WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION SESSION, 2010

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ENROLLED

House Bill No. 4026

(By Delegates M. Poling, Paxton, Williams, Beach, Louisos, Smith, Walker, Andes, Canterbury, Ireland and Romine)

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Passed March 12, 2010

In Effect Ninety Days From Passage
AN ACT to repeal §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended; to repeal §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code; to amend and reenact §5-6-4a of said code; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-4-6 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-10-8 of said code; and to amend said code by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-12, §18B-19-13, §18B-19-14, §18B-19-15, §18B-19-16, §18B-19-17 and §18B-19-18, all relating to higher education capital facilities generally; repealing certain specific duties of governing boards of higher education institutions; eliminating condemnation rights of those boards; eliminating execution of contracts and deeds by those boards; eliminating certain obligation concerning capital construction and repair duties;
eliminating the authority of certain state institutions from selling certain properties and lease-back provisions; replacing those duties that are being repealed with similar responsibilities; setting forth certain specific responsibilities of the Higher Education Policy Commission and the Council for Community and Technical College Education; reviewing tuition and fee increases; reviewing and approving capital project planning, financing, management and maintenance; permitting the acquisition, sale, transfer, exchange, lease, conveyance and condemnation of real property; permitting the construction and operation of capital facilities; permitting the collection and use of certain capital fees; establishing in the State Treasury a capital maintenance fund for each state institution of higher education; setting forth legislative findings and intent; defining terms; requiring rulemaking; providing for system facilities institution and facilities planning; designating Marshall Community and Technical College as Mountwest Community and Technical College; making certain technical corrections; and deleting certain obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-2B-6 of said code be amended and reenacted; that §18B-4-6 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-10-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10,
§18B-19-16, §18B-19-17 and §18B-19-18, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.

ARTICLE 6. STATE BUILDINGS.

§5-6-4a. Review of real property contracts and agreements;
master plan for office space.

(a) The Secretary of Administration shall provide to the
Joint Committee on Government and Finance a copy of a
contract or agreement for real property exceeding $1 million
and a report setting forth a detailed summary of the terms of the
contract or agreement, including the name of the owner of the
property and the agent involved in the sale, at least thirty days
prior to any sale, exchange, transfer, purchase, lease purchase,
lease or rental of real property, any refundings of lease
purchases, leases or rental agreements, any construction of new
buildings and any other acquisition or lease of buildings, office
space or grounds by any state agency, but excepting the
transactions of the Higher Education Policy Commission,
Council for Community and Technical College Education, state
institutions of higher education and the Division of Highways
for state road purposes pursuant to article two-a, chapter
seventeen of this code: Provided, That a contract or agreement
for the lease purchase, lease or rental of real property by any
state agency, where the costs of real property acquisition and
improvements are to be financed, in whole or in part, with bond
proceeds, may contain a preliminary schedule of rents and
leases for purposes of review by the committee.
(b) For renewals of contracts or agreements required to be reported by this section, the Secretary of Administration shall provide a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the owner of the property.

(c) Within thirty days after receipt of the contract, agreement or report, the committee shall meet and review the contract, agreement or report.

CHAPTER 18B. HIGHER EDUCATION

ARTICLE 1B. 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 and article one-d 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 and the powers and duties assigned to the governing boards of Marshall University and West Virginia University, respectively. 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 article one-d of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section seven,
article one-d of this chapter and to develop and implement
the master plan described in section five, article one-d of this
chapter for the purpose of accomplishing the mandates of this
section;

(2) Develop, oversee and advance the promulgation and
implementation of a financing rule for state institutions of
higher education under its jurisdiction. The rule shall meet
the following criteria:

(A) Provide for an adequate level of educational 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 eliminating
defered 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) Evaluate institutions' requests for tuition and fee
increases except Marshall University and West Virginia
University which are subject to the provisions of section one,
article ten 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
49 school districts in order to create the necessary linkages to
50 assure smooth, effective and seamless movement of students
51 through the public education and post-secondary education
52 systems and to ensure that the needs of public school courses
53 and programs can be fulfilled by the graduates produced and
54 the programs offered;

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

58 (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;

62 (4) Develop and adopt each institutional compact;

63 (5) Review and adopt the annual updates of the
institutional compacts;

65 (6) Serve as the accountability point to state
policymakers:

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

69 (B) The Legislature by maintaining a close working
relationship with the legislative leadership and the Legislative
Oversight Commission on Education Accountability;

72 (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 progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

(10) Report to the Legislature and to the Legislative Oversight Commission on Education Accountability annually during the January interim meeting period 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 the goals, objectives, and priorities set forth in article one and article one-d of this chapter and in the commission’s master plan and institutional compacts;

(B) The commission’s priorities for new operating and capital investments and the justification for the priority;

(C) Recommendations of the commission for statutory changes necessary or expedient to achieve state goals and objectives;

(11) Establish a formal process for identifying capital investment needs and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter;
(12) Develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;

(13) Ensure that governing boards manage capital projects and facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter;

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

(15) Employ a Chancellor for Higher Education pursuant to section five of this article;

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

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

(18) 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
(19) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards shall 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;

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

(21) Approve and implement a uniform standard jointly with the council 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 they shall communicate to the State Board of Education and the State Superintendent of Schools;

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

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

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and state institutions of higher education are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

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

(24) Establish and implement policies and procedures to ensure that a student 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 to incur additional costs as is consistent with sound academic policy;

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

(26) Establish and implement policies and programs, in cooperation with the council and the institutions of higher
education, through which a student who has 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 he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate’s 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 workforce 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 and article one-d of this chapter;

(28) Promulgate and implement a rule for higher education governing boards and institutions to follow when considering capital projects pursuant to article nineteen of this chapter;

(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the institutions under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request 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 may assess institutions under its jurisdiction, including the state institutions of higher education known as Marshall University and West Virginia University, 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 providing 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 June 30, 2000, 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 article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules 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 state 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, in consultation with the governing boards of all the institutions under its jurisdiction, promulgate the joint rule;

(35) Promulgate and implement a rule 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;

(36) By November 1, 2010, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all institutions of higher education under the jurisdiction of the commission, including Marshall University and West Virginia University. 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;

(37) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential
benefits of vaccination. The commission shall encourage institutions that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

(38) Notwithstanding any other provision of this code to the contrary, sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.

(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 of the system;

(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. The commission’s authority to review and approve academic programs for either the state institution of higher education known as Marshall University or West Virginia University is limited to programs
that are proposed to be offered at a new location not presently served by that institution;

(5) Distribution of funds appropriated to the commission, including 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) Developing, establishing and implementing information, assessment and accountability systems, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, promulgating and implementing rules 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 required by section eleven of this article;

(10) Developing, implementing and overseeing statewide and regional 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 research, data
collection and analysis, planning, policy analysis, program
review and approval, budgeting and information and
accountability systems.

(c) In addition to the powers and duties provided 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 any other powers and duties necessary or expedient to
accomplish the purposes of this article.

(d) The commission may withdraw specific powers of a
governing board of an institution under its jurisdiction for a
period not to exceed two years, if the commission makes a
determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive
years to develop or implement an institutional compact as
required in article one-d 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.

Specific powers of a governing board may not be
withdrawn for a period exceeding two years. During that time
the commission may take all steps necessary to restore sound,
stable and responsible institutional governance.

ARTICLE 2A. BOARDS OF GOVERNORS.

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 institution of higher education under its jurisdiction;

(b) Develop a master plan for the institution under its jurisdiction.

