WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. ___448_____

(By Senator ___Plymale, et al___)

PASSED ____March 13, 2004____

In Effect ____From____ Passage
AN ACT to repeal §18B-1A-8 of the code of West Virginia, 1931, as amended; to repeal §18B-1B-7 of said code; to repeal §18B-3C-7 of said code; to repeal §18B-6-2a, §18B-6-3a, §18B-6-4a and §18B-6-4b of said code; to amend and reenact §18-2-1 of said code; to amend and reenact §18B-1-1a, §18B-1-2, §18B-1-3 and §18B-1-6 of said code; to amend and reenact §18B-1A-2, §18B-1A-3, §18B-1A-4, §18B-1A-5 and §18B-1A-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code; to amend said code by adding thereto a new section, designated §18B-1B-11; to amend and reenact §18B-2A-1 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-6; to amend and reenact §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code; to amend said code by adding thereto a new section, designated §18B-2B-6a; to amend and reenact §18B-2C-3
and §18B-2C-4 of said code; to amend and reenact §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code; to amend and reenact §18B-4-1, §18B-4-2 and §18B-4-7 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-6-1 and §18B-6-1a of said code; to amend said code by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; to amend and reenact §18B-7-1 of said code; to amend said code by adding thereto a new section, designated §18B-7-12; to amend and reenact §18B-9-1 and §18B-9-2 of said code; to amend and reenact §18B-10-2 of said code; and to amend said code by adding thereto a new section, designated §18B-10-1b, all relating to education generally; higher education; community and technical college education; post-secondary education; state board membership; powers and duties of higher education policy commission and council for community and technical college education; goals for post-secondary education; definitions; transferring certain rules and expanding and clarifying rule-making authority; developing and approving institutional compacts and master plans; establishing benchmarks and indicators; authorizing emergency rule; selecting peer institutions; legislative financing goals; budget authority of commission and council; provision of baccalaureate and graduate education; reducing duration of certain grants; higher education personnel; developing public policy agenda; commission membership; consistency and cooperation among commission, council and certain boards and groups; establishing priorities and distributing funds for capital projects; employment of staff; appointments to boards and commissions; transfer of certain course credits; approval of new institutions, programs and courses; employment of chancellor for higher education; powers and duties; evaluations and contracts; appointment of institutional presidents; evaluations; role of governing and advisory boards, commission and council in appointments; requiring study of certain institutions providing post-secondary education; requiring reports
to legislative oversight commission on education accountability; powers and duties of governing boards and institutional boards of advisors; authority of governing board in determining institutional status; changing status of certain baccalaureate institutions; establishing or continuing governing and advisory boards for certain institutions; membership; terms of office; legislative findings; employment of chancellor for community and technical college education; evaluations and contracts; maintenance of employee benefits; council membership and terms of office; qualifications; jurisdiction and authority of council; employment of staff; tuition and fees; certain fee transfer; developing standards for remedial and developmental courses; higher education report card; authorization to withdraw certain powers from a governing board; transfer and expansion of certain administrative, programmatic and budgetary control; establishing certain deadlines for commission and council; transferring certain fund and authorizing expenditures; employee transfer; powers and duties of chancellor; establishing and conforming structure of certain advisory groups; membership and terms of office; exceptions; meetings; development of search and screening guidelines; establishing certain advisory groups; clarifying certain expenses; modifying deadline for attaining independent accreditation; exceptions; council options; district consortia elimination; community and technical college consortia districts established; consortia powers, duties, responsibilities and operation; modifying title of certain employees; continuation in office; council authority over certain degree programs; service and fee requirement modification and limitation; employee reorganization; supervision of certain employees; essential services; employment of vice chancellor for administration; deadline for employment; modifying certain purchasing and competitive bidding requirements; certain employee seniority and displacement authority modification; duty of council regarding personnel classification system; creation, collection and use of certain fees; and eliminating certain obsolete provisions.
Be it enacted by the Legislature of West Virginia:

That §18B-1A-8 of the code of West Virginia, 1931, as amended, be repealed; that §18B-1B-7 of said code be repealed; that §18B-3C-7 of said code be repealed; that §18B-6-2a, §18B-6-3a, §18B-6-4a and §18B-6-4b of said code be repealed; that §18-2-1 of said code be amended and reenacted; that §18B-1-1a, §18B-1-2, §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2, §18B-1A-3, §18B-1A-4, §18B-1A-5 and §18B-1A-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-11; that §18B-2A-1 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-6; that §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7 and §18B-2B-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2B-6a; that §18B-2C-3 and §18B-2C-4 of said code be amended and reenacted; that §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10 and §18B-3C-12 of said code be amended and reenacted; that §18B-4-1, §18B-4-2 and §18B-4-7 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; that said code be amended by adding thereto five new sections, designated §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-5 and §18B-6-6; that §18B-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-7-12; that §18B-9-1 and §18B-9-2 of said code be amended and reenacted; that §18B-10-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-10-1b, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.
§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

There is a state board of education, to be known as the West Virginia board of education, which is a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board consists of twelve members, of whom one is the state superintendent of schools, ex officio; one of whom is the chancellor of the higher education policy commission, ex officio; and one of whom is the chancellor of the West Virginia council for community and technical college education, ex officio, none of whom is entitled to vote. The other nine members are citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of nine years. Terms of office begin on the fifth day of November of the appropriate year and end on the fourth day of November of the appropriate year. At least two, but not more than three, members are appointed from each congressional district.

No more than five of the appointive members may belong to the same political party and no person is eligible for appointment to membership on the state board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or who is an appointee or employee of the board. Members are eligible for reappointment. Any vacancy on the board shall be filled by the governor by appointment for the unexpired term.

Notwithstanding the provisions of section four, article six, chapter six of this code, a member of the state board may not be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of state elective officers.
Before exercising any authority or performing any duties as a member of the state 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, the certificate whereof shall be filed with the secretary of state. A suitable office in the state department of education at the state capitol shall be provided for use by the state board.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-la. Goals for post-secondary education.

(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 academic 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 accountability system in West Virginia must be 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 workforce 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, colleges and community and technical colleges that have focused missions, individual 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, workforce 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 that:

(i) Assess regional needs;

(ii) Ensure access to comprehensive community and technical college and workforce development services within each of their respective regions;

(iii) Convene and serve 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) Maximize 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, to assist them in accomplishing the elements of the public policy agenda and to 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 and council 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, have the goals 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 are 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, including academic career fairs; 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 among public and post-secondary education, the governor's council on literacy and the governor's workforce investment office to promote the effective and efficient utilization of work force investment and other funds to:
(i) Provide to individuals and employers greatly improved access to information and services 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) Improve citizens' 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.

(2) 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 workforce 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 workforce and other nontraditional students for upgrading and retraining college-level skills; and

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

(3) 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:

(A) Are relevant and affordable;

(B) Allow them to gain transferrable credits and associate or higher level degrees;

(C) Provide quality technical education and skill training; and

(D) 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 skill 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 evaluation 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 mechanisms 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 business, 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 workforce needs of the state.

(7) Faculty and administrators are compensated at a level competitive 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 least covers the full cost of instruction.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meaning hereinafter-
(a) Effective the first day of July, two thousand five, "regional campus" means West Virginia university at Parkersburg and West Virginia university institute of technology.

(b) "Governing boards" or "boards" means the institutional boards of governors created pursuant to section one, article two-a of this chapter;

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

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

(e) "Community and technical college", in the singular or plural, means the freestanding community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes southern West Virginia community and technical college, West Virginia northern community and technical college, eastern West Virginia community and technical college, New River community and technical college, West Virginia university at Parkersburg, the community and technical college at West Virginia university institute of technology, the community and technical college of Shepherd, Fairmont state community and technical college, Marshall community and technical college and West Virginia state community and technical college;
(f) "Community and technical college education" means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in article three-c of this chapter;

(g) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

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

(i) "Higher education policy commission", "policy commission" or "commission" means the commission created pursuant to section one, article one-b of this chapter;

(j) "Chancellor for higher education" means the chief executive officer of the higher education policy commission employed pursuant to section five, article one-b of this chapter;

(k) "Chancellor for community and technical college education" means the chief executive officer of the West Virginia council for community and technical college education employed pursuant to section three, article two-b of this chapter;

(l) "Chancellor" means the chancellor for higher education where the context refers to a function of the higher education policy commission. "Chancellor" means chancellor for community and technical college education where the context refers to a function of the West Virginia council for community and technical college education;

(m) "Institutional operating budget" or "operating budget" means for any fiscal year an institution's total unrestricted education and general funding from all sources in the prior fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any
adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(n) "Community and technical college education program" means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All such programs are under the jurisdiction of the council. Any reference to "post-secondary vocational education programs" means community and technical college education programs as defined in this subsection;

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

(p) For the purposes of this chapter and chapter eighteen-c of this code "senior administrator" means the vice chancellor for administration employed by the commission with the advice and consent of the council in accordance with section two, article four of this chapter;

(q) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college or West Virginia state college;

(r) "State institution of higher education" means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;
(s) Until the first day of July, two thousand five, "regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university and West Virginia university institute of technology;

(t) The advisory board previously appointed for the West Virginia graduate college is known as the "board of visitors" and shall provide guidance to the Marshall university graduate college;

(u) "Institutional compact" means the compact between the commission or council and a state institution of higher education under its jurisdiction, as described in section two, article one-a of this chapter;

(v) "Peer institutions", "peer group" or "peers" means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;

(w) "Administratively linked community and technical college" means a community and technical college created pursuant to section eight, article three-c of this chapter;

(x) "Sponsoring institution" means a state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight, article three-c of this chapter;

(y) "Collaboration" means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(z) "Broker" or "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement
with a provider of education services either in-state or out-of-state; and

(aa) "Council" means the West Virginia council for community and technical college education created pursuant to article two-b of this chapter.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.

(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 this chapter, 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 this chapter 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.
(e) 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.

(1) The obligations contained in revenue bonds issued by the previous governing boards under the provisions of section eight, article ten of this chapter and article twelve-b, chapter eighteen of this code are hereby transferred to the commission and each institution shall transfer to the commission those funds the commission deter-
(2) 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:

(1) 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 continue in effect until rescinded, revised, altered, amended or transferred to the governing boards by the commission as provided in this section and in section six of this article.

(2) Adopted or promulgated by the commission relating solely to community and technical colleges or community and technical college education, or rules which the council finds necessary for the exercise of its lawful powers and duties pursuant to the provisions of this chapter, may be adopted by the council and continue in effect until rescinded, revised, altered, amended or transferred to the governing boards under the jurisdiction of the council pursuant to section six of this article. Nothing in this section requires the initial rules of the commission that are adopted by the council to be promulgated again under the procedure set forth in article three-a, chapter twenty-nine-a of this code unless such rules are rescinded, revised, altered or amended.

(3) Adopted or promulgated by the commission relating to multiple types of public institutions of higher education or community and technical college education as well as
baccalaureate and post-baccalaureate education are transferred to the council in part as follows:

(A) That portion of the rule relating solely to community and technical colleges or community and technical college education is transferred to the council and continues in effect until rescinded, revised, altered, amended or transferred to the governing boards by the council as provided in this section and in section six of this article;

(B) That portion of the rule relating to institutions or education other than community and technical colleges is retained by the commission and continues in effect until rescinded, revised, altered, amended or transferred to the governing boards by the commission as provided in this section and in section six of this article.

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

The council may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the council pursuant to section six of this article.

(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 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.

§18B-1-6. Rulemaking.

(a) 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, subject to the provisions of section three of this article.

(b) The council 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 and subject to the provisions of section three of this article. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

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

(1) A procedure to ensure 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.

(d) On and after the effective date of this section, and notwithstanding any other provision of this code to the contrary, any rule heretofore required by law to be promulgated as a legislative rule prior to the first day of July, two thousand one, may not 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 of this article;

(2) The legislative rule required by section eight-a of this article;

(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.

(e) Nothing in this section requires that any rule reclassified or transferred under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or modified.
(f) The commission and council each shall file with the legislative oversight commission on education accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article.

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 state college and university shall prepare an institutional compact for submission to the commission. Each community and technical college shall prepare an institutional compact for submission to the council. When the process herein provided is completed, the institutional compacts shall form the agreements between the institutions of higher education and the commission or council, respectively, and, ultimately, between the institutions of higher education and the people of West Virginia on how the institutions 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 and council. The step-by-step process shall be delineated by objectives and shall set forth a time line 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 commission or council determines appropriate. In the determina-
tion of mission, the institutions and the commission or
council 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, re-
quired by the commission or council, designed to accom-
plish 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 or council.

(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 is 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 state college and univer-
sity institutional compacts resides with the commission.
The ultimate responsibility for developing and adopting
the final version of the community and technical college
institutional compacts resides with the council;
(3) Each institution shall submit its compact to the commission or council annually by the fifteenth day of November;

(4) The commission and council shall review each compact of the institutions under their respective jurisdictions and either adopt the compact or return it with specific comments for change or improvement. The commission and council shall continue this process as long as each considers advisable;

(5) By the first day of May annually, if the institutional compact of any institution as presented by that institution is not adopted by the commission or council, then the commission or council is empowered and directed to develop and adopt the institutional compact for the institution and the institution is bound by the compact so adopted; and

(6) As far as practicable, the commission and council each shall establish uniform processes and forms for the development and submission of the institutional compacts by the institutions under their respective jurisdictions. As a part of this function, the commission and council 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 and council shall assign geographic areas of responsibility to the state institutions of higher education under their respective jurisdictions 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 responsibility.
The compacts shall contain benchmarks used to determine progress toward meeting the goals established in the compacts. The benchmarks shall meet the following criteria:

1. They shall be as objective as possible;
2. They shall be directly linked to the goals in the compacts;
3. They shall be measured by the indicators described in subsection (f) of this section; and
4. Where applicable, they shall be used to measure progress in geographic areas of responsibility.

