every vendor doing business with that institution of the
196 provisions of section fifty-four, article three, chapter
197 five-a of this code, also known as the "prompt pay act of
198 1990".

199 (p) Consultant services, such as strategic planning
200 services, may not preclude or inhibit the governing boards
201 or the commission from considering any qualified bid or

202 response for delivery of a product or a commodity because
203 of the rendering of those consultant services.

204 (q) After the commission has granted approval for lease-
205 purchase arrangements by the governing boards, a govern-
206 ing board may enter into lease-purchase arrangements for
207 capital improvements, including equipment. Any lease-
208 purchase arrangement so entered shall constitute a special
209 obligation of the State of West Virginia. The obligation
210 under a lease-purchase arrangement so entered may be
211 from any funds legally available to the institution and
212 must be cancelable at the option of the governing board or
213 institution at the end of any fiscal year. The obligation,
214 any assignment or securitization thereof, shall never
215 constitute an indebtedness of the State of West Virginia or
216 any department, agency or political subdivision thereof,
217 within the meaning of any constitutional provision or
218 statutory limitation, and shall not be a charge against the
219 general credit or taxing powers of the state or any political
220 subdivision thereof; and such facts shall be plainly stated
221 in any lease-purchase agreement. Further, the lease-
222 purchase agreement shall prohibit assignment or securiti-
223 zation without consent of the lessee and the approval of
224 the attorney general of West Virginia. Proposals for any
225 arrangement must be requested in accordance with the
226 requirements of this section and any rules or guidelines of
227 the commission. In addition, any lease-purchase agree-
228 ment must be approved by the attorney general of West
229 Virginia. The interest component of any lease-purchase
230 obligation shall be exempt from all taxation of the state of
231 West Virginia, except inheritance, estate and transfer
232 taxes. It is the intent of the Legislature that if the require-
233 ments set forth in the internal revenue code of one thou-
234 sand nine hundred eighty-six, as amended, and any
235 regulations promulgated pursuant thereto are met, the
236 interest component of any lease-purchase obligation also
237 shall be exempt from the gross income of the recipient for
238 purposes of federal income taxation and may be desig-

239 nated by the governing board or the president of the
240 institution as a bank-qualified obligation.

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

1 The policy commission shall make an annual report to
2 the finance committees of the House of Delegates and the
3 Senate regarding the entities with which each of the
4 governing boards contracted in the previous year. This
5 report shall be submitted on or before the fifteenth day of
6 January of each year and shall be cumulative in nature.
7 The report shall include, but not be limited to, information
8 regarding the number of out-of-state entities with which
9 each governing board contracted; the number of in-state
10 firms with which each governing board contracted; the
11 dollar amount of each contract; the equipment, commodity
12 or service for which each contract was let; and the policy
13 commission's recommendations, if any, on the manner in
14 which the purchasing procedures could be improved.

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

**§18B-6-1. Institutional boards of advisors for regional campuses
and administratively linked community and techni-
cal colleges.**

1 (a) Effective the first day of July, two thousand, there is
2 established at each regional campus and administra-
3 tively-linked community and technical college, excluding
4 centers and branches thereof, an institutional board of
5 advisors: *Provided*, That the institutional board of advi-
6 sors shall not be appointed for administratively linked
7 community and technical colleges until provided for in
8 their compact.

9 (1) For the transition year beginning on the first day of
10 July, two thousand, through the thirtieth day of June, two
11 thousand one, only, the lay members of the institutional
12 board of advisors established for each of the regional
13 campuses of West Virginia university are appointed by the
14 president of the respective institution. Effective the first

15 day of July, two thousand one, the lay members of the
16 institutional boards of advisors for the regional campuses
17 are appointed by the board of governors.

18 (2) The lay members of the institutional board of
19 advisors established for the administratively linked
20 community and technical colleges are appointed by the
21 West Virginia council for community and technical college
22 education.

23 (b) The board of advisors consists of fifteen members,
24 including a full-time member of the faculty with the rank
25 of instructor or above duly elected by the faculty; a
26 member of the student body in good academic standing,
27 enrolled for college credit work and duly elected by the
28 student body; a member from the institutional classified
29 employees duly elected by the classified employees; and
30 twelve lay persons appointed pursuant to subsection (a) of
31 this section who have demonstrated a sincere interest in
32 and concern for the welfare of that institution and who are
33 representative of the population of its responsibility
34 district and fields of study. At least eight of the twelve lay
35 persons appointed shall be residents of the state. Of the lay
36 members who are residents of the state, at least two shall
37 be alumni of the institution and no more than a simple
38 majority may be of the same political party.

39 (c) The student member shall serve for a term of one year
40 beginning upon appointment in July, two thousand, and
41 ending on the thirtieth day of April, two thousand one.
42 Thereafter the term shall begin on the first day of May.
43 The member from the faculty and the classified employees
44 shall serve for a term of two years beginning upon ap-
45 pointment in July, two thousand, and ending on the
46 thirtieth day of April, two thousand two. Thereafter the
47 term shall begin on the first day of May; and the twelve lay
48 members shall serve terms of four years each beginning
49 upon appointment in July, two thousand. Thereafter the
50 term shall begin on the first day of May. All members are
51 eligible to succeed themselves for no more than one

52 additional term. A vacancy in an unexpired term of a
53 member shall be filled for the remainder of the unexpired
54 term within thirty days of the occurrence thereof in the
55 same manner as the original appointment or election.
56 Except in the case of a vacancy, all elections shall be held
57 and all appointments shall be made no later than the
58 thirtieth day of April preceding the commencement of the
59 term.

60 (d) Each board of advisors shall hold a regular meeting
61 at least quarterly, commencing in May of each year.
62 Additional meetings may be held upon the call of the
63 chairperson, president of the institution or upon the
64 written request of at least five members. A majority of the
65 members constitutes a quorum for conducting the business
66 of the board of advisors.

67 (e) One of the twelve lay members shall be elected as
68 chairperson by the board of advisors in May of each year:
69 *Provided*, That the chairperson elected in two thousand
70 shall be elected in July. No member may serve as chair-
71 person for more than two consecutive years.

72 (f) The president of the institution shall make available
73 resources of the institution for conducting the business of
74 the board of advisors. The members of the board of
75 advisors shall be reimbursed for all reasonable and
76 necessary expenses actually incurred in the performance
77 of their official duties under this section upon presentation
78 of an itemized sworn statement thereof. All expenses
79 incurred by the boards of advisors and the institutions
80 under this section shall be paid from funds allocated to the
81 institutions for that purpose.

82 (g) The board of advisors shall review, prior to the
83 submission by the president to its governing board, all
84 proposals of the institution in the areas of mission, aca-
85 demic programs, budget, capital facilities and such other
86 matters as requested by the president of the institution or
87 its governing board or otherwise assigned to it by law. The

88 board of advisors shall comment on each such proposal in
89 writing, with such recommendations for concurrence
90 therein or revision or rejection thereof as it considers
91 proper. The written comments and recommendations shall
92 accompany the proposal to the governing board and the
93 governing board shall include the comments and recom-
94 mendations in its consideration of and action on the
95 proposal. The governing board shall promptly acknowl-
96 edge receipt of the comments and recommendations and
97 shall notify the board of advisors in writing of any action
98 taken thereon.

