WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 792

(By Senator OLIVERIO)

PASSED MARCH 11, 2006

In Effect JULY 4, 2006 Passage
ENROLLED

Senate Bill No. 792

(BY SENATOR OLIVERIO)

[Passed March 11, 2006; to take effect July 1, 2006.]

AN ACT to repeal §18B-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1-2 of said code; to amend said code by adding thereto a new section, designated §18B-1-7; to amend and reenact §18B-1B-6 of said code; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18B-3C-4 and §18B-3C-8 of said code; to amend said code by adding thereto a new section, designated §18B-3C-7; and to amend and reenact §18B-6-1 and §18B-6-1a of said code; and to amend and reenact §18B-10-1 of said code, all relating to making Fairmont State Community and Technical College a division of Fairmont State University and changing its name to Pierpont Community and Technical College; clarifying definitions; dissolving certain advisory board; clarifying process for delivery of community and technical college education in certain location; providing exception to process for achieving independent accreditation for community and technical colleges; designating Community and Technical College of Shepherd as Blue Ridge Community and Technical College; establishing the responsi-
ibilities of Pierpont Community and Technical College; maintaining a board of advisors for the delivery of community and technical college education at Fairmont State University; eliminating the requirement that the governing board chairs of Shepherd University and the community and technical college of Shepherd, whose name is changed to Blue Ridge Community and Technical College, and Bluefield State College and New River Community and Technical College, serve on each other's boards of governors; establishing an evaluation process for the relationship between Fairmont State University and Pierpont Community and Technical College; establishing a sunset date of the first day of July, two thousand nine; providing for establishing independent accreditation for certain community and technical college under certain circumstances; providing for fee increases for certain institutions under certain conditions; clarifying definitions; making technical corrections; and repealing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18B-2-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1-7; that §18B-1B-6 of said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

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

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

(a) Effective the first day of July, two thousand seven, "regional campus" means West Virginia University at Parkersburg.

(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, Blue Ridge 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 associ-
ated with the delivery of community and technical college education programs;

(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 commis-
sion 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) "Senior administrator" means the vice chancellor for administration employed in accordance with section two, article four of this chapter;

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

(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 seven, "regional campus" means West Virginia University at Parkersburg 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-1-7. Fairmont State Community and Technical College merged.

(a) Notwithstanding any other provision of this code to the contrary, on the first day of July, two thousand six, Fairmont State Community and Technical College shall be known as Pierpont Community and Technical College and shall merge and consolidate with Fairmont State University and become a fully integrated division of the university. All administrative and academic units shall be consolidated with primary responsibility for direction and support assigned to Fairmont State University.

(1) Fairmont State Community and Technical College ceases to be an individual higher education institution, as defined by subsection (h), section two of this article.

(2) The advisory board previously appointed for Fairmont State Community and Technical College is continued as the advisory board for Pierpont Community and Technical College. The advisory board:

(A) Serves to advise the Fairmont State University Board of Governors and president on issues regarding the delivery of community and technical college education; and

(B) Continues to function pursuant to the provisions of section one, article six of this chapter.

(b) Any reference in this code to Fairmont State Community and Technical College means Pierpont Community and Technical College, a division of Fairmont State University.

(c) In the delivery of community and technical college education and programs, Fairmont State University shall
adhere to all provisions set forth in this code and rules promulgated by the council for the delivery of such education and programs, including, but not limited to, council review and approval of academic programs, institutional compacts, master plans, charge-back agreements and tuition and fee rates, including capital fees. The only provision of this code that Fairmont State University is not required to adhere to is the requirement related to independent accreditation of community and technical colleges.

(d) Pierpont Community and Technical College shall continue to exist as an administrative division of Fairmont State University, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

(e) During the time period Pierpont Community and Technical College exists as an administrative division of Fairmont State University pursuant to subsection (d) of this section, the council shall determine if the following conditions are being met:

1. Pierpont Community and Technical College meets or exceeds all of the benchmarks contained in its approved compact required by section two, article one-a of this chapter;

2. Pierpont Community and Technical College has established and is meeting or exceeding the goals of its approved consortium compact pursuant to section four, article three-c of this chapter;

3. Pierpont Community and Technical College meets or exceeds the service needs of its consortium planning district according to its approved consortium compact;

4. Pierpont Community and Technical College meets or exceeds Council goals as defined in the community and technical college performance indicators and institutional
compacts established pursuant to section two, article one-
a of this chapter and national averages for the delivery of
comprehensive community and technical college education
in the following areas:

(A) Providing access to the following groups of students
in the community and technical college's consortium
planning district:

(i) Traditional students eighteen to twenty-four years of
age;

(ii) Nontraditional students twenty-five to forty-four
years of age; and

(iii) High school students seeking college credit through
early entrance and earn-a-degree-graduate-early (EDGE)
courses;

(B) Serving the state's workforce development goals by:

(i) Increasing the number of graduates with career
technical certificates and associate degrees;

(ii) Ensuring that students who earn certificates and
degrees are placed in the workforce;

(iii) Providing workforce education and training pro-
grams for employers; and

(iv) Maintaining community and technical college
student freshman-to-sophomore retention rates and
graduation rates that equal or exceed state and national
averages;

(5) The costs of operating Pierpont Community and
Technical College as an independently accredited commu-
nity and technical college administratively linked to
Fairmont State University exceed the benefits of such an
arrangement to the achievement of community and
technical college system goals;
(6) A consortia arrangement, centralized processing alternative or other cost-saving measure is not available to offset the costs determined to be excessive pursuant to subdivision (5) of this subsection; and

(7) Fairmont State University and Pierpont Community and Technical College demonstrate that they are required:

(A) By the United States Department of Education to operate separate offices for student financial aid processing; and

(B) By the Higher Learning Commission of the North Central Association of Colleges and Schools to maintain a separate library for each institution.

(f) The council shall report to the Legislative Oversight Commission on Education Accountability concerning their findings and their final recommendations. The report shall be filed by the first day of December, two thousand nine.

(g) If the council determines that the merger of Fairmont State University and Pierpont Community and Technical College has not resulted in enabling the community and technical college to meet the conditions established in this section, the community and technical college shall pursue independent accreditation status. If Pierpont Community and Technical College fails to achieve independent accreditation by the first day of January, two thousand eleven, the council shall choose one of the following options:

(1) Create the administratively linked institution as a freestanding community and technical college under the jurisdiction of its own institutional board of governors established pursuant to section one, article two-a of this chapter; or

(2) Assign the responsibility for obtaining independent accreditation to another state institution of higher education.
ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

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

(a) Appointment of institutional presidents. — Appointment of presidents of the state 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 University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College, West Virginia School of Osteopathic Medicine, West Virginia State University 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. The president serves at the will and pleasure of the governing board. When selecting candidates for consideration to fill the office of president, the governing board shall use the search and screening process provided in section one, article six of this chapter.

3. Until the first day of July, two thousand seven, and 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 the regional campus serves at the will and pleasure of the appointing governing board.

4. 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 Technical College and West Virginia Northern Community and Technical College.
(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 college which shares a physical campus location with the sponsoring institution, including Pierpont Community and Technical College, a division of Fairmont State University, 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. The president of the administratively linked community and technical college serves at the will and pleasure of the appointing governing board.

(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 Blue Ridge Community and Technical College.

(b) Other appointments. – The institutional president appoints a provost to be the administrative head of the Potomac campus of West Virginia University and, effective the first day of July, two thousand seven, for West Virginia University Institute of Technology.

(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 employed 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.
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, Blue Ridge Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Marshall University, New River Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

(b) The institutional board of governors for Marshall University consists of sixteen persons and the institutional board of governors for West Virginia University consists of eighteen persons. Each other board of governors consists of twelve persons.

(c) 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 Gover-
nor, 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 chairpersons of the following boards serving as ex officio, voting members:

(A) The institutional board of advisors of:

(i) The Community and Technical College at West Virginia University Institute of Technology; and

(ii) West Virginia University at Parkersburg; and

(B) The Board of Visitors of West Virginia University Institute of Technology.

(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.
(d) 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.

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

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

(g) 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.

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

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

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

105  (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.

119  (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.

134  (l) 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.

(m) 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.

(n) 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 incurred 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.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§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 workforce 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 projects 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 com-
unity 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 workforce
investment board in the district and shall participate in
any development or amendment to the regional workforce
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 Mar-
shall 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 Pierpont Community and Technical College, a division of Fairmont State University.

(B) Participating institutions include Pierpont Community and Technical College, a division of Fairmont State University; 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 includes 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 Blue Ridge Community and Technical College.

(B) Participating institutions include Blue Ridge Community and Technical College; 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 Consortia 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 Technical 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) Maintain 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) Maintain a format for developing and revising a consortium compact outlining plans for achieving stated goals to be submitted to the council annually for approval.

g) On or before the fifteenth day of November each year 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.