The commission and council each 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 by the institutions under their respective jurisdictions. The benchmarks established in subsection (e) of this section shall be measured by the indicators.

The Legislature finds that an emergency exists; therefore, not later than the first day of October, two thousand four, the council shall file as an emergency rule a legislative rule pertaining to benchmarks and indicators in accordance with the provisions of article three-a, chapter twenty-nine-a of this code. The rule pertaining to benchmarks and indicators in effect for the commission at the time of the effective date of this section remains in effect for the institutions under its jurisdiction.

The legislative rules shall set forth at the least the following as pertains to all state institutions of higher education:

A. The indicators used to measure the degree to which the goals and objectives are being met;
Uniform definitions for the various data elements to be used in establishing the indicators;

Guidelines for the collection and reporting of data;

and

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 or council 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.

In addition to any other requirement, the legislative rule established by the council 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 council 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 council for the purpose of making
161 the determination required by section three, article two-c
162 of this chapter; and

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

170 (g) The commission or the council, as appropriate, shall
171 approve the master plans developed by the boards of
governors and the institutional boards of advisors pursu-
ant to section four, article two-a of this chapter or section
one, article six of this chapter, as appropriate.

§18B-1A-3. Peer institutions.

1 (a) The commission shall select not fewer than ten peer
2 institutions for each state institution of higher education
3 in West Virginia, including, but not limited to, independ-
4 ently accredited community and technical colleges.

5 (b) When selecting peers, the commission shall abide by
6 the following conditions:

7 (1) The peer institutions shall be selected from among
8 institutions throughout the United States and not solely
9 from the states that are members of the southern regional
10 education board.

11 (2) The peer institutions for community and technical
12 colleges shall be selected in collaboration with the council.

13 (3) The peer institutions, as selected by the commission,
14 shall be used as benchmarks for comparison purposes only
15 and are not intended to reflect funding goals for West
16 Virginia institutions of higher education. Such a use is
17 inappropriate since institutions selected as peers for a
18 state institution may be located in an area of high per
19 capita income or have their funding subject to other
factors that make its use unrealistic for setting funding goals in West Virginia. The peer institutions shall be used for comparison in the following areas:

(A) To determine adjustments to base operating budgets as described in section five of this article;

(B) To determine comparable levels of tuition;

(C) To determine comparable faculty and staff teaching requirements and other workloads; and

(D) For such other purposes as the law may require or the commission may find useful or necessary.

(4) The commission shall contract with a national, independent education consulting firm to assist in the unbiased selection of peer institutions for each West Virginia institution.

(5) The commission shall select peer institutions for each institution through an open, deliberative, objective process and in consultation with the institutional boards of governors or boards of advisors, as appropriate, intended to achieve broad understanding of the basis for this selection in the higher education community and the Legislature.

(6) Final peer selection is subject to the approval of the legislative oversight commission on education accountability.

(7) In selecting peer institutions, the commission shall use criteria such as, but not limited to:

(A) Institutional mission;

(B) Institutional size related to full-time equivalent students;

(C) The proportions of full-time and part-time students;

(D) The level of academic programs, including, but not limited to, number of degrees granted at the associate,
baccalaureate, masters, doctoral and first-professional level;

(E) The characteristics of academic programs such as health sciences, professional, technical or liberal arts and sciences; and

(F) The level of research funding from federal competitive funding sources.

(8) Subject to the approval of the legislative oversight commission on education accountability, the commission shall review and make necessary adjustments to peer institutions at least every six years or as necessary based on changes in institutional missions as approved in institutional compacts or in changes at peer institutions. The commission shall review and make adjustments to peer institutions for community and technical colleges in collaboration with the council.

(9) Nothing herein prevents the commission from using the same peers or peer groups for more than one institution of higher education.

§18B-1A-4. Legislative financing goals.

(a) The Legislature recognizes that the higher education goals set forth in section one-a, article one of this chapter are of utmost importance. The Legislature further recognizes that meeting the goals may require the appropriation of funds above the current operating budgets of the institutions.

(b) It is, therefore, the desire of the Legislature to increase funding annually for higher education at a rate not less than the annual percentage increase in the overall general revenue budget.

(c) If the commission or council, or both, determines that appropriations are insufficient to fund the requirements of the institutional compacts under its jurisdiction, the commission or council first shall consider extending the
length of the compacts or otherwise modifying the compacts to allow the institutions to achieve the benchmarks in the compacts. If modifications to the institutional compacts are not sufficient to allow the institutions to meet their benchmarks, the commission or council, or both, shall recommend to the Legislature methods of making the higher education system more efficient. The methods may include, but are not limited to, the following:

(1) Administrative efficiencies;
(2) Consolidation of services;
(3) Elimination of programs;
(4) Consolidating institutions; and
(5) Closing institutions.

§18B-1A-5. Financing; institutional operating budgets, additional funding.

(a) Budget request and appropriations. — The commission and council each has the responsibility to develop a budget for the state system of higher education under its respective jurisdiction. The commission submits the budget request for higher education, including the budget request as developed by the council, to the governor before the first day of September annually. The budget requests of the commission and the council specifically shall include the amount of the institutional operating budgets, as defined in section two, article one of this chapter, required for all state institutions of higher education under their respective jurisdictions. The budget appropriation for the state systems of higher education under this chapter and other provisions of the law shall consist of separate control accounts or institutional control accounts, or some combination of such accounts, for appropriation of institutional operating budgets and other funds. The commission and council each is responsible for allocating state appropriations to supplement institutional operating budgets in
accordance with this section. In addition to the institutional operating budget and incentive funding, however, the commission and council each is responsible for allocating funds that are appropriated to it for other purposes. In order to determine institutional allocations, it is the responsibility of the institutions and their respective institutional boards of governors or advisors, as appropriate to provide to the commission or council documentation on institutional progress toward mission enhancement, preliminary peer comparison calculations, performance of increased productivity and academic quality and measurable attainment in fulfilling state priorities as set forth in this article. The documentation shall be provided to the commission or council no later than the first day of October annually.

(b) Legislative funding priorities. —

(1) The Legislature recognizes the current funding model has not moved all state institutions equitably towards comparable peer funding levels. The model has left West Virginia institutions at a competitive disadvantage to their national peers.

(2) The Legislature acknowledges that the resource allocation model used to comply with enrolled committee substitute for Senate bill no. 547, passed during the legislative session of one thousand nine hundred ninety-five, alleviated some of the disparity that exists among state institutions’ operating budgets, but left significant differences between the institutions and their national peers.

(3) The Legislature recognizes that a system of independently accredited community and technical colleges is essential to the economic vitality of the state.

(4) The Legislature places great importance on achieving the priority goals outlined in the public policy agenda and believes the state institutions of higher education should
(5) The Legislature also believes it is imperative that the state make progress on narrowing the peer inequity while balancing the need for sustaining the quality of our institutions.

(6) It is the charge of the commission and council to allocate all funds appropriated in excess of the fiscal year two thousand one general revenue appropriations in alignment with the legislative funding priorities listed below. The commission and council shall consider the priorities and assign a percentage of the total appropriation of new funds to each priority.

(A) Peer equity. — Funds appropriated for this purpose increase the level of the institutional operating budget for state institutions of higher education comparable to their peer institutions. The allocation shall provide, subject to the availability of funds and legislative appropriations, for a systematic adjustment of the institutional operating budgets to move all institutions' funding in the direction of levels comparable with their peers. Institutional allocations shall be calculated as follows:

(i) A calculation shall be made of the deficiency in per student funding of each institution in comparison with the mean per student funding of the peer institutions as defined by the commission pursuant to section three of this article;

(ii) For all institutions that are deficient in comparison with peer institutions, the amounts of the deficiencies shall be totaled;

(iii) A ratio of the amount of the deficiency for an institution divided by the total amounts of deficiency for all West Virginia institutions shall be established for each institution; and
(iv) The allocation to each institution shall be calculated by multiplying the ratio by the total amount of money in the account;

(B) Independently accredited community and technical colleges development. — Funds appropriated for this purpose will ensure a smooth transition, where required, from “component” community and technical colleges to independently accredited community and technical colleges as defined in section two, article one of this chapter. Appropriations for this purpose are to be allocated only to those institutions having approved compacts with the council that expressly include the transition of their component community colleges to independently accredited status and have demonstrated measurable progress towards this goal. By the first day of July, two thousand five, or when all required community and technical colleges are independently accredited, whichever first occurs, funds for this purpose shall be allocated to the incentives for institutional contributions to state priorities;

(C) Research challenge. — Funds appropriated for this purpose shall assist public colleges and universities in West Virginia to compete on a national and international basis by providing incentives to increase their capacity to compete successfully for research funding. The Legislature intends for institutions to collaborate in the development and execution of research projects to the extent practicable and to target research to the needs of the state as established in the public policy agenda and linked to the future competitiveness of this state.

(i) The commission shall develop criteria for awarding grants to institutions under this account, which may include, but are not limited to, the following:

(I) Grants to be used to match externally funded, peer-reviewed research;

(II) Grants to be used to match funds for strategic institutional investments in faculty and other resources to increase research capacity;
(III) Grants to support funding for new research centers and projects that will foster economic development and work force investment within the state. These grants shall be limited to five years and each research center or project funded shall receive a decreasing award each year and shall be required to be supported solely by external funding within five years;

(ii) The commission may establish an advisory council consisting of nationally prominent researchers and scientists, including representatives from outside the state, to assist in developing the criteria for awarding grants under this account.

(iii) For the purposes of making the distributions from this account, the commission shall establish the definition for research, research funds and any other terms as may be necessary to implement this subdivision; and

(D) Incentives for institutional contributions to state priorities. — Funds appropriated for this purpose provide incentives to institutions which demonstrate success toward advancing the goals of the public policy agenda as set forth in section one-a, article one of this chapter and to provide incentives for mission enhancement as set forth in section two of this article.

(E) Sustained quality support. — The commission and council shall provide additional operating funds to institutions under their respective jurisdictions with approved compacts. The commission and council shall allocate these funds on an equal percentage basis to all institutions. The commission or council may delay distribution of these funds to any institution which does not demonstrate measurable progress towards the goals provided in its compact with the commission or council.

(c) Allocations to institutional operating budgets. — For the purposes of this subsection, the commission and council each shall establish by rule pursuant to subsection
(f), section two of this article the method for measuring the progress of each institution towards meeting the benchmarks of its institutional compact.

(d) Allocation of appropriations to the institutions. — Appropriations in this section shall be allocated to the state institutions of higher education in the following manner:

(1) Each fiscal year appropriations from the funds shall be allocated only to institutions which have:

(A) Approved compacts, pursuant to section two of this article; and

(B) Achieved their annual benchmarks for accomplishing the goals of their compacts, as approved by the commission or council.

(2) If an institution has not achieved all of its annual benchmarks, the commission or council may distribute a portion of the funds to the institution based on its progress as the commission or council determines appropriate. The commission and council each shall establish by rule, pursuant to subsection (f), section two of this article, the method for measuring the progress of each institution toward meeting the benchmarks of its institutional compact.

(e) Nothing in this section limits the appropriation or collection of fees necessary to effectuate the operation and purpose of the commission or council.

§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 preservice 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, Glenville 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.

(3) 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 (1), (2) and (3) of this subsection 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 universi-
ties 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.

(j) 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-1. Higher education policy commission established; development of public policy agenda.

There is hereby created the "higher education policy commission", hereinafter referred to as the "commission". It is the intent of the Legislature that the commission be responsible to develop, gain consensus around and oversee
the public policy agenda for higher education and other statewide issues pursuant to section one-a, article one of this chapter under the following conditions:

(a) It is the responsibility of the commission to work collaboratively with the council to develop and gain consensus around the public policy agenda for community and technical colleges;

(b) It is the responsibility of the council to oversee the implementation of the public policy agenda for the institutions under its jurisdiction.

(c) All matters of governance not specifically assigned to the commission or council by law are the duty and responsibility of the governing boards.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of ten members. One is the secretary of education and the arts, ex officio. One is the state superintendent of schools, ex officio. One is the chair of the West Virginia council for community and technical college education who is an ex officio, nonvoting member.

(b) The other seven members of the commission are citizens of the state, appointed by the governor, by and with the advice and consent of the Senate. Prior to appointment, the governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter. The governor shall invite the president of the Senate, the speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the governor may determine to participate in interviewing potential candidates. Each
20 member appointed to the commission by the governor shall
21 represent the public interest and shall be committed to the
22 legislative intent and goals set forth in said section.
23 (c) The governor may not appoint any person to be a
24 member of the commission who is an officer, employee or
25 member of the council or an advisory board of any state
26 college or university; an officer or member of any political
27 party executive committee; the holder of any other public
28 office or public employment under the government of this
29 state or any of its political subdivisions; an appointee or
30 employee of any governing board; or an immediate family
31 member of any employee under the jurisdiction of the
32 commission, the council or any governing board. Of the
33 members appointed by the governor from the public at
34 large, no more than four thereof may belong to the same
35 political party and at least two shall be appointed from
36 each congressional district.
37 (d) The terms of the members appointed by the governor
38 are for overlapping terms of four years.
39 (e) The governor shall appoint a member to fill any
40 vacancy among the seven members appointed by the
41 governor, by and with the advice and consent of the
42 Senate. Any member appointed to fill a vacancy serves for
43 the unexpired term of the vacating member. The governor
44 shall fill the vacancy within thirty days of the occurrence
45 of the vacancy.
46 (f) A member appointed by the governor may not serve
47 more than two consecutive terms.
48 (g) Before exercising any authority or performing any
49 duties as a member of the commission, each member shall
50 qualify as such by taking and subscribing to the oath of
51 office prescribed by section five, article IV of the constitu-
52 tion of West Virginia and the certificate thereof shall be
53 filed with the secretary of state.
(h) A member of the commission appointed by the governor may not 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.

