ENROLLED

SENATE BILL NO. 703
(Originating in the Committee
(By Senator on Education)

PASSED April 14, 2001
In Effect July 1, 2001
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[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-
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 an 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-i 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-a, three and six, article one, chapter eighteen-b of said code be amended and reenacted; that sections four and five, 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.

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

(b) Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or
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:
(a) "Agreement" means the long-term lease and agreement to be entered into between the board and the corporation pursuant to section four of this article;

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

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

(d) "Corporation" means the nonstock, not-for-profit corporation to be established under the general corporation laws of the state, which meets the description prescribed by section three of this article;

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

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

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

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

(i) "Hospital" means the inpatient and outpatient health care services of the board, other than those used for student health services and family practice clinics, operated in connection with the university, consisting of the
existing facilities and any other health care service components of the West Virginia university medical center at Morgantown rendering patient care services and more particularly identified by the agreement;

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

(k) "Medical personnel" means both university personnel and corporation employees;

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

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

(n) "University" means West Virginia university;

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

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

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.
The board is hereby authorized to enter into the agree-
ment and any other contractual relationships authorized
by this article with the corporation, but only if the corpo-
ration meets the following description:

(a) The directors of the corporation, all of whom shall be
voting, shall consist of the president of the university, who
shall serve ex officio as chairman of the directors, the vice
chancellor for health sciences of the higher education
policy commission, one designee of the board: Provided,
That if the position of vice chancellor for health sciences
has not been filled, the board shall designate one addi-
tional member to serve until the position is filled, the vice
president for health sciences of the university, the vice
president for administration and finance of the university,
the chief of the medical staff of the hospital, the dean of
the school of medicine of the university, the dean of the
school of nursing of the university and the chief executive
officer of the corporation, all of whom shall serve as ex
officio members of the directors, a representative elected
at large by the corporation employees and seven directors
to be appointed by the West Virginia health system board.
The West Virginia health system board shall select and
appoint the seven appointed members in accordance with
the provisions of section six-a, article five-b, chapter
sixteen of this code: Provided, That the current directors
of the corporation shall continue to serve until they resign
or their term expires. On and after the effective date of
this section, the seven appointed directors shall be ap-
pointed by the system board for staggered six-year terms.
The system board shall select all of the appointed members
in a manner which assures geographic diversity and
assures that at least two members are from each congres-
sional district.

(b) The corporation shall report its audited records
publicly and to the joint committee on government and
finance at least annually.
(c) Upon liquidation of the corporation, the assets of the corporation shall be transferred to the board for the 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.

(a) Any reference in this code to the “additional retirement plan” relating to state higher education employees, means the “higher education retirement plan” provided in this section. Any state higher education employee participating in a retirement plan upon the effective date of this section continues to participate in that plan and may not elect to participate in any other state retirement plan. Any such retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.

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

(c) The higher education policy commission and the governing boards, with policy commission approval, may contract for a supplemental retirement plan for any or all of their employees to supplement the benefits the employees otherwise receive. The governing boards and higher education policy commission may make additional periodic deductions from the salary payments due the employ-
ees in the amount they are required to contribute for the supplemental retirement plan.

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

(d) Each governing board and the higher education policy commission, by way of additional compensation to their employees, shall pay an amount equal to the contributions of the employees into the higher education retirement plan from funds appropriated to the board or commission for personal services.

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

(f) Any person whose employment commences on or after the effective date of this section, and who is eligible to participate in the higher education retirement plan,
shall participate in that plan and is not eligible to participate in any other state retirement system. The additional retirement plan contracted for by the governing boards prior to the effective date of this section remains in effect unless changed by the higher education policy commission. Nothing in this section may be construed to consider employees of the governing boards as employees of the higher education policy commission, nor is the higher education policy commission responsible or liable for retirement benefits contracted by, or on behalf of, the governing boards.

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

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

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

(3) Codify the current contribution levels of the governing boards, the higher education policy commission and their employees toward the present higher education retirement plan;

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

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

(6) Clarify the application and purposes of the additional and supplemental retirement plans previously provided for in this section; and

(7) Remove obsolete and archaic language.
CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.


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

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

(2) Post-secondary education is changing throughout the nation. Place-bound adults, employers and communities are demanding education and student services that are accessible at any time, at any place and at any pace. Institutions are seizing the opportunity to provide aca-
demic content and support services on a global scale by designing new courseware, increasing information technology-based delivery, increasing access to library and other information resources and developing new methods to assess student competency rather than “seat time” as the basis for recognizing learning, allocating resources and ensuring accountability. In this changing environment, the state must take into account the continuing decline in the public school-age population, the limits of its fiscal resources and the imperative need to serve the educational needs of working-age adults. West Virginia cannot afford to finance quality higher education systems that aspire to offer a full array of programs while competing among themselves for a dwindling pool of traditional applicants. The competitive position of the state and its institutions will depend fundamentally on its capacity to reinforce the quality and differentiation of its institutions through policies that encourage focus and collaboration.

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

(4) The state should make the best use of the expertise that private institutions of higher education can offer and
recognize the importance of their contributions to the economic, social and cultural well-being of their communities.

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

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

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

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

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

(c) Elements of the compact with higher education. — It is the intent of the Legislature that the compact with higher education include the following elements:

(1) A step-by-step process, as provided in articles one-b and three-c of this chapter, which will enable the state to achieve its public policy agenda through a system of higher education equipped to assist in producing the needed results. This process includes, but is not limited to, separate institutional compacts with state institutions of higher education that describe changes in institutional missions in the areas of research, graduate education, admission standards, community and technical college education and geographical areas of responsibility to accomplish the following:
(A) A capacity within higher education to conduct research to enhance West Virginia in the eyes of the larger economic and educational community and to provide a basis for West Virginia's improved capacity to compete in the new economy through research oriented to state needs;

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

(C) Universities and colleges that have focused missions, their own points of distinction and quality and strong links with the educational, economic and social revitalization of their regions and the state of West Virginia;

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

(E) Independently accredited community and technical colleges in every region of the state, to the extent possible, that: (i) Assess regional needs; (ii) ensure access to comprehensive community and technical college and work force development services within each of their respective regions; (iii) convene and act as a catalyst for local action in collaboration with regional leaders, employers and other educational institutions; (iv) provide and, as necessary, broker educational services; (v) provide necessary student services; (vi) fulfill such other aspects of the community and technical college mission and general provisions for community and technical colleges as provided for in article three-c of this chapter; and (vii) make maximum use of existing infrastructure and resources within their regions to increase access, including, but not limited to, vocational technical centers, schools, libraries, industrial parks and work sites.
(2) Providing additional resources, subject to availability and appropriation by the Legislature, as provided in article one-a of this chapter, to make the state institutions of higher education more competitive with their peers, assist them in accomplishing the elements of the public policy agenda and ensure the continuity of academic programs and services to students.

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

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

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

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

(1) The overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to
encourage citizens of all ages to increase their knowledge and skills. Efforts in pursuit of this goal include, but are not limited to, the following:

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

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

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

(D) Opportunities for advanced high school students to obtain college credit prior to high school graduation.
The number of degrees produced per capita by West Virginia institutions of higher education is at the national average. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's work force investment office to promote to individuals of all ages the benefits of increased post-secondary educational attainment;

(B) Assistance in overcoming the financial barriers to post-secondary education for both traditional and nontraditional students;

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

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

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

All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed, have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which:

(i) Are relevant and affordable; (ii) allow them to gain transferrable credits and associate or higher level degrees; (iii) provide quality technical education and skill training;
and (iv) are responsive to business, industry, labor and community needs.

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

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

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

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

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

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

(F) Admission and exit standards for students, professional staff development, program assessment and evalua-
tion and other incentives are used to improve teaching and
learning.

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

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

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

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

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

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

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

(C) Closer linkages among higher education and busi-
ness, labor, government and community and economic
development organizations; and
(D) Clarification of institutional missions and shifting of resources to programs which meet the current and future work force needs of the state.

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

(8) The tuition and fee levels for in-state students are competitive with those of peer institutions and the tuition and fee levels for out-of-state students are set at a level 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.