(1) The ultimate responsibility for developing and updating each master plan at the institutional level resides with the board of governors, but the ultimate responsibility for approving the final version of each institutional master plan, including periodic updates, resides with the commission or council, as appropriate.

(2) Each institutional master plan shall include, but not be limited to, the following:

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

(B) 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 a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(C) Documentation showing how the governing board involved 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.

(3) The plan shall be established for periods of not fewer
than three nor more than five years and shall be revised
periodically as necessary, including adding or deleting degree
programs as the governing board in its discretion determines
is necessary;

(c) Develop a ten-year campus development plan in
accordance with article nineteen of this chapter;

(d)Prescribe for the institution, under its jurisdiction, in
accordance with its master plan and compact, specific
functions and responsibilities to achieve the goals, objectives
and priorities established in articles one and one-d of this
chapter to meet the higher education needs of its area of
responsibility and to avoid unnecessary duplication;

(e) Direct the preparation of an appropriation request for
the institution under its jurisdiction, which relates directly to
missions, goals and projections as found in the institutional
master plan and the institutional compact;

(f) Consider, revise and submit to the commission or
council, as appropriate, an appropriation request on behalf of
the institution under its jurisdiction;

(g) Review, at least every five years, all academic
programs offered at the institution under its jurisdiction. The
review shall address the viability, adequacy and necessity of
the programs in relation to established state goals, objectives
and priorities, the institutional master plan, the institutional
compact and the education and workforce needs of its
responsibility district. As a part of the review, each
governing board shall require the institution 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;

(h) Ensure that the sequence and availability of academic
programs and courses offered by the institution under its
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 the institution is
transferable to any other state institution of higher education
for credit with the grade earned;

(i) Subject to article one-b of this chapter, 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 use
one nationally recognized teacher education program
accreditation standard as the appropriate standard for
program evaluation;

(j) Involve faculty, students and classified employees in
institutional-level planning and decisionmaking when those
groups are affected;

(k) Subject to the provisions of federal law and pursuant
to articles seven, eight and 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 institution under its jurisdiction;

(l) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(m) Solicit and use or expend voluntary support, including financial contributions and support services, for the institution under its jurisdiction;

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

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

(p) Employ all faculty and staff at the institution under its jurisdiction. The employees operate under the supervision of the president, but are employees of the governing board;

(q) Submit to the commission or council, as appropriate, any data or reports requested by the commission or council, as appropriate, within the time frame set by the commission or council;

(r) 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 state institutions of higher education or at off-campus
locations in the institution’s responsibility district. To accomplish this goal, the boards may share resources among the various groups in the community;

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

(t) 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 master plan and compact. If a governing board elects to delegate any of its power and control under this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part, except that the commission may not revoke delegations of authority made by the governing boards of Marshall University or West Virginia University as they relate to the state institutions of higher education known as Marshall University and West Virginia University;

(u) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for the institution under its jurisdiction. Individual departments at a state institution of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;
(v) 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 appropriated and nonappropriated revenue at the institution under its jurisdiction that ensures that properly submitted requests for payment be paid on or before the due date but, in any event, within fifteen days of receipt in the State Auditor's office;

(w) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, 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 institution under its jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms, which shall be submitted to the respective governing board and the Department of Finance and Administration;

(x) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for its use to any corresponding line item in a general revenue account at any agency or institution under its jurisdiction as long as the transferred funds are used for the purposes appropriated;

(y) Transfer funds from appropriated special revenue accounts for capital improvements under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction as long as the transferred funds are used for the purposes appropriated in accordance with article nineteen of this chapter;

(z) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary,
including representation of the governing board, its institution, 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 board may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law; and

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

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


(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 statewide network of independently accredited community and technical colleges as a whole, including community and technical college education programs as defined in section two, article one of this chapter.

(b) The council shall propose rules pursuant to section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code to implement this section and applicable provisions of article one-d of this chapter. To implement article one-d of this chapter relevant to community and technical colleges, the council may propose rules jointly with the commission or separately and may choose to address all components of the accountability system in a single rule or may propose additional rules to cover specific components.
(c) The council has the following powers and duties relating to the authority established in subsection (a) of this section:

1. Develop, oversee and advance the public policy agenda for community and technical college education for the purpose of accomplishing the mandates of this section, including, but not limited to, the following:

   A. Achieving the goals and objectives established in articles one and one-d of this chapter;

   B. Addressing the goals and objectives contained in the institutional compacts created pursuant to section seven, article one-d of this chapter; and

   C. Developing and implementing the master plan described in section five, article one-d of this chapter;

2. Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to develop and implement a financing policy for community and technical college education in West Virginia. The rule shall meet the following criteria:

   A. Provide for an adequate level of educational 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. Establish a plan for strategic funding to strengthen capacity for support of community and technical college education;
(D) Establish a plan that measures progress and provides performance-based funding to institutions which make significant progress in the following specific areas:

(i) Achieving the objectives and priorities established in article one-d of this chapter;

(ii) Serving targeted populations, especially working age adults twenty-five years of age and over;

(iii) Providing access to high-cost, high-demand technical programs in every region of the state;

(iv) Increasing the percentage of functionally literate adults in every region of the state; and

(v) Providing high-quality community and technical college education services to residents of every region of the state; and

(E) Evaluate institutions' requests for tuition and fee increases subject to section one, article ten of this chapter;

(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 each community and technical college and the statewide network of independently accredited community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in articles one, one-d and three-c of this chapter;

(4) Develop for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting workforce and economic development and ensuring access to advanced education for the citizens of West Virginia;

(5) 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 agendas approved by the commission and council.

(6) Review and adopt annually all institutional compacts for the community and technical colleges pursuant to section seven, article one-d of this chapter;

(7) Fulfill the mandates of the accountability system established in article one-d of this chapter and report on progress in meeting established goals, objectives and priorities to the elected leadership of the state;

(8) Propose a legislative rule pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code to establish benchmarks and indicators in accordance with this subsection;
(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress:

(A) In meeting state goals, objectives and priorities established in articles one and one-d of this chapter;

(B) In carrying out institutional missions; and

(C) In meeting the essential conditions established in article three-c of this chapter;

(10) Collect and analyze data relating to the performance of community and technical colleges in every region of West Virginia and report periodically or as directed to the Legislative Oversight Commission on Education Accountability on the progress in meeting the goals and objectives established in articles one and one-d of this chapter.

Additionally, the council shall report annually during the January interim meeting period 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 annual report shall address at least the following:

(A) The performance of the community and technical college network during the previous fiscal year, including, but not limited to, progress in meeting the goals, objectives and priorities established in articles one and one-d of this chapter and in the council’s master plan and institution compacts;

(B) The priorities of the council for new operating and capital investments and the justification for the priority; and
(C) Recommendations of the council for statutory changes necessary or expedient to achieve established state goals and objectives;

(11) In accordance with article nineteen of this chapter:

(A) Establish a formal process for identifying needs for capital investments and for determining priorities for these needs for consideration by the Governor and the Legislature as part of the appropriation request process;

(B) Ensure that the governing boards adhere to the capital construction and maintenance provisions of article nineteen of this chapter; and

(C) Notwithstanding any other provision of this code to the contrary, sell, lease, convey or otherwise dispose of all or part of any real property that it owns.