§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. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia council for community and technical college education. To that end, the commission has the following powers and duties relating to the institutions under its jurisdiction:

(1) Develop, oversee and advance the public policy agenda pursuant to section one, article one-a of this chapter 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 nine of this article for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the implementation jointly with the council 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;

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter; and

(D) Incorporate the plan for strategic funding to strengthen capacity for support of community and technical college education established by the West Virginia council for community and technical college education pursuant to the provisions of section six, article two-b of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

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

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

(C) Holding the higher education institutions and the higher education systems as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;
(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to:

(A) The governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the legislative oversight commission on education accountability;

(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions pursuant to section two, article one-a of this chapter;

(10) Annually 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 its 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;
An analysis of enrollment data collected pursuant to 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;

The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority;

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;

Establish a formal process for identifying needs for capital investments and for determining priorities for these investments. It is the responsibility of the commission to assure a fair distribution of funds for capital projects between the commission and the council. To that end the commission shall take the following steps:

Receive the list of priorities developed by the council for capital investment for the institutions under the council's jurisdiction pursuant to subsection (b), section six, article two-b of this chapter;

Place the ranked list of projects on the agenda for action within sixty days of the date on which the list was received;

Select a minimum of three projects from the list submitted by the council to be included on the ranked list established by the commission. At least one of the three projects selected must come from the top two priorities established by the council.

Maintain 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. Such a
project may not be pursued by an institution without the
approval of the commission. An institution may not
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;

(13) Acquire legal services as are considered necessary,
including representation of the commission, its institu-
tions, employees and officers before any court or adminis-
trative 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 addi-
tion, the commission may, but is not required to, call upon
the attorney general for legal assistance and representa-
tion as provided by law;

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

(15) Employ other staff as necessary and appropriate to
carry out the duties and responsibilities of the commission
and the council, in accordance with the provisions of
article four of this chapter;

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

(17) Advise and consent in the appointment of the
presidents of the institutions of higher education under its
jurisdiction 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;

(18) Approve the total compensation package from all
sources for presidents of institutions under its jurisdiction,
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;

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

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

(21) Review and approve or disapprove capital projects
as described in subdivision (11) of this subsection;

(22) Jointly with the council, develop and implement an
oversight plan to manage systemwide 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; and

(B) Increasing the delivery of instruction to nontradi-
tional students, to provide services to business and indus-
try and increase the management capabilities of the higher
education system;
(23) 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 incur additional costs as is consistent with sound academic policy;

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

(25) 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 incur additional costs as is consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the council and 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;

(27) 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;

(28) 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 advantage to new private sector projects over existing West Virginia businesses, unless the commission determines such private sector projects are in the best interest of the students, the institution and the community to be served; and

(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;

(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government a budget that reflects recommended appropriations from the commission and the institutions under its jurisdiction. The commission shall submit as part of its budget proposal the separate recommended appropriations it received from the council both for the council and the institutions under the council’s jurisdiction. The commission annually shall submit the proposed institutional allocations based on each institution’s progress toward meeting the goals of its institutional compact;
(30) The commission has the authority to assess institutions under its jurisdiction for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

(31) 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;

(32) 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, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(33) 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 and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;
(34) Determine when a joint rule among the governing boards of the institutions under its jurisdiction is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

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

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

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

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

(E) Such other policies as the commission and council consider appropriate.

(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 funds to influence institutional behavior in ways that are consistent with public priorities;

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

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

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of any rules necessary to administer those programs;

(7) Serving 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) Jointly with the council, 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 pursuant to the findings and policy recommendations to be determined as set forth in section eleven of this article;

(10) Development, implementation and oversight of statewide and regionwide projects and initiatives related
to providing post-secondary education at the baccalaureate level and above 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 of an institution under its jurisdiction 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.
§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 is the chief executive officer of the commission and who serves at its will and pleasure.

(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 a system of higher education while employed as chancellor.

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

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

(e) 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.

(f) The commission may employ a vice chancellor for health sciences who serves at the will and pleasure of the commission. 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 responsibility of the chancellor or a designee.

(g) The commission shall employ a vice chancellor for administration pursuant to section two, article four of this chapter.

(h) The commission may employ a vice chancellor for state colleges who serves at the will and pleasure of the commission. 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.

(i) On behalf of the commission, 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 is responsible for the daily operations of the commission and has the following responsibilities relating to the commission and the institutions under its jurisdiction:

(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) To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-
nine-a of this code. The chancellor is responsible for ensuring that any policy which is required to be uniform across the institutions 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, with the commission, advises the Legislature on matters of higher education in West Virginia. The chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals for higher education that the Legislature has established by law.

(m) 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. In those instances where the initiatives to be proposed have a direct and specific impact or connection to community and technical college education as well as to baccalaureate and graduate education, the chancellor for higher education and the chancellor for community and technical college education shall design and develop the initiatives jointly for consideration by the commission and the council.

(n) 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
To further the goals of cooperation and coordination between the commission and the state board of education, the chancellor serves as an ex officio, nonvoting member of the state board of education.

§18B-1B-6. Appointment of institutional presidents; evaluation.

(a) Appointment of institutional presidents. — Appointment of presidents of the public institutions of higher education shall be made as follows:

(1) Subject to the approval of the commission, the governing board of the institution appoints a president for Bluefield state college, Concord college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, West Liberty state college, West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

(2) Subject to the approval of the council and to the provisions of article three-c of this chapter, the governing board of West Virginia University appoints the president of the regional campus known as West Virginia university at Parkersburg. When selecting candidates for consideration to fill the office of president, the governing board shall use the search and screening process provided for in section one, article six of this chapter.

Subject to the approval of the commission, the governing board of West Virginia University appoints the president of the regional campus known as West Virginia university institute of technology. The president of each regional campus serves at the will and pleasure of the appointing governing board.

(3) Subject to the approval of the council, the governing board of the community and technical college appoints a president for eastern West Virginia community and technical college, southern West Virginia community and
(4) Subject to the approval of the council, the governing board of the sponsoring institution appoints a president for each administratively linked community and technical colleges which shares a physical campus location with the sponsoring institution, including Fairmont state community and technical college, Marshall community and technical college, the community and technical college at West Virginia university institute of technology and West Virginia state community and technical college.

(5) Subject to the approval of the council, the governing board of the community and technical college appoints a president for each administratively linked community and technical college which does not share a physical campus location with the sponsoring institution, including New River community and technical college and the community and technical college of Shepherd.

Subject to the approval of the council, the governing board of the sponsoring institution appoints a president for each of these two community and technical colleges until the institution gains independent accreditation.

(b) Other appointments. – Effective the first day of July, two thousand five, the institutional president shall appoint a provost to be the administrative head of the Potomac campus of West Virginia university.

(c) Evaluation of presidents. – The appointing governing board shall conduct written performance evaluations of each institution's president, including the presidents of administratively linked community and technical colleges. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable
in higher education matters who are not otherwise em-
ployed by a governing board. A part of the evaluation
shall be a determination of the success of the institution in
meeting the requirements of its institutional compact.

§18B-1B-11. Study of licensing and oversight of certain insti-
tutions providing post-secondary education.

(a) The commission and the council shall conduct a joint
study of current policies relating to licensing and oversight
of both public and private degree-granting and
nondegree-granting entities providing post-secondary
education programs or courses within the state or from
locations outside this state through distance learning or
any technology methods.

(b) The study shall include, but is not limited to, the
following:

(1) The strengths and weaknesses of current state and
higher education policies including a determination of how
well the policies protect consumers and whether such
protection should be expanded;

(2) The appropriate entity within public higher educa-
tion to assume licensing and oversight of each type of
institution;

(3) The standards to be used for program approval or a
method to develop such standards; and

(4) The requirements for fees and bonding.

The commission and the council shall report their
findings, conclusions and recommendations, together with
drafts of any legislation necessary to effectuate the
recommendations, to the legislative oversight commission
on education accountability by the first day of December,
two thousand four.

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

(a) A board of governors is continued 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 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.

(b) For the community and technical college of Shepherd and New River community and technical college the institutional board of advisors remains in place until the institution achieves independent accreditation as provided in section eight, article three-c of this chapter.

(1) As long as the institutional board of advisors remains in place, the chairperson of the board of advisors serves as an ex officio, voting member of the board of governors of the sponsoring institution;

(2) When the community and technical college achieves independent accreditation, the board of advisors is abolished and a board of governors is established with members appointed pursuant to this section;

(3) When a board of governors is established for the community and technical college:

(A) The chairperson of the governing board of the sponsoring institution serves as an ex officio, nonvoting member of the governing board of the community and technical college board of governors; and

(B) The chairperson of the governing board of the community and technical college serves as an ex officio,
nonvoting member of the governing board of the sponsoring institution.

(4) In making the initial appointments to these boards of governors, the governor shall appoint those persons who are lay members of the institutional boards of advisors, except in the case of death, resignation or failure to be confirmed by the Senate.

(c) The institutional board of governors for Marshall university consists of sixteen persons and the institutional board of governors for West Virginia university consists of seventeen persons. Each other board of governors consists of twelve persons.

(d) Each board of governors includes the following members:

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

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

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

(4) For the institutional board of governors at Marshall university, twelve lay members appointed by the governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of Marshall community and technical college serving as an ex officio, voting member.

(5) For the institutional board of governors at West Virginia university, twelve lay members appointed by the governor by and with the advice and consent of the senate pursuant to this section and, additionally, the chairperson of the institutional board of advisors of the community
and technical college at West Virginia university institute of technology and West Virginia university at Parkersburg.

(6) For each institutional board of governors of an institution that does not have an administratively linked community and technical college under its jurisdiction, nine lay members appointed by the governor, by and with the advice and consent of the Senate, pursuant to this section.

(7) For each institutional board of governors which has an administratively linked community and technical college under its jurisdiction:

(A) Eight lay members appointed by the governor, by and with the advice and consent of the Senate, pursuant to this section and, additionally, the chairperson of the institutional board of advisors of the administratively linked community and technical college; and

(B) Of the eight lay members appointed by the governor, one shall be the superintendent of a county board of education from the area served by the institution.

(e) Of the eight or nine members appointed by the governor, no more than five may be of the same political party. 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. Of the eight or nine members appointed by the governor, at least six shall be residents of the state. Of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, at least eight shall be residents of the state.

(f) The student member serves for a term of one year. Each term begins on the first day of July.

(g) The faculty member serves for a term of two years. Each term begins on the first day of July. Faculty mem-
bers are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(h) The member representing classified employees serves for a term of two years. Each term begins 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.

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

(j) 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. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than two consecutive years.

(k) The appointed members of the institutional boards of governors serve staggered terms of four years.

(l) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(1) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee 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 council or commission. This subsection does not prevent
the representative from the faculty, classified employees, students or chairpersons of the boards of advisors or the superintendent of a county board of education from being members of the governing boards.

(2) For a community and technical college, a person is ineligible for appointment who is an officer, employee 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, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or chairpersons of the boards of advisors from being members of the governing boards.

(m) 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.

(n) A member of a governing board appointed by the governor may not 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.

(o) 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 serve without compensation, but are reimbursed for all reasonable and necessary expenses actually in-
curred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.


Each governing board separately has 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 which retain an institutional board of advisors 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 or council, as appropriate. 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 or council, as appropriate, 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 institutions 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 institutions under its jurisdiction, 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 or council, as appropriate, a budget request on behalf of the institutions under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the institutions 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 employers 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 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 is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at institutions 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 commission 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 decisionmaking 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 and the council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institutions under their jurisdiction;

(k) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article
six-a, chapter twenty-nine of this code is the exclusive
mechanism for hearing prospective employee grievances
and appeals. In construing the application of said article
to grievances of higher education employees, the following
apply:

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

(2) The state division of personnel may 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 institutions under its jurisdiction;

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

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

(o) Employ all faculty and staff at the institution under
its jurisdiction. Such employees operate under the super-
vision of the president, but are employees of the governing
board;

(p) Submit to the commission or council, as appropriate,
no later than the first day of November of each year an
annual report of the performance of the institution under
its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact;

(q) 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;

(r) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

(s) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president 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 appropriate 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;

(t) Unless changed by the commission or the council, as appropriate, 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 require-
(u) 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;

(v) The governing boards in consultation with the appropriate 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 standardized system or forms which will be submitted to the respective governing board and the department of finance and administration;

(w) Notwithstanding any other provision of this code to the contrary, the governing boards may 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 may 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;

(x) Notwithstanding any other provision of this code to the contrary, the governing boards may acquire legal
services as are considered necessary, including representa-
tion 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; and
(y) Each governing board which has under its jurisdic-
tion an administratively linked community and technical
college or a regional campus offering community and
technical college education programs shall create within
the administrative structure of its governing board a
subcommittee for community and technical college
education. The subcommittee shall have at least four
members, one of whom is the chairperson of the board of
advisors of the community and technical college or, in the
case of the governing board of West Virginia university,
both the member representing the community and techni-
college and the member representing the regional
campus;
§18B-2A-6. University status for public baccalaureate institu-
tions of higher education.

(a) The purpose of this section is to redesignate certain
existing public baccalaureate institutions as universities
and to provide a mechanism for other public baccalaureate
institutions to become universities. The change in name is
based on each institution's ability to meet minimum
standards developed and adopted by the commission.

(b) Each governing board of a public baccalaureate
institution is authorized to make changes which would
further its eligibility to attain university status:

(1) If the college meets the eligibility requirements
established by the commission to attain university status
and if the commission grants university status, then the
governing board shall determine the effective date on which the public baccalaureate institution becomes a university; and

(2) On and after the effective date designated by the governing board, the baccalaureate institution shall be designated a university.