(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-7. Blue Ridge Community and Technical College.

The Community and Technical College of Shepherd is hereafter named "Blue Ridge Community and Technical College". Any reference in this code to the Community and Technical College of Shepherd means Blue Ridge Community and Technical College.

§18B-3C-8. Statewide network of independently accredited community and technical colleges.

(a) There is continued 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 measurable benchmarks for developing an independently accredited 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 accomplishing the benchmarks established in its institutional com-
19 pact for developing an independently accredited community and technical college; and

21 (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.

25 (c) The statewide network of independently accredited community and technical colleges is comprised of the freestanding community and technical colleges, West Virginia University at Parkersburg and the following state institutions of higher education:

30 (1) New River Community and Technical College. -

31 (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. New River Community and Technical College is an independently accredited community and technical college.

34 (B) Bluefield State College may continue associate degree programs in areas of particular institutional strength which are closely articulated to its 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) As an independently accredited community and technical college, New River also serves as a higher education center for its region by brokering with other colleges, universities and 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.

(E) New River Community and Technical College participates in the planning and development of a unified effort involving multiple providers to meet the documented education and workforce 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) 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 remains administratively linked to Marshall University. Marshall University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its 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) Blue Ridge Community and Technical College. —
Blue Ridge Community and Technical College is an independently accredited community and technical college. Subject to the provisions of section twelve of this article, the community and technical college remains administratively linked to Shepherd University. Shepherd
University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its 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.

(4) West Virginia State Community and Technical College. – West Virginia State 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 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 remains administratively linked to West Virginia State University. West Virginia State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its 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.

(5) **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 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 remains 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 its 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.

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

ARTICLE 6. ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors for regional cam-
puses and certain administratively linked commu-
nity and technical colleges.

(a) There are continued 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 sponsor-
ing institution. This category includes Marshall Commu-
nity and Technical College, West Virginia State Commu-
nity 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; and

(3) For Pierpont Community and Technical College. The chairperson of the board of advisors of Pierpont Community and Technical College serves as an ex officio, voting member of the Fairmont State University Board of Governors.

(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 and Pierpont Community and Technical College 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 on the first day of May. The member from the faculty and the classified employees, respectively, serves for a term of two years beginning on the first day of May. The twelve lay members serve terms of four years each beginning 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) 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.

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

(g) One of the twelve lay members shall be elected as chairperson by the board of advisors in May of each year. A member may not serve as chairperson 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 governing board, the board of advisors shall review all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it 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 workforce and workforce development needs of their
service area, including the needs of nontraditional stu-
dents 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.

(1) 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 appropriate governing
board. If the governing board rejects all candidates
submitted, the committee shall submit the names of at
least three additional candidates and this process shall be
repeated until the governing board approves one of the
candidates 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 screen-
ing committee. This subsection does not apply to Fairmont
State University. The president of Fairmont State Univer-
sity continues to be appointed pursuant to the provisions
of section six, article one-b of this chapter.
(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 institutional 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 institutional compact;

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

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

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

§18B-6-1a. 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, Marshall Community and Technical College, New River Community and Technical College, West Virginia Northern Community and Technical College, Blue Ridge Community and Technical College, 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, Pierpont Community and Technical College, a division of Fairmont State University, 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, Blue Ridge Community and Technical College, West Virginia State Community and Technical College, West Virginia University at Parkersburg, West Virginia University Institute of Technology, the Community and Technical College at West Virginia University Institute of Technology, the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, the West Virginia Network for Educational Telecomputing and any other institution so designated by the Legislature.

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

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

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

(1) Tuition and required educational and general fees;
(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.

(b) An institution may establish a single special revenue account for each of the following classifications of fees:

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from such accounts, an institution may expend funds from each such special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a student's attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

(d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.
(e) The Legislature finds that an emergency exists and, therefore, the commission and council jointly shall file the rule required by subsection (d) of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, subject to the prior approval of the Legislative Oversight Commission on Education Accountability.

(f) The schedule of all tuition and fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of such schedule and changes.

(g) The boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

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

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

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

1. The governing boards shall permit fee payments to be made in installments over the course of the academic term.
2. All fees shall be paid prior to the awarding of course credit at the end of the academic term.
(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student's finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis if the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code defining conditions under which an institution may offer tuition and fee deferred payment plans through the institution or through third parties.