(12) Draw upon the expertise available within Workforce West Virginia and the West Virginia Development Office as a resource in the area of workforce development and training;

(13) Acquire legal services that 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;

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

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

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

(18) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards shall 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;

(19) Establish and implement policies and procedures to ensure that a student 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 to incur additional costs as is consistent with sound academic policy;

(20) Establish and implement policies and programs, jointly with the community and technical colleges, through which a student who has 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 the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate’s degree or a bachelor’s degree at a state institution of higher education;

(21) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, that council members consider critical for the
197 performance of their duties. The council shall keep abreast
198 of national and regional community and technical college
199 education trends and policies to aid members in developing
200 the policies for this state that meet the education goals and
201 objectives established in articles one and one-d of this
202 chapter;

203 (22) Assess community and technical colleges for the
204 payment of expenses of the council or for the funding of
205 statewide services, obligations or initiatives related
206 specifically to the provision of community and technical
207 college education;

208 (23) Promulgate rules allocating reimbursement of
209 appropriations, if made available by the Legislature, to
210 community and technical colleges for qualifying noncapital
211 expenditures incurred in the provision of services to students
212 with physical, learning or severe sensory disabilities;

213 (24) Assume the prior authority of the commission in
214 examining and approving tuition and fee increase proposals
215 submitted by community and technical college governing
216 boards as provided in section one, article ten of this chapter.

217 (25) Develop and submit to the commission, a single
218 appropriation request for community and technical college
219 education that reflects recommended appropriations for
220 community and technical colleges and that meets the
221 following conditions:

222 (A) Incorporates the provisions of the financing rule
223 mandated by this section to measure and provide
224 performance funding to institutions that achieve or make
225 significant progress toward achieving established state goals,
226 objectives and priorities;
(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals, objectives and priorities established in article one-d of this chapter and its approved institutional compact.

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

(27) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high quality community and technical college education in all regions of the state;

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

(29) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter;

(30) 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
257 committed to achieving the goals and objectives established
258 in the institutional compact and in articles one, one-d and
259 three-c of this chapter;

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

263 (32) Provide a mechanism capable of serving two or
264 more institutions to facilitate joint problemsolving in areas
265 including, but not limited to, the following:

266 (A) Defining faculty roles and personnel policies;

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

269 (C) Providing one-stop service for workforce training to
270 be delivered by multiple institutions; and

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

273 (33) Provide support and technical assistance to develop,
274 coordinate and deliver effective and efficient community and
275 technical college education programs and services in all
276 regions of the state;

277 (34) Assist the community and technical colleges in
278 establishing and promoting links with business, industry and
279 labor in the geographic areas for which each community and
280 technical college is responsible;

281 (35) Develop alliances among the community and technical
282 colleges for resource sharing, joint development of courses and
283 courseware, and sharing of expertise and staff development;
(36) Serve aggressively as an advocate for development of a seamless curriculum;

(37) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulation between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;

(38) Encourage the most efficient use of available resources;

(39) 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;

(40) 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;

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

(43) Review and approve all institutional master plans for the community and technical colleges pursuant to section four, article two-a of this chapter;

(44) Propose rules for promulgation pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

(45) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards, which may rescind, revise, alter or amend any rule transferred pursuant to rules adopted by the council, and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;

(46) Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

(47) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Mountwest Community and Technical College;

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

(49) Develop with the State Board of Education plans for
secondary and post-secondary vocational-technical-
occupational and adult basic education, including, but not
limited to, the following:

(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;

(50) 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 State Board of Education shall continue to be the
fiscal agent for federal vocational education funding;

(B) The percentage split between the State Board of
Education and the council shall be determined by rule
promulgated by the council under article three-a, chapter
twenty-nine-a of this code;

(51) 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;

(52) 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;

(53) Analyze and report to the State 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;

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

(55) 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;

(56) 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;
(57) 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;

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

(59) Assume the powers set out in section nine of this article. 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;

(60) Pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(61) 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;

(62) Subject to section one, article ten of this chapter, promulgate a rule establishing tuition and fee policy for all governing boards under its jurisdiction. 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) Any other policies the council considers appropriate;

(63) 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

(64) Promulgate and implement a rule 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.

(d) In addition to the powers and duties listed in
subsections (a), (b) and (c) 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 network as a whole or a geographical region of the network;

(3) Development and implementation of each community and technical college mission definition including use of incentive and performance funds to influence institutional behavior in ways that are consistent with achieving established state goals, objectives and 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 institutional operating and capital budgets and distributing incentive and performance-based funding;

(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 internal 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;

(9) Development, implementation and oversight of
statewide and regional 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.

(c) The council may 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 any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in section seven, article one-d 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 may take
steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided in subsections (a), (b), (c) and (d) of this section and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article.

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

(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 action within sixty days of the date when the request for concurrence is received; and

(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.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-6. Regulation of parking, speed flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

(a) Notwithstanding any other motor vehicle or traffic law or regulation to the contrary, a governing board may regulate and control at any state institution under its jurisdiction the speed, flow and parking of vehicles on campus roads, driveways and parking facilities or areas.
(1) Rules for this purpose shall be promulgated by the governing boards in the manner prescribed in section six, article one of this chapter; and

(2) When so promulgated, the rules have the force and effect of law.

(3) The governing board shall post in a conspicuous location in each parking facility or area, a summary of the rules governing the use of the facility or area including, but not limited to, the availability of temporary parking permits and where these permits may be obtained and the penalties which may be imposed for violations of the rules.

(4) The governing board shall post in a conspicuous location along each campus road and driveway notice signs pertaining to the speed of vehicles, spaces available for parking, directional flow of traffic and penalties which may be imposed for violations of the rules.

(b) Any person parking or operating a vehicle in violation of the rules shall be issued a citation:

(1) Describing the offense charged; and

(2) Ordering an appearance:

(A) Within ten days, excluding Saturdays, Sundays and holidays observed by the state institution, before a designated official of the institution;

(B) Before a magistrate located in the county if the person cited fails to appear within the ten days; or

(C) Before the judge of the municipal court, if the state institution is located within a municipality having such an
33 official and the person cited fails to appear within the ten
days.

35 (c) The designated official of the state institution has
exclusive jurisdiction of the offense during the ten-day period
until the citation is forwarded to a magistrate. For the state
institutions of higher education under the jurisdiction of the
governing board of Marshall University and for the state
institution of higher education known as West Virginia
University only, the designated official of the institution has
exclusive jurisdiction of the offense for thirty days following
the violation. After thirty days the official shall forward the
citation to a magistrate. Any person cited may plead no
contest to the offense and, by so pleading, is subject to a civil
penalty to be determined uniformly by the designated official
and commensurate with the severity of the offense. For the
state institutions under the jurisdiction of the governing board
of Marshall University and for the state institution of higher
education known as West Virginia University only, the
amount imposed may not exceed $20. For all other
institutions the amount may not exceed $10, for each offense
as partial reimbursement to the state institution of higher
education for the cost of regulating traffic and parking. In the
case of the state institutions under the jurisdiction of the
governing board of Marshall University and in the case of the
state institution of higher education known as West Virginia
University only, the designated official shall determine the
penalty uniformly, commensurate with the severity of the
offense, and may apply academic restrictions in lieu of
requiring a student to appear in court and receive penalties
otherwise provided in this section. Moneys derived from
civil penalties imposed in this subsection shall be deposited
in the institution's auxiliary and auxiliary capital fees fund.

65 (d) Upon expiration of the ten-day or thirty-day period,
as applicable, or upon a pleading of not guilty before the
designated official of the state institution within the applicable period, the magistrate or judge of the municipal court has jurisdiction of the offense. Any person cited under this section, upon a finding of guilty by the magistrate or municipal judge, is subject to a fine for each offense by the state institutions under the jurisdiction of the governing board of Marshall University and for the state institution of higher education known as West Virginia University only, of up to $40, and at all other state institutions not less than $10 nor more than $20, the amount to be commensurate with the severity of the offense.