(c) Concord college, Fairmont state college, Shepherd college and West Virginia state college, having met the eligibility requirements established by the commission to attain university status, are hereby designated as universities on the effective date of this section.

(d) An institution may not request or seek additional state appropriations as a result of the redesignation provided for in this section. No consequences, including the need to meet future accreditation requirements in order to maintain university status, which arise as a result of designating an existing state college as a university, provide sufficient justification for an institution to request or in any way seek additional state funds.

(e) Notwithstanding any provision of this code to the contrary, Marshall university and West Virginia university are, and remain, the only research and doctoral degree-granting public institutions of higher education in this state.

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 enrolled Senate bill no. 653, passed during the two thousand regular legislative session, reflected the research findings available to the Legislature at the time; since then, however, additional research indicates that, while enrolled Senate bill no. 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 enrolled Senate bill no. 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 condi-
tions required by enrolled Senate bill no. 653 are neces-
sary, but not sufficient alone to provide a strong enough
tool to accomplish the state's goal to strengthen commu-
nity and technical college education;

(viii) The community and technical college will not be
able to operate optimally until they move out of the
shadow of their "parent" institutions, with the flexibility
and autonomy to establish a uniquely community college
identity, culture, program mix, outreach capacity and
approach to teaching and learning;
(ix) The development of stronger support mechanisms for the community and technical colleges should be an extension of the ongoing step-by-step process for achieving the goals for post-secondary education in the state;

(x) Building on the foundations laid in enrolled committee substitute for Senate bill no. 547 and enrolled Senate bill no. 653, the Legislature should now establish the further systemic and policy supports that are needed for the community and technical college to thrive, perform and meet state goals;

(xi) Implementation will necessarily be incremental;

(xii) The consistent focus at the state level should be on the statewide mission of raising educational attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;

(xiii) The solution must ensure a high degree of flexibility and autonomy at the local level, preserving the ability of community and technical colleges to respond rapidly and effectively to local needs;

(xiv) At the same time, there is serious and recognized need for statewide leadership, coordination and support for the work of the community and technical colleges and the advocacy for the public priorities that these institutions are charged to address; and therefore

(xv) 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 enrolled Senate bill no. 653 to
determine the most effective and efficient method to
deliver community and technical college services in the
former responsibility areas of Marshall university, West
Virginia state college and West Virginia university insti-
tute 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 stu-
dents;

(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 coordi-
nated leadership and a delivery system for education and
training initiatives;

(ii) To provide accountability through a separate com-
pact 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 accessi-
bility in higher education.

(b) Based on the recent research cited above, the Legisla-
ture 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 effi-
cient, 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 capabili-
ties;

(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;

(G) Implementation will necessarily be incremental;

(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 achiev-
ing 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 com-
munity 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 educa-
tion 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 develop-
ment 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, communi-
cation 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 creden-
tial from an institution under the jurisdiction of a govern-
ing board or other public or private education provider.

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

(d) “Chancellor for community and technical college
education” means the chief executive officer of the West
Virginia council for community and technical college
education employed pursuant to section three, article
two-b of this chapter. Any reference in this code to the
vice chancellor for community and technical college
education and work force development means the chancellor for community and technical college education.

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

§18B-2B-3. West Virginia council for community and technical college education; supervision of chancellor; chief executive officer.

(a) There is continued the West Virginia council for community and technical college education. The council has all the powers and duties assigned by law to the joint commission for vocational-technical-occupational education prior to the effective date of this section and such other powers and duties as may be assigned by law.

(b) The council shall employ a chancellor for community and technical college education. The chancellor serves as chief executive officer of the council at the will and pleasure of the council. The chancellor shall be compensated at a level set by the council not to exceed eighty percent of the annual salary of the chancellor for higher education.

(1) The vice chancellor for community and technical college education and workforce development, as the current chief executive officer of the council, shall continue in such capacity upon the effective date of this section, and shall be the chancellor for community and technical college education.

(A) The council shall conduct a written performance evaluation of the chancellor one year after the effective date of this section. The council shall report the results of the evaluation to the legislative oversight commission on
education accountability during the legislative interim meeting period following the evaluation.

(B) After reviewing the evaluation, the council shall make a determination by vote of its members on continuing employment and compensation level for the chancellor.

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

(D) When a vacancy occurs in the position of chancellor, the council shall enter into an initial employment contract for one year with the candidate selected to fill the vacancy. At the end of the initial period, the council shall make a determination by vote of its members on continuing employment and compensation level for the chancellor and shall continue thereafter as set forth in paragraph (C) of this subdivision.

(2) The chancellor maintains all benefits of employment held, accrued and afforded as the vice chancellor for community and technical college education and workforce development. Such benefits include, but are not limited to, retirement benefits, continued membership in the same retirement system, any insurance coverage and sick and annual leave. For the purposes of leave conversion established in section thirteen, article sixteen, chapter five of this code, the chancellor is not a new employee, and the prohibition on conversion does not apply if the chancellor was eligible for leave conversion while serving as vice chancellor on the day preceding the effective date of this section. On the effective date of this section, for the purpose of section thirteen article sixteen, chapter five of this code, the chancellor:
(A) Maintains all sick and annual leave accrued, and all
rights to convert the leave that had been accrued as vice
chancellor; and

(B) Continues to maintain his or her status for eligibility
under the provisions and application of said section as
applied while serving as vice chancellor on the day preced-
ing the effective date of this section.

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

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

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

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

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

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

(3) The executive director of the West Virginia develop-
ment office, or designee;
(4) The president of the West Virginia AFL-CIO, or a designee;

(5) The chair of the higher education policy commission who serves as an ex officio, nonvoting member of the council; and

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

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

(c) The governor may not appoint any person to be a member of the council who is an officer, employee or member of an advisory board of any state college or university, the holder of any other public office or public employment under the government of this state or any of its political subdivisions, an appointee or employee of any governing board or an immediate family member of any employee under the jurisdiction of the commission or any governing board. An individual may not serve on the council who is engaged in providing, or employed by a person or company whose primary function is to provide, workforce development services and activities.

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

§18B-2B-5. Meetings and compensation.

(a) 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 workforce 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. The chairperson and other officers are elected for two-year terms commencing on the first day of July following the annual meeting. The chairperson of the board may serve no more than two consecutive two-year terms as chair, except that the member serving as chairperson of the council on the effective date of this section is eligible to serve a two-year term regardless of the number of consecutive terms already served.

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

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

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

(a) The council is the sole agency responsible for administration of vocational-technical-occupational education and community and technical college education in the state. The council has jurisdiction and authority over the community and technical colleges and the system of community and technical college education as a whole, including community and technical college education programs as defined in section two, article one of this chapter.

(b) As relates to the authority established in subsection (a) of this section, the council has the following powers and duties:

1. Develop, oversee and advance the public policy agenda as it relates to community and technical college education 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 nine of this article for the purpose of accomplishing the mandates of this section;

2. Jointly with the commission, 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;
(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter; and

(D) Establish for incorporation into the financing policy for higher education in West Virginia a plan for strategic funding to strengthen capacity for support of community and technical college education;

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

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

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

(C) Holding the community and technical college institutions and the community and technical college system as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) To develop 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;
(5) 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 policy agenda approved by the commission and council. For the institutions under their jurisdiction, this responsibility includes, but is not limited to:

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

(B) Holding the institutions and the system as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(6) To review and adopt annually all institutional compacts for the community and technical colleges pursuant to the provisions of section two, article one-a of this chapter;

(7) Serve as the accountability point to:

(A) The governor for implementation by the community and technical colleges of their role in advancing the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the legislative oversight commission on education accountability;

(8) Jointly with the commission, promulgate a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions;
(10) Review the progress of community and technical colleges in every region of West Virginia. The review includes, but is not limited to, evaluating and reporting annually to the legislative oversight commission on education accountability on the step-by-step implementation required in article three-c of this chapter;

(11) Annually 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 community and technical college system 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 system as a whole in meeting the goals and objectives set forth in section one-a, article one of this chapter;

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

(C) Recommendations of the council for statutory changes necessary 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. When the needs have been determined, the council shall take the following steps:

(A) Develop a ranked list of the top ten projects for capital investment for the institutions under its jurisdiction;

(B) Convey the ranked list to the commission for its consideration pursuant to section four, article one-b of this chapter;
(13) Draw upon the expertise available within the governor's workforce investment office and the West Virginia development office as a resource in the area of workforce development and training;

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

(15) Employ a chancellor for community and technical college education pursuant to section three of this article;

(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter;

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

(18) Provide suitable offices in Charleston for the chancellor and other staff;

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

(20) 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
(21) Establish and implement policies and programs, jointly with the community and technical colleges, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(22) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as in the council's discretion is critical for the performance of their duties as members for the purpose of keeping abreast of community and technical college 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;

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

(24) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;
(25) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter.

(26) Consider and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that:

(A) 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

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

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

(28) Establish a plan of strategic funding to strengthen capacity for support of community and technical college education in all areas of the state;

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

(30) Assume 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;

(31) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure
through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a, article one of this chapter;

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

(33) 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 workforce training to be delivered by multiple institutions; and

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

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

(35) 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;

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

(37) Serve aggressively as an advocate for development of a seamless curriculum;
269 (38) 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;

274 (39) Encourage the most efficient utilization of available resources;

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

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

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

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

302 (44) Review and approve all institutional master plans for the community and technical colleges;
304 (45) Establish policies or rules for promulgation that are
305 necessary or expedient for the effective and efficient
306 performance of community and technical colleges in the
307 state;

308 (46) In its sole discretion, transfer any rule under its
309 jurisdiction, other than a legislative rule, to the jurisdic-
310 tion of the governing boards who may rescind, revise, alter
311 or amend any rule so transferred pursuant to rules adopted
312 by the council;

313 (47) Establish benchmarks and performance indicators
314 for community and technical colleges to measure institu-
315 tional progress toward meeting the goals as outlined in
316 section one-a, article one of this chapter and in meeting
317 the essential conditions established in article three-c of
318 this chapter;

319 (48) Develop for inclusion in the higher education report
320 card, as defined in section eight, article one-b of this
321 chapter, a separate section on community and technical
322 colleges. This section shall include, but is not limited to,
323 evaluation of the institutions based upon the benchmarks
324 and indicators developed in subdivision (47) of this
325 subsection;

326 (49) Facilitate continuation of the advantage valley
327 community college network under the leadership and
328 direction of Marshall community and technical college;

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

333 (51) Develop with the state board of education state
334 plans for secondary and post-secondary voca-
335 tional-technical-occupational and adult basic education,
336 including, but not limited to:
(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

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

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

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) The percentage split between the board of education and the council shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the board of education before proposing a rule;

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

(54) 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;

(55) Analyze and report to 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;

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

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

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

(59) Meet annually between the months of October and December with the advisory committee of community and technical college presidents 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;

(60) Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;
(61) 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 and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(62) 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 council and commission shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

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

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

(A) Comparisons with peer institutions;
(B) Differences among institutional missions;
(C) Strategies for promoting student access;
(D) Consideration of charges to out-of-state students;
(E) Such other policies as the commission and council consider appropriate;

(65) In cooperation with the West Virginia division of highways, study a method for increasing the signage signifying community and technical college locations
along the state interstate highways, and report to the legislative oversight commission on education accountability regarding any recommendations and required costs; and

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

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

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

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

(3) Development and implementation of each community and technical college mission definition including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

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

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving
(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

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

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs pursuant to the findings and policy recommendations to be determined as set forth in section eleven, article one-b of this chapter;

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

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

(d) The council is authorized to withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that:
(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 council 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 council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

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

(e) In addition to the powers and duties provided for in subsections (a) and (b), (c) and (d) of this section and any other powers and duties as may be assigned to it by law, the council has:

(1) Such other powers and duties as may be necessary or expedient to accomplish the purposes of this article; and

(2) All powers, duties and responsibilities directly related to community and technical colleges and community and technical college education that were vested in the commission prior to the effective date of this section.

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

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

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final
(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

§18B-2B-6a. Transfer of funds; council authority to expend funds.

On the effective date of this section, the unexpended balance remaining in the appropriation for the West Virginia council for community and technical education is transferred from the commission to the authority of the council to be expended by the council to carry out the purposes of this article.


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

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

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

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

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

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

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

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

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

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

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

(D) To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. The chancellor is responsible for ensuring that any policy which is required to be uniform across the institutions under the jurisdiction of the council is applied in a uniform manner; and
(E) To perform all other duties and responsibilities assigned by the council or by state law.

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

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

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

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

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

(B) Appropriate coordination of missions and programs.

To further the goals of cooperation and coordination between the council and the state board of education, the chancellor serves as an ex officio, nonvoting member of the state board of education.

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

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

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

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

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

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

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

(a) The council annually shall review and analyze all the public community and technical colleges, and any branches, centers, regional centers or 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 council in section six, article two-b of this chapter.

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

(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 requests from the council 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 council include,
but are not limited to, assistance in seeking and/or attain-
ing 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 determines that it is in the best interests
of the people of the state or a region of the state to create
a statewide, independently accredited community and
technical college.

(d) The council 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) By the first day of December annually, the council
shall prepare and file with the legislative oversight
commission on education accountability a written report
on the findings and determinations required by this
section, together with a detailed history of any actions
taken by the council under the authority of this article.

§18B-2C-4. Authority of council in creating West Virginia
community and technical college.
(a) Subject to the provisions of subsection (c), section three of this article, if the council makes a determination that one or more of the conditions exists, then the council is authorized to create the West Virginia community and technical college.

