

# WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

**Senate Bill 369**

(BY SENATORS SYPOLT, BOSO, PLYMALE, PREZIOSO,

AND WILLIAMS, *original sponsors*)

[Passed February 22, 2016; in effect 90 days from passage.]

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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1 AN ACT to repeal §18-2-5g of the Code of West Virginia, 1931, as amended; to repeal §18-2E-  
2 3g of said code; to repeal §18B-5-8 of said code; to amend and reenact §18-2E-5 of said  
3 code; to amend and reenact §18-2I-5 of said code; to amend and reenact §18-3-12 of said  
4 code; to amend and reenact §18-5-44 of said code; to amend and reenact §18-20-5 and  
5 §18-20-8 of said code; to amend and reenact §18A-2-3 of said code; to amend and reenact  
6 §18A-4-7a of said code; to amend and reenact §18A-5-1a of said code; to amend and  
7 reenact §18B-1-10 of said code; to amend and reenact §18B-1B-4 of said code; to amend  
8 and reenact §18B-1D-8 of said code; to amend said code by adding thereto a new section,  
9 designated §18B-1D-8a; to amend and reenact §18B-2B-6 of said code; to amend and  
10 reenact §18B-2C-3 of said code; to amend and reenact §18B-3D-2 of said code; to amend  
11 and reenact §18B-10-1 of said code; to amend and reenact §18B-13-5 of said code; to  
12 amend and reenact §18B-18-6 of said code; to amend and reenact §18C-3-4 of said code;  
13 to amend and reenact §18C-5-7 of said code; and to amend and reenact §18C-7-5 of said  
14 code, all relating to legislative education reporting requirements; repealing obsolete  
15 section providing for establishment of a special five-year demonstration professional  
16 development school project for improving academic achievement including requirement  
17 for status reports to commission; repealing requirement for review, evaluation and report  
18 to commission on reports required to be written by principals and teachers; repealing  
19 section requiring Higher Education Policy Commission to report to commission on in-state  
20 and out-of-state contracts and purchases; removing requirement for Office of Education  
21 Performance Audits to report to commission on each appeal of on-site review findings;  
22 removing requirement for report to the commission on the effectiveness of staff  
23 development resulting from expenditures from Strategic Staff Development Fund;  
24 removing requirement for status report to commission relating to Special Community  
25 Development School Pilot Program; removing requirement for report to commission on  
26 progress of implementation of early childhood education programs for all children who

27 have attained the age of four prior to September 1 of the school year in which the pupil  
28 enters the program; removing requirement for report to the commission and the Joint  
29 Committee on Government and Finance that addresses, at a minimum, certain early  
30 childhood education program issues; removing requirement for State Superintendent of  
31 Schools to review the rules, policies and standards of the state and federal law for serving  
32 the needs of certain exceptional children and removing requirement for report to  
33 commission on the findings of the review along with an accounting of the services provided  
34 and the costs thereof; removing requirement for annual report to commission, the Joint  
35 Committee on Education, the Legislative Commission on Juvenile Law, and other  
36 agencies, as appropriate, which recommends policies, procedures and legislation for  
37 effectively providing early intervention services and reports on the status of existing  
38 programs; removing requirement for State Board of Education to review the status of  
39 employing prospective employable professional personnel and the requirement for an  
40 annual report to the commission which must include certain minimum prospective  
41 employable professional personnel-related items; removing requirement that county board  
42 of education submit a copy of its policy defining which policies are lateral positions to the  
43 state board within thirty days of any adoption or modification and the requirement that the  
44 state board compile a report and submit the report to the commission; removing the  
45 requirement that county boards report the number of students determined to be dangerous  
46 students to the state board and the requirement that the state board compile the statistics  
47 and report its findings to the commission; removing the reporting requirements on the  
48 cooperative relationship between Potomac State College and Eastern West Virginia  
49 Community and Technical College; removing the requirement that the Higher Education  
50 Policy Commission report on its performance, capital investment priorities, and  
51 recommendations for statutory changes; removing numerous reports from list of reports  
52 that are not required to be made annually to the Legislature and requiring remaining

53 reports on list to be combined with other reports, including certain personnel, classification,  
54 compensation and human resources reports, all capital appropriation requests, priorities  
55 and campus and state capital development plans, all academic related matters and  
56 reports, and all financial aid reports; permitting the Commission to modify deadlines for  
57 statutory or rule mandated reports without a statutory or rule-making change as long as  
58 provided within calendar year; removing requirement that Council collect and analyze  
59 data, report on community and technical college performance in every region, and report  
60 on progress toward meeting goals and objectives; removing annual requirement that  
61 Council report on its performance, capital investment priorities and recommendations for  
62 statutory changes; removing annual requirement that Council report on progress toward  
63 meeting statutory goals and whether statewide independently accredited community and  
64 technical college should be created; removing requirement for status report on workforce  
65 development initiatives; removing requirement for annual report on auxiliary fees;  
66 removing requirement that Higher Education Policy Commission report on technical  
67 assistance and associated costs provided to qualified businesses within the higher  
68 education and industry partnership; removing requirement for annual status report on the  
69 Eminent Scholars Endowment Trust Fund; removing requirement of an annual report on  
70 number of nursing scholarship recipients; removing requirement to report on status of  
71 Higher Education Adult Part-Time Student Grant Program; and removing requirement for  
72 annual recommendation to encourage PROMISE recipients to live and work in West  
73 Virginia after graduation.

*Be it enacted by the Legislature of West Virginia:*

1 That §18-2-5g of the Code of West Virginia, 1931, as amended, be repealed; that §18-2E-  
2 3g of said code be repealed; that §18B-5-8 of said code be repealed; that §18-2E-5 of said code  
3 be amended and reenacted; that §18-2I-5 of said code be amended and reenacted; that §18-3-  
4 12 of said code be amended and reenacted; that §18-5-44 of said code be amended and

5 reenacted; that §18-20-5 and §18-20-8 of said code be amended and reenacted; that §18A-2-3  
6 of said code be amended and reenacted; that §18A-4-7a of said code be amended and reenacted;  
7 that §18A-5-1a of said code be amended and reenacted; that §18B-1-10 of said code be amended  
8 and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-1D-8 of said  
9 code be amended and reenacted; that said code be amended by adding thereto a new section,  
10 designated §18B-1D-8a; that §18B-2B-6 of said code be amended and reenacted; that §18B-2C-  
11 3 of said code be amended and reenacted; that §18B-3D-2 of said code be amended and  
12 reenacted; that §18B-10-1 of said code be amended and reenacted; that §18B-13-5 of said code  
13 be amended and reenacted; that §18B-18-6 of said code be amended and reenacted; that §18C-  
14 3-4 of said code be amended and reenacted; that §18C-5-7 of said code be amended and  
15 reenacted; and that §18C-7-5 of said code be amended and reenacted, all to read as follows:

## CHAPTER 18. EDUCATION.

### ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

**§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.**

1 (a) *Legislative findings, purpose and intent.* — The Legislature makes the following  
2 findings with respect to the process for improving education and its purpose and intent in the  
3 enactment of this section:

4 (1) The process for improving education includes four primary elements, these being:

5 (A) Standards which set forth the knowledge and skills that students should know and be  
6 able to perform as the result of a thorough and efficient education that prepares them for the  
7 twenty-first century, including measurable criteria to evaluate student performance and progress;

8 (B) Assessments of student performance and progress toward meeting the standards;

9           (C) A system of accountability for continuous improvement defined by high-quality  
10 standards for schools and school systems articulated by a rule promulgated by the state board  
11 and outlined in subsection (c) of this section that will build capacity in schools and districts to meet  
12 rigorous outcomes that assure student performance and progress toward obtaining the  
13 knowledge and skills intrinsic to a high-quality education rather than monitoring for compliance  
14 with specific laws and regulations; and

15           (D) A method for building the capacity and improving the efficiency of schools and school  
16 systems to improve student performance and progress;

17           (2) As the constitutional body charged with the general supervision of schools as provided  
18 by general law, the state board has the authority and the responsibility to establish the standards,  
19 assess the performance and progress of students against the standards, hold schools and school  
20 systems accountable and assist schools and school systems to build capacity and improve  
21 efficiency so that the standards are met, including, when necessary, seeking additional resources  
22 in consultation with the Legislature and the Governor;