(e) Each designated official of a state institution presiding over a case under this section shall keep a record of every citation which alleges a violation of the provisions, or the rules promulgated in accordance with this section, and shall keep a record of every official action in reference to the citation including, but not limited to, a record of every plea of no contest, conviction or acquittal, of the offense charged, and the amount of the fine or civil penalty resulting from each citation.

(f) Whenever a vehicle is parked on any state institution campus road, driveway or parking facility or area in a manner which violates posted rules and substantially impedes the flow of traffic or endangers the health and safety, in addition to issuing a citation and any procedures set forth in this section, the institution may remove the vehicle, by towing or otherwise, to an area owned by the institution or areas designated for this purpose. The vehicle, having been towed to the designated area or areas, may be rendered immovable by use of locking wheel blocks or other device not damaging to the vehicle. The state institution of higher education shall maintain any vehicle towed in the same condition as it was immediately prior to being towed, but is not liable for any damage to a vehicle towed to, or kept in, a designated area.
pursuant to this section. The state institution of higher
education shall pay for the cost of removing the vehicle and
has a right to reimbursement from the owner for this cost and
for the reasonable cost of keeping the vehicle in the
designated area. Until payment of these costs, the state
institution of higher education may retain possession of the
vehicle and the institution shall have a lien on the vehicle for
the amount due. The state institution of higher education
may enforce this lien in the manner provided in section
fourteen, article eleven, chapter thirty-eight of this code for
the enforcement of other liens. For the state institutions of
higher education under the jurisdiction of the governing
board of Marshall University and for the state institution of
higher education known as West Virginia University only,
this subsection also applies when a vehicle is subject to three
or more unpaid citations.

(g) If, at any time, Mountwest Community and Technical
College ceases to share a physical campus location with
Marshall University, it may not be included as an institution
under the jurisdiction of the governing board of Marshall
University for the purposes of subsections (c), (d) and (f) of
this section.

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
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,
except the governing boards of Marshall University and West
Virginia University, respectively, are subject to subsection (d) of this section.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section. The rules shall ensure that the following procedures are followed:

1. No person is precluded from participating and making sales thereof to the council, commission or governing board except as otherwise provided in section five of this article. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

2. Specifications are established and prescribed for materials, supplies, equipment, services and printing to be purchased;

3. Purchase order, requisition or other forms as may be required are adopted and prescribed;

4. Purchases and acquisitions in such quantities, at such times and under contract, are negotiated for and made in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

5. Bids are advertised on all purchases exceeding $25,000, and made by means of sealed or electronically-submitted bids and competitive bidding or advantageous purchases effected through other accepted governmental methods and practices. Competitive bids are not required for purchases of $25,000 or less.
(6) Notices for acquisitions and purchases for which competitive bids are being solicited are posted in the purchasing office of the specified institution involved in the purchase, at least two weeks prior to making the purchases. The rules shall ensure that the notice is available to the public during business hours;

(7) Purchases are made in the open market;

(8) Vendors are notified of bid solicitation and emergency purchasing; and

(9) No fewer than three bids are obtained when bidding is required, except if fewer than three bids are submitted, an award may be made from among those received.

(c) When a state institution of higher education submits a contract, agreement or other document to the Attorney General for approval as to form as required by this chapter the following conditions apply:

(1) "Form" means compliance with the Constitution and statutes of the State of West Virginia;

(2) The Attorney General does not have the authority to reject a contract, agreement or other document based on the substantive provisions in the contract, agreement or document or any extrinsic matter as long as it complies with the Constitution and statutes of this state;

(3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state institution of higher education in writing that the contract, agreement or other document is approved or disapproved as to form. If the contract, agreement or other document is disapproved as to form, the notice of disapproval shall identify each defect that supports the disapproval; and
(4) If the state institution elects to challenge the disapproval by filing a writ of mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards of Marshall University and West Virginia University, respectively, may carry out the following actions:

(1) Purchase or acquire all materials, supplies, equipment, services and printing required for the governing board without approval from the commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in subsection (f) of this section;

(2) 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 these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space or other space, and capital improvements, including equipment, if the rental is necessarily required by the governing board; and

(4) Use purchase cards under terms approved for the commission, the council and governing boards of state institutions of higher education and participate in any expanded program of use as provided in subsection (u) of this section.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and
adopt appropriate rules subject to section six, article one of
this chapter to govern and control acquisitions, purchases,
leases and other instruments for grounds, buildings, office or
other space, and capital improvements, including equipment,
or lease-purchase agreements.

(f) The council, commission or each governing board
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.

(g) 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 applies to the competitive bids
made pursuant to this section.

(h) The governing boards, council and commission shall
maintain a purchase file, which shall be a public record and
open for public inspection.

(1) After the award of the order or contract, the governing
boards, council and commission shall indicate upon the
successful bid the following information:

(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

(C) The reason for rejection, if the mathematical low
vendor was not awarded the order or contract.
(2) 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.

(3) All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

(i) The commission and council, also jointly, shall promulgate 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 has one of the following qualifications:

(1) Is 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.

(j) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of $50,000, 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 these buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall be paid from
funds appropriated to the applicable governing board or the council or commission.

(k) 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. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered and they may be entered into the state's centralized accounting system by the staff of the commission, council or governing boards to satisfy the requirements of article two, chapter five-a of this code to determine whether the amount of the purchase is within the quarterly allotment of the commission, council or governing board, is in accordance with the approved expenditure schedule and otherwise conforms to the article.

(l) The governing boards, council and commission may make requisitions upon the State 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 State Auditor shall draw a warrant upon the Treasurer for those 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.

(m) 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 as to form by the Attorney General. The Attorney General shall make a list of those changes which he or she considers to be substantive and the list, and any changes to the list, shall be published in the State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this section 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.

(n) If the governing board, council or commission purchases or contracts for materials, supplies, equipment, services and printing contrary to sections four through seven of this article or the rules pursuant to this article, the purchase or contract is void and of no effect.

(o) A governing board or the council or commission, as appropriate, may request the director of purchasing to make available 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. The director of purchasing shall cooperate with that governing board, council or commission, as appropriate, in all such purchases and acquisitions upon that request.
(p) Each governing board or the council or commission, as appropriate, may 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. A private institution desiring to join as purchaser on purchase contracts shall file with that governing board or the council or commission, as appropriate, an affidavit signed by the president or designee of the private institution 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 institution 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.

(q) 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 that source, and purchasing from that source would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher education, except Marshall University and West Virginia University, 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.
(1) The governing boards of Marshall University and West Virginia University, respectively, shall provide for independent performance audits of all purchasing functions and duties on their campuses at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

(3) Copies of all appropriate documents relating to any audit performed by the governing boards of Marshall University and West Virginia University shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

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

(t) Consultant services, such as strategic planning services, do 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.

(u) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any institution under their respective jurisdictions using
purchasing cards. The procedures shall ensure that each
meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with article three, chapter twelve of
this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all
purchasing card transactions.

(2) Notwithstanding any other provision of this code to
the contrary, the council, commission and any institution
authorized pursuant to subdivision (3) of this subsection may
use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job
duties of the traveling employee, including, but not limited
to, fuel and food; and

(B) Payment of any routine, regularly scheduled
payment, including, but not limited to, utility payments and
real property rental fees.