(b) As soon as practicable after the council determines that the college should be created, the council 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. The council shall conduct 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. The council may not create the college prior to the report being received by the legislative oversight commission on education accountability.

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

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-2. Purposes of article.

The general purposes of this article are the following:

(a) To establish community and technical college education that is well articulated with the public schools and four-year colleges; that makes maximum use of shared facilities, faculty, staff, equipment and other resources; that encourages traditional and nontraditional students and adult learners to pursue a lifetime of learning; that serves as an instrument of economic development; and that has the independence and flexibility to respond quickly to changing needs;
(b) To charge the respective governing boards with providing community and technical college education at state institutions of higher education under their jurisdiction that has the administrative, programmatic and budgetary control necessary to allow maximum flexibility and responsiveness to district and community needs. Education services shall be provided consistent with the goal of sharing facilities, faculty, staff, equipment and other resources within and among the districts, the other systems of public and higher education and other education and training programs;

(c) To establish the essential conditions for community and technical college programs and services, as defined in section three of this article, necessary to ensure that each region of West Virginia is served by a community and technical college meeting the needs of the people of the region;

(d) To establish a mechanism for assuring that, where applicable, a transition plan for meeting the essential conditions is developed by each relevant community and technical college;

(e) To establish community and technical college consortia districts for each of the community and technical colleges to ensure accountability that the full range of community and technical college education programs and services is provided in all areas of the state, including the implementation of seamless curricula and the West Virginia EDGE, "Earn a Degree Graduate Early" program;

(f) To define the full range of programs and services that each community and technical college has the responsibility to provide; and

(g) To establish such other policies and procedures necessary to ensure that the needs of West Virginia, its people and its businesses are met for the programs and
services that can be provided through a comprehensive system of community and technical colleges.

§18B-3C-3. Essential conditions for community and technical college programs and services.

1 The Legislature hereby establishes the following essential conditions for community and technical college programs and services:

4 (a) Independent accreditation by the higher learning commission of the north central association of colleges and schools (NCA), by the first day of July, two thousand five, reflecting external validation that academic programs, services, faculty, governance, financing and other policies are aligned with the community and technical college mission of the institution. An institution meets this requirement if on such date the council determines that the institution is on target to meet independent accreditation status. A community and technical college continues to share the accreditation of the sponsoring institution until such time as independent accreditation is achieved;

(b) A full range of community and technical college services offered as specified in section six of this article;

(c) Programmatic approval consistent with the provisions of section nine of this article;

(d) A fee structure competitive with its peer institutions;

(e) Basic services, some of which may be obtained under contract with existing institutions in the region. These basic services shall include, but are not limited to, the following:

(1) Student services, including, but not limited to, advising, academic counseling, financial aid and provision of the first line of academic mentoring and mediation;

(2) Instructional support services;
(3) Access to information and library services;
(4) Physical space in which courses can be offered;
(5) Access to necessary technology for students, faculty and mentors;
(6) Monitoring and assessment; and
(7) Administrative services, including, but not limited to, registration, fee collection and bookstore and other services for the distribution of learning materials;
(f) A president who is the chief executive officer of the community and technical college appointed and serving pursuant to the terms of section six, article one-b of this chapter. The president reports directly to the institutional board of governors. It is the responsibility of the board of governors to provide sufficient time at each meeting for the president to discuss issues relevant to the mission of the community and technical college;
(g) An institutional board of governors or an institutional board of advisors appointed and serving as required by law;
(h) A full-time core faculty, complemented by persons engaged through contract or other arrangements, including:
(1) College and university faculty, to teach community college courses; and
(2) Qualified business, industry and labor persons engaged as adjunct faculty in technical areas;
(i) A faculty personnel policy, formally established to be separate and distinct from that of other institutions, which includes, but is not limited to, appointment, promotion, workload and, if appropriate, tenure pursuant to section nine of this article. These policies shall be appropriate for the community and technical college mission and may not be linked to the policies of any other institution;
(j) Community and technical colleges designed and operating as open-provider centers with the authority and flexibility to draw on the resources of the best and most appropriate provider to ensure that community and technical college services are available and delivered in the region in a highly responsive manner. A community and technical college may contract with other institutions and providers as necessary to obtain the academic programs and resources to complement those available through a sponsoring college, where applicable, in order to meet the region's needs;

(k) Separately identified state funding allocations for each of the community and technical colleges.

(l) Full budgetary authority for the president of the institution, subject to accountability to its governing board, including authority to retain all tuition and fees generated by the community and technical college for use to carry out its mission.

§18B-3C-4. Community and technical college consortia planning districts.

(a) Unless otherwise designated, the president of each community and technical college facilitates the formation of community and technical college consortia in the state, which includes representatives of community and technical colleges, public vocational-technical education centers, and public baccalaureate institutions offering associate degrees. The community and technical college consortium shall:

(1) Complete 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) Coordinate 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 decisionmaking;

(3) Plan and develop a unified effort between the community and technical colleges and public vocational-technical education to meet the documented workforce 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 review and revise curricula to ensure that the workforce needs are met, develop new programs and phase out or modify existing programs as appropriate to meet such needs, streamline procedures for designing and implementing customized training programs;

(5) Increase the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementation of seamless curricula project in all major career pathways and the West Virginia EDGE, "Earn a Degree Graduate Early" program;

(6) Plan and implement integrated professional development activities for secondary and post-secondary faculty, staff and administrators;

(7) Ensure 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 course work in which they already possess competency;

(9) Cooperate with workforce investment boards 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) Increase 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) Establish a single point of contact for employers and potential employers to access education and training programs throughout the district.

(b) The community and technical college education consortium shall cooperate with the regional work force investment board in the district and shall participate in any development or amendment to the regional work force investment plan.

(c) To carry out the provisions of this section, community and technical college consortia planning districts are established and defined as follows:

(1) Northern panhandle community and technical college district includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia northern community and technical college.

(B) Participating institutions include West Virginia northern community and technical college; John Marshall high school; Cameron high school; John D. Rockefeller center; and other public vocational technical schools offering post-secondary programs.

(2) North central West Virginia community and technical college district includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.
(A) The facilitating institution is Fairmont State Community and Technical College.

(B) Participating institutions include Fairmont State Community and Technical College; Glenville State College; Randolph County Vocational-Technical Center; Monongalia County Technical Education Center; United Technical Center; Marion County Technical Center; Fred W. Eberly Technical Center; and other public vocational technical schools offering post-secondary programs.

(3) Mid-Ohio Valley Community and Technical College district includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.

(A) The facilitating institution is West Virginia University at Parkersburg.

(B) Participating institutions include West Virginia University at Parkersburg; West Virginia Northern Community and Technical College; Roane-Jackson Technical Center; Gaston Caperton Center; Wood County Technical Center; and other public vocational technical schools offering post-secondary programs.

(4) Potomac Highlands Community and Technical College district includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is Eastern West Virginia Community and Technical College.

(B) Participating institutions include Eastern West Virginia Community and Technical College; South Branch Career and Technical Center; Mineral County Technical Center; and other public vocational technical schools offering post-secondary programs.

(5) Shenandoah Valley Community and Technical College district includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is the Community and Technical College of Shepherd.
(B) Participating institutions include the community and technical college of Shepherd; James Rumsey technical institute; and other public vocational technical schools offering post-secondary programs.

(6) Advantage valley community and technical college district includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution is Marshall community and technical college.

(B) Every five years the council shall:

(i) Evaluate the progress of the advantage valley consortium toward achieving the goals and benchmarks of its compact;

(ii) Evaluate the progress of each community and technical college in the district toward achieving the goals and benchmarks of its institutional compact;

(iii) Determine which community and technical college in the district would best serve the needs of the district for the following five-year period if serving as the facilitating institution; and

(iv) Designate the community and technical college selected pursuant to subparagraph (iii) of this paragraph to serve as the facilitating institution for the following five-year period.

(C) Participating institutions include Marshall community and technical college; the community and technology college at West Virginia university institute of technology; West Virginia state community and technical college; Carver career center; Garnet career center; Ben Franklin career center; Putnam County vocational-technical-occupational center; Cabell County career-technical center; and other public vocational technical schools offering post-secondary programs.
(7) Southern mountains community and technical college district includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.

(A) The facilitating institution is southern West Virginia community and technical college.

(B) Participating institutions include southern West Virginia community and technical college; New River community and technical college; Boone County career and technical center; Wyoming County vocational-technical center; Ralph R. Willis Career and technical center; McDowell County career and technology center; Mingo County vocation-technical center; Charles Yeager technical center; and other public vocational technical schools offering post-secondary programs.

(8) Southeastern community and technical college district includes Raleigh, Summers, Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.

(A) The facilitating institution is New River community and technical college.

(B) Participating institutions include New River community and technical college; southern West Virginia community and technical college; the community and technical college at West Virginia university institute of technology; Bluefield state college; academy of careers and technology; Fayette plateau vocation-technology center; Summers County high school; Monroe County technical center; Mercer County technical center; and other public vocational technical schools offering post-secondary programs.

(d) In the role of the facilitating institution of the community and technical college district, the college:

(1) Communicates to the council;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which
includes the seven areas of comprehensive community and technical college education delivery as required by section six of this article; and

(3) Facilitates development of statement of commitment signed by all participating institutions in the region as to how community and technical college education will be delivered.

(e) Participating institutions are not subordinate to the facilitating institution but will sign the statement of commitment to participate.

(f) The council shall:

(1) Establish guidelines for community and technical college consortia development;

(2) Set goals for each consortium based upon legislative goals for the delivery of comprehensive community and technical college education; and

(3) Establish a format for development of a consortium compact outlining plans for achieving stated goals to be submitted to the council for approval on or before the fifteenth day of November, two thousand four.

(g) On or before the fifteenth day of November, two thousand four, each consortium shall submit to the council for approval a compact which outlines plans for obtaining the stated goals. Each compact shall include the implementation of seamless curricula and the West Virginia EDGE, “Earn a Degree Graduate Early” program, and be updated annually.

(h) The council annually shall evaluate the progress made in meeting the compact goals for each community and technical college consortia through the development and collection of performance indicator data.

§18B-3C-5. Appointment of community and technical college presidents.
The administrative head of a community and technical college is the president who is chosen pursuant to the terms of section six, article one-b of this chapter. Any individual employed as provost of an administratively linked community and technical college on the first day of January, two thousand four, continues as the administrative head of the institution and becomes the community and technical college president on the effective date of this section.

§18B-3C-6. Community and technical college programs.

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

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

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

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

4. Workforce training and retraining and contract education with business and industry to train or retrain employees;

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

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

(7) Cooperative arrangements with the public school system for the seamless progression of students through programs of study which are calculated to begin at the secondary level and conclude at the community and technical college level.

(b) All administrative, programmatic and budgetary control over community and technical college education within the institution is vested in the president, subject to rules adopted by the council. The president with the institutional board of governors or institutional board of advisors, as appropriate, is responsible for the regular review, revision, elimination and establishment of programs within the institution to assure that the needs of the community and technical college consortia district are met. It is the intent of the Legislature that the program review and approval process for community and technical college education be separate and distinct from baccalaureate education and subject to the provisions of section nine of this article.

(c) Independently accredited community and technical colleges shall serve as higher education centers for their regions by brokering with colleges, universities and other providers, in state and out of state, to ensure the coordinated access of students, employers and other clients to needed programs and services.

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

(a) By the first day of July, two thousand five, West Virginia shall have 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 or West
Virginia university at Parkersburg.

(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 a step-by-step plan with measur-
able benchmarks for developing an independently accred-
ited community and technical college that meets the
essential conditions set forth in section three of this
article;

(2) That it is able to offer evidence to the satisfaction of
the council that it is making progress toward accomplish-
ing the benchmarks established in its institutional com-
 pact for developing an independently accredited commu-
nity and technical college; and

(3) That it has submitted an expenditure schedule
approved by the council 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 arrange-
ment of "component" community and technical colleges to
the legislatively mandated statewide network of independ-
ently accredited community and technical colleges serving
every region of the state shall be accomplished. The
following recommendations are designed to reflect signifi-
cantly variations among regions and the potential impacts on the sponsoring institutions.

(1) **New River community and technical college.** –

(A) There is continued the multicampus entity known as New River community and technical college, administratively linked to Bluefield state college. New River community and technical college is headquartered in the Beckley higher education center and incorporates the campuses of Greenbrier community college center of New River community and technical college and Nicholas community college center of New River community and technical college. New River community and technical college shall be an independently accredited community and technical college. The council shall appoint an institutional board of advisors, pursuant to section one, article six of this chapter, for New River community and technical college which is separate from the institutional board of governors of Bluefield state college. The board of advisors shall become the board of governors pursuant to section one, article two-a of this chapter when the institution achieves independent accreditation.

(B) Bluefield state college may continue associate degree programs 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 through direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall
thereafter be delivered by the community and technical college.

(C) Bluefield state college may continue the associate of science degree in nursing which is an existing nationally accredited associate degree program in an area of particular institutional strength and which is closely articulated to the baccalaureate program and mission. The program is of a high-cost nature and can best be provided through direct administration by a baccalaureate institution. This program may not be transferred to New River community and technical college or any other community and technical college as long as the program maintains national accreditation and is seamlessly coordinated into the baccalaureate program at the institution.

(D) By the first day of July, two thousand five, New River community and technical college shall be independently accredited. The president and the board of governors of Bluefield state college are responsible for obtaining independent accreditation of the community and technical college. If the multicampus entity known as New River community and technical college has not obtained independent accreditation by this date, the council shall choose one of the following options:

(i) Create New River as a freestanding community and technical college; or

(ii) Assign the responsibility for obtaining independent accreditation to another state institution of higher education.