23           (3) As the constitutional body charged with providing for a thorough and efficient system  
24 of schools, the Legislature has the authority and the responsibility to establish and be engaged  
25 constructively in the determination of the knowledge and skills that students should know and be  
26 able to do as the result of a thorough and efficient education. This determination is made by using  
27 the process for improving education to determine when school improvement is needed by  
28 evaluating the results and the efficiency of the system of schools, by ensuring accountability and  
29 by providing for the necessary capacity and its efficient use;

30           (4) In consideration of these findings, the purpose of this section is to establish a process  
31 for improving education that includes the four primary elements as set forth in subdivision (1) of  
32 this subsection to provide assurances that the high-quality standards are, at a minimum, being  
33 met and that a thorough and efficient system of schools is being provided for all West Virginia  
34 public school students on an equal education opportunity basis; and

35           (5) The intent of the Legislature in enacting this section and section five-c of this article is  
36 to establish a process through which the Legislature, the Governor and the state board can work  
37 in the spirit of cooperation and collaboration intended in the process for improving education, to  
38 consult and examine the performance and progress of students, schools and school systems and,  
39 when necessary, to consider alternative measures to ensure that all students continue to receive  
40 the thorough and efficient education to which they are entitled. However, nothing in this section  
41 requires any specific level of funding by the Legislature.

42           (b) *Electronic county and school strategic improvement plans.* — The state board shall  
43 promulgate a rule consistent with the provisions of this section and in accordance with article  
44 three-b, chapter twenty-nine-a of this code establishing an electronic county strategic  
45 improvement plan for each county board and an electronic school strategic improvement plan for  
46 each public school in this state. Each respective plan shall be for a period of no more than five  
47 years and shall include the mission and goals of the school or school system to improve student,  
48 school or school system performance and progress, as applicable. The strategic plan shall be  
49 revised annually in each area in which the school or system is below the standard on the annual  
50 performance measures. The plan shall be revised when required pursuant to this section to  
51 include each annual performance measure upon which the school or school system fails to meet  
52 the standard for performance and progress, the action to be taken to meet each measure, a  
53 separate time line and a date certain for meeting each measure, a cost estimate and, when  
54 applicable, the assistance to be provided by the department and other education agencies to  
55 improve student, school or school system performance and progress to meet the annual  
56 performance measure.

57           The department shall make available to all public schools through its website or the West  
58 Virginia Education Information System an electronic school strategic improvement plan  
59 boilerplate designed for use by all schools to develop an electronic school strategic improvement

60 plan which incorporates all required aspects and satisfies all improvement plan requirements of  
61 the No Child Left Behind Act.

62 (c) *High-quality education standards and efficiency standards.* — In accordance with the  
63 provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt and  
64 periodically review and update high-quality education standards for student, school and school  
65 system performance and processes in the following areas:

- 66 (1) Curriculum;
- 67 (2) Workplace readiness skills;
- 68 (3) Finance;
- 69 (4) Transportation;
- 70 (5) Special education;
- 71 (6) Facilities;
- 72 (7) Administrative practices;
- 73 (8) Training of county board members and administrators;
- 74 (9) Personnel qualifications;
- 75 (10) Professional development and evaluation;
- 76 (11) Student performance, progress and attendance;
- 77 (12) Professional personnel, including principals and central office administrators, and  
78 service personnel attendance;
- 79 (13) School and school system performance and progress;
- 80 (14) A code of conduct for students and employees;
- 81 (15) Indicators of efficiency; and
- 82 (16) Any other areas determined by the state board.

83 (d) *Comprehensive statewide student assessment program.* — The state board shall  
84 establish a comprehensive statewide student assessment program to assess student

85 performance and progress in grades three through twelve. The assessment program is subject to  
86 the following:

87 (1) The state board shall promulgate a rule in accordance with the provisions of article  
88 three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student  
89 assessment program;

90 (2) Prior to the 2014-2015 school year, the state board shall align the comprehensive  
91 statewide student assessment for all grade levels in which the test is given with the college-  
92 readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop  
93 other aligned tests to be required at each grade level so that progress toward college readiness  
94 in English/language arts and math can be measured;

95 (3) The state board may require that student proficiencies be measured through the ACT  
96 EXPLORE and the ACT PLAN assessments or other comparable assessments, which are  
97 approved by the state board and provided by future vendors;

98 (4) The state board may require that student proficiencies be measured through the West  
99 Virginia writing assessment at any grade levels determined by the state board to be appropriate;  
100 and

101 (5) The state board may provide, through the statewide assessment program, other  
102 optional testing or assessment instruments applicable to grade levels kindergarten through grade  
103 twelve which may be used by each school to promote student achievement. The state board  
104 annually shall publish and make available, electronically or otherwise, to school curriculum teams  
105 and teacher collaborative processes the optional testing and assessment instruments.

106 (e) *State annual performance measures for school and school system accreditation.* —

107 The state board shall promulgate a rule in accordance with the provisions of article three-  
108 b, chapter twenty-nine-a of this code that establishes a system to assess and weigh annual  
109 performance measures for state accreditation of schools and school systems. The state board  
110 also may establish performance incentives for schools and school systems as part of the state

111 accreditation system. On or before December 1, 2013, the state board shall report to the Governor  
112 and to the Legislative Oversight Commission on Education Accountability the proposed rule for  
113 establishing the measures and incentives of accreditation and the estimated cost therefore, if any.  
114 Thereafter, the state board shall provide an annual report to the Governor and to the Legislative  
115 Oversight Commission on Education Accountability on the impact and effectiveness of the  
116 accreditation system. The rule for school and school system accreditation proposed by the board  
117 may include, but is not limited to, the following measures:

118 (1) Student proficiency in English and language arts, math, science and other subjects  
119 determined by the board;

120 (2) Graduation and attendance rate;

121 (3) Students taking and passing AP tests;

122 (4) Students completing a career and technical education class;

123 (5) Closing achievement gaps within subgroups of a school's student population; and

124 (6) Students scoring at or above average attainment on SAT or ACT tests.

125 (f) *Indicators of efficiency.* — In accordance with the provisions of article three-b, chapter  
126 twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update  
127 indicators of efficiency for use by the appropriate divisions within the department to ensure  
128 efficient management and use of resources in the public schools in the following areas:

129 (1) Curriculum delivery including, but not limited to, the use of distance learning;

130 (2) Transportation;

131 (3) Facilities;

132 (4) Administrative practices;

133 (5) Personnel;

134 (6) Use of regional educational service agency programs and services, including programs  
135 and services that may be established by their assigned regional educational service agency or  
136 other regional services that may be initiated between and among participating county boards; and

137 (7) Any other indicators as determined by the state board.

138 (g) *Assessment and accountability of school and school system performance and*  
139 *processes.* — In accordance with the provisions of article three-b, chapter twenty-nine-a of this  
140 code, the state board shall establish by rule a system of education performance audits which  
141 measures the quality of education and the preparation of students based on the annual measures  
142 of student, school and school system performance and progress. The system of education  
143 performance audits shall provide information to the state board, the Legislature and the Governor,  
144 upon which they may determine whether a thorough and efficient system of schools is being  
145 provided. The system of education performance audits shall include:

146 (1) The assessment of student, school and school system performance and progress  
147 based on the annual measures established pursuant to subsection (e) of this section;

148 (2) The evaluation of records, reports and other information collected by the Office of  
149 Education Performance Audits upon which the quality of education and compliance with statutes,  
150 policies and standards may be determined;

151 (3) The review of school and school system electronic strategic improvement plans; and

152 (4) The on-site review of the processes in place in schools and school systems to enable  
153 school and school system performance and progress and compliance with the standards.

154 (h) *Uses of school and school system assessment information.* — The state board shall  
155 use information from the system of education performance audits to assist it in ensuring that a  
156 thorough and efficient system of schools is being provided and to improve student, school and  
157 school system performance and progress. Information from the system of education performance  
158 audits further shall be used by the state board for these purposes, including, but not limited to,  
159 the following:

160 (1) Determining school accreditation and school system approval status;

161 (2) Holding schools and school systems accountable for the efficient use of existing  
162 resources to meet or exceed the standards; and

163 (3) Targeting additional resources when necessary to improve performance and progress.