(a) All powers, duties and authorities transferred to the board of regents pursuant to former provisions of chapter eighteen of this code and transferred to the board of trustees and board of directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the board of trustees and board of directors, to the extent they are in effect on the seventeenth day of June, two thousand, are hereby transferred to the interim governing board created in article one-c of this chapter and shall be exercised and performed by the interim governing board until the first day of July, two thousand one, as such powers, duties and authorities may apply to the institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the board of trustees and the board of directors and property vested in either of the boards separately, formerly existing under the provisions of chapter eighteen-b of this code, are hereby transferred to the interim governing board created in article one-c of this chapter until the first day of July, two thousand one. Property transferred to or vested in the board of trustees and board of directors shall include:
(1) All property vested in the board of governors of West Virginia university and transferred to and vested in the West Virginia board of regents;

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

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

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

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

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

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

(3) Each valid agreement and obligation of the state commission on higher education transferred to and
deemed the agreement and obligation of the West Virginia board of regents; and

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

(d) All orders, resolutions and rules adopted or promulgated by the respective board of trustees and board of directors and in effect immediately prior to the first day of July, two thousand, are hereby transferred to the interim governing board until the first day of July, two thousand one, and shall continue in effect and shall be deemed the orders, resolutions and rules of the interim governing board until rescinded, revised, altered or amended by the commission or the governing boards in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include:

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

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

(3) Those adopted or promulgated by the state commission on higher education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; and
(4) Those adopted or promulgated by the board of regents prior to the first day of July, one thousand nine hundred eighty-nine, unless and until rescinded, revised, altered or amended by the respective board of trustees or board of directors in the manner and to the extent authorized and permitted by law.

(c) Title to all real property transferred to or vested in the interim governing board pursuant to this section of the code is hereby transferred to the commission effective the first day of July, two thousand one. The board of governors for each institution may request that the commission transfer title to the board of governors of any real property specifically identifiable with that institution or the commission may initiate the transfer. Any such request must be made within two years of the effective date of this section and be accompanied by an adequate legal description of the property. The title to any real property that is jointly utilized by institutions or for statewide programs under the jurisdiction of the commission shall be retained by the commission.

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

(g) Each valid agreement and obligation previously transferred or vested in the interim governing board and which was undertaken or agreed to on behalf of an institution or institutions is hereby transferred to the board of governors of the institution or institutions for whose benefit the agreement was entered into or the obligation undertaken, effective the first day of July, two thousand one. The obligations contained in revenue bonds issued by the previous governing boards under the provisions of section eight, article ten, chapter eighteen-b and article twelve-b, chapter eighteen of this code are hereby trans-
ferred to the commission and each institution shall transfer to the commission those funds the commission determines are necessary to pay that institution's share of bonded indebtedness. The obligations contained in revenue bonds issued on behalf of a state institution of higher education pursuant to any other section of this code is hereby transferred to the board of governors of the institution on whose behalf the bonds were issued.

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

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

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

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

Any determination which needs to be made regarding applicability of any provision of law shall first be made by the commission.


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

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

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

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

3. A procedure to maximize internet access to all proposed and approved rules, guidelines and other policy statements, to the extent technically and financially feasible.

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

1. The legislative rule required by subsection (c), section eight, article one of this chapter;
(2) The legislative rule required by section eight-a, article one of this chapter;

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

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

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

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

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

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

(d) On or after the effective date of this section and before the first day of October, two thousand one, notwithstanding any other provision of this code to the contrary, any rule heretofore promulgated as a legislative rule which was not required specifically by law to be promulgated as a legislative rule, or any rule previously required to be a legislative rule by statute but reclassified by subsection (c) of this section, may be reclassified by the commission either as an interpretive rule or as a procedural rule. The commission shall notify in writing the legislative oversight commission on education accountability of such reclassification and shall file such notice with the office of the secretary of state to be published in the state register.

(e) Nothing in this section may be construed to require that any rule reclassified under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a unless the rule is amended or modified.
(f) The commission shall cause a copy of any rule it
proposes to promulgate, adopt, amend or repeal under the
authority of this article to be filed with the legislative
oversight commission on education accountability created
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.

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

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

(2) A determination of the mission of the institution
which specifically addresses changes, as applicable, in the
areas of research, graduate education, baccalaureate
education, revised admission requirements, community
and technical colleges and such other areas as the commis-
sion determines appropriate. In the determination of
mission, the institutions and the commission shall consider
the report completed by the national center for higher education management systems pursuant to the legislative study as provided in section seven, article three of this chapter;

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

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

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

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

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

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

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

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

(3) The initial institutional compacts shall be submitted to the commission by the institutions on or before the first day of February, two thousand one. The first annual
updates shall be submitted on or before the fifteenth day
of November, two thousand one, and succeeding updates
shall be submitted on the fifteenth day of November of
each year thereafter;

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

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

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

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

(e) The compacts shall contain benchmarks used to
determine progress toward meeting the goals established
in the compacts. The benchmarks shall meet the following
criteria:
They shall be as objective as possible;

They shall be directly linked to the goals in the compacts;

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

Where applicable, they shall be used to measure progress in geographic areas of responsibility.

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

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

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

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

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

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

(D) Sufficient detail within the benchmarks and indicators to:
(i) Provide measurable evidence that the pursuits of the institution are targeting the educational needs of the citizens of the state and the components of the compacts and master plans;

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

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

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

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

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

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

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

(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination by the commission that an institution’s progress toward achieving the goals for post-secondary education and the essential conditions is so deficient that
implementation of the provisions of section four, article two-c of this chapter is warranted and necessary.

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

§18B-1A-6. Graduate education.

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

(b) Findings. — The Legislature makes the following findings:

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

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

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

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

(c) In order to meet the need for graduate education, the commission shall be responsible for accomplishing the following:
(1) Ensuring that West Virginia university and Marshall university expand access to master's degree programs throughout West Virginia, with a strong emphasis on collaboration with the baccalaureate colleges and community and technical colleges in each region;

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

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

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

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

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

(2) The institutions may begin collaborative programs with other institutions leading to the granting of master's degrees in selected areas that are demonstrated to be related directly to the needs of their regions and that draw on faculty strengths. An institution may continue to offer collaborative programs aimed at meeting the documented needs with the approval of the commission or, if a sustained need still exists, the institution may move to the next level.
If the graduate education needs of the region have not been met through brokering and collaborative programs, the institution may explore the option of beginning its own graduate-level program leading to the granting of a master's degree. The institution may begin its own master's degree program if it can meet the following conditions as determined by the commission:

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

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

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

(D) Demonstrate that the core mission of the baccalaureate institution will not be impaired by offering the graduate program;

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

(F) Demonstrate that the need documented in subdivision (B) of this subsection is not currently being met by any other state institution of higher education; and

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

(I) Sufficient credentialed faculty to offer quality programs in the areas selected;
(II) Sufficient unmet demand for the programs; and

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

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

(e) There is an urgent need for master's degree programs for teachers in disciplines or subject areas, such as mathematics, science, history, literature, foreign languages and the arts. Currently, master's-level courses in education that are offered in the regions served by the state universities are primarily in areas such as guidance and counseling, administration, special education and other disciplines unrelated to teaching in subject areas. If this need is not being met in a region through the procedure established in subsection (d) of this section, then the graduate center in that region may plan a master's degree program in education focused on teaching in subject area fields in which the demand is not being met. No institution may begin a graduate program under the provisions of this section until the program has been reviewed and approved by the commission. The commission shall approve only those programs, as authorized by this subsection, that emphasize serving the needs of teachers and schools in the colleges' immediate regions. In determining whether a program should be approved, the commission also shall rely upon the recommendations of the statewide task force on teacher quality provided for in section eight, article fourteen of this chapter.

(f) The commission shall review all graduate programs being offered under the provisions of this section and, using the criteria established for program startup in subsection (d) of this section, determine which programs should be discontinued.
(g) At least annually, the governing boards shall evaluate graduate programs developed pursuant to the provisions of this section and report to the commission on the following:

1. The number of programs being offered and the courses offered within each program;
2. The disciplines in which programs are being offered;
3. The locations and times at which courses are offered;
4. The number of students enrolled in the program; and
5. The number of students who have obtained master’s degrees through each program.

The governing boards shall provide the commission with any additional information the commission requests in order to make a determination on the viability of a program.