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

103 (i) The board of advisors shall provide advice and
104 assistance to the president in establishing closer connec-
105 tions between higher education and business, labor,
106 government, community and economic development
107 organizations to give students greater opportunities to
108 experience the world of work, such as business and
109 community service internships, apprenticeships and
110 cooperative programs; to communicate better and serve
111 the current work force and work force development needs
112 of their service area, including the needs of nontraditional
113 students for college-level skills upgrading and retraining
114 and the needs of employers for specific programs of
115 limited duration; and to assess the performance of the
116 institution's graduates and assist in job placement.

117 (j) Upon the occurrence of a vacancy in the office of
118 president of the institution, the board of advisors shall
119 serve as a search and screening committee for candidates
120 to fill the vacancy under guidelines established by the
121 commission pursuant to the provisions of section six,
122 article one-b of this chapter. When serving as a search and
123 screening committee, the board of advisors and its govern-
124 ing board are each authorized to appoint up to three

125 additional persons to serve on the committee as long as the
126 search and screening process is in effect. The three addi-
127 tional appointees of the board of advisors shall be faculty
128 members of the institution. Only for the purposes of the
129 search and screening process, the additional members shall
130 possess the same powers and rights as the regular members
131 of the board of advisors, including reimbursement for all
132 reasonable and necessary expenses actually incurred.
133 Following the search and screening process, the committee
134 shall submit the names of at least three candidates to the
135 president of the sponsoring institution for consideration
136 and appointment. If the president rejects all candidates
137 submitted, the committee shall submit the names of at
138 least three additional candidates and this process shall be
139 repeated until the president appoints one of the candidates
140 submitted. The governing board shall provide all necessary
141 staff assistance to the board of advisors in its role as a
142 search and screening committee.

143 (k) The boards of advisors shall develop a master plan
144 for each administratively linked community and technical
145 college. The ultimate responsibility for developing and
146 updating the master plans at the institutional level resides
147 with the institutional board of advisors, but the ultimate
148 responsibility for approving the final version of the
149 institutional master plans, including periodic updates,
150 resides with the commission. The plan shall include, but
151 not be limited to, the following:

152 (1) A detailed demonstration of how the master plan will
153 be used to meet the goals and objectives of the institu-
154 tional compact;

155 (2) A well-developed set of goals outlining missions,
156 degree offerings, resource requirements, physical plant
157 needs, personnel needs, enrollment levels and other
158 planning determinates and projections necessary in such
159 a plan to assure that the needs of the institution's area of
160 responsibility for a quality system of higher education are
161 addressed;

162 (3) Documentation of the involvement of the commis-
163 sion, institutional constituency groups, clientele of the
164 institution, and the general public in the development of
165 all segments of the institutional master plan.

166 The plan shall be established for periods of not less than
167 three nor more than six years and shall be revised periodi-
168 cally as necessary, including recommendations on the
169 addition or deletion of degree programs as, in the discre-
170 tion of the board of advisors, may be necessary.

§18B-6-2a. State advisory council of faculty.

1 (a) Effective the first day of July, two thousand, there is
2 hereby established the state advisory council of faculty.
3 For the purposes of this section, the state advisory council
4 of faculty shall be referred to as the "council".

5 (b) During the month of April of each odd-numbered
6 year, beginning in the year two thousand one, each presi-
7 dent or other administrative head of a state institution of
8 higher education, including, but not limited to, Potomac
9 state college of West Virginia university, West Virginia
10 university at Parkersburg, West Virginia university
11 institute of technology, Robert C. Byrd health sciences
12 Charleston division of West Virginia university and the
13 Marshall university graduate college, at the direction of
14 the council and in accordance with procedures established
15 by the council, shall convene a meeting or otherwise
16 institute a balloting process to elect one faculty to serve on
17 the council. Terms of the members of the council shall be
18 for two years and shall begin on the first day of July of
19 each odd-numbered year. Members of the council shall be
20 eligible to succeed themselves.

21 (c) The council shall meet at least once each quarter. One
22 of the quarterly meetings shall be during the month of
23 July, at which meeting the council shall elect a chairper-
24 son: *Provided*, That the chairperson shall serve no more
25 than two consecutive terms as chair. No member may vote

26 by proxy at the election. In the event of a tie in the last
27 vote taken for such election, a member authorized by the
28 council shall select the chairperson by lot from the names
29 of those persons tied. Immediately following the election
30 of a chairperson, the council shall elect, in the manner
31 prescribed by this section for the election of a chairperson,
32 a member of the council to preside over meetings of the
33 council in the chairperson's absence. Should the chairper-
34 son vacate the position, the council shall meet and elect a
35 new chairperson to fill the unexpired term within thirty
36 days following the vacancy.

37 (d) The council, through its chairperson and in any
38 appropriate manner, shall communicate to the commis-
39 sion, through the chancellor, matters of higher education
40 in which the faculty members may have an interest.

41 (e) The commission shall meet annually between the
42 months of October and December with the council to
43 discuss matters of higher education in which the faculty
44 members or the commission may have an interest.

45 (f) Members of the council shall serve without compen-
46 sation, but shall be entitled to reimbursement for actual
47 and necessary expenses incurred in the performance of
48 their official duties from funds allocated to the state
49 institution of higher education served.

50 (g) The council shall cause to be prepared minutes of its
51 meetings, which minutes shall be available, upon request,
52 to any faculty member of a state institution of higher
53 education represented on the council.

§18B-6-4a. State advisory councils of classified employees.

1 (a) Effective the first day of July, two thousand, there is
2 hereby established the state advisory council of classified
3 employees. For the purposes of this section, the state
4 advisory council of classified employees shall be referred
5 to as the "council".

6 (b) During the month of April of each odd-numbered
7 year, beginning in the year two thousand one, each presi-
8 dent or other administrative head of a state institution of
9 higher education, including, but not limited to, Potomac
10 state college of West Virginia university, West Virginia
11 university at Parkersburg, West Virginia university
12 institute of technology, Robert C. Byrd health sciences
13 Charleston division of West Virginia university and the
14 Marshall university graduate college, at the direction of
15 the council and in accordance with procedures established
16 by the council, shall convene a meeting or otherwise
17 institute a balloting process to elect one classified em-
18 ployee to serve on the state advisory council. Terms of the
19 members of the council shall be for two years and shall
20 begin on the first day of July of each odd-numbered year
21 and members of the council shall be eligible to succeed
22 themselves. For the purposes of this section the term
23 "institution of higher education" includes the facilities
24 and staff supervised by the vice-chancellor for administra-
25 tion employed by the commission and the West Virginia
26 network for educational telecomputing.