164 The state board shall make accreditation information available to the Legislature, the  
165 Governor, the general public and to any individual who requests the information, subject to the  
166 provisions of any act or rule restricting the release of information.

167 (i) *Early detection and intervention programs.* — Based on the assessment of student,  
168 school and school system performance and progress, the state board shall establish early  
169 detection and intervention programs using the available resources of the Department of  
170 Education, the regional educational service agencies, the Center for Professional Development  
171 and the Principals Academy, or other resources as appropriate, to assist underachieving schools  
172 and school systems to improve performance before conditions become so grave as to warrant  
173 more substantive state intervention. Assistance shall include, but is not limited to, providing  
174 additional technical assistance and programmatic, professional staff development, providing  
175 monetary, staffing and other resources where appropriate.

176 (j) *Office of Education Performance Audits.* —

177 (1) To assist the state board in the operation of a system of education performance audits,  
178 the state board shall establish an Office of Education Performance Audits consistent with the  
179 provisions of this section. The Office of Education Performance Audits shall be operated under  
180 the direction of the state board independently of the functions and supervision of the State  
181 Department of Education and state superintendent. The Office of Education Performance Audits  
182 shall report directly to and be responsible to the state board in carrying out its duties under the  
183 provisions of this section.

184 (2) The office shall be headed by a director who shall be appointed by the state board and  
185 who serves at the will and pleasure of the state board. The annual salary of the director shall be  
186 set by the state board and may not exceed eighty percent of the salary of the State Superintendent  
187 of Schools.

188 (3) The state board shall organize and sufficiently staff the office to fulfill the duties  
189 assigned to it by law and by the state board. Employees of the State Department of Education  
190 who are transferred to the Office of Education Performance Audits shall retain their benefits and  
191 seniority status with the Department of Education.

192 (4) Under the direction of the state board, the Office of Education Performance Audits shall  
193 receive from the West Virginia education Information System staff research and analysis data on  
194 the performance and progress of students, schools and school systems, and shall receive  
195 assistance, as determined by the state board, from staff at the State Department of Education,  
196 the regional education service agencies, the Center for Professional Development, the Principals  
197 Academy and the School Building Authority to carry out the duties assigned to the office.

198 (5) In addition to other duties which may be assigned to it by the state board or by statute,  
199 the Office of Education Performance Audits also shall:

200 (A) Assure that all statewide assessments of student performance used as annual  
201 performance measures are secure as required in section one-a of this article;

202 (B) Administer all accountability measures as assigned by the state board, including, but  
203 not limited to, the following:

204 (i) Processes for the accreditation of schools and the approval of school systems; and

205 (ii) Recommendations to the state board on appropriate action, including, but not limited  
206 to, accreditation and approval action;

207 (C) Determine, in conjunction with the assessment and accountability processes, what  
208 capacity may be needed by schools and school systems to meet the standards established by  
209 the state board and recommend to the state board plans to establish those needed capacities;

210 (D) Determine, in conjunction with the assessment and accountability processes, whether  
211 statewide system deficiencies exist in the capacity of schools and school systems to meet the  
212 standards established by the state board, including the identification of trends and the need for

213 continuing improvements in education, and report those deficiencies and trends to the state  
214 board;

215 (E) Determine, in conjunction with the assessment and accountability processes, staff  
216 development needs of schools and school systems to meet the standards established by the state  
217 board and make recommendations to the state board, the Center for Professional Development,  
218 the regional educational service agencies, the Higher Education Policy Commission and the  
219 county boards;

220 (F) Identify, in conjunction with the assessment and accountability processes, school  
221 systems and best practices that improve student, school and school system performance and  
222 communicate those to the state board for promoting the use of best practices. The state board  
223 shall provide information on best practices to county school systems; and

224 (G) Develop reporting formats, such as check lists, which shall be used by the appropriate  
225 administrative personnel in schools and school systems to document compliance with applicable  
226 laws, policies and process standards as considered appropriate and approved by the state board,  
227 which may include, but is not limited to, the following:

228 (i) The use of a policy for the evaluation of all school personnel that meets the  
229 requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

230 (ii) The participation of students in appropriate physical assessments as determined by  
231 the state board, which assessment may not be used as a part of the assessment and  
232 accountability system;

233 (iii) The appropriate licensure of school personnel; and

234 (iv) The appropriate provision of multicultural activities.

235 Information contained in the reporting formats is subject to examination during an on-site  
236 review to determine compliance with laws, policies and standards. Intentional and grossly  
237 negligent reporting of false information are grounds for dismissal of any employee.

238 (k) *On-site reviews.* —

239 (1) The system of education performance audits shall include on-site reviews of schools  
240 and school systems which shall be conducted only at the specific direction of the state board upon  
241 its determination that circumstances exist that warrant an on-site review. Any discussion by the  
242 state board of schools to be subject to an on-site review or dates for which on-site reviews will be  
243 conducted may be held in executive session and is not subject to the provisions of article nine-a,  
244 chapter six of this code relating to open governmental proceedings. An on-site review shall be  
245 conducted by the Office of Education Performance Audits of a school or school system for the  
246 purpose of making recommendations to the school and school system, as appropriate, and to the  
247 state board on such measures as it considers necessary. The investigation may include, but is  
248 not limited to, the following:

249 (A) Verifying data reported by the school or county board;

250 (B) Examining compliance with the laws and policies affecting student, school and school  
251 system performance and progress;

252 (C) Evaluating the effectiveness and implementation status of school and school system  
253 electronic strategic improvement plans;

254 (D) Investigating official complaints submitted to the state board that allege serious  
255 impairments in the quality of education in schools or school systems;

256 (E) Investigating official complaints submitted to the state board that allege that a school  
257 or county board is in violation of policies or laws under which schools and county boards operate;  
258 and

259 (F) Determining and reporting whether required reviews and inspections have been  
260 conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the  
261 Health Department, the School Building Authority and the responsible divisions within the  
262 department of education, and whether noted deficiencies have been or are in the process of being  
263 corrected.

264           (2) The Director of the Office of Education Performance Audits shall notify the county  
265 superintendent of schools five school days prior to commencing an on-site review of the county  
266 school system and shall notify both the county superintendent and the principal five school days  
267 before commencing an on-site review of an individual school: *Provided*, That the state board may  
268 direct the Office of Education Performance Audits to conduct an unannounced on-site review of  
269 a school or school system if the state board believes circumstances warrant an unannounced on-  
270 site review.

271           (3) The Office of Education Performance Audits shall conduct on-site reviews which are  
272 limited in scope to specific areas in which performance and progress are persistently below  
273 standard as determined by the state board unless specifically directed by the state board to  
274 conduct a review which covers additional areas.

275           (4) The Office of Education Performance Audits shall reimburse a county board for the  
276 costs of substitutes required to replace county board employees who serve on a review team.

277           (5) At the conclusion of an on-site review of a school system, the director and team leaders  
278 shall hold an exit conference with the superintendent and shall provide an opportunity for  
279 principals to be present for at least the portion of the conference pertaining to their respective  
280 schools. In the case of an on-site review of a school, the exit conference shall be held with the  
281 principal and curriculum team of the school and the superintendent shall be provided the  
282 opportunity to be present. The purpose of the exit conference is to review the initial findings of the  
283 on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between  
284 the reviewers and the school or school system to promote a better understanding of the findings.

285           (6) The Office of Education Performance Audits shall report the findings of an on-site  
286 review to the county superintendent and the principals whose schools were reviewed within thirty  
287 days following the conclusion of the on-site review. The Office of Education Performance Audits  
288 shall report the findings of the on-site review to the state board within forty-five days after the  
289 conclusion of the on-site review. A school or county that believes one or more findings of a review

290 are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of  
291 education in the school or county or address issues unrelated to the health, safety and welfare of  
292 students and the quality of education, may appeal to the state board for removal of the findings.  
293 The state board shall establish a process for it to receive, review and act upon the appeals.