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

(i) Brokering institutions shall invite proposals from other public institutions of higher education for service provision prior to contracting with other institutions: Provided, That if institutions propose providing graduate programs in service areas other than in their responsibility district, the institution seeking to establish a program shall work through the district’s lead institution in providing those services.
In addition to the approval required by the commission, authorization for any institution to offer a master's degree program under the provisions of this section is subject to the formal approval processes established by the governing boards.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

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

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a, article one of this chapter. To that end, the commission has the following powers and duties:

(1) Develop, oversee and advance the public policy agenda to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a, article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two, article one-a of this chapter and to develop and implement the master plan described in section ten of this article for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the implementation of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

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

(C) Invest and provide incentives for achieving the 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
with the legislative leadership and the legislative oversight commission on education accountability;

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

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

(10) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions;

(11) In January, two thousand one, and annually thereafter, report to the Legislature and to the legislative oversight commission on education accountability during the January interim meetings, on a date and at a time and location to be determined by the president of the Senate and the speaker of the House of Delegates. The report shall address at least the following:

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

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

(C) The priorities established for capital investment needs pursuant to subdivision (12) of this subsection and the justification for such priority;
(E) Recommendations of the commission for statutory changes needed to further the goals and objectives set forth in section one-a, article one of this chapter;

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

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

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

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

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

(17) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission;
(18) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;

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

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

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

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

(23) Approve and implement a uniform standard, as developed by the chancellor, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and
assessment tools used in West Virginia and shall be
applied uniformly by the governing boards throughout the
public higher education system. The chancellor shall
develop a clear, concise explanation of the standard which
the governing boards shall communicate to the state board
of education and the state superintendent of schools;

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

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

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

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

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

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

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

(30) Seek out and attend regional, national and international meetings and forums on education and work force development related topics, as in the commission’s discretion is critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

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

(A) That the governing boards and institutions not approve or promote projects that give competitive advan-
(B) That the governing boards and institutions not approve or promote projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties.

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

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

(33) Consider and submit to the appropriate agencies of the executive and legislative branches of state government, a single budget for higher education that reflects recommended appropriations: Provided, That on the first day of January, two thousand one, and annually thereafter, the commission shall submit the proposed institutional allocations based on each institution’s progress toward meeting the goals of its institutional compact;

(34) Initiate a full review and analysis of all student fees charged by state institutions of higher education and make recommendations to the legislative oversight commission on education accountability no later than the second day
of January, two thousand two. The final report shall contain findings of fact and recommendations for proposed legislation to condense, simplify and streamline the fee schedule and the use of fees or other money collected by state institutions of higher education;

(35) The commission has the authority to assess institutions for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives;

(36) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

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

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

(39) Examine and determine the feasibility of recommendations contained in the Implementation Board Report presented to the commission in January, two
thousand one, and, at the discretion of the commission, create the advantage valley community college network to enhance provision of community and technical college education in the responsibility areas of Marshall University, West Virginia State College and West Virginia University Institute of Technology;

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

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

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

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

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

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

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

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following
general powers and duties related to its role in developing,
articulating and overseeing the implementation of the
public policy agenda:

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

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

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

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

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

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

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

(8) Development, establishment and implementation of
information, assessment and accountability systems
including maintenance of statewide data systems that
facilitate long-term planning and accurate measurement
of strategic outcomes and performance indicators;
(9) Developing, establishing and implementing policies for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state;

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

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

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

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

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

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

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

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

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

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

(A) Strategies to ensure access to graduate education;

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

(C) The process by which state colleges obtain authorization to grant graduate degrees;

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

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

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

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

(a) The commission, created pursuant to section one of this article, shall employ a chancellor for higher education
who shall be the chief executive officer of the commission and who shall serve at its will and pleasure. The vice chancellor for administration shall serve as the interim chancellor until a chancellor is employed.

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

1. Possesses an excellent academic and administrative background;
2. Demonstrates strong communication skills;
3. Has significant experience and an established national reputation as a professional in the field of higher education;
4. Is free of institutional or regional biases; and
5. Holds or retains no other administrative position within the system of higher education while employed as chancellor.

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

(d) With the approval of the commission, the chancellor may employ a vice chancellor for health sciences who shall serve at the will and pleasure of the chancellor. The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine, and the West Virginia school of osteopathic medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The vice chancellor for health sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a
vacancy in the office of vice chancellor of health sciences,
the duties assigned to this office by law are the responsi-

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

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

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

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

(f) With the approval of the commission, the chancellor
shall employ a vice chancellor for administration pursuant
to section two, article four of this chapter;
(g) With the approval of the commission, the chancellor may employ a vice chancellor for state colleges who shall serve at the will and pleasure of the chancellor. It is the duty and responsibility of the vice chancellor for state colleges to:

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

(2) Advise, assist and consult regularly with the institutional presidents and institutional boards of governors of each state college;

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

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

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

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

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

(j) The chancellor shall be responsible for the day-to-day operations of the commission and shall have the following responsibilities:
(1) To carry out policy and program directives of the commission;

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

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

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

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

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

(l) The chancellor is the primary advocate for higher education and, with the commission, advises the Legislature on matters of higher education in West Virginia. As the primary advocate for higher education, the chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals for higher education that the Legislature has established by law;
The chancellor may design and develop for consideration by the commission new statewide or regional initiatives in accordance with the goals set forth in section one-a, article one of this chapter and the public policy agenda articulated by the commission.

The chancellor shall work closely with members of the state board of education and with the state superintendent of schools to assure that the following goals are met:

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

(2) Appropriate coordination of missions and programs.

To further the goals of cooperation and coordination between the commission and the state board of education, the chancellor shall serve as an ex officio, nonvoting 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.

(a) Effective the thirtieth day of June, two thousand one, the institutional boards of advisors at Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university are abolished.

(b) Effective the first day of July, two thousand one, a board of governors is established at each of the following institutions: Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall
Each board of governors shall consist of twelve persons: Provided, That the institutional boards of governors for Marshall university and West Virginia university shall consist of fifteen persons. Each board of governors shall include:

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

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

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

(4) Nine lay members appointed by the governor by and with the advice and consent of the Senate pursuant to section one-a, article six of this chapter: Provided, That for the institutional boards of governors at Marshall university and West Virginia university, twelve lay members shall be appointed by the governor by and with the advice and consent of the Senate pursuant to section one-a, article six of this chapter: Provided, however, That of the appointed lay members, the governor shall appoint one superintendent of a county board of education from the area served by the institution: Provided further, That in making the initial appointments to the institutional boards of governors, the governor shall appoint, except in the case of death, resignation or failure to be confirmed by the Senate, those persons who are lay members of the institutional boards of advisors for those institutions named in subsection (a) on the thirtieth day of June, two thousand one, and appointed pursuant to section one-a, article six of this chapter.
(c) Of the nine members appointed by the governor, no more than five may be of the same political party: Provided, That of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, no more than seven may be of the same political party. At least six of the members shall be residents of the state: Provided, however, That of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, at least eight of the members shall be residents of the state.

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

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

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

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

(h) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the
occurrence of the vacancy in the same manner as the
original appointment or election. Except in the case of a
vacancy, all elections shall be held and all appointments
shall be made no later than the thirtieth day of June
preceding the commencement of the term, except the
election of officers for the term beginning in July, two
thousand one shall be made that July. Each board of
governors shall elect one of its appointed lay members to
be chairperson in June of each year. No member may serve
as chairperson for more than two consecutive years.

(i) The appointed members of the institutional boards of
governors shall serve staggered terms. Of the initial
appointments by the governor to each of the institutional
boards of governors, two shall be appointed for terms of
one year, two shall be appointed for terms of two years,
two shall be appointed for terms of three years and three
shall be appointed for terms of four years: Provided, That
for the initial appointments to the governing boards of
Marshall university and West Virginia university, three
shall be appointed for terms of one year, three shall be
appointed for terms of two years, three shall be appointed
for terms of three years and three shall be appointed for
terms of four years. After the initial appointments, all
appointees shall serve for terms of four years.

(j) No person shall be eligible for appointment to mem-
bership on a board of governors who is an officer, em-
ployee or member of any other board of governors, a
member of an institutional board of advisors of any public
institution of higher education, an employee of any
institution of higher education, an officer or member of
any political party executive committee, the holder of any
other public office or public employment under the
government of this state or any of its political subdivisions
or a member of the commission: Provided, That this
subsection shall not be construed to prevent the represen-
tative from the faculty, classified employees, or students or
the superintendent of a county board of education from
being members of the governing boards.
(k) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

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

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


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

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

(b) Develop a master plan for the institutions under its jurisdiction; except the administratively linked community and technical colleges shall develop their master plans subject to the provisions of section one, article six of this
chapter. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission. Each master plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

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

(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary.