(E) The president and the board of governors of Bluefield state college also are accountable to the council for ensuring that the full range of community and technical college services is available throughout the region and that New River community and technical college adheres to the essential conditions pursuant to section three of this article.
(F) As an independently accredited community and technical college, New River also shall serve as a 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.

(G) New River community and technical college shall participate in the planning and development of a unified effort involving multiple providers to meet the documented education and work force development needs in the region. Nothing in this subdivision prohibits or limits any existing, or the continuation of any existing, affiliation between mountain state university, West Virginia university institute of technology and West Virginia university. The objective is to assure students and employers in the area that there is coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area.

(2) Fairmont state community and technical college. — Fairmont state community and technical college is an independently accredited community and technical college. The community and technical college is developed on the base of the component community and technical college of Fairmontstate 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 council, 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. Fairmont state college may continue associate degree programs 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. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(3) Marshall community and technical college. — Marshall community and technical college is an independently accredited community and technical college. The new community and technical college is developed on the base of the 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 council, 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. Marshall university may continue associate degree programs 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. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the
sponsoring institution. The final contract is approved by
the council. Such a program shall be evaluated according
to the benchmarks and indicators for community and
technical college education developed by the council. If
the council determines that the program is making insuffi-
cient progress toward accomplishing the benchmarks, the
program shall thereafter be delivered by the community
and technical college.

(4) The community and technical college of Shepherd. —
The community and technical college of Shepherd shall
become an independently accredited community and
technical college. The new community and technical
college is developed on the base of the component commu-
nity 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 council, 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. Shepherd
college may continue associate degree programs in areas of
particular institutional strength which are closely articu-
lated 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.
Any such program shall be delivered under the authority
of the council and through contract with the community
and technical college. The terms of the contract shall be
negotiated between the council and the governing board of
the sponsoring institution. The final contract is approved
by the council. Such a program shall be evaluated accord-
ing to the benchmarks and indicators for community and
technical college education developed by the council. If
the council determines that the program is making insuffi-
cient progress toward accomplishing the benchmarks, the
program shall thereafter be delivered by the community and technical college.

(5) West Virginia state community and technical college.
- West Virginia state community and technical college shall become an independently accredited community and technical college. The new community and technical college is developed on the base of the component community and technical college of West Virginia state college. Subject to the provisions of this section, the president and the governing board of West Virginia state college are responsible, according to a plan approved by the council, 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 West Virginia state college. West Virginia state college may continue associate degree programs 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. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(6) The community and technical college at West Virginia university institute of technology. – The community and
technical college at West Virginia university institute of technology is an independently accredited community and technical college. The new community and technical college is developed on the base of the 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 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. West Virginia university institute of technology may continue associate degree programs 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. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of the sponsoring institution. The final contract is approved by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(d) For each administratively linked community and technical college which fails to achieve independent accreditation by the first day of July, two thousand five, the council shall choose one of the following options:
(1) Create the administratively linked institution as a freestanding community and technical college; or

(2) Assign the responsibility for obtaining independent accreditation to another state institution of higher education.

The president and the board of governors of each sponsoring institution is accountable to the council for ensuring that the community and technical college is able to meet the conditions for independent accreditation and adheres to the essential conditions pursuant to section three of this article.

§18B-3C-9. Increasing flexibility for community and technical colleges.

(a) Notwithstanding any rules or procedures of the governing boards to the contrary, the community and technical colleges have the authority and the duty to:

(1) Incorporate the most effective and efficient use of technology in accessing and delivering courses and programs in order to make the best use of available resources and to control costs;

(2) Incorporate a model to offer occupational program curricula in smaller modules to accommodate specific student and employer needs and to gain sufficient flexibility in formatting courses;

(3) Serve as a facilitator for education programs from outside delivery sources to meet the needs of the residents and employers of the district; and

(4) Employ faculty in the most effective manner to serve the core mission of the community and technical college.

(A) To that end, the freestanding community and technical colleges may employ faculty for an indefinite period without a grant of tenure and shall work toward a staffing goal of no more than twenty percent of the faculty holding
tenure or being tenure-track employees. Tenured faculty employed by the freestanding community and technical colleges before the first day of July, one thousand nine hundred ninety-nine, are not affected by this provision.

(B) All community and technical colleges, other than those set forth in paragraph (A) of this subdivision, may employ faculty for an indefinite period without a grant of tenure. The immediate goal is to use this provision as a tool to assist the community and technical colleges in meeting the essential conditions provided for in section three of this article and in gaining independent accreditation status. The ultimate goal is to provide the flexibility community and technical colleges need to meet the needs of the state by working toward having no more than twenty percent of the core faculty holding tenure or being tenure-track employees. Tenured faculty employed by community and technical colleges other than freestanding community and technical colleges on the thirtieth day of June, two thousand, may not be affected by this provision. Tenure may not be denied to a faculty member solely as a result of change in employing institution necessitated by the change to independently accredited community and technical colleges.

(b) The governing boards shall adopt a model of program approval for the community and technical colleges that permits occupational programs to be customized to meet needs without requiring approval by any governing board or other agency of government. The model shall incorporate a post-audit review of such programs on a three-year cycle to determine the effectiveness of the programs in meeting district needs.

(c) The council shall promulgate rules to implement the provisions of this section and shall file these rules for review and approval with the chancellor no later than the first day of December, two thousand four.
§18B-3C-10. Freestanding community and technical colleges; tuition and fees.

(a) Each governing board may fix tuition and establish and set such other fees to be charged students at its community and technical college as it considers appropriate, subject to the provisions of this subsection and article ten of this chapter.

(1) The governing board, in consultation with the council, also may establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes. The council shall determine which fees, if any, do not apply to the entire student population and to which students such fees do not apply. Such special fees may be used only for the purposes for which collected.

(2) A community and technical college may contract with any other state institution of higher education for the participation of its students in programs, activities or services of the other institution and for the use of such fees collected.

(b) All tuition and fee charges in the total aggregate shall comply with the terms of the institution's compact approved by the council, based on peer comparisons or cost of instruction as set forth in the goals for post-secondary education pursuant to section one-a, article one of this chapter.

§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.

(a) Intent and purposes. –

(1) It is the intent of the Legislature to establish community and technical colleges in every region of the state that
meet the essential conditions of section three of this article.

(2) The Legislature finds that, in order to increase efficiency, reduce costs and, generally, to facilitate the effective transition from community and technical colleges which are components of existing institutions of higher education to community and technical colleges which meet the essential conditions, it is appropriate to maintain an administrative link between the community and technical colleges and the sponsoring institutions.

(3) This section defines the relationship between an administratively linked community and technical college and its sponsoring institution.

(b) Where an independently accredited community and technical is linked administratively to a sponsoring state college or university in order to ensure efficient use of limited resources, the following conditions apply:

(1) The community and technical college shall be accredited separately from the sponsoring institution;

(2) All state funding allocations for the community and technical college shall be transferred directly to the community and technical college. The sponsoring institution may charge fees for administrative overhead costs subject to a schedule approved by the council.

(A) By the first day of December, two thousand four, the council shall develop a new model, or select an existing model, for services to be provided by sponsoring institutions and the fees to be charged administratively linked community and technical colleges for the services. The fee schedule shall be based upon the reasonable and customary fee for any service and shall bear a rational relationship to the cost of providing the service. Nothing in this paragraph requires the council to adopt a particular model for service delivery.
(B) With the approval of the council, a community and technical college and the sponsoring institution may customize the model to fit their needs;

(3) Policies shall be formally established to ensure the separation of academic and faculty personnel policies of the community and technical college from those of the sponsoring institution. These policies include, but are not limited to, appointment, promotion, workload and, if appropriate, tenure; and

(4) The council may authorize a community and technical college to decline any service of the sponsoring institution provided in subsection (c) of this section if the council determines that the service is not appropriate for the community and technical college, or that declining the service is in the best interest of the community and technical college. Any service declined may be obtained from an alternate source with the approval of the council.

(c) The sponsoring institution which is administratively linked to a community and technical college shall provide the following services:

(1) Personnel management;
(2) Recordkeeping;
(3) Payroll;
(4) Accounting;
(5) Legal services;
(6) Registration;
(7) Student aid;
(8) Student records; and
(9) Such other services as determined to be necessary and appropriate by the council.
(d) The institutional governing board shall appoint the president of the community and technical college, who serves at the will and pleasure of the governing board.

(e) The governing board and the council are responsible for the step-by-step development of the community and technical college and for compliance with the essential conditions, all as required by this article.

(f) The president of the community and technical college has such responsibilities, powers and duties in the development of the community and technical college and in compliance with the essential conditions, as directed by the governing board or as are necessary for the proper implementation of the provisions of this act.

(g) Notwithstanding any other provision of this code to the contrary, the commission shall take necessary steps to ensure that institutional bonded indebtedness is secure and that each administratively linked community and technical college assumes its fair share of any institutional debt acquired while it was part of the baccalaureate institution.

(h) The community and technical college is encouraged to secure academic services from the sponsoring institution when it is in the best interests of the students to be served, the community and technical college and the sponsoring institution. In determining whether or not to secure services from the sponsoring institution, the community and technical college shall consider the following:

1. The cost of the academic services;
2. The quality of the academic services;
3. The availability, both as to time and place, of the academic services; and
4. Such other considerations as the community and technical college finds appropriate taking into account the best interests of the students to be served, the community
and technical college, and the sponsoring institution. Nothing in this article prohibits any state institution of higher education from purchasing or brokering remedial or developmental courses from a community and technical college.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.

(a) The council and commission each shall employ a chancellor to assist in the performance of their respective duties and responsibilities subject to the following conditions:

(1) Each chancellor serves at the will and pleasure of the hiring body.

(2) Neither chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor.

(3) Each chancellor is responsible for carrying out the directives of the body by whom employed and shall work with that body in developing policy options.

(4) The commission shall designate a limited number of positions that are under the direct control and supervision of the chancellor for higher education. These positions form the nuclear staff of the chancellor's office and may equal no more than fifteen percent of the total number of staff employed by the commission.

Nevertheless, regardless of the number or title of the positions so designated, the commission is responsible to the council and the chancellor for community and technical college education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal
services, research, technology, computing, finance and facilities, academic affairs, telecommunications, human resources, student services and any other general areas the council considers to be essential to the exercise of its legal authority. The services are provided under the general supervision of the vice chancellor for administration.

(5) For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and staff of the institutions under their respective jurisdictions.

(b) In addition to the staff positions designated in subdivision (4), subsection (a) of this section, the vice chancellor for administration, employed pursuant to section two of this article, serves the offices of the chancellors to discharge jointly the duties and responsibilities of the council and commission.

(c) 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.

(d) Suitable offices for the vice chancellor of administration and other staff shall be provided in Charleston.

§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.

(a) By and with the advice and consent of the council, the commission shall employ a vice chancellor for administration who may not be dismissed without the consent of the council:

(1) The individual serving as vice chancellor for administration on the effective date of this section may continue to serve on an interim basis until the commission and the council have agreed, jointly, on a candidate to fill the position;
(2) The interim vice chancellor for administration may be considered as a candidate for the position;

(3) The position shall be filled on a permanent basis no later than the first day of October, two thousand four; and

(4) Any vacancy occurring in this position shall be filled pursuant to the requirements of this section.

(b) Any reference in this chapter or chapter eighteen-c of this code to the senior administrator means the vice chancellor for administration.

(c) The vice chancellor for administration has a ministerial duty, in consultation with and under direction of the chancellors, to perform such functions, tasks and duties as may be necessary to carry out the policy directives of the council and commission and such other duties as may be prescribed by law.

(d) The vice chancellor for administration shall supervise such professional, administrative, clerical and other employees as may be necessary to these duties and shall delineate staff responsibilities as considered desirable and appropriate. It is the responsibility of the vice chancellor for administration, within the parameters of the total resources available, to supervise and direct the staff in such a way that the staff and resource needs of the council, the commission and the offices of the chancellors are met.

(e) Any employee of the commission or the council whose job duties meet criteria listed in the system of job classifications as stated in article nine of this chapter is accorded the job title, compensation and rights established in the article as well as all other rights and privileges accorded classified employees by the provisions of this code.

(f) The office of the vice chancellor for administration and all personnel, except for the chancellor for community and technical college education and staff transferred to the jurisdiction of the council pursuant to subsection (a),
section seven, article two-b of this chapter, who are employed on the first day of January, two thousand four, within the higher education central office and the West Virginia network for educational telecomputing remain under the jurisdiction of the commission. Prior to the first day of October, two thousand four, any such employee may not be terminated or have his or her salary and benefit levels reduced as the result of the higher education reorganization that occurs on the effective date of this section.

(g) The vice chancellor for administration shall follow state and national education trends and gather data on higher education needs.

(h) The vice chancellor for administration, in accordance with established guidelines and in consultation with and under the direction of the chancellors, shall administer, oversee or monitor all state and federal student assistance and support programs administered on the state level, including those provided for in chapter eighteen-c of this code.

(i) The vice chancellor for administration has a fiduciary responsibility to administer the tuition and registration fee capital improvement revenue bond accounts of the governing boards.

(j) The vice chancellor for administration shall administer the purchasing system or systems of the council and commission, the offices of the chancellors and the governing boards. By mutual agreement, the commission and the council may delegate authority for the purchasing systems or portions thereof to the institution presidents.

(k) The vice chancellor for administration is responsible for the management of the West Virginia network for educational telecomputing (WVNET). The vice chancellor for administration shall establish a computer advisory board, which shall be representative of higher education and other users of the West Virginia network for educa-
Enr. S. B. No. 448] 146

79 national telecomputing as the commission and council
determine appropriate. It is the responsibility of the
computer advisory board to recommend to the commission
and the council policies for a statewide shared computer
system.