294 (7) The Legislature finds that the accountability and oversight of some activities and  
295 programmatic areas in the public schools are controlled through other mechanisms and agencies  
296 and that additional accountability and oversight may be unnecessary, counterproductive and  
297 impair necessary resources for teaching and learning. Therefore, the Office of Education  
298 Performance Audits may rely on other agencies and mechanisms in its review of schools and  
299 school systems.

300 (l) *School accreditation.* —

301 (1) The state board shall establish levels of accreditation to be assigned to schools. The  
302 establishment of levels of accreditation and the levels shall be subject to the following:

303 (A) The levels will be designed to demonstrate school performance in all the areas outlined  
304 in this section and also those established by the state board;

305 (B) The state board shall promulgate legislative rules in accordance with the provisions of  
306 article three-b, chapter twenty-nine-a of this code to establish the performance and standards  
307 required for a school to be assigned a particular level of accreditation; and

308 (C) The state board will establish the levels of accreditation in such a manner as to  
309 minimize the number of systems of school recognition, both state and federal, that are employed  
310 to recognize and accredit schools.

311 (2) The state board annually shall review the information from the system of education  
312 performance audits submitted for each school and shall issue to every school a level of  
313 accreditation as designated and determined by the state board.

314 (3) The state board, in its exercise of general supervision of the schools and school  
315 systems of West Virginia, may exercise any or all of the following powers and actions:

- 316 (A) To require a school to revise its electronic strategic plan;
- 317 (B) To define extraordinary circumstances under which the state board may intervene  
318 directly or indirectly in the operation of a school;
- 319 (C) To appoint monitors to work with the principal and staff of a school where extraordinary  
320 circumstances are found to exist and to appoint monitors to assist the school principal after  
321 intervention in the operation of a school is completed;
- 322 (D) To direct a county board to target resources to assist a school where extraordinary  
323 circumstances are found to exist;
- 324 (E) To intervene directly in the operation of a school and declare the position of principal  
325 vacant and assign a principal for the school who will serve at the will and pleasure of the state  
326 board. If the principal who was removed elects not to remain an employee of the county board,  
327 then the principal assigned by the state board shall be paid by the county board. If the principal  
328 who was removed elects to remain an employee of the county board, then the following procedure  
329 applies:
- 330 (i) The principal assigned by the state board shall be paid by the state board until the next  
331 school term, at which time the principal assigned by the state board shall be paid by the county  
332 board;
- 333 (ii) The principal who was removed is eligible for all positions in the county, including  
334 teaching positions, for which the principal is certified, by either being placed on the transfer list in  
335 accordance with section seven, article two, chapter eighteen-a of this code, or by being placed  
336 on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of  
337 this code; and
- 338 (iii) The principal who was removed shall be paid by the county board and may be  
339 assigned to administrative duties, without the county board being required to post that position  
340 until the end of the school term; and

341 (F) Other powers and actions the state board determines necessary to fulfill its duties of  
342 general supervision of the schools and school systems of West Virginia.

343 (4) The county board may take no action nor refuse any action if the effect would be to  
344 impair further the school in which the state board has intervened.

345 (m) *School system approval.* — The state board annually shall review the information  
346 submitted for each school system from the system of education performance audits and issue  
347 one of the following approval levels to each county board: Full approval, temporary approval,  
348 conditional approval or nonapproval.

349 (1) Full approval shall be given to a county board whose schools have all been given full,  
350 temporary or conditional accreditation status and which does not have any deficiencies which  
351 would endanger student health or safety or other extraordinary circumstances as defined by the  
352 state board. A fully approved school system in which other deficiencies are discovered shall  
353 remain on full accreditation status for the remainder of the approval period and shall have an  
354 opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

355 (2) Temporary approval shall be given to a county board whose education system is below  
356 the level required for full approval. Whenever a county board is given temporary approval status,  
357 the county board shall revise its electronic county strategic improvement plan in accordance with  
358 subsection (b) of this section to increase the performance and progress of the school system to  
359 a full approval status level. The revised plan shall be submitted to the state board for approval.

360 (3) Conditional approval shall be given to a county board whose education system is below  
361 the level required for full approval, but whose electronic county strategic improvement plan meets  
362 the following criteria:

363 (A) The plan has been revised in accordance with subsection (b) of this section;

364 (B) The plan has been approved by the state board; and

365 (C) The county board is meeting the objectives and time line specified in the revised plan.

366 (4) Nonapproval status shall be given to a county board which fails to submit and gain  
367 approval for its electronic county strategic improvement plan or revised electronic county strategic  
368 improvement plan within a reasonable time period as defined by the state board or which fails to  
369 meet the objectives and time line of its revised electronic county strategic improvement plan or  
370 fails to achieve full approval by the date specified in the revised plan.

371 (A) The state board shall establish and adopt additional standards to identify school  
372 systems in which the program may be nonapproved and the state board may issue nonapproval  
373 status whenever extraordinary circumstances exist as defined by the state board.

374 (B) Whenever a county board has more than a casual deficit, as defined in section one,  
375 article one of this chapter, the county board shall submit a plan to the state board specifying the  
376 county board's strategy for eliminating the casual deficit. The state board either shall approve or  
377 reject the plan. If the plan is rejected, the state board shall communicate to the county board the  
378 reason or reasons for the rejection of the plan. The county board may resubmit the plan any  
379 number of times. However, any county board that fails to submit a plan and gain approval for the  
380 plan from the state board before the end of the fiscal year after a deficit greater than a casual  
381 deficit occurred or any county board which, in the opinion of the state board, fails to comply with  
382 an approved plan may be designated as having nonapproval status.

383 (C) Whenever nonapproval status is given to a school system, the state board shall  
384 declare a state of emergency in the school system and shall appoint a team of improvement  
385 consultants to make recommendations within sixty days of appointment for correcting the  
386 emergency. When the state board approves the recommendations, they shall be communicated  
387 to the county board. If progress in correcting the emergency, as determined by the state board,  
388 is not made within six months from the time the county board receives the recommendations, the  
389 state board shall intervene in the operation of the school system to cause improvements to be  
390 made that will provide assurances that a thorough and efficient system of schools will be provided.  
391 This intervention may include, but is not limited to, the following:

392 (i) Limiting the authority of the county superintendent and county board as to the  
393 expenditure of funds, the employment and dismissal of personnel, the establishment and  
394 operation of the school calendar, the establishment of instructional programs and rules and any  
395 other areas designated by the state board by rule, which may include delegating decision-making  
396 authority regarding these matters to the state superintendent;

397 (ii) Declaring that the office of the county superintendent is vacant;

398 (iii) Declaring that the positions of personnel who serve at the will and pleasure of the  
399 county superintendent as provided in section one, article two, chapter eighteen-a of this code, are  
400 vacant, subject to application and reemployment;

401 (iv) Delegating to the state superintendent both the authority to conduct hearings on  
402 personnel matters and school closure or consolidation matters and, subsequently, to render the  
403 resulting decisions and the authority to appoint a designee for the limited purpose of conducting  
404 hearings while reserving to the state superintendent the authority to render the resulting decisions;

405 (v) Functioning in lieu of the county board of education in a transfer, sale, purchase or  
406 other transaction regarding real property; and

407 (vi) Taking any direct action necessary to correct the emergency including, but not limited  
408 to, the following:

409 (I) Delegating to the state superintendent the authority to replace administrators and  
410 principals in low performing schools and to transfer them into alternate professional positions  
411 within the county at his or her discretion; and

412 (II) Delegating to the state superintendent the authority to fill positions of administrators  
413 and principals with individuals determined by the state superintendent to be the most qualified for  
414 the positions. Any authority related to intervention in the operation of a county board granted  
415 under this paragraph is not subject to the provisions of article four, chapter eighteen-a of this  
416 code.

417 (n) Notwithstanding any other provision of this section, the state board may intervene  
418 immediately in the operation of the county school system with all the powers, duties and  
419 responsibilities contained in subsection (m) of this section, if the state board finds the following:

420 (1) That the conditions precedent to intervention exist as provided in this section; and that  
421 delaying intervention for any period of time would not be in the best interests of the students of  
422 the county school system; or

423 (2) That the conditions precedent to intervention exist as provided in this section and that  
424 the state board had previously intervened in the operation of the same school system and had  
425 concluded that intervention within the preceding five years.