27 (c) The council of classified employees shall meet at least
28 once each quarter. One of the quarterly meetings shall be
29 during the month of July, at which meeting the council
30 shall elect a chairperson: *Provided*, That the chair shall
31 serve no more than two consecutive terms as chair. No
32 member may vote by proxy at the election. In the event of
33 a tie in the last vote taken for such election, a member
34 authorized by the council shall select the chairperson by
35 lot from the names of those persons tied. Immediately
36 following the election of a chairperson, the council shall
37 elect, in the manner prescribed by this section for the
38 election of a chairperson, a member of the council to
39 preside over meetings of the council in the chairperson's
40 absence. Should the chairperson vacate the position, the
41 council shall meet and elect a new chairperson to fill the
42 unexpired term within thirty days following the vacancy.

43 (d) The council, through its chairperson and in any
44 appropriate manner, shall communicate to the commis-
45 sion, through the chancellor, matters of higher education
46 in which the classified employees may have an interest.

47 (e) The commission shall meet annually, between the
48 months of October and December, with the council to
49 discuss matters of higher education in which the classified
50 employees or the commission may have an interest.

51 (f) Members of the council shall serve without compen-
52 sation, but shall be entitled to reimbursement for actual
53 and necessary expenses incurred in the performance of
54 their official duties from funds allocated to the state
55 institution of higher education served.

56 (g) The council shall cause to be prepared minutes of its
57 meetings, which minutes shall be available, upon request,
58 to any classified employee of a state institution of higher
59 education represented on the council.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

1 (a) The president or other administrative head of each
2 state institution of higher education shall give written
3 notice to probationary faculty members concerning their
4 retention or nonretention for the ensuing academic year (1)
5 not later than the first day of March for those proba-
6 tionary faculty members who are in their first academic year
7 of service; (2) not later than the fifteenth day of December
8 for those probationary faculty members who are in their
9 second academic year of service; and (3) at least one year
10 before the expiration of an appointment for those proba-
11 tionary faculty members who have been employed two or
12 more years with the institution. Such notice to those
13 probationary faculty members not being retained shall be
14 by certified mail, return receipt requested.

15 (b) Upon request of the probationary faculty member
16 not retained, the president or other administrative head of
17 the institution shall within ten days, and by certified mail,
18 inform the probationary faculty member of the reasons for
19 nonretention. Any probationary faculty member who
20 desires to appeal the decision shall utilize the grievance
21 procedure established in article six-a, chapter twenty-nine
22 of this code. If it is concluded that the reasons for
23 nonretention are arbitrary or capricious or without a
24 factual basis, the faculty member shall be retained for the
25 ensuing academic year.

26 (c) The term "probationary faculty member" shall be
27 defined according to rules promulgated by the governing
28 boards. The rights herein provided to probationary faculty
29 members are in addition to, and not in lieu of, other rights
30 afforded them by other rules and other provisions of law.

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

§18B-9-1. Legislative purpose.

1 The purpose of the Legislature in the enactment of this
2 article is to require the commission to establish, control,
3 supervise and manage a complete, uniform system of
4 personnel classification in accordance with the provisions
5 of this article for all employees other than faculty and
6 nonclassified employees at state institutions of higher
7 education.

§18B-9-2. Definitions.

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 or the commission, including all employ-
5 ees of the West Virginia network for educational
6 telecomputing, who hold a position that is assigned a
7 particular job title and pay grade in accordance with the

8 personnel classification system established by this article
9 or by the commission;

10 (b) "Nonclassified employee" means an individual who
11 is responsible for policy formation at the department or
12 institutional level, or reports directly to the president, or
13 is in a position considered critical to the institution by the
14 president pursuant to policies adopted by the governing
15 board: *Provided*, That the percentage of personnel placed
16 in the category of "nonclassified" at any given institution
17 shall not exceed ten percent of the total number of em-
18 ployees of that institution who are eligible for membership
19 in any state retirement system of the state of West Virginia
20 or other retirement plan authorized by the state: *Provided*,
21 *however*, That an additional ten percent of the total
22 number of employees of that institution as defined in this
23 subsection may be placed in the category of
24 "nonclassified" if they are in a position considered critical
25 to the institution by the president. Final approval of such
26 placement shall be with the appropriate governing board;

27 (c) "Job description" means the specific listing of duties
28 and responsibilities as determined by the appropriate
29 governing board or the commission and associated with a
30 particular job title;

31 (d) "Job title" means the name of the position or job as
32 defined by the appropriate governing board or the com-
33 mission;

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

39 (f) "Pay grade" means the number assigned by the
40 commission to a particular job title and refers to the
41 vertical column heading of the salary schedule established
42 in section three of this article;

43 (g) "Personnel classification system" means the process
44 of job categorization adopted by the commission by which
45 job title, job description, pay grade and placement on the
46 salary schedule are determined;

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

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

53 (j) "Years of experience" means the number of years a
54 person has been an employee of the state of West Virginia
55 and refers to the horizontal column heading of the salary
56 schedule established in section three of this article. For
57 the purpose of placement on the salary schedule, employ-
58 ment for nine months or more equals one year of experi-
59 ence, but no classified employee may accrue more than one
60 year of experience during any given fiscal year. Employ-
61 ment for less than full time or less than nine months
62 during any fiscal year shall be prorated. In accordance
63 with rules established by the commission, a classified
64 employee may be granted additional years of experience
65 not to exceed the actual number of years of prior, relevant
66 work or experience at accredited institutions of higher
67 education other than state institutions of higher education.

**§18B-9-3. Higher education classified employee annual salary
schedule.**

1 (a) There is hereby established a state annual salary
2 schedule for classified employees consisting of a minimum
3 annual salary for each pay grade in accordance with years
4 of experience: *Provided*, That payment of the minimum
5 salary shall be subject to the availability of funds, and
6 nothing in this article shall be construed to guarantee
7 payment to any classified employee of the salary indicated
8 on the schedule at the actual years of experience absent

9 specific legislative appropriation therefor. The minimum
10 salary herein indicated shall be prorated for classified
11 employees working less than thirty-seven and one-half
12 hours per week. Despite any differences in salaries that
13 may occur, a classified employee is equitably compensated
14 in relation to other classified employees in the same
15 paygrade if the following conditions exist:

16 (1) His or her annual salary is at least the minimum
17 salary that was required for his or her pay grade and years
18 of service on the first day of July two thousand, on the
19 salary schedule included in this section immediately prior
20 to the effective date of this act; and

21 (2) Progress is being made by the institution in meeting
22 the salary goals set out in this article.

23 (b) The commission shall report to the legislative
24 oversight commission on education accountability on the
25 first day of December, two thousand one, and each year
26 thereafter on the progress of the governing boards toward
27 funding the classified employees' salary schedule estab-
28 lished pursuant to section three, article nine of this
29 chapter. The report shall include, but not be limited to, a
30 detailed comparison of funding on individual campuses
31 and specifically shall compare the status of funding for
32 exempt and nonexempt classified employees pursuant to
33 subsection (c), section four of this article.

34 (c) The commission shall conduct a study and report to
35 the legislative oversight commission on education account-
36 ability by the first day of December, two thousand one, on
37 the feasibility of considering location differential costs as
38 part of the compensation package for classified employees.

39 (d) Nothing in this section may be construed to require
40 an appropriation by the Legislature in excess of the
41 legislative funding priorities as set forth in this chapter.