84 (l) The central office, under the direction of the vice
chancellor for administration, shall provide necessary staff
support to the commission, the council and offices of the
chancellors.

88 (m) The vice chancellor for administration may adminis-
ter any program or service authorized or required to be
performed by the board of trustees or the board of direc-
tors on the thirtieth day of June, two thousand, and not
specifically assigned to another agency. In addition, the
vice chancellor for administration may administer any
program or service authorized or required to be performed
by the commission, council or chancellors, but not as-
signed specifically to the commission, council or chancel-
loors. Any such program or service may include, but is not
limited to, telecommunications activities and other
programs and services provided for under grants and
contracts from federal and other external funding sources.

§18B-4-7. Accreditation of institutions of higher education;
standards for degrees.

1 (a) The council shall make rules for the accreditation of
2 community and technical colleges in this state and shall
determine the minimum standards for conferring degrees.
4 The commission shall make rules for the accreditation of
5 colleges and universities in this state and shall determine
6 the minimum standards for conferring degrees. An
7 institution of higher education may not confer any degree
8 on any basis of work or merit below the minimum stan-
9 dards prescribed by the council or commission. Nothing in
10 this section infringes upon the rights, including rights to
11 award degrees, granted to any institution by charter given
12 according to law, or by actions of the council or commis-
sion or their predecessors, prior to the effective date of this section. With the approval of the commission, governing boards of institutions which currently offer substantial undergraduate course offerings and a master's degree in a discipline are authorized to grant baccalaureate degrees in that discipline.

Except as otherwise provided in this section, a charter or other instrument containing the right to confer degrees of higher education status may not be granted by the state of West Virginia to any institution, association or organization within the state, nor may any such degree be awarded, until the condition of conferring the degree has first been approved in writing by the council or commission.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

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

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

(1) Do not preclude any person from participating and making sales thereof to the governing board or to the council or commission except as otherwise provided in section five of this article. Provision of consultant services such as strategic planning services will not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services;
21 (2) Establish and prescribe specifications, in all proper cases, for materials, supplies, equipment, services and printing to be purchased;

24 (3) Adopt and prescribe such purchase order, requisition or other forms as may be required;

26 (4) 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;

31 (5) 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;

36 (6) 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;

42 (7) Provide for purchasing in the open market;

43 (8) Provide for vendor notification of bid solicitation and emergency purchasing;

45 (9) Provide that competitive bids are not required for purchases of twenty-five thousand dollars or less; and

47 (10) Provide for not fewer than three bids where bidding is required. If fewer than three bids are submitted, an award may be made from among those received.

(b) The council, 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 council or 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, council or commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code apply to the competitive bids made pursuant to this section.

(d) The governing boards, council and 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, council and 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. A record in the purchase file may not 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 and council also jointly 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 a person may not 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 this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond shall be filed with the secretary of state. The cost of any such bond shall be paid from funds appropriated to the applicable governing board or the council 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, council and commission may make requisitions upon the auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the auditor shall draw a warrant upon the treasurer for such accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council 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 council or commission in the name of the state and shall be
approved as to form by the attorney general. A contract which requires approval as to form by the attorney general is considered approved if the attorney general has not responded within fifteen days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds and certificates of insurance which use terms and conditions or standardized forms previously approved by the attorney general and do not make substantive changes in the terms and conditions of the contract do not require approval by the attorney general. 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. If requested to do so, the governing boards, council or commission shall make all contracts available for inspection by the state auditor. The governing board, council or 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, council or commission purchases or contracts for materials, supplies, equipment, services and printing contrary to the provisions of sections four through seven of this article or the rules pursuant thereto, such purchase or contract is void and of no effect.

(k) Any governing board or the council or 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, council or commission in the purchase and acquisition of materials, supplies, equipment, services and printing and the director of purchases shall cooperate with that govern-
ing board, council or commission, as appropriate, in all such purchases and acquisitions upon such request.

(1) Each governing board or the council or commission, as appropriate, shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services and equipment entered into by that governing board or the council or commission. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board or the council or commission an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council or commission, as appropriate. The private school shall agree that it is bound by such terms and conditions as that governing board or the council or 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, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from cooperative buying groups, consortia, the federal government or from a federal contract and purchasing from the cooperative buying groups, consortia, 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 institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are
responsible for paying the cost of the audit from funds appropriated to the governing boards, council or 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, council or 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 or council, as appropriate, 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, never constitutes 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 may not be a charge against the general credit or taxing powers of the state or any political subdivision thereof. 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 and council. In addition, any lease-purchase agreement which exceeds one hundred thousand dollars total shall be approved by the attorney general of West Virginia. The interest component of any lease-purchase obligation is 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 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.

(r) Notwithstanding any other provision of this code to the contrary, the commission, council and governing boards have the authority, in the name of the state, to lease, or offer to lease, as lessee, any grounds, buildings, office or other space in accordance with this paragraph and as provided below:

(1) The commission, council and governing boards have sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is necessarily required by the commission, council or governing boards for the institutions under their jurisdiction. The chief executive officer of the commission, council or an institution shall certify the following:

(A) That the grounds, buildings, office space or other space requested is necessarily required for the proper function of the commission, council or institution;

(B) That the commission, council or institution will be responsible for all rent and other necessary payments in connection with the contract or lease; and

(C) That satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings
currently owned or leased by the commission, council or
the institution.

Before executing any rental contract or lease, the
commission, council or a governing board shall determine
the fair rental value for the rental of the requested
grounds, buildings, office space or other space, in the
condition in which they exist, and shall contract for or
lease the premises at a price not to exceed the fair rental
value.

(2) The commission, council and governing boards are
authorized to enter into long-term agreements for build-
ings, land and space for periods longer than one fiscal year
but not to exceed forty years. Any purchase of real estate,
any lease-purchase agreement and any construction of new
buildings or other acquisition of buildings, office space or
grounds resulting therefrom, pursuant to the provisions of
this subsection shall be presented by the policy commis-
sion or council, as appropriate, to the joint committee on
government and finance for prior review. Any such lease
shall contain, in substance, all the following provisions:

(A) That the commission, council or governing board, as
lessee, has the right to cancel the lease without further
obligation on the part of the lessee upon giving thirty days' 
written notice to the lessor at least thirty days prior to the
last day of the succeeding month;

(B) That the lease is considered canceled without further
obligation on the part of the lessee if the Legislature or the
federal government fails to appropriate sufficient funds
therefor or otherwise acts to impair the lease or cause it to
be canceled; and

(C) That the lease is considered renewed for each ensuing
fiscal year during the term of the lease unless it is canceled
by the commission, council or governing board before the
end of the then-current fiscal year.
(3) The commission, council or institution which is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the commission, council or governing board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

(4) Leases and other instruments for grounds, buildings, office or other space, once approved by the commission, council or governing board, may be signed by the chief executive officer of the commission, council or institution. Any lease or instrument exceeding one hundred thousand dollars annually shall be approved as to form by the attorney general. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the state auditor.

(5) The commission and council jointly may promulgate rules they consider necessary to carry out the provisions of this section.

ARTICLE 6. ADVISORY COUNCILS AND BOARDS.

§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.

(a) There is hereby continued or established institutional boards of advisors as follows:

(1) For each regional campus. The chairperson of the board of advisors of West Virginia university at...
Parkersburg serves as an ex officio, voting member of the governing board of West Virginia university;

(2) For administratively linked community and technical colleges which share a physical location with the sponsoring institution. This category includes Fairmont state community and technical college, Marshall community and technical college, West Virginia state community and technical college and the community and technical college at West Virginia university institute of technology. The chairperson of the board of advisors of each administratively linked community and technical college serves as an ex officio, voting member of the sponsoring institution's board of governors or, in the case of the community and technical college at West Virginia university institute of technology, the chairperson of the board of advisors serves as an ex officio voting member of the governing board of West Virginia university;

(3) For New River community and technical college and the community and technical college of Shepherd, until these institutions achieve independent accreditation. As long as New River community and technical college or the community and technical college of Shepherd retains a board of advisors and remains administratively linked to the baccalaureate institution, the chairperson of that board of advisors serves as an ex officio, voting member of the governing board of Bluefield state college or Shepherd college, respectively.

(b) The lay members of the institutional boards of advisors for the regional campuses are appointed by the board of governors.

(c) The lay members of the institutional boards of advisors established for the administratively linked community and technical colleges are appointed by the West Virginia council for community and technical college education.
(d) 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 of the respective institution; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; a member from the institutional classified employees duly elected by the classified employees of the respective institution; and twelve lay persons appointed pursuant to 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 respective institution and no more than a simple majority may be of the same political party.

(e) The student member serves for a term of one year beginning upon appointment in July, two thousand four, and ending on the thirtieth day of April, two thousand five. Thereafter the term shall begin on the first day of May. The member from the faculty and the classified employees, respectively, serves for a term of two years beginning upon appointment in July, two thousand four, and ending on the thirtieth day of April, two thousand five. Thereafter the term shall begin on the first day of May; and the twelve lay members serve terms of four years each beginning upon appointment in July, two thousand four. 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:

(1) Commencing in two thousand five, 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; and

(2) Terms of members begin on the first day of May
following election, except for two thousand four only,
terms begin upon appointment in July.

(f) Each board of advisors shall hold a regular meeting at
least quarterly, commencing in May of each year. Addi-
tional meetings may be held upon the call of the chairper-
son, president of the institution or upon the written
request of at least five members. A majority of the mem-
bers constitutes a quorum for conducting the business of
the board of advisors.

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

(h) 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.

(i) Prior to the submission by the president to its govern-
ing board, the board of advisors shall review all proposals
of the institution in the areas of mission, academic pro-
grams, budget, capital facilities and such other matters as
requested by the president of the institution or its govern-
ing 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.

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

(k) The board of advisors shall provide advice and
assistance to the president and the governing board in
areas including, but not limited to, the following:

(1) Establishing closer connections between higher
education and business, labor, government and community
and economic development organizations to give students
greater opportunities to experience the world of work.
Examples of such experiences include business and
community service internships, apprenticeships and
cooperative programs;

(2) Communicating better and serving 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

(3) Assessing the performance of the institution's gradu-
ates and assisting in job placement.

(l) When a vacancy occurs 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 council.
When serving as a search and screening committee, the
board of advisors and its governing board are each autho-
rized 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.
For the purposes of the search and screening process only,
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 council, or to the
governing board in the case of West Virginia university
institute of technology, for consideration. If the council or
governing board rejects all candidates submitted, the
committee shall submit the names of at least three addi-
tional candidates and this process shall be repeated until
the council or governing board approves one of the candi-
dates submitted. In all cases, the governing board shall
make the appointment with the approval of the council or
the commission in the case of West Virginia university
institute of technology. The governing board or the
council shall provide all necessary staff assistance to the
board of advisors in its role as a search and screening
committee.

(m) The boards of advisors shall develop a master plan
for those administratively linked community and technical
colleges which retain boards of advisors. The ultimate
responsibility for developing and updating the master
plans at the institutional level resides with the institu-
tional board of advisors, but the ultimate responsibility for
approving the final version of these institutional master
plans, including periodic updates, resides with the council.
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 institu-
tional 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-6-1a. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) “Advisory council of classified employees” or “classified council” means the state advisory organization of classified employees created pursuant to section five of this article.

(b) “Advisory council of faculty” or “faculty council” means the state advisory organization of faculty created pursuant to section two of this article.

(c) “Advisory council of students” or “student advisory council” means the state advisory organization of students created pursuant to section four of this article.

(d) “Classified employee”, in the singular or plural, means any regular full-time or regular part-time employee of a governing board, the commission, the council or the West Virginia network for educational telecomputing who
holds a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by law.

(e) "Community and technical college" means eastern West Virginia community and technical college, Fairmont state community and technical college, Marshall community and technical college, New River community and technical college, West Virginia northern community and technical college, the community and technical college of Shepherd, southern West Virginia community and technical college, West Virginia state community and technical college, the community and technical college at West Virginia university institute of technology, West Virginia university at Parkersburg and any other community and technical college so designated by the Legislature.

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

(g) "Institutional classified employee council" or "staff council" means the advisory group of classified employees formed at a state institution of higher education pursuant to section six of this article.

(h) "Institutional faculty senate", "faculty senate" or "faculty assembly" means the advisory group of faculty formed at a state institution of higher education pursuant to section three of this article.

(i) "State institution of higher education", in the singular or plural, means the institutions as defined in section two, article one of this chapter and, additionally, Fairmont state community and technical college, Marshall community and technical college, New River community and technical college, Potomac state college of West Virginia university, Robert C. Byrd health sciences Charleston division of West Virginia university, the community and technical college of Shepherd, West Virginia state commu-
Enr. S. B. No. 448) 164

53 nity and technical college, West Virginia university at
54 Parkersburg, West Virginia university institute of technol-
55 ogy, the community and technical college at West Virginia
56 university institute of technology, the higher education
57 policy commission, the West Virginia council for commu-
58 nity and technical college education, the West Virginia
59 network for educational telecomputing and any other
60 institution so designated by the Legislature.