426 (o) *Capacity.* — The process for improving education includes a process for targeting  
427 resources strategically to improve the teaching and learning process. Development of electronic  
428 school and school system strategic improvement plans, pursuant to subsection (b) of this section,  
429 is intended, in part, to provide mechanisms to target resources strategically to the teaching and  
430 learning process to improve student, school and school system performance. When deficiencies  
431 are detected through the assessment and accountability processes, the revision and approval of  
432 school and school system electronic strategic improvement plans shall ensure that schools and  
433 school systems are efficiently using existing resources to correct the deficiencies. When the state  
434 board determines that schools and school systems do not have the capacity to correct  
435 deficiencies, the state board shall take one or more of the following actions:

436 (1) Work with the county board to develop or secure the resources necessary to increase  
437 the capacity of schools and school systems to meet the standards and, when necessary, seek  
438 additional resources in consultation with the Legislature and the Governor;

439 (2) Recommend to the appropriate body including, but not limited to, the Legislature,  
440 county boards, schools and communities methods for targeting resources strategically to  
441 eliminate deficiencies identified in the assessment and accountability processes. When making

442 determinations on recommendations, the state board shall include, but is not limited to, the  
443 following methods:

444 (A) Examining reports and electronic strategic improvement plans regarding the  
445 performance and progress of students, schools and school systems relative to the standards and  
446 identifying the areas in which improvement is needed;

447 (B) Determining the areas of weakness and of ineffectiveness that appear to have  
448 contributed to the substandard performance and progress of students or the deficiencies of the  
449 school or school system and requiring the school or school system to work collaboratively with  
450 the West Virginia Department of Education State System of Support to correct the deficiencies;

451 (C) Determining the areas of strength that appear to have contributed to exceptional  
452 student, school and school system performance and progress and promoting their emulation  
453 throughout the system;

454 (D) Requesting technical assistance from the School Building Authority in assessing or  
455 designing comprehensive educational facilities plans;

456 (E) Recommending priority funding from the School Building Authority based on identified  
457 needs;

458 (F) Requesting special staff development programs from the Center for Professional  
459 Development, the Principals Academy, higher education, regional educational service agencies  
460 and county boards based on identified needs;

461 (G) Submitting requests to the Legislature for appropriations to meet the identified needs  
462 for improving education;

463 (H) Directing county boards to target their funds strategically toward alleviating  
464 deficiencies;

465 (I) Ensuring that the need for facilities in counties with increased enrollment are  
466 appropriately reflected and recommended for funding;

467 (J) Ensuring that the appropriate person or entity is held accountable for eliminating  
468 deficiencies; and

469 (K) Ensuring that the needed capacity is available from the state and local level to assist  
470 the school or school system in achieving the standards and alleviating the deficiencies.

471 (p) *Building leadership capacity* — To help build the governance and leadership capacity  
472 of a county board during an intervention in the operation of its school system by the state board,  
473 and to help assure sustained success following return of control to the county board, the state  
474 board shall require the county board to establish goals and action plans, subject to approval of  
475 the state board, to improve performance sufficiently to end the intervention within a period of not  
476 more than five years. The state superintendent shall maintain oversight and provide assistance  
477 and feedback to the county board on development and implementation of the goals and action  
478 plans. At a minimum, the goals and action plans shall include:

479 (A) An analysis of the training and development activities needed by the county board and  
480 leadership of the school system and schools for effective governance and school improvement;

481 (B) Support for the training and development activities identified which may include those  
482 made available through the state superintendent, regional education service agencies, Center for  
483 Professional Development, West Virginia School Board Association, Office of Education  
484 Performance Audits, West Virginia Education Information System and other sources identified in  
485 the goals and action plans. Attendance at these activities included in the goals and action plans  
486 is mandatory as specified in the goals and action plans; and

487 (C) Active involvement by the county board in the improvement process, working in  
488 tandem with the county superintendent to gather, analyze and interpret data, write time-specific  
489 goals to correct deficiencies, prepare and implement action plans and allocate or request from  
490 the State Board of Education the resources, including board development training and coaching,  
491 necessary to achieve approved goals and action plans and sustain system and school  
492 improvement.

493           At least once each year during the period of intervention, the Office of Education  
494 Performance Audits shall assess the readiness of the county board to accept the return of control  
495 of the system or school from the state board and sustain the improvements, and shall make a  
496 report and recommendations to the state board supported by documented evidence of the  
497 progress made on the goals and action plans. The state board may end the intervention or return  
498 any portion of control of the operations of the school system or school that was previously  
499 removed at its sole determination. If the state board determines at the fifth annual assessment  
500 that the county board is still not ready to accept return of control by the state board and sustain  
501 the improvements, the state board shall hold a public hearing in the affected county at which the  
502 attendance by all members of the county board is requested so that the reasons for continued  
503 intervention and the concerns of the citizens of the county may be heard. The state board may  
504 continue the intervention only after it holds the public hearing and may require revision of the  
505 goals and action plans.

506           Following the termination of an intervention in the operation of a school system and return  
507 of full control by the state board, the support for governance education and development shall  
508 continue as needed for up to three years. If at any time within this three years, the state board  
509 determines that intervention in the operation of the school system is again necessary, the state  
510 board shall again hold a public hearing in the affected county so that the reasons for the  
511 intervention and the concerns of the citizens of the county may be heard.

## **ARTICLE 2I. PROFESSIONAL DEVELOPMENT.**

### **§18-2I-5. Strategic Staff Development Fund.**

1           (a) There is created an account within the state board titled the Strategic Staff  
2 Development Fund. The allocation of balances which accrue in the General School Fund shall be  
3 transferred to the Strategic Staff Development Fund each year when the balances become  
4 available. Any remaining funds transferred to the Strategic Staff Development Fund during the  
5 fiscal year shall be carried over for use in the same manner the next fiscal year and shall be

6 separate and apart from, and in addition to, the transfer of funds from the General School Fund  
7 for the next fiscal year.

8 (b) The money in the Strategic Staff Development Fund shall be used by the state board  
9 to provide staff development in schools, counties or both that the state board determines need  
10 additional resources.

### **ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.**

#### **§18-3-12. Special Community Development School Pilot Program.**

1 The state superintendent shall establish a Special Community Development School Pilot  
2 Program to be implemented in a neighborhood of at least five public schools, which shall include  
3 at least one elementary and middle school, for the duration of five years. The neighborhood of  
4 public schools designated by the state superintendent for the pilot shall have significant  
5 enrollments of disadvantaged, minority and underachieving students. The designated  
6 neighborhood of public schools under the direction of the county board and county superintendent  
7 shall work in collaboration with higher education, community organizations, Center for  
8 Professional Development, local community leaders, affected classroom teachers, affected  
9 parents and the state board to develop and implement strategies that could be replicated in other  
10 public schools with significant enrollments of disadvantaged, minority and underachieving  
11 students to improve academic achievement. For purposes of this section "neighborhood" means  
12 an area of no more than seven square miles.

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-44. Early childhood education programs.**

1 (a) For the purposes of this section, "early childhood education" means programs for  
2 children who have attained the age of four prior to September 1 of the school year in which the  
3 pupil enters the program created in this section.

4 (b) *Findings.* -

5 (1) Among other positive outcomes, early childhood education programs have been  
6 determined to:

7 (A) Improve overall readiness when children enter school;

8 (B) Decrease behavioral problems;

9 (C) Improve student attendance;

10 (D) Increase scores on achievement tests;

11 (E) Decrease the percentage of students repeating a grade; and

12 (F) Decrease the number of students placed in special education programs;

13 (2) Quality early childhood education programs improve school performance and low-  
14 quality early childhood education programs may have negative effects, especially for at-risk  
15 children;

16 (3) West Virginia has the lowest percentage of its adult population twenty-five years of age  
17 or older with a bachelor's degree and the education level of parents is a strong indicator of how  
18 their children will perform in school;

19 (4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty  
20 states in the percentage of school children eligible for free and reduced lunches and this  
21 percentage is a strong indicator of how the children will perform in school;

22 (5) For the school year 2008-2009, thirteen thousand one hundred thirty-five students  
23 were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the  
24 number of students enrolled in kindergarten;

25 (6) Excluding projected increases due to increases in enrollment in the early childhood  
26 education program, projections indicate that total student enrollment in West Virginia will decline  
27 by one percent, or by approximately two thousand seven hundred four students, by the school  
28 year 2012-2013;

29 (7) In part, because of the dynamics of the state aid formula, county boards will continue  
30 to enroll four-year old students to offset the declining enrollments;

31 (8) West Virginia has a comprehensive kindergarten program for five-year olds, but the  
32 program was established in a manner that resulted in unequal implementation among the counties  
33 which helped create deficit financial situations for several county boards;

34 (9) Expansion of current efforts to implement a comprehensive early childhood education  
35 program should avoid the problems encountered in kindergarten implementation;

36 (10) Because of the dynamics of the state aid formula, counties experiencing growth are  
37 at a disadvantage in implementing comprehensive early childhood education programs; and

38 (11) West Virginia citizens will benefit from the establishment of quality comprehensive  
39 early childhood education programs.