(3) The commission and council each shall evaluate the
capacity of each institution under its jurisdiction for
complying with the procedures established pursuant to
subdivision (2) of this subsection. The commission and
council each shall authorize expanded use of purchasing
cards pursuant to that subdivision for any institution it
determines has the capacity to comply.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER
EDUCATION.
§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) This section and any rules adopted by the commission, council or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code, govern the collection, disposition and use of the capital and auxiliary capital fees authorized by section one of this article. The statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) Fees for full-time students. -- The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix the fees at higher rates for students who are not residents of this state.

(c) Fees for part-time students. -- For all part-time students and for all summer school students, the governing boards shall impose and collect the fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is continued in the State Treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of the following:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and
(2) The fees collected from the students pursuant to section one of this article. The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which the fees were pledged prior to the enactment of this section.

e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance or fund on a cash basis, in whole or in part, in combination with any federal, state or other grants or contributions, for any one or more of the following projects:

    (1) The acquisition of land or any rights or interest in land;

    (2) The construction or acquisition of new buildings;

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

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

    (5) The construction or acquisition of any other capital improvements or capital education facilities at the state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.
(f) The commission, when singly or jointly requested by the council or governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in the special funds for the payment of the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds shall be a prior and superior charge on the special funds over the use of any of the moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any expenditures from the special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in the order of priority agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the Governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the ten-year campus development plan approved by the governing board pursuant to section three, article nineteen of this chapter.

(g) The revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in the special funds.

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

(i) The commission or governing boards may enter into
trust agreements with banks or trust companies, within or
without the state, and in the trust agreements or the
resolutions authorizing the issuance of the bonds may enter
into valid and legally binding covenants with the holders of
the revenue bonds as to the custody, safeguarding and
disposition of the proceeds of the revenue bonds, the moneys
in the special funds, sinking funds, reserve funds or any other
moneys or funds; as to the rank and priority, if any, of
different issues of revenue bonds by the commission or
governing boards under this section; as to the maintenance or
revision of the amounts of the fees; as to the extent to which
swap agreements, as defined in subsection (h), section two,
article two-g, chapter thirteen of this code shall be used in
connection with the revenue bonds, including such provisions
as payment, term, security, default and remedy provisions as
the commission considers necessary or desirable, if any,
under which the fees may be reduced; and as to any other
matters or provisions which are considered necessary and
advisable by the commission or governing boards in the best
interests of the state and to enhance the marketability of the
revenue bonds.

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

(k) Additional revenue bonds may be issued by the
commission or governing boards pursuant to this section and
financed by additional revenues or funds dedicated from
other sources. The special revenue fund in the State Treasury
known as the Community and Technical College Capital
Improvement Fund into which shall be deposited the amounts
specified in subsection (j), section eighteen, article twenty-
two, chapter twenty-nine of this code is continued. All
amounts deposited in the fund shall be pledged to the
repayment of the principal, interest and redemption premium,
if any, on any revenue bonds or refunding revenue bonds
authorized by the commission for community and technical
college capital improvements or used by the council on a
cash basis as provided under subdivision (4), subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code for community and technical college capital improvements or capital projects.

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

(m) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the commission.

(n) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

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

(p) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section and section one of this article are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher
education institutions. Notwithstanding any other provisions
of this code to the contrary, in the event any capital, tuition,
registration or auxiliary fees are pledged to the payment of
any revenue bonds issued pursuant to any general bond
resolutions of the commission, any of its predecessors or any
institution, adopted prior to the effective date of this section,
the fees shall remain in effect in amounts not less than the
amounts in effect as of that date, until the revenue bonds
payable from any of the fees have been paid or the pledge of
the fees is otherwise legally discharged.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-1. Legislative findings and intent.

(a) The Legislature makes the following findings:

(1) State institutions of higher education vary widely in
the conditions of their facilities infrastructure.

(2) State institutions of higher education vary widely in
their ability to incur debt for capital improvements. It is
nearly impossible for community and technical colleges and
some smaller baccalaureate institutions to fund significant
capital improvements in the absence of state funding.

(3) A student enrolled at a community and technical
college that previously was administratively linked to another
state institution of higher education pays substantially higher
tuition and mandatory fees than a student enrolled at a
freestanding community and technical college. This cost
discrepancy is due in large part to the significantly higher
capital fees charged to these students to pay debt service for
capital improvements.

(4) The substantial amount of capital fees that students
must pay at the institution level contributes significantly to
the poor grade the state receives in the category of "Affordability" in *Measuring Up: The National Report Card on Higher Education.*

(5) It is beneficial for the state to provide additional ongoing capital funding to reduce the obligation of students and parents to bear the cost of higher education capital improvements and facilities maintenance.

(6) West Virginia is one of only a few states that does not address higher education capital improvements and facilities maintenance needs through a statewide plan.

(7) State funding for capital improvements should align with state and system higher education goals, objectives and priorities as set forth in article one-d of this chapter.

(8) State capital funding should focus primarily on educational and general capital improvements, not auxiliary capital improvements.

(9) Renovations of existing buildings generally deserve greater consideration for state funding than new construction. However, new construction may deserve greater consideration than renovation when a state or system goal, objective or priority is implicated.

(10) As the Legislature increases funding for new educational and general capital improvements and major renovations, and supplants existing educational and general debt, institutions should target funds for maintenance and deferred maintenance needs.

(11) If community and technical colleges are to keep the cost of education affordable, they cannot be expected to fund maintenance obligations entirely from student capital fees.
(12) The commission and council should scrutinize carefully all requests from institutions to incur additional debt in order to determine their effect on institution debt capacity and the impact that incurring additional debt will have on students.

(13) State institutions of higher education ultimately should target adequate state capital contributions and capital fees to address maintenance and deferred maintenance needs.

(14) Until institutions are able to generate sufficient revenue to address maintenance and deferred maintenance needs, the Legislature should provide periodic funding to assist institutions in addressing these needs. Funding priority should be given to projects that address building code requirements and critical maintenance needs.

(15) In supporting future high priority capital needs, the Legislature, commission and council should not reward institutions with state funding if they neglect to address facilities maintenance needs or do not prudently manage their capital resources.

(16) Once an institution’s capital development plan has been approved by the governing board and the commission or council, as appropriate, project priorities should not change significantly from year to year.

(17) Commission and council staff should participate to a greater extent in managing capital projects at smaller institutions than at larger institutions since smaller institutions often lack the expertise necessary to plan, design and complete projects at or under budget.

(b) The intent of the Legislature relating to this article includes, but is not limited to, the following:
(1) Dedicated state funding sources shall be designated to finance construction and renovation of educational and general facilities at state institutions of higher education from time to time;

(2) Capital project lists submitted by institutions to the commission or council, as appropriate, and capital project lists submitted by the commission and council to the state budget office, Legislative Oversight Commission on Education Accountability, and Joint Committee on Government and Finance for consideration for state funding shall be reasonable requests that align with state and system goals, objectives and priorities and ones which reasonably could be funded if approved;

(3) As the Legislature increases its responsibility for financing new educational and general facilities and major renovations, the commission, council and institutions shall ensure that sufficient capital revenues are available for maintenance and that the facilities are maintained adequately;

(4) Ongoing state funding shall be dedicated to supplement capital fees available for maintenance at community and technical colleges; and

(5) Once a system capital plan is in place, institutions shall set aside adequate funding annually to ensure that ongoing facilities maintenance needs are met.


As used in this article, the following terms have the meanings ascribed to them.