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

1 (a) There is continued the state advisory council of
2 faculty.
3 (b) Election of members and terms of office. –
4 (1) During the month of April of each odd-numbered
5 year, each president of a state institution of higher educa-
6 tion, at the direction of the faculty council and in accor-
7 dance with procedures established by the faculty council,
8 shall convene a meeting or otherwise institute a balloting
9 process to elect one faculty member from each institution
10 of higher education to serve on the faculty council.
11 (2) Terms of the members are for two years and begin on
12 the first day of July of each odd-numbered year. Members
13 are eligible to succeed themselves.
14 (3) For the year two thousand four only, each president
15 of an administratively linked community and technical
16 college shall consult with the faculty council during the
17 month of July to establish procedures and convene a
18 meeting or otherwise institute a balloting process to elect
19 one faculty member from that institution to serve on the
20 faculty council. Members so elected shall take office upon
21 election and serve until the next regularly scheduled
22 election held pursuant to this section; thereafter, faculty
23 members elected to represent administratively linked
24 community and technical colleges serve a regular two-year
25 term.
(c) The faculty council shall meet at least once each quarter and may meet at such other times as called by the chairperson or by a majority of its members. One of the quarterly meetings shall be during the month of July, at which meeting the faculty council shall elect a chairperson from among its members. The chairperson may serve no more than two consecutive terms as chair. A member may not 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 faculty council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, and in the manner prescribed by this section for the election of a chairperson, the faculty council shall elect a member to preside over meetings in the absence of the chairperson. If the chairperson vacates the position, the faculty council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The faculty council, through its chairperson and in any appropriate manner, shall communicate to the commission or the council, as appropriate, matters of higher education in which the faculty members have an interest.

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

(f) Members of the faculty council serve without compensation. Members are entitled to reimbursement for actual and necessary expenses, including travel expenses, incurred in the performance of their official duties. Expenses are paid from funds allocated to the state institution of higher education which the member serves.

(g) The faculty council shall prepare 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 faculty council.

§18B-6-3. Institutional faculty senate.

(a) Effective the first day of July, two thousand four, a faculty senate is established at each institution of higher education, except for those institutions which choose to establish a faculty assembly. In the latter case, all faculty participate in the faculty assembly and the requirements of subsections (b) and (c) of this section do not apply.

Members and officers of an organized, campus-level advisory group of faculty who are serving prior to the effective date of this section may continue to serve with all the rights, privileges and responsibilities prescribed herein until the time that members elected as set forth in subsection (b) of this section assume office.

(b) Members of each faculty senate are elected as follows:

(1) During the month of April of each even-numbered year, each president of a state institution of higher education, at the direction of the faculty and in accordance with procedures established by the faculty, shall convene a meeting or otherwise institute a balloting process to elect the members of the faculty senates, except that for two thousand four only, the election shall take place in July.

(2) Selection procedures shall provide for appropriate representation of all academic units within the institution.

(3) The faculty member who is elected to serve on the faculty council is an ex officio, voting member of the faculty senate and reports to the faculty senate on meetings of the faculty council and the board of governors.

(c) Members serve a term of two years, which term begins on the first day of July of each even-numbered year, except for the year two thousand four when terms begin upon election. Members of the faculty senate are eligible to succeed themselves.
(d) Each faculty senate shall elect a chairperson from among its members. The chairperson serves a term of two years, and may serve no more than two consecutive terms as chairperson.

(e) The faculty senate meets quarterly and may meet at such other times as called by the chairperson or by a majority of the members. With appropriate notification to the president of the institution, the chairperson may convene a faculty senate meeting for the purpose of sharing information and discussing issues affecting faculty and the effective and efficient management of the institution.

(f) The president of the institution shall meet at least quarterly with the faculty senate to discuss matters affecting faculty and the effective and efficient management of the institution.

(g) The governing board of the institution shall meet at least annually with the faculty senate to discuss matters affecting faculty and the effective and efficient management of the institution.

§18B-6-4. State advisory council of students.

(a) There is continued the state advisory council of students.

(b) During the month of April of each year, each student government organization at each institution of higher education shall elect a student to serve on the student advisory council. Terms of the members of the student advisory council are for one year and begin on the first day of September of each year. A duly elected member currently serving on the advisory council of students may continue to serve until a new member from that institution is elected pursuant to the provisions of this section. Members of the student advisory council are eligible to succeed themselves.
(c) The student advisory council shall meet at least once each quarter. One of the quarterly meetings shall be during the month of September, at which meeting the student advisory council shall elect a chairperson. A member may not vote by proxy at the election. In the event of a tie in the last vote taken for the election, a member authorized by the student advisory council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the student advisory 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 in the absence of the chairperson. If the chairperson vacates the position, the student advisory council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The student advisory council, through its chairperson and in any appropriate manner, shall communicate to the commission or the council, as appropriate, matters of higher education in which the student members have an interest.

(e) At the request of the chairperson of the student advisory council, the commission and council each shall meet annually, between the months of October and December, with the student advisory council to discuss matters of higher education in which the student members or the commission or council have an interest.

(f) Members of the student advisory council serve without compensation, but are entitled to reimbursement for actual and necessary expenses, including travel expenses, incurred in the performance of their official duties. Expenses are paid from funds allocated to the state institution of higher education in which the student is enrolled.

(g) The student advisory council shall prepare minutes of its meetings. The minutes shall be available, upon request,
§18B-6-5. State advisory councils of classified employees.

(a) There is hereby continued the state advisory council of classified employees.

(b) Election of members and terms of office. —

(1) During the month of April of each odd-numbered year, each president of a state institution of higher education, at the direction of the classified council and in accordance with procedures established by the classified council, shall convene a meeting or otherwise institute a balloting process to elect one classified employee from each institution of higher education to serve on the classified council.

(2) Terms of the members are for two years and begin on the first day of July of each odd-numbered year. Members are eligible to succeed themselves.

(3) For the year two thousand four only, each president of an administratively linked community and technical college shall consult with the classified council during the month of July to establish procedures and convene a meeting or otherwise institute a balloting process to elect one classified employee from that institution to serve on the classified council. Members so elected take office upon election and serve until the next regularly scheduled election held pursuant to this section; thereafter, classified employees elected to represent administratively linked community and technical colleges serve a regular two-year term.

(c) The classified council shall meet at least once each quarter and may meet at such other times as called by the chairperson or by a majority of its members. One of the quarterly meetings shall be during the month of July, at which meeting the classified council shall elect a chairper-
son from among its members. The chairperson may serve no more than two consecutive terms as chairperson. A member may not vote by proxy at the election. In the event of a tie in the last vote taken for the election, a member authorized by the classified council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the classified council shall elect, in the manner prescribed by this section for the election of a chairperson, a member of the classified council to preside over meetings in the absence of the chairperson. If the chairperson vacates the position, the classified council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The classified council, through its chairperson and in any appropriate manner, shall communicate to the commission or the council, as appropriate, matters of higher education in which the classified employees have an interest.

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

(f) Members of the classified council serve without compensation, but are entitled to reimbursement for actual and necessary expenses, including travel expenses, incurred in the performance of their official duties. Expenses are paid from funds allocated to the state institution of higher education which the member serves.

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

§18B-6-6. Institutional classified employee council.
(a) There is continued at each institution of higher education an institutional classified employees advisory council to be known as the staff council.

(b) During the month of April of each odd-numbered year, each president of a state institution of higher education, at the direction of the staff council and in accordance with procedures established by the staff council, shall convene a meeting or otherwise institute a balloting process to elect members of the staff council, except that for two thousand four only, the election shall take place in July. Members are elected as follows:

(1) Two classified employees from the administrative/managerial sector;

(2) Two classified employees from the professional/nonteaching sector;

(3) Two classified employees from the paraprofessional sector;

(4) Two classified employees from the secretarial/clerical sector;

(5) Two classified employees from the physical plant/maintenance sector;

(6) The classified employee who is elected to serve on the advisory council of classified employees serves as an ex officio, voting member of the staff council. This member shall report to the staff council on meetings of the classified council and the board of governors; and

(7) Classified employees at Marshall university and West Virginia university may elect five classified employees from each of the five sectors to serve on the staff council.

(c) Members serve a term of two years, which term begins on the first day of July of each odd-numbered year. Members of the staff council are eligible to succeed themselves.
(d) Classified employees shall select one of their members to serve as chairperson. All classified employees at the institution are eligible to vote for the chairperson by any method approved by a majority of their members. The chairperson is eligible to succeed himself or herself.

(e) The staff council shall meet at least monthly or at the call of the chairperson. With appropriate notification to the president of the institution, the chairperson may convene staff council meetings for the purpose of sharing information and discussing issues affecting the classified employees or the efficient and effective operations of the institution.

(f) The president of the institution shall meet at least quarterly with the staff council to discuss matters affecting classified employees.

(g) The governing board of the institution shall meet at least annually with the staff council to discuss matters affecting classified employees and the effective and efficient management of the institution.

ARTICLE 7. PERSONNEL GENERALLY.

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

(a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter, except that the provisions of this section apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year. This section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply. Any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions
equivalent to or lower than the last job class the employee
held.

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

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

The institution shall notify all employees maintaining active listings on the preferred recall list of all position openings that periodically exist. The notice shall be sent by certified mail to the last known address of the employee. It is the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. A position opening may not be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(d) A nonexempt classified employee, who applies and meets the minimum qualifications for a nonexempt job opening at the institution where currently employed, whether the job is a lateral transfer or a promotion, shall be transferred or promoted before a new person is hired.

(1) This subsection does not apply if the hiring is affected by:

(A) Mandates in affirmative action plans; or

(B) The requirements of Public Law 101-336, the Americans with Disabilities Act.

(2) This subsection applies to any nonexempt classified employee, including:

(A) One who has not accumulated a minimum total of one thousand forty hours during the calendar year; and

(B) One whose contract does not extend over at least nine months of a calendar year.

(3) If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified
employee is awarded the position. In instances where the
classified employees are equally qualified, the nonexempt
classified employee with the greatest amount of continu-
ous seniority at that institution is awarded the position.

(4) A nonexempt classified employee is one to whom the
provisions of the federal Fair Labor Standards Act, as
amended, apply.

(e) In addition to any other information required, any
application for personnel governed by the provisions of
this section shall include the applicant's social security
number.

(f) Regardless of the level of seniority for any employee,
for the purposes of this section:

(1) In the case of a reduction in force, an employee at a
community and technical college may not displace any
employee of an institution under the jurisdiction of the
commission.

(2) In the case of a reduction in force, an employee at an
institution under the jurisdiction of the commission may
not displace any employee of a community and technical
college.

(3) For the purpose of this subsection, an employee
performing a dual service for a sponsoring institution and
an administratively linked community and technical
college is an employee at an institution under the jurisdic-
tion of the commission if the sponsoring institution
receives a fee from the administratively linked community
and technical college for the service performed by that
employee.

§18B-7-12. Maintenance of benefits for employees.

(a) On the effective date of this section, any individual
employed on the day preceding the effective date of this
section by the chancellor for higher education or commis-
sion maintains all benefits of employment held, accrued
and afforded prior to the effective date of this section. Such benefits include, but are not limited to, retirement benefits, continued membership in the same retirement system, any insurance coverage, and sick and annual leave. For the purposes of leave conversion established in section thirteen, article sixteen, chapter five of this code, an employee is not a new employee, and the prohibition on leave conversion does not apply if the employee was eligible for leave conversion on the day preceding the effective date of this section. For the purpose of section thirteen, article sixteen, chapter five of this code:

(1) Each employee maintains all sick and annual leave accrued, and all rights to convert the leave that had been accrued on the day preceding the effective date of this section; and

(2) Each employee continues to maintain his or her status for eligibility under the provisions and application of said section thirteen as applied to the employee on the day preceding the effective date of this section.

(b) Prior to the first day of October, two thousand four, an employee may not be terminated, or have his or her salary or benefit levels reduced as the result of the higher education reorganization set forth in this article.

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 and council jointly 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, the commission or the council, 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 and council;

(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. The percentage of personnel placed in the category of "nonclassified" at any given institution may 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, 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, the commission or council 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, the commission or council;

(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, the commission or council;

(f) "Pay grade" means the number assigned by the commission and council 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 and council jointly 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 a classified employee may not 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 and council jointly, 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.
ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1b. Special equity fee; purpose; exemptions.

1 In addition to the other fees provided in this article, each
governing board has the authority to impose, collect and
expend the proceeds of a special equity fee under the
following conditions:

5 (a) The fee shall be used solely for the purpose of com-
plying with the athletic provisions of 20 U. S. C. 1681, et
seq., known as Title IX of the Education Amendment of
1972;

9 (b) The fee is exempt from limitations on fee increases
set forth in this article for three years from the effective
date of this section;

12 (c) The fee may not be used by an institution to advance
its classification of participation in its athletics governing
body; and

15 (d) The fee may not be imposed upon part-time students
or students enrolled in an administratively-linked commu-
nity and technical college.

§18B-10-2. Higher education resource fee.

1 In addition to the fees specifically provided for in section
one of this article, all students enrolled for credit at a state
institution of higher education shall pay a higher educa-
tion resource fee. The commission and council jointly shall
fix the fee rates for the various institutions and classes of
students under their respective jurisdictions and may from
time to time change these rates. The amount of the fee
charged at each institution shall be prorated for part-time
students. 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 is not limited
thereby. Refunds of the fee may be made in the same
manner as any other fee collected at state institutions of higher education.

Ninety percent of the total fees collected at each institution pursuant to this section shall be deposited in a special fund in the state treasury for the institution at which the fees are collected and may be used by the institution for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services. Up to ten percent of the fee collections from institutions under the jurisdiction of the commission shall be deposited in a special fund and expended or allocated by the commission to meet general operating expenses of the commission or to fund statewide programs. Up to ten percent of the fee collections from institutions under the jurisdiction of the council shall be deposited in a special fund and expended or allocated by the council to meet general operating expenses of the council or to fund statewide programs. The boards shall, to the maximum extent practicable, offset the impact, if any, on financially needy students of any potential fee increases under this section by allocating an appropriate amount of such fee revenue to the state scholarship program to be expended in accordance with the provisions of article five, chapter eighteen-c of this code.

The commission and council each shall, on or before the first day of July annually, provide the legislative auditor with a report of the projected fee collections for the board and each of its institutions and the expenditures proposed for such fee.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within... approved... this the...
Day of April... 17th, 2004.

Governor