40 (c) Beginning no later than the school year 2012-2013, and continuing thereafter, county  
41 boards shall provide early childhood education programs for all children who have attained the  
42 age of four prior to September 1 of the school year in which the pupil enters the early childhood  
43 education program. Beginning no later than the school year 2016-2017, and continuing thereafter,  
44 early childhood education programs that are full day and five days per week shall be available to  
45 all children meeting the age requirement set forth in the subsection.

46 (d) The program shall meet the following criteria:

47 (1) It shall be voluntary, except, upon enrollment, the provisions of section one, article  
48 eight of this chapter apply to an enrolled student, subject to subdivision (3) of this subsection;

49 (2) All children meeting the age requirement set forth in this section shall have the  
50 opportunity to enroll in a program that is full day and five days per week. The program may be for  
51 fewer than five days per week and may be less than full day based on family need if a sufficient  
52 number of families request such programs and the county board finds that such programs are in  
53 the best interest of the requesting families and students: *Provided*, That the ability of families to  
54 request programs that are fewer than five days a week or less than a full day does not relieve the  
55 county of the obligation to provide all resident children with the opportunity to enroll in a full-day  
56 program; and

57           (3) A parent of a child enrolled in an early education program may withdraw a child from  
58 that program for good cause by notifying the district. Good cause includes, but is not limited to,  
59 enrollment of the child in another program or the immaturity of the child. A child withdrawn under  
60 this section is not subject to the attendance provisions of this chapter until that child again enrolls  
61 in a public school in this state.

62           (e) Enrollment of students in Head Start, in any other program approved by the state  
63 superintendent as provided in subsection (k) of this section may be counted toward satisfying the  
64 requirement of subsection (c) of this section.

65           (f) For the purposes of implementation financing, all counties are encouraged to make use  
66 of funds from existing sources, including:

67           (1) Federal funds provided under the Elementary and Secondary Education Act pursuant  
68 to 20 U. S. C. §6301, *et seq.*;

69           (2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

70           (3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601,  
71 *et seq.*;

72           (4) Funds provided by the School Building Authority pursuant to article nine-d of this  
73 chapter;

74           (5) In the case of counties with declining enrollments, funds from the state aid formula  
75 above the amount indicated for the number of students actually enrolled in any school year; and

76           (6) Any other public or private funds.

77           (g) Each county board shall develop a plan for implementing the program required by this  
78 section. The plan shall include the following elements:

79           (1) An analysis of the demographics of the county related to early childhood education  
80 program implementation;

81           (2) An analysis of facility and personnel needs;

82 (3) Financial requirements for implementation and potential sources of funding to assist  
83 implementation;

84 (4) Details of how the county board will cooperate and collaborate with other early  
85 childhood education programs including, but not limited to, Head Start, to maximize federal and  
86 other sources of revenue;

87 (5) Specific time lines for implementation; and

88 (6) Any other items the state board may require by policy.

89 (h) A county board shall submit its plan to the Secretary of the Department of Health and  
90 Human Resources. The secretary shall approve the plan if the following conditions are met:

91 (1) The county board has maximized the use of federal and other available funds for early  
92 childhood programs;

93 (2) The county board has provided for the maximum implementation of Head Start  
94 programs and other public and private programs approved by the state superintendent pursuant  
95 to the terms of subsection (k) of this section; and

96 (3) If the Secretary of the Department of Health and Human Resources finds that the  
97 county board has not met one or more of the requirements of this subsection, but that the county  
98 board has acted in good faith and the failure to comply was not the primary fault of the county  
99 board, then the secretary shall approve the plan. Any denial by the secretary may be appealed to  
100 the circuit court of the county in which the county board is located.

101 (i) The county board shall submit its plan for approval to the state board. The state board  
102 shall approve the plan if the county board has complied substantially with the requirements of  
103 subsection (g) of this section and has obtained the approval required in subsection (h) of this  
104 section.

105 (j) Every county board shall submit its plan for reapproval by the Secretary of the  
106 Department of Health and Human Resources and by the state board at least every two years after  
107 the initial approval of the plan and until full implementation of the early childhood education

108 program in the county. As part of the submission, the county board shall provide a detailed  
109 statement of the progress made in implementing its plan. The standards and procedures provided  
110 for the original approval of the plan apply to any reapproval.

111 (k) A county board may not increase the total number of students enrolled in the county in  
112 an early childhood program until its program is approved by the Secretary of the Department of  
113 Health and Human Resources and the state board.

114 (l) The state board annually may grant a county board a waiver for total or partial  
115 implementation if the state board finds that all of the following conditions exist:

116 (1) The county board is unable to comply either because:

117 (A) It does not have sufficient facilities available; or

118 (B) It does not and has not had available funds sufficient to implement the program;

119 (2) The county has not experienced a decline in enrollment at least equal to the total  
120 number of students to be enrolled; and

121 (3) Other agencies of government have not made sufficient funds or facilities available to  
122 assist in implementation.

123 Any county board seeking a waiver shall apply with the supporting data to meet the criteria  
124 for which they are eligible on or before March 25 for the following school year. The state  
125 superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

126 (m) The provisions of subsections (b), (c) and (d), section eighteen of this article relating  
127 to kindergarten apply to early childhood education programs in the same manner in which they  
128 apply to kindergarten programs.

129 (n) Except as required by federal law or regulation, no county board may enroll students  
130 who will be less than four years of age prior to September 1 for the year they enter school.

131 (o) Neither the state board nor the state department may provide any funds to any county  
132 board for the purpose of implementing this section unless the county board has a plan approved  
133 pursuant to subsections (h), (i) and (j) of this section.

134 (p) The state board shall promulgate a rule in accordance with the provisions of article  
135 three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this  
136 section. The state board shall consult with the Secretary of the Department of Health and Human  
137 Resources in the preparation of the rule. The rule shall contain the following:

138 (1) Standards for curriculum;

139 (2) Standards for preparing students;

140 (3) Attendance requirements;

141 (4) Standards for personnel; and

142 (5) Any other terms necessary to implement the provisions of this section.

143 (q) The rule shall include the following elements relating to curriculum standards:

144 (1) A requirement that the curriculum be designed to address the developmental needs of  
145 four-year old children, consistent with prevailing research on how children learn;

146 (2) A requirement that the curriculum be designed to achieve long-range goals for the  
147 social, emotional, physical and academic development of young children;

148 (3) A method for including a broad range of content that is relevant, engaging and  
149 meaningful to young children;

150 (4) A requirement that the curriculum incorporate a wide variety of learning experiences,  
151 materials and equipment, and instructional strategies to respond to differences in prior  
152 experience, maturation rates and learning styles that young children bring to the classroom;

153 (5) A requirement that the curriculum be designed to build on what children already know  
154 in order to consolidate their learning and foster their acquisition of new concepts and skills;

155 (6) A requirement that the curriculum meet the recognized standards of the relevant  
156 subject matter disciplines;

157 (7) A requirement that the curriculum engage children actively in the learning process and  
158 provide them with opportunities to make meaningful choices;

159           (8) A requirement that the curriculum emphasize the development of thinking, reasoning,  
160 decisionmaking and problem-solving skills;

161           (9) A set of clear guidelines for communicating with parents and involving them in  
162 decisions about the instructional needs of their children; and

163           (10) A systematic plan for evaluating program success in meeting the needs of young  
164 children and for helping them to be ready to succeed in school.