(c) Prescribe for the state institutions of higher education under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(d) Direct the preparation of a budget request for the state institutions of higher education under its jurisdic-
tion, such request to relate directly to missions, goals and
projections as found in the institutional master plans and
the institutional compacts;

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

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

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

(h) Subject to the provisions of article one-b of this
chapter, the appropriate governing board has the exclusive
authority to approve the teacher education programs
offered in the institution under its control. In order to
permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the chancellor may select and utilize one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

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

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

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

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

(2) The state division of personnel shall not be a party to nor have any authority regarding a grievance initiated by a higher education employee; and
(3) The provisions of this section supersede and replace the grievance procedure set out in article twenty-nine, chapter eighteen of this code for any grievance initiated by a higher education employee after the first day of July, two thousand one.

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

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

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

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

(p) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution’s responsibility district. To accomplish this goal, the boards are permitted to share resources among the various groups in the community;

(q) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of a particular state institution of higher education under its jurisdiction to the president or other administrative head of the state institution of higher education in any
case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall notify the chancellor. Any such delegation of power and control may be rescinded by the appropriate governing board or the chancellor at any time, in whole or in part;

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

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

(t) The governing boards in consultation with the chancellor and the secretary of the department of administration shall develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standard-
ized system or forms which will be submitted to the respective governing board and the department of finance and administration;

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

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

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

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

(a) The Legislature hereby finds that:

(1) The goals, objectives and purposes contained in Senate Bill 653, passed during the regular legislative session in two thousand, reflected the research findings available to the Legislature at the time; since then, however, additional research indicates that, while Senate Bill
653 moves in the appropriate direction of independent accreditation and meeting essential conditions for public community and technical colleges, the legislation does not take the final steps that are considered to be necessary by independent researchers. This position is clearly demonstrated by the recent research findings and recommendations cited below:

(A) "West Virginia: A Vision Shared! Economic Development: A Plan for West Virginia's Future", hereinafter cited in this article and article two-c of this chapter as the Market Street Report, is a research document commissioned by the West Virginia council for community and economic development to assess the economic competitiveness of the state. The report makes a number of findings and recommendations important to public community and technical college education:

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

(ii) The state needs to establish a strong technical education system that is separate from the university system and is responsive to the needs of business throughout the state;

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

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

(B) The Report to the Legislative Oversight Commission on Education Accountability, hereinafter cited in this
article and article two-c as the McClenney Report, is a study required by provisions of Senate Bill 653 and conducted by Dr. Kay McClenney. The research found that:

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

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

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

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

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

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

(vii) Independent accreditation and the essential conditions required by Senate Bill 653 are necessary, but not sufficient alone to provide a strong enough tool to accomplish the state’s goal to strengthen community and technical college education; and therefore,

(viii) The state needs to create a community college support capacity at the state level that will bring leadership, coordination, technical support, advocacy and critical mass to a statewide network of local community and technical college campuses.
(C) The Report and Recommendations of the Implementation Board to the West Virginia Higher Education Policy Commission, hereinafter cited in this article and article two-c of this chapter as the Implementation Board Report, is a study required by Senate Bill 653 to determine the most effective and efficient method to deliver community and technical college services in the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. The Implementation Board Report states its goals and vision for community and technical college education in the advantage valley region as one of a dynamic, vital and vibrant community college network which offers:

(i) Affordable, quality training and education to students;

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

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

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

(i) To enhance economic development through coordinated leadership and a delivery system for education and training initiatives;

(ii) To provide accountability through a separate compact and through independent accreditation of each of the affected community and technical colleges; and

(iii) To enhance education opportunities for the citizens of the area and assist in overcoming the barrier of accessibility in higher education.
(b) Based on the recent research cited above, the Legislature further finds that:

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

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

(3) The research shows that:

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

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

(C) Community and technical colleges need to be efficient, avoiding duplication and the burden of bureaucracy while recognizing fiscal realities;

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

(E) Community and technical colleges need state-level support and leadership that recognize differences among regions of the state and among institutions and accept the reality that institutions are at different stages in their
development and have different challenges and capabilities;

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

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

(c) Legislative intent. — The intent of the Legislature in enacting this article is to address the research findings cited above by reconstituting the joint commission for vocational-technical-occupational education as the West Virginia council for community and technical college education in order to reorient the mission, role and responsibilities consistent with and supportive of the mission, role and responsibilities of the commission, the goals for post-secondary education and accountability for assisting the public community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission in achieving the state's public policy agenda.

(d) Purpose. — The purpose of this article is to provide for the development of a leadership and support mechanism for the community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission to assist them in meeting the essential conditions and in the step-by-step implementation process for achieving the goals for community and technical college education as provided for in article three-c of this chapter, and to promote coordination
and collaboration among secondary and post-secondary vocational-technical-occupational and adult basic education programs as provided for in this chapter and chapter eighteen of this code.

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


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

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

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

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

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

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

§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.

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

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

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

(a) On the effective date of this section, the joint commission for vocational-technical-occupational education is reconstituted as the West Virginia council for commu-
(b) The council is comprised of eight members selected as follows:

1. Three members appointed by the governor, with the advice and consent of the Senate;
2. Two members appointed by the governor from a list of six persons nominated by the president of the Senate: Provided, That no more than two nominees may be from the same congressional district and no more than three may be from the same political party;
3. Two members appointed by the governor from a list of six persons nominated by the speaker of the House of Delegates: Provided, That no more than two nominees may be from the same congressional district and no more than three may be from the same political party; and
4. The assistant superintendent for technical and adult education of the state department of education who serves as an ex officio, nonvoting member of the council;

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

(d) All appointed members shall be citizens of the state, shall represent the public interest and shall be persons who understand and are committed to achieving the goals and objectives set forth in section one-a, article one of this chapter, the essential conditions for community and technical college education programs and services set forth in article three-c of this chapter, and the goals for second-
ary and post-secondary vocational-technical-occupational and adult basic education in the state. The appointed members shall represent the interests of the business, labor and employer communities and demonstrate knowledge of the education needs of the various regions, attainment levels and age groups within the state.

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

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

§18B-2B-5. Meetings and compensation.

(a) The vice chancellor shall call the initial meeting of the council and preside until a chairperson is selected. The members shall elect a chairperson from among the persons appointed by the governor. The council shall hold at least eight meetings annually and may meet more often at the
call of the chairperson. One such meeting shall be a public forum for the discussion of the goals and standards for work force development, economic development, and vocational education in the state.

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

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

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


(a) The council has all the powers and duties assigned to the joint commission prior to the effective date of this article as set forth in the provisions of section two, article two-b, chapter eighteen of this code and such other powers and duties as may be assigned by law or by the commis-
sion. Authority granted under that section to the joint commission as the sole agency responsible for the administration of vocational-technical-occupational education in the state is hereby transferred to the council.

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

(1) To develop and recommend to the commission for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting work force and economic development and ensuring access to advanced education for the citizens of West Virginia;

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

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

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

(A) Includes recommended appropriations;

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

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

(5) To make recommendations to the commission for approval of the administration and distribution of the independently-accredited community and technical college development account;
(6) To design and recommend to the commission a plan of strategic funding to strengthen capacity for support of community and technical college education in all areas of the state;

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

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

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

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

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

(A) Defining faculty roles and personnel policies;

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

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

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

(12) To provide support and technical assistance to develop, coordinate, and deliver effective and efficient
community and technical college education programs and services in the state;

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

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

(15) To serve aggressively as an advocate for development of a seamless curriculum, to cooperate with the governor's p-20 council of West Virginia to remove barriers relating to transfer and articulation between and among community and technical colleges, state colleges and universities, and public education, preschool through grade twelve, and to encourage the most efficient utilization of available resources. The council for community and technical college education is responsible for advising the commission on these issues and making appropriate recommendations;

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

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

(18) To review and approve all institutional master plans for the community and technical colleges prior to their submission to the commission for final approval;
(19) To recommend to the commission policies or rules for promulgation that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

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

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

(22) If approved by the commission, to facilitate creation of the advantage valley community college network recommended by the Implementation Board Report as well as any other regional networks of affiliated community and technical colleges if requested by all affected institutions in that region as the commission finds to be appropriate and in the best interests of the citizens to be served;

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

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

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;
(24) To distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on the distribution of financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.