(b) "Auxiliary enterprise" means an entity that exists to furnish goods or services to students, faculty, staff or others; charges a fee directly related to, although not necessarily equal to, the cost of the goods or services; and is managed as essentially self-supporting.

(c) "Auxiliary facility" means a building or structure that is used for an auxiliary enterprise including, but not limited to, residence halls, food services, parking, intercollegiate athletics, faculty and staff housing, student unions, bookstores and other service centers.

(d) "Auxiliary fees" means funds derived from, but not limited to, the following sources:

(1) Parking fees received from any source;

(2) Revenues received from athletic events, including ticket sales, television revenues and skybox fees;

(3) Bookstore revenues;

(4) Student union vendor and user fees;

(5) Donations or grants from any external source;

(6) Facility rental fees; and

(7) Fees assessed to students to support auxiliary enterprises.

(e) "Capital planning" means a purposeful activity that focuses attention on long term physical plant objectives which should be accomplished in a logical sequence over time as opportunities arise and resources become available.
(f) "Capital project management" means planning, designing, bidding and providing construction administration and oversight of architectural, engineering and construction contracts and projects.

(g) "Deferred maintenance" means repair, maintenance and renewal of capital facilities which should be part of normal maintenance management, but which have been postponed to a future budget cycle or until funds become available.

(h) "Educational and general capital fees" means the fees collected from students to pay debt service for capital improvement bonds issued by the commission and governing boards for educational and general facilities, for the maintenance of those facilities and to fund capital improvements in those facilities on a cash basis.

(i) "Educational and general facility" means a building or structure used for instruction and instructional support purposes, and includes classroom, laboratory, library, computer laboratory, faculty and administrative office and other academic support spaces.

(j) "Extraordinary circumstance" or "extraordinary circumstances" means a situation involving life-safety issues, issues that would result in extensive damage to a facility if not addressed immediately, any unforeseen opportunity to use external funds and any other situation the commission or council determines should warrant special consideration.

(k) "Life-safety" means a condition existing on a campus that, if not corrected immediately, would jeopardize the safety and property of students, faculty, staff and the visiting public.
“Maintenance” means the work necessary within a budget cycle to realize the originally anticipated life of a fixed asset, including buildings, fixed equipment and infrastructure.

“Governing board”, “state institution of higher education” and “institution under the jurisdiction of the commission” means all state institutions of higher education including Marshall University and West Virginia University and their respective governing boards.


(a) By December 31, 2011, the commission and council, jointly or separately, shall develop a system capital development plan for approval by the Legislative Oversight Commission on Education Accountability. At a minimum the initial plan shall include the following:

(1) System goals for capital development;

(2) An explanation of how system capital development goals align with state goals, objectives and priorities established in articles one and one-d of this chapter and with system master plans;

(3) A process for prioritizing capital projects for state funding based on their ability to further state goals, objectives and priorities and system capital development goals;

(4) A building renewal formula to calculate a dollar benchmark that shall be collected annually and invested in facilities to minimize deferred maintenance and to provide the commission and council objective information to determine if the investments in maintenance are occurring;
(5) A process for governing boards to follow in developing and submitting campus development plans to the commission or council, as appropriate, for approval;

(6) A process for governing boards to follow to ensure that sufficient revenue is generated for and applied toward facilities maintenance; and

(7) A discussion addressing how capital fees dedicated to debt service for the bond issue to be paid off in 2012 will be used after the payoff date.

(b) The system capital development plan shall be developed in consultation with governing boards and appropriate institution staff. Before approving the capital development plan, the commission and council shall afford interested parties an opportunity to comment on the plan through a notice-and-comment period of at least thirty days.

(c) The commission and council shall update its system capital development plan at least once in each ten-year period.

§18B-19-4. Campus development plans.

(a) Each governing board shall update its current campus development plan and submit the updated plan to the commission or council, as appropriate, for approval by June 30, 2013. A campus development plan shall be developed for a ten-year period and shall align with criteria specified in the following sources:

(1) The system capital development plan;

(2) The institution’s approved master plan and compact; and
(3) The current campus development plan objectives.

(b) Campus development plans are intended to be aspirational; however, an institution's plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints within which the institution operates. At a minimum the campus development plan shall include the following:

(1) The governing board’s development strategy;

(2) An assessment of the general condition and suitability of buildings and facilities, including deferred maintenance, life-safety and building code issues, ADA requirements and energy efficiency;

(3) An assessment of the impact of projected enrollment and demographic changes on building and facility needs;

(4) A comprehensive list of deferred maintenance projects that need to be addressed for each campus by building or facility including an estimated cost for each;

(5) A list of existing buildings and facilities in need of renovations, additions, demolition or any combination thereof;

(6) A list of major site improvements that are needed, including vehicular and pedestrian circulation, parking and landscaping;

(7) A list of telecommunications, utilities and other infrastructure improvements that are needed;

(8) A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion;
(9) A list of proposed new facilities and building sites;

(10) A list of capital projects in priority order;

(11) Estimates of the timing, phasing and projected costs associated with individual projects;

(12) If an institution has multiple campuses in close proximity, a delineation of how the campuses should interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible;

(13) A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public with respect to its implementation; and

(14) Any other requirement established by the commission and council in the rules required by section seventeen of this article.

(c) Campus development plans shall incorporate all current and proposed facilities, including educational and general and auxiliary facilities.

(d) At the next regularly scheduled meeting of the commission or council, as applicable, following the fifth anniversary date after the commission or council approves the development plan of a governing board, the governing board shall report on the progress made in the first five years to implement the campus development plan for each campus under its jurisdiction. In addition, the governing board shall report on its plans to implement the remaining five-year period of its campus development plan.

(e) Each governing board shall update its campus development plan at least once during each ten-year period
and any update is subject to the approval of the commission or council, as appropriate.

(f) A governing board may not implement a campus development plan or plan update that has not been approved by the commission or council, as appropriate.


(a) The commission and council each shall submit a prioritized capital appropriation request annually to the state budget office as required by article two, chapter eleven-b of this code consisting of major capital projects and maintenance projects.

(b) The commission and council each shall develop a process for governing boards to follow in submitting a list of major educational and general capital projects so that a prioritized major capital project list, approved by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) The governing board’s major capital project list shall include the following items:

(A) Projects identified in the governing board’s approved campus development plan or plans. A project may not be included which is not contained in the approved plan, except when extraordinary circumstances otherwise warrant;

(B) A current estimate of each project’s estimated cost accounting for inflation since completion of the campus development plan. The size and scope of the project may not change unless the campus development plan has been updated and approved as provided in section three of this article; and
(C) Any additional information required to be provided by the commission, council or state budget office.

(2) The commission and council each shall rank the major capital projects submitted by the governing boards according to priority consistent with the criteria outlined in the system capital development plan. The council and commission may not submit to the state budget office a request for an institution which the commission or council determines reasonably could not secure funding through the appropriation process during the following fiscal year.

c) The commission and council each shall develop a process for governing boards to follow in submitting a list of maintenance projects so that a prioritized maintenance project list, approved by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) No later than April 1, 2011, and annually thereafter, the commission and council, as appropriate, shall provide each governing board a building renewal calculation that identifies the funds that should be collected and invested in its buildings and facilities during the next fiscal year to maintain them and minimize deferred maintenance.