(5) An institution may charge interest or fees for any deferred or installment payment plans.

(i) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

(j) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rule proposed by the commission and council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and fees;
(2) Allow institutions to charge different tuition and fees for different programs;

(3) Provide that a board of governors may propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(E) The commission, council or both, as appropriate, shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years;

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

(k) A penalty may not be imposed by the commission or council upon any institution based upon the number of nonresidents who attend the institution unless the com-
mission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission or council on the numbers of nonresidents and such other enrollment information as the commission or council may request.

(1) Tuition and fee increases of the governing boards, except for the governing boards of the state institutions of higher education known as Marshall University and West Virginia University, are subject to rules adopted by the commission and council jointly pursuant to this section and in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(1) Subject to the provisions of subdivisions (4) and (8) of this subsection, a governing board of an institution under the jurisdiction of the commission may propose tuition and fee increases of up to nine and one-half percent for undergraduate resident students for any fiscal year. The nine and one-half percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established specialized fee which may be proposed by a governing board.

(2) A governing board of an institution under the jurisdiction of the council may propose tuition and fee increases of up to four and three-quarters percent for undergraduate resident students for any fiscal year. The four and three-quarters percent total includes the amount of increase over existing tuition and fees, combined with the amount of any newly established specialized fee which may be proposed by a governing board.

(3) The commission or council, as appropriate, shall examine individually each request from a governing board for an increase.
(4) Subject to the provisions of subdivision (8) of this subsection the governing boards of Marshall University and West Virginia University, as these provisions relate to the state institutions of higher education known as Marshall University and West Virginia University, each may annually:

(A) Increase tuition and fees for undergraduate resident students to the maximum allowed by this section without seeking approval from the commission; and

(B) Set tuition and fee rates for post-baccalaureate resident students and for all nonresident students, including establishing regional tuition and fee rates, reciprocity agreements or both.

(C) The provisions of this subdivision do not apply to tuition and fee rates of the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology, the regional campus known as West Virginia University at Parkersburg and, until the first day of July, two thousand seven, the regional campus known as West Virginia University Institute of Technology.

(5) Any proposed tuition and fee increase for state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University requires the approval of the commission or council, as appropriate. In determining whether to approve or deny the governing board’s request, the commission or council shall determine the progress the institution has made toward meeting the conditions outlined in this subdivision and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each institution has met the following conditions:
(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

(D) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(F) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(6) This section does not require equal increases among institutions or require any level of increase at an institution.

(7) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (5) of this subsection.

(8) Notwithstanding the provisions of subdivisions (1) and (4) of this subsection, tuition and fee increases at state institutions of higher education which are under the jurisdiction of the commission, including the state institutions of higher education known as Marshall University
and West Virginia University, are subject to the following conditions:

(A) Institutions may increase tuition and fees for resident, undergraduate students by no more than an average of seven and one-half percent per year during any period covering four consecutive fiscal years, with the first fiscal year of the first four-fiscal year cycle beginning on the first day of July, two thousand seven;

(B) The seven and one-half percent average cap does not apply to an institution for any fiscal year in which the total state base operating budget appropriations to that institution are less than the total state base operating budget appropriations in the fiscal year immediately preceding;

(C) A new capital fee or an increase in an existing capital fee is excluded from the tuition and fee increase calculation in this subdivision:

(i) If the new fee or fee increase is approved by an institutional governing board or by a referendum of an institution's undergraduate students, or both, on or before the first day of February, two thousand six; or

(ii) If the following conditions are met:

(I) The new fee or fee increase was approved by an institutional governing board or by a referendum of an institution's undergraduate students, or both, on or before the first day of July, two thousand six;

(II) The institution for which the capital fee is approved has been designated a university pursuant to the provisions of section six, article two-a of this chapter by the effective date of this section; and

(III) The institutional board of governors previously oversaw a community and technical college that achieved independent accreditation and consequently acquired its own board of governors;
Institutions shall provide, in a timely manner, any data on tuition and fee increases requested by the staff of the commission. The commission has the power and the duty to:

(i) Collect such data from any institution under its jurisdiction; and

(ii) Annually by the first day of July, provide a detailed analysis of the institutions' compliance with the provisions of this subdivision to the Legislative Oversight Commission on Education Accountability.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2006.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 31st Day of April, 2006.

Governor
PRESENTED TO THE GOVERNOR

APR 03 2006

Time 2:15 pm