In distributing funds the council shall use the following guidelines:

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

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

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

(25) To collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Work Force Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;
(26) To coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

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

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

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

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

(31) To meet annually between the months of October and December with the advisory committee of community and technical college presidents and provosts created pursuant to section eight, of this article to discuss those matters relating to community and technical college
education in which advisory committee members or the
council may have an interest; and

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

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


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

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

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

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

(4) With the approval of the commission and the chancel-
lo, to employ and direct staff as necessary and appro-
priate to carry out the duties and responsibilities of this
article. On the first day of July, two thousand one, all
personnel employed on the thirtieth day of June, two
thousand one, within the joint commission for vocational-
technical-occupational education are hereby transferred
to the jurisdiction of the commission and are under the
direct supervision of the vice chancellor and the chancel-
or: Provided, That prior to the first day of October, two
thousand one, no employee shall be terminated or have his
or her salary or benefit levels reduced as the sole result of
the governance reorganization set forth in this article.

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

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

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

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

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

(e) The vice chancellor shall prepare meeting minutes
which shall be made available, upon request, to the public.
ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

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

(a) Legislative findings. —

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

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

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

(C) Senate Bill 547, passed during the regular session of one thousand nine hundred ninety-five, established goals and funding for faculty and staff salaries, required the governing boards to establish community and technical education with the administrative, programmatic and budgetary control necessary to respond to local needs and provided that community and technical college budgets be appropriated to a separate control account;
(D) Senate Bill 653, passed during the regular session of two thousand, established the commission to develop a public policy agenda for higher education in conjunction with state leaders, set forth the essential conditions that must be met by each community and technical college in the state, and mandated that most component community and technical colleges move to independent accreditation.

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

(b) Intent. — It is the intent of the Legislature:

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

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

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

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

(i) Raises education attainment;
(ii) Increases adult literacy;

(iii) Promotes work force and economic development; and

(iv) Ensures access to post-secondary education for the citizens of the state;

(B) To provide oversight or governance of the community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission;

(C) To provide leadership, support and coordination; and

(D) To protect and expand the local autonomy and flexibility necessary for community and technical colleges to succeed.

§18B-2C-2. Definitions.

The following words when used in this article and article two-b of this chapter have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

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

(b) “Governing board” means the West Virginia council for community and technical college education when acting as the governing board for the West Virginia community and technical college created pursuant to the provisions of this article.

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

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

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

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

(g) "West Virginia community and technical college" or "college" means the statewide, accredited entity created 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.

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

(b) The analysis required in subsection (a) of this section shall be based, in whole or in part, upon the findings made
pursuant to the rule establishing benchmarks and indicators required to be promulgated by the commission in section two, article one-a of this chapter.

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

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

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

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

(4) It is in the best interests of the people of the state or a region of the state to have one accredited institution able to extend accreditation to institutions and entities required to seek independent accreditation;

(5) One or more of the public community and technical colleges, branches, centers, regional centers, or other delivery sites with a community and technical college mission request from the commission the type of assistance which can best be delivered through implementation of the provisions of section four of this article. Institutional requests that may be considered by the commission include, but are not limited to, assistance in seeking and/or attaining independent accreditation, in meeting the goals for post secondary education established in section one-a,
article one of this chapter, in meeting the essential condi-
tions set forth in section three, article three-c of this
chapter, or in establishing and implementing regional
networks.

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

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

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

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

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

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

(b) As soon as practicable after the commission deter-
mines that the college should be created, the commission
shall notify the governor, the president of the Senate, the
speaker of the House of Delegates and the legislative
oversight commission on education accountability of the
proposed actions: Provided, That the commission shall
counter a study regarding the procedures, findings and
determinations considered necessary prior to any creation
of the college and shall report its findings to the legislative
oversight commission on education accountability no later
than the first day of December, two thousand one: Pro-
vided, however, That the commission may not create the
college prior to the report being received by the legislative
oversight commission on education accountability.

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

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

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

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

(3) Assign powers and duties to the governing board and
the college as may be necessary or expedient to accomplish
the purposes of this article;
(4) Create the office of president of the college; and

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

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

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

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

(1) To assist the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission in any way practicable to meet the goals and objectives set forth in section one-a, article one of this chapter;

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

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

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

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

(c) The governing board has the following powers and duties as to all institutions:
(1) To coordinate public community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission including, but not limited to, those that are free-standing or administratively-linked to a sponsoring institution.

(2) To negotiate arrangements with individual entities who may elect to become units of the college for academic and accreditation purposes while retaining certain administrative links to a sponsoring institution;

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

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

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

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

(1) To govern and have direct academic and administrative responsibility for any public community and technical college, branch, center, regional center, or other delivery site with a community and technical college mission.

(2) To require the entities to seek independent accreditation through the college.

(3) To allocate state budgetary resources to the entity; and
§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 college until such time as a president is selected as prescribed by law. As acting president, the vice chancellor has all the powers and duties assigned by law, by the commission or by the governing board. In addition, the vice chancellor shall continue to exercise all other powers and duties assigned by law or by the commission.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

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

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

(1) Completing a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short and long-term work force development needs of the district;
(2) Coordinating efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decision making;

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

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

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

(A) Helps students focus on career objectives;

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

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

(D) Addresses the needs of at-risk students and school dropouts;
(6) Planning and implementation of integrated professional development activities for secondary and post-secondary faculty, staff and administrators and other consortium partners throughout the district;

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

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

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

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

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

(b) The district consortium committee shall cooperate with the regional work force investment board in the responsibility area of its institution and shall participate in any development or amendment to the regional work force investment plan.
§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

(a) Over a six-year period beginning the first day of July, two thousand one, West Virginia shall move from having “component” community and technical colleges to having a statewide network of independently-accredited community and technical colleges serving every region of the state. This section does not apply to the freestanding community and technical colleges, West Virginia University at Parkersburg and Potomac State College of West Virginia University: Provided, That Potomac State College of West Virginia University shall serve as a comprehensive two-year institution for the delivery of transfer education, may offer career programs in the area of agriculture, and may offer nontraditional outreach and workforce development programs as a collaborative effort in a region with the local community and technical college whose mission and charge encompasses outreach and workforce development programs.

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

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

(2) That it is able to offer evidence annually to the satisfaction of the council and the commission that it is making progress toward accomplishing the benchmarks established in its institutional compact for developing an independently accredited community and technical college; and
(3) That it has submitted an expenditure schedule approved by the council and the commission which sets forth a proposed plan of expenditures for funds allocated to it from the fund.

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

(1) Bluefield state community and technical college. – Bluefield state community and technical college, including the Lewisburg center, should retain its relationship as a component of Bluefield state college. The president and the board of governors of Bluefield state college are accountable to the commission for ensuring that the full range of community and technical college services is available throughout the region and that the community and technical college adheres, as nearly as possible, to the essential conditions pursuant to section three of this article with the possible exception of independent accreditation.

(2) Center for higher education and work force development at Beckley. – The president of Bluefield state college and the institutional board of advisors are responsible, according to a plan approved by the commission, for the step-by-step implementation of a new independently accredited community and technical college administra-
tively linked to Bluefield state college, known as the center
for higher education and work force development, which
adheres to the essential conditions pursuant to section
three of this article. As an independently accredited
community and technical college, the center also shall
serve as higher education center for its region by brokering
with other colleges, universities and other providers, in-
state and out-of-state, both public and private, to ensure
the coordinated access of students, employers, and other
clients to needed programs and services. The new commu-
nity and technical college shall serve Raleigh, Summers
and Fayette counties and be headquartered in Beckley.
The commission shall appoint an institutional board of
advisors for the center at Beckley which is separate from
the institutional board of advisors of Bluefield state
college but may have some overlap in membership to
facilitate coordination. In addition, the president of the
center shall appoint a district consortium committee to
advise the president on a comprehensive assessment of the
needs in the region, on coordinating efforts with regional
labor market information systems, and on other areas as
provided for in section seven of this article relating to the
duties of district consortia committees. The center shall
facilitate the planning and development of a unified effort
involving multiple providers and facilities, including, but
not limited to, Concord college, the college of West Vir-
ginia, Marshall university, West Virginia university, West
Virginia university institute of technology and other
entities to meet the documented work force development
needs in the region: Provided, That nothing in this
subdivision prohibits or limits any existing, or the contin-
uation of any existing, affiliation between the college of
West Virginia, West Virginia university institute of
technology and West Virginia university. The center for
higher education and work force development at Beckley
also shall provide the facilities and support services for
other public and private institutions delivering courses,
programs and services in Beckley. The objective would be
to assure students and employers in the area that there would be coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area. If, at a future time, the commission believes it appropriate, it may recommend to the Legislature that the Beckley institution be created as a freestanding institution.