42 **HIGHER EDUCATION CLASSIFIED EMPLOYEE**
43 **ANNUAL SALARY SCHEDULE**

44

YEARS OF EXPERIENCE

PAY GRADE	0	1	2	3	4	5	6	7	8
45									
46									
47	1	12,809	13,094	13,385	13,677	13,968	14,274	14,580	14,900
48	2	13,465	13,764	14,070	14,376	14,696	15,017	15,352	15,687
49	3	14,164	14,478	14,798	15,133	15,483	15,832	16,182	16,546
50	4	14,908	15,250	15,599	15,949	16,313	16,692	17,085	17,478
51	5	15,696	16,066	16,444	16,837	17,231	17,624	18,046	18,469
52	6	16,556	16,954	17,362	17,784	18,207	18,644	19,081	19,547
53	7	17,489	17,915	18,352	18,804	19,255	19,721	20,202	20,697
54	8	18,495	18,949	19,416	19,896	20,391	20,901	21,411	21,950
55	9	19,559	20,056	20,566	21,091	21,615	22,168	22,722	23,290
56	10	20,691	21,221	21,763	22,318	22,887	23,466	24,056	24,657
57	11	21,107	21,665	22,239	22,812	23,400	24,015	24,645	25,288
58	12	22,436	23,022	23,624	24,253	24,896	25,554	26,225	26,924
59	13	23,837	24,477	25,134	25,805	26,505	27,218	27,945	28,701
60	14	25,363	26,057	26,771	27,498	28,253	29,022	29,806	30,631
61	15	27,015	27,764	28,533	29,330	30,141	30,981	31,834	32,715
62	16	28,821	29,624	30,449	31,316	32,197	33,092	34,030	34,981
63	17	30,767	31,638	32,533	33,470	34,421	35,400	36,421	37,456
64	18	32,868	33,820	34,799	35,806	36,841	37,904	39,009	40,142
65	19	37,613	38,718	39,855	41,022	42,219	43,460	44,747	46,064
66	20	40,265	41,471	42,712	43,984	45,301	46,647	48,038	49,460
67	21	43,171	44,478	45,824	47,216	48,637	50,103	51,614	53,170
68	22	46,332	47,754	49,220	50,731	52,272	53,873	55,534	57,224
69	23	49,777	51,330	52,931	54,561	56,252	58,002	59,797	61,653
70	24	53,552	55,234	56,970	58,750	60,605	62,505	64,465	66,485
71	25	57,462	59,483	61,383	63,328	65,348	67,427	69,567	71,781

72

PAY GRADE	9	10	11	12	13	14	15
73							
74	1	15,541	15,876	16,226	16,575	16,939	17,304
75	2	16,386	16,750	17,129	17,507	17,886	18,294
76	3	17,304	17,697	18,090	18,498	18,920	19,343
77	4	18,279	18,702	19,139	19,576	20,027	20,493
78	5	19,343	19,794	20,260	20,741	21,222	21,717
79	6	20,479	20,974	21,469	21,994	22,518	23,057
80	7	21,717	22,241	22,780	23,334	23,902	24,484
81	8	23,042	23,610	24,193	24,805	25,416	26,043
82	9	24,484	25,096	25,737	26,378	27,048	27,732
83	10	25,008	25,638	26,295	26,980	27,666	28,379
84	11	26,617	27,316	28,015	28,757	29,498	30,267
85	12	28,365	29,120	29,890	30,687	31,498	32,323
86	13	30,267	31,078	31,918	32,771	33,652	34,561
87	14	32,323	33,204	34,114	35,051	36,002	36,981
88	15	34,561	35,512	36,505	37,512	38,547	39,624
89	16	36,981	38,030	39,093	40,198	41,331	42,492
90	17	39,624	40,757	41,918	43,121	44,352	45,611
91	18	42,506	43,736	44,995	46,296	47,639	49,023
92	19	48,801	50,238	51,719	53,230	54,801	56,416
93	20	52,452	54,023	55,623	57,284	58,990	60,755
94	21	56,431	58,137	59,902	61,712	63,568	65,482
95	22	60,785	62,640	64,555	66,530	68,579	70,674
96	23	65,527	67,562	69,656	71,826	74,040	76,344
97	24	70,734	72,948	75,237	77,601	80,039	82,552
98	25	76,419	78,842	81,356	83,944	86,607	89,360

**§18B-9-4. Establishment of personnel classification system;
assignment to classification and to salary schedule.**

1 (a) The commission shall implement an equitable system
2 of job classifications, with the advice and assistance of
3 staff councils and other groups representing classified
4 employees, each classification to consist of related job
5 titles and corresponding job descriptions for each position
6 within a classification, together with the designation of an
7 appropriate pay grade for each job title, which system
8 shall be the same for corresponding positions of the
9 commission and in institutions under all governing boards.
10 The equitable system of job classification and the rules
11 establishing it which were in effect immediately prior to
12 the effective date of this section are hereby transferred to
13 the jurisdiction and authority of the commission and shall
14 remain in effect unless modified or rescinded by the
15 commission.

16 (b) Any classified staff salary increases distributed
17 within state institutions of higher education on the first
18 day of July, two thousand one shall be in accordance with
19 the uniform employee classification system and a salary
20 policy adopted by the interim governing board and
21 approved by the commission. Any classified salary
22 increases distributed within a state institution of higher
23 education after the first day of July, two thousand one,
24 shall be in accordance with the uniform classification
25 system and a uniform and equitable salary policy adopted
26 by each individual board of governors. Each salary policy
27 shall detail the salary goals of the institution and the
28 process whereby the institution will achieve or progress
29 toward achievement of placing each classified employee at
30 his or her minimum salary on the schedule established
31 pursuant to section three of this article.

32 (c) No classified employee defined as nonexempt from
33 the wage and hour provisions of the Fair Labor Standards
34 Act of 1938, as amended, may be paid an annual salary in
35 excess of the salary established by the salary schedule for

36 his or her paygrade and years of experience. Classified
37 employees defined as exempt from the wage and hour
38 provisions of the Fair Labor Standards Act of 1938, as
39 amended, may receive a salary in excess of the salary
40 established by the salary schedule for his or her paygrade
41 and years of experience but only if all such exempt
42 employees at the institution are receiving at least the
43 minimum salary for their pay grade and years of experi-
44 ence as established for them by the salary schedule:
45 *Provided*, That no exempt classified employee may receive
46 a salary in excess of the highest salary provided for his or
47 her paygrade in the salary schedule.

§18B-9-5. Classified employee salary.

1 (a) Commencing with the fiscal year beginning on the
2 first day of July, one thousand nine hundred ninety-eight,
3 and each fiscal year thereafter, each classified employee
4 with three or more years of experience shall receive an
5 annual salary increase equal to fifty dollars times the
6 employee's years of experience: *Provided*, That the annual
7 salary increase may not exceed the amount granted for the
8 maximum of twenty years of experience. These incremen-
9 tal increases are in lieu of any salary increase received
10 pursuant to section two, article five, chapter five of this
11 code; are in addition to any across-the-board,
12 cost-of-living or percentage salary increases which may be
13 granted in any fiscal year by the Legislature; and shall be
14 paid in like manner as the annual payment to eligible state
15 employees of the incremental salary increases based on
16 years of service under the provisions of section two, article
17 five, chapter five of this code.