165           (r) After the school year 2012-2013, on or before July 1 of each year, each county board  
166 shall report the following information to the Secretary of the Department of Health and Human  
167 Resources and the state superintendent:

168           (1) Documentation indicating the extent to which county boards are maximizing resources  
169 by using the existing capacity of community-based programs, including, but not limited to, Head  
170 Start and child care; and

171           (2) For those county boards that are including eligible children attending approved,  
172 contracted community-based programs in their net enrollment for the purposes of calculating state  
173 aid pursuant to article nine-a of this chapter, documentation that the county board is equitably  
174 distributing funding for all children regardless of setting.

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

**§18-20-5. Powers and duties of state superintendent.**

1           (a) The State Superintendent of Schools shall organize, promote, administer and be  
2 responsible for:

3           (1) Stimulating and assisting county boards of education in establishing, organizing and  
4 maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher  
5 services.

6           (2) Cooperating with all other public and private agencies engaged in relieving, caring for,  
7 curing, educating and rehabilitating exceptional children, and in helping coordinate the services  
8 of such agencies.

9           (3) (A) Preparing the necessary rules, policies, formula for distribution of available  
10 appropriated funds, reporting forms and procedures necessary to define minimum standards in  
11 providing suitable facilities for education of exceptional children and ensuring the employment,  
12 certification and approval of qualified teachers and therapists subject to approval by the State  
13 Board of Education: *Provided*, That no state rule, policy or standard under this article or any  
14 county board rule, policy or standard governing special education may exceed the requirements  
15 of federal law or regulation.

16           (B) An appropriation shall be made to the Department of Education to be distributed to  
17 county boards to support children with high acuity needs that exceed the capacity of county to  
18 provide with funds available. Each county board shall apply to the state superintendent for receipt  
19 of this funding in a manner set forth by the state superintendent that assesses and takes into  
20 account varying acuity levels of the exceptional students. Any remaining funds at the end of a  
21 fiscal year from the appropriation shall be carried over to the next fiscal year. When possible,  
22 federal funds shall be distributed to county boards for this purpose before any of the state  
23 appropriation is distributed. The state board shall promulgate a rule in accordance with the  
24 provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of  
25 this subdivision relating to distributing the funds to the county boards. The rule at least shall  
26 include a definition for "children with high acuity needs".

27           (4) Receiving from county boards of education their applications, annual reports and  
28 claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such  
29 claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

30           (5) Assuring that all exceptional children in the state, including children in mental health  
31 facilities, residential institutions, private schools and correctional facilities as provided in section  
32 thirteen-f, article two of this chapter receive an education in accordance with state and federal  
33 laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities  
34 and regional jails receive an education to the extent funds are provided therefor.

35 (6) Performing other duties and assuming other responsibilities in connection with this  
36 program as needed.

37 (7) Receive the county plan for integrated classroom submitted by the county boards of  
38 education and submit a state plan, approved by the State Board of Education, to the Legislative  
39 Oversight Commission on Education Accountability no later than December 1, 1995.

40 (b) Nothing contained in this section shall be construed to prevent any county board of  
41 education from establishing and maintaining special schools, classes, regular class programs,  
42 home-teaching or visiting-teacher services out of funds available from local revenue.

**§18-20-8. Interagency plan for exceptional children; advisory council.**

1 (a) The state departments of health, human services and education shall enter into a  
2 collaborative agreement for the purpose of developing a statewide plan of coordinating  
3 comprehensive, multidisciplinary interagency programs providing appropriate early intervention  
4 services to all developmentally delayed and at-risk children, ages birth through five years, and  
5 their families to be phased in by the school year 1990-99.

6 This comprehensive, coordinated statewide plan shall include, at a minimum:

- 7 (1) Specification of the population to be served;  
8 (2) The development of regulations and procedural safeguards;  
9 (3) The development of procedures for administration, supervision and monitoring;  
10 (4) The identification and coordination of all available resources; and  
11 (5) The development of formal interagency agreements that define the financial  
12 responsibility of each agency and all additional components necessary to ensure meaningful  
13 cooperation and coordination.

14 (b) To assist in the development of such a plan, an advisory council consisting of twelve  
15 members shall be created. The departments of health, human services and education shall each  
16 appoint four members, and each shall include in such appointments one parent of an exceptional  
17 child under the age of six; one public or private provider of early intervention services for

18 developmentally delayed and at-risk children; one individual involved in the education training of  
19 personnel who work with preschool handicapped; and one other person.

20 The functions of the council shall include the following:

21 (1) Meet at least quarterly;

22 (2) Solicit information and opinions from concerned agencies, groups and individuals; and

23 (3) Advise and assist the departments of health, human services and education in the  
24 development of the statewide plan herein required.

25 Following the submission of the advisory council's first annual report, the joint committee  
26 on education is authorized and empowered to disband the council or alter its functions as it deems  
27 advisable.

28 The members of the council may be reimbursed for actual and necessary expenses  
29 incurred in the performance of their official duties in accordance with state law from appropriations  
30 to the departments of health, human services and education or available federal funds.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-3. Employment of substitute teachers; employment of retired teachers as  
substitutes in areas of critical need and shortage; and employment of  
prospective employable professional personnel.**

1 (a) The county superintendent, subject to approval of the county board, may employ and  
2 assign substitute teachers to any of the following duties:

3 (1) Fill the temporary absence of any teacher or an unexpired school term made vacant  
4 by resignation, death, suspension or dismissal;

5 (2) Fill a teaching position of a regular teacher on leave of absence; and

6 (3) Perform the instructional services of any teacher who is authorized by law to be absent  
7 from class without loss of pay, providing the absence is approved by the board of education in  
8 accordance with the law.

9           The substitute shall be a duly certified teacher.

10           (b) Notwithstanding any other provision of this code to the contrary, a substitute teacher  
11 who has been assigned as a classroom teacher in the same classroom continuously for more  
12 than one half of a grading period and whose assignment remains in effect two weeks prior to the  
13 end of the grading period, shall remain in the assignment until the grading period has ended,  
14 unless the principal of the school certifies that the regularly employed teacher has communicated  
15 with and assisted the substitute with the preparation of lesson plans and monitoring student  
16 progress or has been approved to return to work by his or her physician. For the purposes of this  
17 section, teacher and substitute teacher, in the singular or plural, mean professional educator as  
18 defined in section one, article one of this chapter.

19           (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified  
20 substitute teachers, a compelling state interest exists in expanding the use of retired teachers to  
21 provide service as substitute teachers in areas of critical need and shortage. The Legislature  
22 further finds that diverse circumstances exist among the counties for the expanded use of retired  
23 teachers as substitutes. For the purposes of this subsection, "area of critical need and shortage  
24 for substitute teachers" means an area of certification and training in which the number of  
25 available substitute teachers in the county who hold certification and training in that area and who  
26 are not retired is insufficient to meet the projected need for substitute teachers.

27           (2) A person receiving retirement benefits under article seven-a, chapter eighteen of this  
28 code or who is entitled to retirement benefits during the fiscal year in which that person retired  
29 may accept employment as a critical needs substitute teacher for an unlimited number of days  
30 each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise  
31 entitled if the following conditions are satisfied:

32           (A) The county board adopts a policy recommended by the superintendent to address  
33 areas of critical need and shortage for substitute teachers;

34 (B) The policy sets forth the areas of critical need and shortage for substitute teachers in  
35 the county in accordance with the definition of area of critical need and shortage for substitute  
36 teachers set forth in subdivision (1) of this subsection;

37 (C) The policy provides for the employment of retired teachers as critical needs substitute  
38 teachers during the school year on an expanded basis in areas of critical need and shortage for  
39 substitute teachers as provided in this subsection;

40 (D) The policy provides that a retired teacher may be employed as a substitute teacher in  
41 an area of critical need and shortage for substitute teachers on an expanded basis as provided  
42 in this subsection only when no other teacher who holds certification and training in the area and  
43 who is not retired is available and accepts the substitute assignment;

44 (E) The policy is effective for one school year only and is subject to annual renewal by the  
45 county board;

46 (F) The state board approves the policy and the use of retired teachers as substitute  
47 teachers on an expanded basis in areas of critical need and shortage for substitute teachers as  
48 provided in this subsection; and

49 (G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond  
50 the post-retirement employment limitations established by the Consolidated Public Retirement  
51 Board, the superintendent of the affected county submits to the state board in a form approved  
52 by the Consolidated Public Retirement Board and the state board, an affidavit signed by the  
53 superintendent stating the name of the county, the fact that the county has adopted a policy to  
54 employ retired teachers as substitutes to address areas of critical need and shortage, the name  
55 or names of the person or persons to be employed as a critical needs substitute pursuant to the  
56 policy, the critical need and shortage area position filled by each person, the date that the person  
57 gave notice to the county board of the person's intent to retire, and the effective date of the  
58 person's retirement. Upon verification of compliance with this section and the eligibility of the  
59 critical needs substitute teacher for employment beyond the post-retirement limit, the state board  
60 shall submit the affidavit to the Consolidated Public Retirement Board.