(3) Glenville state community and technical college. — Glenville state community and technical college, including the centers in Nicholas, Lewis and Roane counties, should retain its relationship as a component of Glenville state college. The president of Glenville state college and the governing board are accountable to the commission for ensuring that the full range of community and technical college services is available throughout the region and that the community and technical college adheres as nearly as possible to the essential conditions pursuant to section three of this article, with the possible exception of independent accreditation.

(4) Fairmont state community and technical college. — Fairmont state community and technical college shall be an independently accredited community and technical college serving Marion, Doddridge, Barbour, Harrison, Monongalia, Preston, Randolph and Taylor counties. The community and technical college is developed on the base of the existing component community and technical college of Fairmont state college. Subject to the provisions of this section, the president and the governing board of Fairmont state college are responsible, according to a plan approved by the commission, for step-by-step implementation of the independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to Fairmont state college. Nothing herein shall be construed to require Fairmont state college to discontinue any
associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

(5) Marshall university community and technical college. - Senate Bill 653 created an implementation board charged with the responsibility to develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. Pursuant to the recommendation of the implementation board and of the commission, Marshall university community and technical college shall become an independently accredited community and technical college. It should serve Cabell, Kanawha, Mason, Putnam and Wayne counties. The new community and technical college is developed on the base of the existing component community and technical college of Marshall University. Subject to the provisions of this section, the president and the governing board of Marshall University are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to Marshall University. Nothing herein shall be construed to require Marshall University to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.
Shepherd community and technical college. – Shepherd community and technical college shall become an independently accredited community and technical college. It should serve Jefferson, Berkeley and Morgan counties. The new community and technical college is developed on the base of the existing component community and technical college of Shepherd college. Subject to the provisions of this section, the president and the governing board of Shepherd college are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to Shepherd college. Nothing herein shall be construed to require Shepherd college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

West Virginia state community and technical college. – Senate Bill 653 created an implementation board charged with the responsibility to develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. Pursuant to the recommendation of the implementation board and of the commission, West Virginia state community and technical college shall become an independently accredited community and technical college. It should serve Kanawha, Putnam and Clay counties. The new community and technical college is developed on the base of the existing component community and technical college of West Virginia State
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(8) West Virginia university institute of technology. — Senate Bill 653 created an implementation board charged with the responsibility to develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology. Pursuant to the recommendation of the implementation board and of the commission, West Virginia university institute of technology community and technical college shall become an independently accredited community and technical college. It should serve Fayette, Clay, Kanawha, Raleigh and Nicholas counties. The new community and technical college is developed on the base of the existing component community and technical college of West Virginia university institute of technology. Subject to the provisions of this section, the president and the governing board of West Virginia university institute of technology are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college. The new independently accredited community and technical college will remain administratively linked to West Virginia state college. Nothing herein shall be construed to require West Virginia state college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.
technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section twelve of this article, the community and technical college will remain administratively linked to West Virginia university institute of technology. Nothing herein shall be construed to require West Virginia university institute of technology to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

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

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

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

(2) Shall establish and prescribe specifications, in all proper cases, for materials, supplies, equipment and printing to be purchased;
(3) Shall adopt and prescribe such purchase order, requisition or other forms as may be required;

(4) Shall negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Shall advertise for bids on all purchases exceeding twenty-five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices: Provided, however, That for printing services, bids shall be advertised by written notification of such bids to any print shop, affiliated with an institution of higher education and operated by classified employees, on all purchases exceeding five thousand dollars;

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

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

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

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

(b) The commission or each governing board, through the vice chancellor for administration, may issue a check in advance to a company supplying postage meters for postage used by that board, the commission and by the state institutions of higher education under their jurisdiction.
(c) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, the commission and delivery terms. **Provided, That** the preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code shall apply to the competitive bids made pursuant to this section.

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

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

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

(2) Has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.
(f) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with sections four through eight of this article and the rules of the interim governing board and the commission. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond or bonds shall be filed with the secretary of state. The cost of any such bond or bonds shall be paid from funds appropriated to the applicable governing board or commission.

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

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

(i) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the commission in the name of the state and shall be approved as to form by the attorney general: Provided, That a contract in which the total does not exceed five thousand dollars and for which the attorney general has not responded within fifteen days of presentation of the contract, the contract shall be deemed approved: Provided, however, That a contract or a change order for that contract which
in total does not exceed fifty thousand dollars and which uses terms and conditions or standardized forms previously approved by the attorney general and does not make substantive changes in the terms and conditions of the contract does not require approval by the attorney general: 

*Provided further,* That the attorney general shall make a list of those changes which he or she deems to be substantive and the list, and any changes thereto, shall be published in the state register. A contract that exceeds fifteen thousand dollars shall be filed with the state auditor: *And provided further,* That upon request, the governing boards or the commission shall make all contracts available for inspection by the state auditor. The governing board or the commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.

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

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

(l) Each governing board or the commission, as appropriate, shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies and equipment entered into by that governing board or the commission. Any private school desiring to join as purchasers on such purchase contracts shall file
with that governing board or the commission an affidavit
signed by the president of the institution of higher educa-
tion or a designee requesting that it be authorized to join
as purchaser on purchase contracts of that governing
board or the commission, as appropriate, and agreeing that
it will be bound by such terms and conditions as that
governing board or the commission may prescribe and that
it will be responsible for payment directly to the vendor
under each purchase contract.

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

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

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

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

(q) After the commission has granted approval for lease-purchase arrangements by the governing boards, a governing board may enter into lease-purchase arrangements for capital improvements, including equipment. Any lease-purchase arrangement so entered shall constitute a special obligation of the State of West Virginia. The obligation under a lease-purchase arrangement so entered may be from any funds legally available to the institution and must be cancelable at the option of the governing board or institution at the end of any fiscal year. The obligation, any assignment or securitization thereof, shall never constitute an indebtedness of the State of West Virginia or any department, agency or political subdivision thereof, within the meaning of any constitutional provision or statutory limitation, and shall not be a charge against the general credit or taxing powers of the state or any political subdivision thereof; and such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the attorney general of West Virginia. Proposals for any arrangement must be requested in accordance with the requirements of this section and any rules or guidelines of the commission. In addition, any lease-purchase agreement must be approved by the attorney general of West Virginia. The interest component of any lease-purchase obligation shall be exempt from all taxation of the state of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the internal revenue code of one thousand nine hundred eighty-six, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also shall be exempt from the gross income of the recipient for purposes of federal income taxation and may be desig-
nated by the governing board or the president of the
 institution as a bank-qualified obligation.

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

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

(a) Effective the first day of July, two thousand, there is
established at each regional campus and administratively-linked community and technical college, excluding
centers and branches thereof, an institutional board of
advisors: Provided, That the institutional board of advis-
sors shall not be appointed for administratively linked
community and technical colleges until provided for in
their compact.

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

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

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

(c) The student member shall serve for a term of one year
beginning upon appointment in July, two thousand, and
ending on the thirtieth day of April, two thousand one.
Thereafter the term shall begin on the first day of May.
The member from the faculty and the classified employees
shall serve for a term of two years beginning upon ap-
pointment in July, two thousand, and ending on the
thirtieth day of April, two thousand two. Thereafter the
term shall begin on the first day of May; and the twelve lay
members shall serve terms of four years each beginning
upon appointment in July, two thousand. Thereafter the
term shall begin on the first day of May. All members are
eligible to succeed themselves for no more than one
additional term. A vacancy in an unexpired term of a
member shall be filled for the remainder of the unexpired
term within thirty days of the occurrence thereof in the
same manner as the original appointment or election.
Except in the case of a vacancy, all elections shall be held
and all appointments shall be made no later than the
thirtieth day of April preceding the commencement of the
term.

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

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

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

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

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

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

(j) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors shall serve as a search and screening committee for candidates to fill the vacancy under guidelines established by the commission pursuant to the provisions of section six, article one-b of this chapter. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three
additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the president of the sponsoring institution for consideration and appointment. If the president rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the president appoints one of the candidates submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

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

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;
(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution, and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including recommendations on the addition or deletion of degree programs as, in the discretion of the board of advisors, may be necessary.