18 (b) Any classified employee may receive merit increases
19 and salary adjustments in accordance with policies
20 established by the board of governors: *Provided*, That
21 merit raises may be granted only pursuant to a rule
22 adopted by the board of governors, and approved by the
23 chancellor, which provides a fair and equitable basis for

24 granting merit raises pursuant to regular evaluations
25 based upon reasonable performance standards.

26 (c) The current annual salary of any classified employee
27 may not be reduced by the provisions of this article nor by
28 any other action inconsistent with the provisions of this
29 article, and nothing in this article may be construed to
30 prohibit promotion of any classified employee to a job title
31 carrying a higher pay grade if the promotion is in accor-
32 dance with the provisions of this article and the personnel
33 classification system established by the appropriate
34 governing board.

§18B-9-7. Conferences regarding personnel classification.

1 The president of the institution or the designees charged
2 with responsibility to develop any personnel recommenda-
3 tions for inclusion in the institution's annual report to its
4 governing board shall meet and confer during development
5 of the recommendations with any classified employee who:
6 (1) May be affected by proposed recommendations to its
7 governing board; or (2) has requested a change in job title.

§18B-9-8. Hirings after effective date.

1 Any individual hired as a full-time classified employee
2 after the effective date of this section shall be assigned, to
3 a placement on the salary schedule which is appropriate to
4 such individual's classification, job title, pay grade and
5 years of experience: *Provided*, That nothing in this section
6 shall be construed to guarantee to a newly hired classified
7 employee payment of the salary prescribed in section three
8 of this article.

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

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

1 (a) Each governing board shall fix tuition and other fees
2 for each school term for the different classes or categories

3 of students enrolling at each state institution of higher
4 education under its jurisdiction and may include among
5 such fees any one or more of the following:

6 (1) Health service fees;

7 (2) Infirmary fees;

8 (3) Student activities, recreational, athletic and extra-
9 curricular fees, which fees may be used to finance a
10 students' attorney to perform legal services for students in
11 civil matters at such institutions: *Provided*, That such legal
12 services shall be limited only to those types of cases,
13 programs or services approved by the administrative head
14 of such institution where such legal services are to be
15 performed; and

16 (4) Graduate center fees and branch college fees, or
17 either, if the establishment and operations of graduate
18 centers or branch colleges are otherwise authorized by
19 law.

20 (b) All fees collected at any graduate center or at any
21 branch college shall be paid into special funds and shall be
22 used solely for the maintenance and operation of the
23 graduate center or branch college at which they were
24 collected: *Provided*, That the commission shall set tuition
25 and fee goals for residents at each institution after exam-
26 ining tuition and fees at the institutions' peers: *Provided*,
27 *however*, That, effective the first day of July, two thousand
28 one, tuition and fees for nonresident, undergraduate
29 students shall, at a minimum, cover actual instructional
30 costs as determined in accordance with commission policy:
31 *Provided further*, That students enrolled in undergraduate
32 courses offered at off-campus locations shall pay an
33 off-campus instruction fee and shall not pay the athletic
34 fee and the student activity fee.

35 (c) The off-campus instruction fee shall be used solely
36 for the support of off-campus courses offered by the
37 institution. Off-campus locations for each institution shall

38 be defined by the appropriate governing board. The
39 schedule of all fees, and any changes therein, shall be
40 entered in the minutes of the meeting of the appropriate
41 governing board, and the board shall file with the legisla-
42 tive auditor a certified copy of such schedule and changes.

43 (d) In addition to the fees mentioned in the preceding
44 paragraph, each governing board may impose and collect
45 a student union building fee. All such building fees
46 collected at an institution shall be paid into a special
47 student union building fund for such institution, which is
48 hereby created in the state treasury, and shall be used only
49 for the construction, operation and maintenance of a
50 student union building or a combination student union
51 and dining hall building or for the payment of the princi-
52 pal of and interest on any bond issued to finance part or
53 all of the construction of a student union building or a
54 combination student union and dining hall building or the
55 renovation of an existing structure for use as a student
56 union building or a combination student union and dining
57 hall building, all as more fully provided in section ten of
58 this article. Any moneys in such funds not needed immedi-
59 ately for such purposes may be invested in any such bonds
60 or other securities as are now or hereafter authorized as
61 proper investments for state funds.

62 (e) The boards shall establish the rates to be charged
63 full-time students enrolled during a regular academic
64 term.

65 (1) For fee purposes, a full-time undergraduate student
66 is one enrolled for twelve or more credit hours in a regular
67 term, and a full-time graduate student is one enrolled for
68 nine or more credit hours in a regular term.

69 (2) Undergraduate students taking fewer than twelve
70 credit hours in a regular term shall have their fees reduced
71 pro rata based upon one twelfth of the full-time rate per
72 credit hour, and graduate students taking fewer than nine
73 credit hours in a regular term shall have their fees reduced

74 pro rata based upon one ninth of the full-time rate per
75 credit hour.

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

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

83 (1) The governing boards shall permit fee payments to be
84 made in up to three installments over the course of the
85 academic term: *Provided*, That all fees must be paid prior
86 to the awarding of course credit at the end of the academic
87 term.

88 (2) The governing boards also shall authorize the accep-
89 tance of credit cards or other payment methods which may
90 be generally available to students for the payment of fees:
91 *Provided*, That the governing boards may charge the
92 students for the reasonable and customary charges in-
93 curred in accepting credit cards and other methods of
94 payment.

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

103 (g) On or before the first day of July, two thousand one,
104 the chancellor for higher education shall review policy
105 series twenty-two of the governing boards, related to
106 assessment, payment and refund of fees and determine
107 whether a new rule should be adopted regarding the
108 refund of any fees upon the voluntary or involuntary

109 withdrawal from classes of any student. The rules shall
110 comply with all applicable state and federal laws and shall
111 be uniformly applied throughout the system.

112 (h) In addition to the fees mentioned in the preceding
113 subsections, each governing board may impose, collect and
114 distribute a fee to be used to finance a nonprofit, stu-
115 dent-controlled public interest research group: *Provided*,
116 That the students at such institution demonstrate support
117 for the increased fee in a manner and method established
118 by that institution's elected student government: *Provided*,
119 *however*, That such fees shall not be used to finance
120 litigation against the institution.

121 (i) Any proposed fee increase which would become
122 effective during the transition year beginning on the first
123 day of July, two thousand, and ending on the thirtieth day
124 of June, two thousand one, and which has been approved
125 by the governing board, shall then be submitted by the
126 governing board to the secretary for education and the arts
127 for approval. Such approval shall be granted only upon the
128 certification that such institution requesting a fee increase
129 is in compliance with the strategic plans required to be
130 submitted, pursuant to section one-b, article one of this
131 chapter. Notice, in the form of a report, shall be provided
132 by the chancellor to the legislative oversight commission
133 on education accountability describing such fee increases
134 and showing how such increases compare with the average
135 tuition and fees charged at comparable peer institutions in
136 member states of the southern regional education board.