(2) As soon as it receives the building renewal calculation, each governing board shall make realistic revenue estimates of the funds available for maintenance projects from educational and general capital fees, from auxiliary and auxiliary capital fees and from any other revenue that may be used for maintenance projects, as well as any anticipated reserves. The governing boards then shall identify and submit proposed maintenance projects, consistent with its campus development plan or plans, to be funded from these revenues.
(3) The commission and council each shall report to the Legislative Oversight Commission on Education Accountability on the revenue available to governing boards for educational and general and auxiliary maintenance projects, as well as any shortfalls based on building renewal formula calculation, and major maintenance projects that institutions propose to undertake during the upcoming fiscal year.

(4) The commission shall work with institutions under its jurisdiction to ensure that adequate funds are generated to fund maintenance and build adequate reserves from educational and general and auxiliary capital fees and other revenue consistent with the building renewal formula. The Legislature recognizes that it may take several years for this to be accomplished fully.

(5) The council shall work with the Legislature and institutions under its jurisdiction to ensure that a combination of appropriated and nonappropriated revenue is available to fund maintenance and build adequate reserves at community and technical colleges consistent with the building renewal formula.

§18B-19-6. Capital project financing.

(a) The commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with section eight, article ten of this chapter.

(b) A governing board may seek funding for and initiate construction or renovation work only for projects contained in an approved campus development plan.

(c) A governing board may fund capital improvements on a cash basis, through bonding or through another financing
method that is approved by the commission and by the council, if appropriate.

(1) If the cost of an improvement project for any institution, except Marshall University or West Virginia University, exceeds $1 million, the governing board first shall obtain the approval of the commission or council, as appropriate. If the cost of an improvement project for Marshall University or West Virginia University exceeds $15 million, the governing board first shall obtain the approval of the commission.

(2) Prior to approving bonding or any alternative financing method, the commission, and council if appropriate, shall evaluate the following issues:

(A) The institution’s debt capacity and ability to meet the debt service payments for the full term of the financing;

(B) The institution’s capacity to generate revenue sufficient to complete the project;

(C) The institution’s ability to fund ongoing operations and maintenance;

(D) The impact of the financing arrangement on students; and

(E) Any other factor considered appropriate.

(d) A governing board shall notify the Joint Committee on Government and Finance at least thirty days before beginning construction or renovation work on any capital project in excess of $1 million.
(e) The commission may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

(f) Any fee or revenue source pledged prior to the effective date of this section for payment of any outstanding debt remains in effect until the debt is fully repaid or refunded.

§18B-19-7. Capital project management.

(a) The commission, council and governing boards shall ensure that capital funds are spent appropriately and that capital projects are managed effectively. Project management shall be conducted in all respects according to sound business practices and applicable laws, and rules.

(b) The commission shall employ a sufficient number of competent facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed. By December 31, 2011, and continuing thereafter, at least one employee shall be Leadership in Energy and Environmental Design (LEED) certified.

(c) An institution that has entered into construction contracts averaging more than $50 million over the most recent rolling five-year period is responsible for capital project management at that institution if it meets the following additional conditions:

(1) The governing board shall employ a facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed and, by December 31, 2011, and continuing thereafter, at least one of these employees
shall be Leadership in Energy and Environmental Design (LEED) certified;

(2) The governing board shall promulgate and adopt a capital project management rule in accordance with section six, article one of this chapter which is consistent with the capital management rules of the commission and council. The capital project management rule shall include at least the following items:

(A) Delineation of the governing board’s responsibilities with respect to capital project management and the responsibilities delegated to the institution’s president;

(B) A requirement for the use of the state’s standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project;

(C) The governing board’s requirements for the following procedures:

(i) Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board’s master plan, compact and campus development plan;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering and construction contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and
(v) Providing a method for project closeout and final acceptance of the project by the governing board.

(3) The institutional capital project management rule shall be filed with the commission no later than one hundred eighty days following the effective date of the rule required of the commission and council in section seventeen of this article.

(4) The commission may review or audit projects greater than $5 million periodically to ascertain that appropriate capital project management practices are being employed.

(d) For institutions that have entered into construction contracts averaging at least $20 million, but not more than $50 million, over the most recent rolling five-year period:

(1) The governing board, with assistance as requested from the commission, shall manage all capital projects if the governing board meets the following conditions:

(A) Employs at least one individual experienced in capital project development and management; and

(B) Promulgates and adopts a capital project management rule in accordance with section six, article one of this chapter that is approved by the commission. The capital project management rule may be amended at the discretion of the governing board, but amendments shall be submitted to the commission for review and approval before becoming effective.

(2) The capital project management rule of the governing board shall include at least the following items:

(A) Delineation of the governing board’s responsibilities with respect to capital project management and the responsibilities delegated to the institution’s president;
(B) A requirement for the use of the state’s standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project; and

(C) The governing board’s requirements for the following procedures:

(i) Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board’s master plan, compact and campus development plan;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering, construction and other capital contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.

(3) If an institution does not meet the provisions of this subsection, the commission shall manage all capital projects exceeding $1 million.

(4) The commission staff shall review and audit periodically all projects greater than $1 million to ascertain that appropriate project management practices are being employed. If serious deficiencies are identified and not addressed sufficiently within ninety days, commission staff may assume management of all projects.
(e) For institutions that have entered into construction contracts averaging less than $20 million over the most recent rolling five-year period and for all community and technical colleges, the commission and council shall manage capital projects exceeding $1 million. In the rule required by section seventeen of this article, the commission and council, as appropriate, shall adopt procedures to afford participation by the governing boards and staff in the planning, development and execution of capital projects.


(a) Each governing board shall ensure that facilities under its jurisdiction are maintained and that a listing of any major deferred maintenance projects is provided annually to the commission or council, as appropriate.

(b) Each governing board shall strive to invest annually an amount for maintenance that is consistent with the building renewal formula developed and approved by the commission and council and to generate a reserve sufficient to address unexpected maintenance needs.

(c) The commission and council shall determine whether a governing board is devoting sufficient resources for maintenance based on the following criteria:

(1) The amount of maintenance expenditures compared to building renewal formula estimates of appropriate expenditures; and

(2) Periodic evaluations of the conditions of facilities at the institution and its performance and effectiveness in maintaining its facilities.

(a) The commission and council jointly shall develop and maintain a higher education facilities information system. The higher education facilities information system shall serve as a vehicle for carrying out the following functions:

(1) Acquisition of statewide data;

(2) Statewide standardization of space use and classification based on nationally recognized standards and measurements to facilitate comparisons among post-secondary education institutions within the state and in the region and nation; and

(3) Other purposes as determined by the commission and council.

(b) At a minimum the higher education facilities information system shall serve the following purposes:

(1) Develop and maintain a statewide inventory of higher education facilities, including those acquired by long-term lease, lease-purchase or other arrangement whereby the institution has long-term beneficial use. The inventory shall include, but is not limited to, the institution and campus location of the facility, the construction date, the original cost, square footage, floor plans, type of construction, ownership status, the purposes for which it is used, the current replacement cost and any other data the commission and council consider appropriate;

(2) Develop and maintain an inventory of all rooms within each facility, which includes, but is not limited to, the room number, the square footage, room usage, number of student stations and any other data the commission and council consider appropriate;
(3) Provide a vehicle for institutions to submit capital appropriation requests to the commission and council;

(4) Provide a vehicle to track the status and cost of institution capital projects from inception to completion, including major maintenance and deferred maintenance projects; and

(5) Provide information on facilities needed to calculate the building renewal formula.

c) The commission and council shall establish benchmarks for classroom and class laboratory use including an analysis of utilization for the fall and spring semesters of each academic year. The efficient use of classrooms and class laboratories is a factor in determining whether an institution needs additional classroom and laboratory facilities.

d) Each governing board and any institution under its jurisdiction shall participate and cooperate with the commission and council in all respects in the development and maintenance of the higher education facilities information system.

e) The higher education facilities information system may be used for other purposes set forth by the commission and council in the rules required by section seventeen of this article.