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

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

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

(c) The council shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting the council shall elect a chairperson: Provided, That the chairperson shall serve no more than two consecutive terms as chair. No member may vote
by proxy at the election. In the event of a tie in the last
vote taken for such election, a member authorized by the
council shall select the chairperson by lot from the names
of those persons tied. Immediately following the election
of a chairperson, the council shall elect, in the manner
prescribed by this section for the election of a chairperson,
a member of the council to preside over meetings of the
council in the chairperson’s absence. Should the chairper-
son vacate the position, the council shall meet and elect a
new chairperson to fill the unexpired term within thirty
days following the vacancy.

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

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

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

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

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

(a) Effective the first day of July, two thousand, there is
hereby established the state advisory council of classified
employees. For the purposes of this section, the state
advisory council of classified employees shall be referred
to as the “council”.
(b) During the month of April of each odd-numbered year, beginning in the year two thousand one, each president or other administrative head of a state institution of higher education, including, but not limited to, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the council and in accordance with procedures established by the council, shall convene a meeting or otherwise institute a balloting process to elect one classified employee to serve on the state advisory council. Terms of the members of the council shall be for two years and shall begin on the first day of July of each odd-numbered year and members of the council shall be eligible to succeed themselves. For the purposes of this section the term "institution of higher education" includes the facilities and staff supervised by the vice-chancellor for administration employed by the commission and the West Virginia network for educational telecomputing.

(c) The council of classified employees shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting the council shall elect a chairperson. Provided, That the chair shall serve no more than two consecutive terms as chair. No member may vote by proxy at the election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the council shall elect, in the manner prescribed by this section for the election of a chairperson, a member of the council to preside over meetings of the council in the chairperson's absence. Should the chairperson vacate the position, the council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.
(d) The council, through its chairperson and in any appropriate manner, shall communicate to the commission, through the chancellor, matters of higher education in which the classified employees may have an interest.

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

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

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

ARTICLE 7. PERSONNEL GENERALLY.

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

(a) The president or other administrative head of each state institution of higher education shall give written notice to probationary faculty members concerning their retention or nonretention for the ensuing academic year (1) not later than the first day of March for those probationary faculty members who are in their first academic year of service; (2) not later than the fifteenth day of December for those probationary faculty members who are in their second academic year of service; and (3) at least one year before the expiration of an appointment for those probationary faculty members who have been employed two or more years with the institution. Such notice to those probationary faculty members not being retained shall be by certified mail, return receipt requested.
Upon request of the probationary faculty member not retained, the president or other administrative head of the institution shall within ten days, and by certified mail, inform the probationary faculty member of the reasons for nonretention. Any probationary faculty member who desires to appeal the decision shall utilize the grievance procedure established in article six-a, chapter twenty-nine of this code. If it is concluded that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year.

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

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-1. Legislative purpose.

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


As used in this article:

(a) "Classified employee or employee" means any regular full-time or regular part-time employee of a governing board or the commission, including all employees of the West Virginia network for educational telecomputing, who hold a position that is assigned a particular job title and pay grade in accordance with the
personnel classification system established by this article or by the commission;

(b) “Nonclassified employee” means an individual who is responsible for policy formation at the department or institutional level, or reports directly to the president, or is in a position considered critical to the institution by the president pursuant to policies adopted by the governing board: Provided, That the percentage of personnel placed in the category of “nonclassified” at any given institution shall not exceed ten percent of the total number of employees of that institution who are eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, however, That an additional ten percent of the total number of employees of that institution as defined in this subsection may be placed in the category of “nonclassified” if they are in a position considered critical to the institution by the president. Final approval of such placement shall be with the appropriate governing board;

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

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

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

(f) “Pay grade” means the number assigned by the commission to a particular job title and refers to the vertical column heading of the salary schedule established in section three of this article;
(g) "Personnel classification system" means the process of job categorization adopted by the commission by which job title, job description, pay grade and placement on the salary schedule are determined;

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

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

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

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

(a) There is hereby established a state annual salary schedule for classified employees consisting of a minimum annual salary for each pay grade in accordance with years of experience: Provided, That payment of the minimum salary shall be subject to the availability of funds, and nothing in this article shall be construed to guarantee payment to any classified employee of the salary indicated on the schedule at the actual years of experience absent
specific legislative appropriation therefor. The minimum salary herein indicated shall be prorated for classified employees working less than thirty-seven and one-half hours per week. Despite any differences in salaries that may occur, a classified employee is equitably compensated in relation to other classified employees in the same paygrade if the following conditions exist:

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

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

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

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

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

HIGHER EDUCATION CLASSIFIED EMPLOYEE ANNUAL SALARY SCHEDULE
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**Enr. S. B. No. 703] 126**
§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

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

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

(c) No classified employee defined as nonexempt from the wage and hour provisions of the Fair Labor Standards Act of 1938, as amended, may be paid an annual salary in excess of the salary established by the salary schedule for
his or her paygrade and years of experience. Classified employees defined as exempt from the wage and hour provisions of the Fair Labor Standards Act of 1938, as amended, may receive a salary in excess of the salary established by the salary schedule for his or her paygrade and years of experience but only if all such exempt employees at the institution are receiving at least the minimum salary for their pay grade and years of experience as established for them by the salary schedule: Provided, That no exempt classified employee may receive a salary in excess of the highest salary provided for his or her paygrade in the salary schedule.

§18B-9-5. Classified employee salary.

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

(b) Any classified employee may receive merit increases and salary adjustments in accordance with policies established by the board of governors: Provided, That merit raises may be granted only pursuant to a rule adopted by the board of governors, and approved by the chancellor, which provides a fair and equitable basis for
granting merit raises pursuant to regular evaluations based upon reasonable performance standards.

(c) The current annual salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article may be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if the promotion is in accordance with the provisions of this article and the personnel classification system established by the appropriate governing board.

§188-9-7. Conferences regarding personnel classification.

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

§188-9-8. Hirings after effective date.

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

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

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

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories
of students enrolling at each state institution of higher education under its jurisdiction and may include among such fees any one or more of the following:

(1) Health service fees;

(2) Infirmary fees;

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

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

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

(c) The off-campus instruction fee shall be used solely for the support of off-campus courses offered by the institution. Off-campus locations for each institution shall
be defined by the appropriate governing board. The
schedule of all fees, and any changes therein, shall be
entered in the minutes of the meeting of the appropriate
governing board, and the board shall file with the legisla-
tive auditor a certified copy of such schedule and changes.

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

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

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

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

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

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

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

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

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

(g) On or before the first day of July, two thousand one, the chancellor for higher education shall review policy series twenty-two of the governing boards, related to assessment, payment and refund of fees and determine whether a new rule should be adopted regarding the refund of any fees upon the voluntary or involuntary
withdrawal from classes of any student. The rules shall comply with all applicable state and federal laws and shall be uniformly applied throughout the system.

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

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

(j) Effective the first day of July, two thousand one, tuition and fees rates shall be determined in accordance with subsections (k), (l) and (m) of this section.

(k) Effective the first day of July, two thousand one, institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with a revised tuition policy adopted by the
respective governing boards and approved by the commission. The revised tuition policy shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs; and

(3) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(1) No penalty shall be imposed by the commission upon any institution based upon the number of nonresidents who attend the institution unless the commission determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of the resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission on the numbers of out-of-state residents and such other enrollment information as the commission may request.

(m) Tuition and fee increases of the governing boards are subject to rules adopted by the commission pursuant to subsection (a), section four, article one-b of this chapter.

§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

(a) In addition to all other fees imposed by the governing boards, there is hereby imposed and the governing boards are hereby directed to provide for the collection of an additional registration fee from all students enrolled in
any state institution of higher education under its jurisdiction in the amounts hereinafter provided.

(1) For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The governing boards have authority to increase such additional registration fee at institutions of higher education under its jurisdiction for students who are nonresidents of this state.

(2) For all part-time students and for all summer school students, the governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

(b) The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and may not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

(c) There is created in the state treasury a special capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds of the additional registration fees collected from students at all state institutions of higher education pursuant to this section to be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which such registration fees were pledged prior to the enactment of this section.

(d) The governing boards may make expenditures from any of the special capital improvements funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following projects:
(1) The acquisition of land or any rights or interest therein;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for any such buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital education facilities.

(e) The governing boards, in their discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or the commission, upon request of institutions or governing boards, singly or jointly, may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis; Provided, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the commission or governing boards to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order of priority as was agreed upon by the governing board or boards and the
(f) Such revenue bonds may be authorized and issued from time to time by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

(g) The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as determined by the governing board receiving the proceeds and the commission. Such revenue bonds shall be signed by the governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. Such revenue bonds shall be sold in such manner as the commission or governing board determines is for the best interests of the state.