137 (j) Effective the first day of July, two thousand one,
138 tuition and fees rates shall be determined in accordance
139 with subsections (k), (l) and (m) of this section.

140 (k) Effective the first day of July, two thousand one,
141 institutions shall retain tuition and fee revenues not
142 pledged for bonded indebtedness or other purposes in
143 accordance with a revised tuition policy adopted by the

144 respective governing boards and approved by the commis-
145 sion. The revised tuition policy shall:

146 (1) Provide a basis for establishing nonresident tuition
147 and fees;

148 (2) Allow institutions to charge different tuition and fees
149 for different programs; and

150 (3) Establish methodology, where applicable, to ensure
151 that, within the appropriate time period under the com-
152 pact, community and technical college tuition rates for
153 community and technical college students in all independ-
154 ently accredited community and technical colleges will be
155 commensurate with the tuition and fees charged by their
156 peer institutions.

157 (l) No penalty shall be imposed by the commission upon
158 any institution based upon the number of nonresidents
159 who attend the institution unless the commission deter-
160 mines that admission of nonresidents to any institution or
161 program of study within the institution is impeding
162 unreasonably the ability of the resident students to attend
163 the institution or participate in the programs of the
164 institution. The institutions shall report annually to the
165 commission on the numbers of out-of-state residents and
166 such other enrollment information as the commission may
167 request.

168 (m) Tuition and fee increases of the governing boards are
169 subject to rules adopted by the commission pursuant to
170 subsection (a), section four, article one-b of this chapter.

**§18B-10-8. Collection; disposition and use of additional regis-
tration fee; creation of special capital improve-
ments funds; revenue bonds.**

1 (a) In addition to all other fees imposed by the governing
2 boards, there is hereby imposed and the governing boards
3 are hereby directed to provide for the collection of an
4 additional registration fee from all students enrolled in

5 any state institution of higher education under its jurisdic-
6 tion in the amounts hereinafter provided.

7 (1) For full-time students at each state institution of
8 higher education, the additional registration fee shall be
9 fifty dollars per semester. The governing boards have
10 authority to increase such additional registration fee at
11 institutions of higher education under its jurisdiction for
12 students who are nonresidents of this state.

13 (2) For all part-time students and for all summer school
14 students, the governing boards shall impose and collect
15 such fee in proportion to, but not exceeding, that paid by
16 full-time students.

17 (b) The fee imposed by this section is in addition to the
18 maximum fees allowed to be collected under the provision
19 of section one of this article and may not be limited
20 thereby. Refunds of such fee may be made in the same
21 manner as any other fee collected at state institutions of
22 higher education.

23 (c) There is created in the state treasury a special capital
24 improvements fund for each state institution of higher
25 education and the commission into which shall be paid all
26 proceeds of the additional registration fees collected from
27 students at all state institutions of higher education
28 pursuant to this section to be expended by the commission
29 and governing boards for the payment of the principal of
30 or interest on any revenue bonds issued by the board of
31 regents or the succeeding governing boards for which such
32 registration fees were pledged prior to the enactment of
33 this section.

34 (d) The governing boards may make expenditures from
35 any of the special capital improvements funds established
36 in this section to finance, in whole or in part, together with
37 any federal, state or other grants or contributions, any one
38 or more of the following projects:

39 (1) The acquisition of land or any rights or interest
40 therein;

41 (2) The construction or acquisition of new buildings;

42 (3) The renovation or construction of additions to
43 existing buildings;

44 (4) The acquisition of furnishings and equipment for any
45 such buildings; and

46 (5) The construction or acquisition of any other capital
47 improvements or capital education facilities at such state
48 institutions of higher education, including any roads,
49 utilities or other properties, real or personal, or for other
50 purposes necessary, appurtenant or incidental to the
51 construction, acquisition, financing and placing in opera-
52 tion of such buildings, capital improvements or capital
53 education facilities.

54 (e) The governing boards, in their discretion, may use the
55 moneys in such special capital improvements funds to
56 finance the costs of the above purposes on a cash basis, or
57 the commission, upon request of institutions or governing
58 boards, singly or jointly, may from time to time issue
59 revenue bonds of the state as provided in this section to
60 finance all or part of such purposes and pledge all or any
61 part of the moneys in such special funds for the payment
62 of the principal of and interest on such revenue bonds, and
63 for reserves therefor. Any pledge of such special funds for
64 such revenue bonds shall be a prior and superior charge on
65 such special funds over the use of any of the moneys in
66 such funds to pay for the cost of any of such purposes on
67 a cash basis: *Provided*, That any expenditures from such
68 special funds, other than for the retirement of revenue
69 bonds, may only be made by the commission or governing
70 boards to meet the cost of a predetermined capital im-
71 provements program for one or more of the state institu-
72 tions of higher education, in such order of priority as was
73 agreed upon by the governing board or boards and the

74 commission and presented to the governor for inclusion in
75 the annual budget bill, and only with the approval of the
76 Legislature as indicated by direct appropriation for the
77 purpose.

78 (f) Such revenue bonds may be authorized and issued
79 from time to time by the commission or governing boards
80 to finance, in whole or in part, the purposes provided in
81 this section in an aggregate principal amount not exceed-
82 ing the amount which the commission determines can be
83 paid as to both principal and interest and reasonable
84 margins for a reserve therefor from the moneys in such
85 special funds.

86 (g) The issuance of such revenue bonds shall be autho-
87 rized by a resolution adopted by the governing board
88 receiving the proceeds and the commission, and such
89 revenue bonds shall bear such date or dates, mature at
90 such time or times not exceeding forty years from their
91 respective dates; be in such form either coupon or regis-
92 tered, with such exchangeability and interchangeability
93 privileges; be payable in such medium of payment and at
94 such place or places, within or without the state; be
95 subject to such terms of prior redemption at such prices
96 not exceeding one hundred five per centum of the princi-
97 pal amount thereof; and shall have such other terms and
98 provisions as determined by the governing board receiving
99 the proceeds and the commission. Such revenue bonds
100 shall be signed by the governor and by the chancellor of
101 the commission or the chair of the governing boards
102 authorizing the issuance thereof, under the great seal of
103 the state, attested by the secretary of state, and the
104 coupons attached thereto shall bear the facsimile signature
105 of the chancellor of the commission or the chair of the
106 appropriate governing boards. Such revenue bonds shall
107 be sold in such manner as the commission or governing
108 board determines is for the best interests of the state.

109 (h) The commission or governing boards may enter into
110 trust agreements with banks or trust companies, within or

111 without the state, and in such trust agreements or the
112 resolutions authorizing the issuance of such bonds may
113 enter into valid and legally binding covenants with the
114 holders of such revenue bonds as to the custody, safe-
115 guarding and disposition of the proceeds of such revenue
116 bonds, the moneys in such special funds, sinking funds,
117 reserve funds, or any other moneys or funds; as to the rank
118 and priority, if any, of different issues of revenue bonds by
119 the commission or governing boards under the provisions
120 of this section; as to the maintenance or revision of the
121 amounts of such additional registration fees, and the terms
122 and conditions, if any, under which such additional
123 registration fees may be reduced; and as to any other
124 matters or provisions which are deemed necessary and
125 advisable by the commission or governing boards in the
126 best interests of the state and to enhance the marketability
127 of such revenue bonds.