§18B-19-10. Authorization to sell property; use of proceeds.

(a) Notwithstanding any other provision of law or this code to the contrary, the commission, council and governing boards each may sell, lease, convey or otherwise dispose of all or part of any real property that it owns, either by contract
or at public auction, and retain the proceeds of the transaction.

(1) The commission, council and governing boards may not sell, lease, convey or otherwise dispose of any real property without first performing the following steps:

(A) Providing for property appraisal by two independent licensed appraisers. The property may not be sold for less than the average of the two appraisals;

(B) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

(C) Holding a public hearing on the issue in the county in which the real property is located; and

(D) In the case of the commission, notifying the Joint Committee on Government and Finance.

(2) Any proceeds from the sale, lease, conveyance or other disposal of real property that is used jointly by institutions or for statewide programs under the jurisdiction of the commission or the council shall be transferred to the General Revenue Fund of the state.

(b) The commission, council or a governing board shall deposit the net proceeds from the sale, lease, conveyance or other disposal of real property into a special revenue account in the State Treasury to be appropriated by the Legislature in the annual budget bill for the purchase of additional real property, equipment or technology, or for capital improvements or maintenance at the institution that sold the surplus real property.

(a) The commission or council may enter into lease-purchase agreements for capital improvements, including equipment, on behalf of, or for the benefit of, a state institution of higher education, the commission or council.

(b) After the commission or council, as appropriate, has granted approval for a lease-purchase agreement by a governing board, the board may enter into a lease-purchase agreement for capital improvements, including equipment.

(c) The governing boards of Marshall University and West Virginia University may enter into lease-purchase agreements without seeking the approval of the commission.

(d) A lease purchase agreement constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the commission, council or the institution and shall be cancelable at the option of the commission, council, or governing board at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, 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 of the state. The facts shall be plainly stated in any lease-purchase agreement.

(e) A lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the agreement as to form by the Attorney General. Proposals for any agreement shall be requested in accordance with the requirements of this section and rules of...
the commission and council. In addition, any lease-purchase
agreement that exceeds $100,000 total shall be approved as
to form by the Attorney General.

(f) 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.


(a) Notwithstanding any other provision of this code to
the contrary, the commission, council and governing boards
may lease, or offer to lease, as lessee, any grounds, buildings,
office or other space in the name of the state.

(b) 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 required necessarily by the commission, council or
institutions.

(c) Before executing any rental contract or lease, the
commission, council or a governing board shall determine the
fair market 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 market value.
(d) The commission, council and each governing board may enter into long-term agreements for buildings land and space for periods longer than one fiscal year but not to exceed forty years.

(e) Any lease shall contain, in substance, all the following provisions:

(1) 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;

(2) 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 for the lease or otherwise acts to impair the lease or cause it to be canceled; and

(3) 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.

(f) The commission, council or institution that 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 that cannot be economically
(g) 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, or designee, of the commission, council or institution.

(h) Any lease or instrument exceeding $100,000 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.


(a) Except as provided elsewhere in this article, 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 from these transactions, shall be approved by the commission or council, as appropriate, and provided to the Joint Committee on Government and Finance for prior review, if the transaction exceeds $1 million.

(b) The commission, council and each governing board shall provide the following to the Joint Committee on Government and Finance:

1. A copy of any contract or agreement to which it is a party for real property if the contract or agreement exceeds $1 million; and

2. A report setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner and the agent involved in the sale.
(c) The copy and report required by subsection (b) of this section shall be provided at least thirty days before any sale, exchange, transfer, purchase, lease-purchase, lease or rental of real property, refundings of lease-purchases, leases or rental agreements, construction of new buildings, and any other acquisition or lease of buildings, office space or grounds.

(d) A contract or agreement that is for the lease purchase, lease or rental of real property, where the costs of real property acquisition and improvements are to be financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of review by the committee.

(e) For renewals of contracts or agreements required by this section to be reported, the commission, council or governing board shall provide a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner.

(f) The Joint Committee on Government and Finance shall meet and review any contract, agreement or report within thirty days of receipt.

(g) Each governing board shall provide to the commission or council, as appropriate, a copy of any contract or agreement submitted to the Joint Committee on Government and Finance pursuant to this section.


(a) Notwithstanding any other provision of this code to the contrary, a governing board may sell any building that is on unencumbered real property to which the board holds title and may lease back the same building if the governing board
obtains approval of the commission or council, as appropriate, before incurring any obligation. The board shall deposit the net proceeds of the transaction into a special revenue account in the State Treasury to be appropriated by the Legislature for the use of the institution at which the real property is located. Prior to such action, the board shall take the following steps:

(1) Provide for the property to be appraised by two licensed appraisers. The board may not sell the property for less than the average of the two appraisals; and

(2) Retain independent financial and legal services to examine fully all aspects of the transaction.

(b) The sale may be made only to a special purpose entity that exists primarily for the purpose of supporting the institution at which the building is located.


(a) A governing board may provide, construct, erect, improve, equip, maintain and operate auxiliary facilities, as defined in section two of this article, for students, employees and visitors on land it owns or leases.

(b) The cost of construction, erection, improvement or equipment may be paid with the proceeds of revenue bonds authorized by this code or by any other financing method provided in this article.

(c) A governing board may engage experts in engineering, architecture and construction and other experts as it considers necessary and may specify the payment and contract terms which are included in the cost of the project.
(d) A governing board may promulgate and adopt rules and charge fees for use of its facilities. The fees charged shall be structured so as to generate funds sufficient for the following purposes:

(1) To maintain payment of the principal of and interest on any revenue bonds, and for reserves for the revenue bonds;

(2) To operate the auxiliary enterprise;

(3) To satisfy annual building renewal formula requirements; and

(4) To build a reserve for major renovation or replacement.

(e) All moneys collected for the use of auxiliary facilities shall be paid to the credit of and expended by the governing board of that institution in accordance with section thirteen, article ten of this chapter.


(a) The commission, council and governing boards each may acquire land or buildings by condemnation for the use and benefit of any state institution under its jurisdiction. A condemnation proceeding conducted pursuant to this section is governed by chapter fifty-four of this code.

(b) The commission, council and governing boards each may condemn any interest, right or privilege, land or improvement, which in its opinion is necessary, in the manner provided by law for the acquisition by this state of property for public purposes. The state is under no obligation to accept and pay for any property condemned and may pay
for the property only from the funds provided for that purpose.

(c) In any proceeding to condemn, the order shall be made by the court having jurisdiction of the suit, action or proceedings. A bond or other security may be required by the court securing the property owner against any loss or damage to be sustained by reason of the state's failure to accept and pay for the property. The bond or security may not impose liability or debt on or of the state as contemplated by the Constitution of the State in relation to state debt.

§18B-19-17. Legislative rule.

The commission and council jointly shall propose a rule or rules for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code, to implement this article.


(a) By July 1, 2013, and annually thereafter, the commission and council shall provide a general status report to the Legislative Oversight Commission on Education Accountability on the progress being made in implementing the state-wide capital development plan and on the progress of the governing boards in implementing the objectives of institutions’ campus development plans.

(b) The process required by the commission and council for reporting by the governing boards shall be included in the rules required by section seventeen of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within happened this the 23rd
day of __________, 2010.

Governor