(h) The commission or governing boards may enter into trust agreements with banks or trust companies, within or
without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of such revenue bonds.

(i) After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education may not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued. Such revenue bonds shall be and constitute negotiable instruments under the uniform commercial code of this state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds may not be deemed to be obligations or debts of the state, and the credit or taxing power of the state may not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(j) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated
from other sources. It is the intent of the Legislature to authorize over a five-year period beginning on the seventeenth day of June, two thousand, additional sources of revenue and funds to effect such funding for capital improvement.

(k) Funding of system-wide and campus-specific revenue bonds under any other section of this code is hereby continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any bonds issued pursuant to this code shall remain the responsibility of that institution.

(l) Any revenue bonds proposed to be issued under this section or article twelve-b, chapter eighteen of this code must be first approved by the commission.

(m) Revenue bonds issued pursuant to article twelve-b, chapter eighteen of this code may be issued by the commission or governing boards, either singly or jointly.

(n) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b, chapter eighteen prior to the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission shall have the authority to transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section, or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

ARTICLE 11A. STATE AUTISM TRAINING CENTER.

§18B-11A-1. Purpose.

The purpose of the Legislature in the enactment of this article is to establish and develop an autism training center in the state of West Virginia with a highly skilled,
interdisciplinary, appropriately experienced staff which will train teachers, parents, guardians and others important to the autistic person's education and training. The center is established and operated by the Marshall university board of governors or its designees.


For the purposes of this article:

(a) "Board" means the Marshall university board of governors;

(b) "Center" means the autism training center;

(c) "Client" means a person with the primary diagnosis of autism or autistic-like behavior; and

(d) "Expenses" means those reasonable and customary expenditures related to training and treatment of eligible clients as defined in the rules and regulations promulgated by the center.


The board of governors is authorized to operate a state autism training center, including either the acquisition by purchase, lease, gift or otherwise, of necessary lands, and the construction of necessary buildings; the expansion, remodeling, altering or equipping of necessary buildings; and the making of contracts by the board of trustees with any state, county or municipal agency, or nonprofit institution, providing for the equipment, expenses, compensation of personnel, operation and maintenance of any facility of such agency or institution utilized for the purposes of this article. The board or its designees may make and enter into all contracts and agreements necessary and incidental to the performance of its powers and duties under this section, and may cooperate with other agencies of the state, county and federal governments.
§18B-11A-4. Responsibilities of center.

1. The center shall, through appropriate identification, evaluation, education, individual training and treatment programs for clients, offer appropriate education and training for professional personnel and family members or guardians.


1. The board, after consultation with the center, shall make and adopt rules, regulations and standards for the establishment, operation, cost reimbursement, fees for services, maintenance and government control of the center established pursuant to this article, including such rules, regulations and standards as may be necessary for cooperation under and compliance with any existing or future federal statutes pertaining to grants-in-aid for client training or facilities and such other rules and regulations as may be necessary to effectuate the purposes of this article.

§18B-11A-6. Advisory board.

1. The board of governors shall appoint a board of West Virginia citizens to advise the center director on matters of policy. The advisory board shall be composed of fifty percent parents or guardians of clients eligible for the center's program; forty percent persons from professional fields related to autism, such as special education, psychology, hearing and speech, neurology and pediatrics; and ten percent knowledgeable lay citizens such as legislators or other lay community leaders. The director of the center shall be an ex officio nonvoting member of the advisory board.

§18B-11A-7. Trainee team; expense.

1. The primary method of providing services through the center is by the use of trainee teams. A trainee team shall consist of an eligible client, a professional chosen by the
primary local service agency and the client's parent or
parents or guardian.

The center may charge agencies such fees and reimburse
trainee team or client expenses as provided by rules and
regulations. The center may also provide for reasonable
and customary expenses in excess of fees charged sending
agencies for each trainee team or otherwise eligible client,
including child care for other children of attending parents
and others as specified in rules and regulations.

ARTICLE 14. MISCELLANEOUS.

§18B-14-5a. Authorization for sale lease back.

Notwithstanding any other provisions of this code to the
contrary and upon approval of the commission before
incurring any obligations, the governing boards are hereby
authorized and empowered to sell any building which is on
unencumbered real property to which the board holds title
and lease back the same building and deposit the net
proceeds of the transaction into a special revenue account
in the state treasury to be appropriated by the Legislature
for the use of the institution at which the real property is
located: Provided, That prior to such action the appropri-
ate governing board shall have the property appraised by
two licensed appraisers and shall not sell the property for
less than the average of the two appraisals: Provided,
however, That prior to such action, the governing board
shall retain independent financial and legal services to
examine fully all aspects of the transaction. Such sale may
only be made to a special purpose entity which exists
primarily for the purpose of supporting the institution at
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.
Subject to the provisions of this article and within the limits of appropriations made by the Legislature, the senior administrator is authorized and empowered to: (1) Prepare and supervise the issuance of public information concerning the grant program; (2) prescribe the form and regulate the submission of applications for grants; (3) administer or contract for the administration of such examinations as may be prescribed by the senior administrator; (4) select qualified recipients of grants; (5) award grants; (6) accept grants, gifts, bequests and devises of real and personal property for the purposes of the grant program; (7) administer federal and state financial loan programs; (8) cooperate with approved institutions of higher education in the state and their governing boards in the administration of the grant program; (9) make the final decision pertaining to residency of an applicant for grant or renewal of grant; (10) employ or engage such professional and administrative employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall serve at the will and pleasure and under the direction and control of the senior administrator; (11) employ or engage such clerical and other employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall be under the direction and control of the senior administrator; (12) prescribe the duties and fix the compensation of all such employees; and (13) administer the adult part-time student higher education grant program established under section seven of this article.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.


As used in this article:

(a) "Commission" means the legislative oversight commission on education accountability;
(b) "Board" means the higher education policy commission or the chancellor as defined in chapter eighteen-b of this code, or both, or any successor agency or officer. "Board" also means any other entity directed by this code to promulgate a rule or rules in accordance with this article, but this definition shall apply solely for the purpose of promulgating the rule or rules required to be promulgated in accordance with this article.

§29A-3A-12. Submission of legislative rules to the legislative oversight commission on education accountability.

(a) When the board finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section ten of this article, the board shall submit to the legislative oversight commission on education accountability at its offices or at a regular meeting of such commission fifteen copies of the following:

(1) The full text of the legislative rule as finally approved by the board, with new language underlined and with language to be deleted from any existing rule stricken-through but clearly legible;

(2) A brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal;

(3) A statement of the circumstances which require the rule;

(4) A fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and

(5) Any other information which the commission may request or which may be required by law.

(b) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings
Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the commission shall recommend that the Legislature:

(1) Authorize the board to promulgate the legislative rule; or

(2) Authorize the board to promulgate part of the legislative rule; or
(3) Authorize the board to promulgate the legislative rule with certain amendments; or

(4) Recommend that the rule be withdrawn.

The commission shall file notice of its action in the state register and with the board proposing the rule: Provided, That when the commission makes the recommendations of subdivision (2), (3) or (4) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the commission recommends that a rule be authorized, in whole or in part, by the Legislature, the commission shall instruct its staff or the office of legislative services to draft a bill authorizing the board to promulgate all or part of the legislative rule. If the commission recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.


Unless there is a provision in a legislative rule specifying that the provisions thereof shall not be severable, the provisions of every legislative rule, whether enacted before or subsequent to the effective date of this section, shall be severable so that if any provision of any rule section or amendment thereto is held to be unconstitutional or void, the remaining provisions of the rule shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the
remaining valid provisions without the unconstitutional or
void one, or unless the court finds the remaining valid
provisions, standing alone, are incomplete and are incapaci-
ty of being executed in accordance with the legislative
intent: Provided, That if any legislative rule has its own
severability clause, then that severability clause shall
govern and control with respect to that section, in lieu of
the provisions of this section. The provisions of this
section shall be fully applicable to all future amendments
to legislative rules, with like effect as if the provisions of
this section were set forth in extenso and every such
amendment were reenacted as a part thereof, unless such
amendment to the legislative rule contains its own
severability clause.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2

Governor
PRESENTED TO THE
GOVERNOR
Date 4/27/01
Time 11:30am