128 (i) After the issuance of any of such revenue bonds, the
129 additional registration fees at the state institutions of
130 higher education may not be reduced as long as any of
131 such revenue bonds are outstanding and unpaid except
132 under such terms, provisions and conditions as shall be
133 contained in the resolution, trust agreement or other
134 proceedings under which such revenue bonds were issued.
135 Such revenue bonds shall be and constitute negotiable
136 instruments under the uniform commercial code of this
137 state; shall, together with the interest thereon, be exempt
138 from all taxation by the state of West Virginia, or by any
139 county, school district, municipality or political subdivi-
140 sion thereof; and such revenue bonds may not be deemed
141 to be obligations or debts of the state, and the credit or
142 taxing power of the state may not be pledged therefor, but
143 such revenue bonds shall be payable only from the revenue
144 pledged therefor as provided in this section.

145 (j) Additional revenue bonds may be issued by the
146 commission or governing boards pursuant to this section
147 and financed by additional revenues or funds dedicated

148 from other sources. It is the intent of the Legislature to
149 authorize over a five-year period beginning on the seven-
150 tenth day of June, two thousand, additional sources of
151 revenue and funds to effect such funding for capital
152 improvement.

153 (k) Funding of system-wide and campus-specific revenue
154 bonds under any other section of this code is hereby
155 continued and authorized pursuant to the terms of this
156 section. Revenues of any state institution of higher educa-
157 tion pledged to the repayment of any bonds issued pursu-
158 ant to this code shall remain the responsibility of that
159 institution.

160 (l) Any revenue bonds proposed to be issued under this
161 section or article twelve-b, chapter eighteen of this code
162 must be first approved by the commission.

163 (m) Revenue bonds issued pursuant to article twelve-b,
164 chapter eighteen of this code may be issued by the com-
165 mission or governing boards, either singly or jointly.

166 (n) Fees pledged for repayment of revenue bonds issued
167 under this section or article twelve-b, chapter eighteen
168 prior to the effective date of this section shall be trans-
169 ferred to the commission in a manner prescribed by the
170 commission. The commission shall have the authority to
171 transfer funds from the accounts of institutions pledged
172 for the repayment of revenue bonds issued prior to the
173 effective date of this section, or issued subsequently by the
174 commission upon the request of institutions, if an institu-
175 tion fails to transfer the pledged revenues to the commis-
176 sion in a timely manner.

ARTICLE 11A. STATE AUTISM TRAINING CENTER.

§18B-11A-1. Purpose.

1 The purpose of the Legislature in the enactment of this
2 article is to establish and develop an autism training
3 center in the state of West Virginia with a highly skilled,

4 interdisciplinary, appropriately experienced staff which
5 will train teachers, parents, guardians and others impor-
6 tant to the autistic person's education and training. The
7 center is established and operated by the Marshall univer-
8 sity board of governors or its designees.

§18B-11A-2. Definitions.

1 For the purposes of this article:

2 (a) "Board" means the Marshall university board of
3 governors;

4 (b) "Center" means the autism training center;

5 (c) "Client" means a person with the primary diagnosis
6 of autism or autistic-like behavior; and

7 (d) "Expenses" means those reasonable and customary
8 expenditures related to training and treatment of eligible
9 clients as defined in the rules and regulations promulgated
10 by the center.

**§18B-11A-3. Powers and duties of board of governors and state
autism center.**

1 The board of governors is authorized to operate a state
2 autism training center, including either the acquisition by
3 purchase, lease, gift or otherwise, of necessary lands, and
4 the construction of necessary buildings; the expansion,
5 remodeling, altering or equipping of necessary buildings;
6 and the making of contracts by the board of trustees with
7 any state, county or municipal agency, or nonprofit
8 institution, providing for the equipment, expenses, com-
9 pensation of personnel, operation and maintenance of any
10 facility of such agency or institution utilized for the
11 purposes of this article. The board or its designees may
12 make and enter into all contracts and agreements neces-
13 sary and incidental to the performance of its powers and
14 duties under this section, and may cooperate with other
15 agencies of the state, county and federal governments.

§18B-11A-4. Responsibilities of center.

1 The center shall, through appropriate identification,
2 evaluation, education, individual training and treatment
3 programs for clients, offer appropriate education and
4 training for professional personnel and family members or
5 guardians.

§18B-11A-5. Rules and regulations.

1 The board, after consultation with the center, shall make
2 and adopt rules, regulations and standards for the estab-
3 lishment, operation, cost reimbursement, fees for services,
4 maintenance and government control of the center estab-
5 lished pursuant to this article, including such rules,
6 regulations and standards as may be necessary for cooper-
7 ation under and compliance with any existing or future
8 federal statutes pertaining to grants-in-aid for client
9 training or facilities and such other rules and regulations
10 as may be necessary to effectuate the purposes of this
11 article.

§18B-11A-6. Advisory board.

1 The board of governors shall appoint a board of West
2 Virginia citizens to advise the center director on matters of
3 policy. The advisory board shall be composed of fifty
4 percent parents or guardians of clients eligible for the
5 center's program; forty percent persons from professional
6 fields related to autism, such as special education, psy-
7 chology, hearing and speech, neurology and pediatrics; and
8 ten percent knowledgeable lay citizens such as legislators
9 or other lay community leaders. The director of the center
10 shall be an ex officio nonvoting member of the advisory
11 board.

§18B-11A-7. Trainee team; expense.

1 The primary method of providing services through the
2 center is by the use of trainee teams. A trainee team shall
3 consist of an eligible client, a professional chosen by the

4 primary local service agency and the client's parent or
5 parents or guardian.

6 The center may charge agencies such fees and reimburse
7 trainee team or client expenses as provided by rules and
8 regulations. The center may also provide for reasonable
9 and customary expenses in excess of fees charged sending
10 agencies for each trainee team or otherwise eligible client,
11 including child care for other children of attending parents
12 and others as specified in rules and regulations.

ARTICLE 14. MISCELLANEOUS.

§18B-14-5a. Authorization for sale lease back.

1 Notwithstanding any other provisions of this code to the
2 contrary and upon approval of the commission before
3 incurring any obligations, the governing boards are hereby
4 authorized and empowered to sell any building which is on
5 unencumbered real property to which the board holds title
6 and lease back the same building and deposit the net
7 proceeds of the transaction into a special revenue account
8 in the state treasury to be appropriated by the Legislature
9 for the use of the institution at which the real property is
10 located: *Provided*, That prior to such action the appropri-
11 ate governing board shall have the property appraised by
12 two licensed appraisers and shall not sell the property for
13 less than the average of the two appraisals: *Provided*,
14 *however*, That prior to such action, the governing board
15 shall retain independent financial and legal services to
16 examine fully all aspects of the transaction. Such sale may
17 only be made to a special purpose entity which exists
18 primarily for the purpose of supporting the institution at
19 which the building is located.

**CHAPTER 18C. STUDENT LOANS;
SCHOLARSHIPS AND STATE AID.**

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-4. Powers and duties of senior administrator.

1 Subject to the provisions of this article and within the
 2 limits of appropriations made by the Legislature, the
 3 senior administrator is authorized and empowered to: (1)
 4 Prepare and supervise the issuance of public information
 5 concerning the grant program; (2) prescribe the form and
 6 regulate the submission of applications for grants; (3)
 7 administer or contract for the administration of such
 8 examinations as may be prescribed by the senior adminis-
 9 trator; (4) select qualified recipients of grants; (5) award
 10 grants; (6) accept grants, gifts, bequests and devises of real
 11 and personal property for the purposes of the grant
 12 program; (7) administer federal and state financial loan
 13 programs; (8) cooperate with approved institutions of
 14 higher education in the state and their governing boards in
 15 the administration of the grant program; (9) make the final
 16 decision pertaining to residency of an applicant for grant
 17 or renewal of grant; (10) employ or engage such profes-
 18 sional and administrative employees as may be necessary
 19 to assist the senior administrator in the performance of the
 20 duties and responsibilities, who shall serve at the will and
 21 pleasure and under the direction and control of the senior
 22 administrator; (11) employ or engage such clerical and
 23 other employees as may be necessary to assist the senior
 24 administrator in the performance of the duties and respon-
 25 sibilities, who shall be under the direction and control of
 26 the senior administrator; (12) prescribe the duties and fix
 27 the compensation of all such employees; and (13) adminis-
 28 ter the adult part-time student higher education grant
 29 program established under section seven of this article.

**CHAPTER 29A. STATE ADMINISTRATIVE
 PROCEDURES ACT.**

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-1. Definitions.

- 1 As used in this article:
- 2 (a) "Commission" means the legislative oversight
 3 commission on education accountability;

4 (b) "Board" means the higher education policy commis-
5 sion or the chancellor as defined in chapter eighteen-b of
6 this code, or both, or any successor agency or officer.
7 "Board" also means any other entity directed by this code
8 to promulgate a rule or rules in accordance with this
9 article, but this definition shall apply solely for the
10 purpose of promulgating the rule or rules required to be
11 promulgated in accordance with this article.

§29A-3A-12. Submission of legislative rules to the legislative oversight commission on education accountability.

1 (a) When the board finally approves a proposed legisla-
2 tive rule for submission to the Legislature, pursuant to the
3 provisions of section ten of this article, the board shall
4 submit to the legislative oversight commission on educa-
5 tion accountability at its offices or at a regular meeting of
6 such commission fifteen copies of the following:

7 (1) The full text of the legislative rule as finally ap-
8 proved by the board, with new language underlined and
9 with language to be deleted from any existing rule
10 stricken-through but clearly legible;

11 (2) A brief summary of the content of the legislative rule
12 and a description and a copy of any existing rule which the
13 agency proposes to amend or repeal;

14 (3) A statement of the circumstances which require the
15 rule;

16 (4) A fiscal note containing all information included in
17 a fiscal note for either house of the Legislature and a
18 statement of the economic impact of the rule on the state
19 or its residents; and

20 (5) Any other information which the commission may
21 request or which may be required by law.

22 (b) The commission shall review each proposed legisla-
23 tive rule and, in its discretion, may hold public hearings

24 thereon. Such review shall include, but not be limited to,
25 a determination of:

26 (1) Whether the board has exceeded the scope of its
27 statutory authority in approving the proposed legislative
28 rule;

29 (2) Whether the proposed legislative rule is in confor-
30 mity with the legislative intent of the statute which the
31 rule is intended to implement, extend, apply, interpret or
32 make specific;

33 (3) Whether the proposed legislative rule conflicts with
34 any other provision of this code or with any other rule
35 adopted by the same or a different agency;

36 (4) Whether the proposed legislative rule is necessary to
37 fully accomplish the objectives of the statute under which
38 the proposed rule was promulgated;

39 (5) Whether the proposed legislative rule is reasonable,
40 especially as it affects the convenience of the general
41 public or of persons particularly affected by it;

42 (6) Whether the proposed legislative rule could be made
43 less complex or more readily understandable by the
44 general public; and

45 (7) Whether the proposed legislative rule was promul-
46 gated in compliance with the requirements of this article
47 and with any requirements imposed by any other provision
48 of this code.

49 (c) After reviewing the legislative rule, the commission
50 shall recommend that the Legislature:

51 (1) Authorize the board to promulgate the legislative
52 rule; or

53 (2) Authorize the board to promulgate part of the
54 legislative rule; or

55 (3) Authorize the board to promulgate the legislative
56 rule with certain amendments; or

57 (4) Recommend that the rule be withdrawn.

58 The commission shall file notice of its action in the state
59 register and with the board proposing the rule: *Provided*,
60 That when the commission makes the recommendations of
61 subdivision (2), (3) or (4) of this subsection, the notice shall
62 contain a statement of the reasons for such recommenda-
63 tion.

64 (d) When the commission recommends that a rule be
65 authorized, in whole or in part, by the Legislature, the
66 commission shall instruct its staff or the office of legisla-
67 tive services to draft a bill authorizing the board to
68 promulgate all or part of the legislative rule. If the
69 commission recommends that the rule not be authorized,
70 it shall include in its report a draft of a bill authorizing
71 promulgation of the rule together with a recommendation.
72 Any draft bill prepared under this section shall contain a
73 legislative finding that the rule is within the legislative
74 intent of the statute which the rule is intended to imple-
75 ment, extend, apply or interpret and shall be available for
76 any member of the Legislature to introduce to the Legisla-
77 ture.

§29A-3A-19. Severability of legislative rules.

1 Unless there is a provision in a legislative rule specifying
2 that the provisions thereof shall not be severable, the
3 provisions of every legislative rule, whether enacted before
4 or subsequent to the effective date of this section, shall be
5 severable so that if any provision of any rule section or
6 amendment thereto is held to be unconstitutional or void,
7 the remaining provisions of the rule shall remain valid,
8 unless the court finds the valid provisions are so essen-
9 tially and inseparably connected with, and so dependent
10 upon, the unconstitutional or void provision that the court
11 cannot presume the Legislature would have enacted the

12 remaining valid provisions without the unconstitutional or
13 void one, or unless the court finds the remaining valid
14 provisions, standing alone, are incomplete and are incapa-
15 ble of being executed in accordance with the legislative
16 intent: *Provided*, That if any legislative rule has its own
17 severability clause, then that severability clause shall
18 govern and control with respect to that section, in lieu of
19 the provisions of this section. The provisions of this
20 section shall be fully applicable to all future amendments
21 to legislative rules, with like effect as if the provisions of
22 this section were set forth in extenso and every such
23 amendment were reenacted as a part thereof, unless such
24 amendment to the legislative rule contains its own
25 severability clause.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carly Musy
.....
Chairman Senate Committee

A. J. Langston
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Ronald Thomas
.....
Clerk of the Senate

Gregory D. Sord
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *2*
Day of *May*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/01

Time 11:30am