61 (3) Any person who retires and begins work as a critical needs substitute teacher within  
62 the same employment term shall lose those retirement benefits attributed to the annuity reserve,  
63 effective from the first day of employment as a retiree substitute in that employment term and  
64 ending with the month following the date the retiree ceases to perform service as a substitute.

65 (4) Retired teachers employed to perform expanded substitute service pursuant to this  
66 subsection are considered day-to-day, temporary, part-time employees. The substitutes are not  
67 eligible for additional pension or other benefits paid to regularly employed employees and may  
68 not accrue seniority.

69 (5) A retired teacher is eligible to be employed as a critical needs substitute to fill a vacant  
70 position only if the retired teacher's retirement became effective at least twenty days before the  
71 beginning of the employment term during which he or she is employed as a substitute.

72 (6) When a retired teacher is employed as a critical needs substitute to fill a vacant  
73 position, the county board shall continue to post the vacant position until it is filled with a regularly  
74 employed teacher who is fully certified or permitted for the position.

75 (7) When a retired teacher is employed as a critical needs substitute to fill a vacant  
76 position, the position vacancy shall be posted electronically and easily accessible to prospective  
77 employees as determined by the state board.

78 (8) Until this subsection is expired pursuant to subdivision (9) of this subsection, the state  
79 board, annually, shall report to the Joint Committee on Government and Finance prior to February  
80 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on  
81 Education Accountability. The report shall contain information indicating the effectiveness of the  
82 provisions of this subsection on reducing the critical need and shortage of substitute teachers  
83 including, but not limited to, the number of retired teachers, by critical need and shortage area  
84 position filled and by county, employed beyond the post-retirement employment limit established  
85 by the Consolidated Public Retirement Board, the date that each person gave notice to the county  
86 board of the person's intent to retire, and the effective date of the person's retirement.

87 (9) The provisions of this subsection shall expire on June 30, 2017.

88 (d) (1) Notwithstanding any other provision of this code to the contrary, each year a county  
89 superintendent may employ prospective employable professional personnel on a reserve list at  
90 the county level subject to the following conditions:

91 (A) The county board adopts a policy to address areas of critical need and shortage as  
92 identified by the state board. The policy shall include authorization to employ prospective  
93 employable professional personnel;

94 (B) The county board posts a notice of the areas of critical need and shortage in the county  
95 in a conspicuous place in each school for at least ten working days; and

96 (C) There are not any potentially qualified applicants available and willing to fill the  
97 position.

98 (2) Prospective employable professional personnel may only be employed from  
99 candidates at a job fair who have or will graduate from college in the current school year or whose  
100 employment contract with a county board has or will be terminated due to a reduction in force in  
101 the current fiscal year.

102 (3) Prospective employable professional personnel employed are limited to three full-time  
103 prospective employable professional personnel per one hundred professional personnel  
104 employed in a county or twenty-five full-time prospective employable professional personnel in a  
105 county, whichever is less.

106 (4) Prospective employable professional personnel shall be granted benefits at a cost to  
107 the county board and as a condition of the employment contract as approved by the county board.

108 (5) Regular employment status for prospective employable professional personnel may  
109 be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

#### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

##### **§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.**

1 (a) A county board of education shall make decisions affecting the filling of vacancies in  
2 professional positions of employment on the basis of the applicant with the highest qualifications:  
3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to  
4 section two, article four, chapter eighteen of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of  
6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching  
9 position, the amount of teaching experience in the required certification area;

10 (3) The amount of course work, degree level or both in the relevant field and degree level  
11 generally;

12 (4) Academic achievement;

13 (5) In the case of a classroom teaching position or the position of principal, certification by  
14 the National Board for Professional Teaching Standards;

15 (6) Specialized training relevant to the performance of the duties of the job;

16 (7) Past performance evaluations conducted pursuant to section twelve, article two of this  
17 chapter and section two, article three-c of this chapter or, in the case of a classroom teacher, past  
18 evaluations of the applicant's performance in the teaching profession;

19 (8) Seniority;

20 (9) Other measures or indicators upon which the relative qualifications of the applicant  
21 may fairly be judged;

22 (10) In the case of a classroom teaching position, the recommendation of the principal of  
23 the school at which the applicant will be performing a majority of his or her duties; and

24 (11) In the case of a classroom teaching position, the recommendation, if any, resulting  
25 from the process established pursuant to the provisions of section five, article five-a, chapter  
26 eighteen of this code by the faculty senate of the school at which the employee will be performing  
27 a majority of his or her duties.

28 (c) In considering the filling of a vacancy pursuant to this section, a county board is entitled  
29 to determine the appropriate weight to apply to each of the criterion when assessing an applicant's  
30 qualifications: *Provided*, That if one or more permanently employed instructional personnel apply  
31 for a classroom teaching position and meet the standards set forth in the job posting, each  
32 criterion under subsection (b) of this section shall be given equal weight except that the criterion  
33 in subdivisions (10) and (11) shall each be double weighted.

34 (d) For a classroom teaching position, if the recommendations resulting from the  
35 operations of subdivisions (10) and (11), subsection (b) of this section are for the same applicant,  
36 and the superintendent concurs with that recommendation, then the other provisions of  
37 subsections (b) and (c) of this section do not apply and the county board shall appoint that  
38 applicant notwithstanding any other provision of this code to the contrary.

39 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in  
40 accordance with the provisions of article three-b, chapter twenty-nine-a of this code to implement  
41 and interpret the provisions of this section, including provisions that may provide for the  
42 compensation based on the appropriate daily rate of a classroom teacher who directly participates  
43 in making recommendations pursuant to this section for periods beyond his or her individual  
44 contract.

45 (f) Recommendations made pursuant to subdivisions (10) and (11), subsection (b) of this  
46 section shall be made based on a determination as to which of the applicants is the highest  
47 qualified for the position: *Provided*, That nothing in this subsection shall require principals or  
48 faculty senates to assign any amount of weight to any factor in making a recommendation.

49 (g) With the exception of guidance counselors, the seniority of classroom teachers, as  
50 defined in section one, article one of this chapter, shall be determined on the basis of the length  
51 of time the employee has been employed as a regular full-time certified and/or licensed  
52 professional educator by the county board of education and shall be granted in all areas that the  
53 employee is certified, licensed or both.

54 (h) Upon completion of one hundred thirty-three days of employment in any one school  
55 year, substitute teachers, except retired teachers and other retired professional educators  
56 employed as substitutes, shall accrue seniority exclusively for the purpose of applying for  
57 employment as a permanent, full-time professional employee. One hundred thirty-three days or  
58 more of said employment shall be prorated and shall vest as a fraction of the school year worked  
59 by the permanent, full-time teacher.

60 (i) Guidance counselors and all other professional employees, as defined in section one,  
61 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching  
62 area of professional employment on the basis of the length of time the employee has been  
63 employed by the county board of education in that area: *Provided*, That if an employee is certified  
64 as a classroom teacher, the employee accrues classroom teaching seniority for the time that that  
65 employee is employed in another professional area. For the purposes of accruing seniority under  
66 this paragraph, employment as principal, supervisor or central office administrator, as defined in  
67 section one, article one of this chapter, shall be considered one area of employment.

68 (j) Employment for a full employment term shall equal one year of seniority, but no  
69 employee may accrue more than one year of seniority during any given fiscal year. Employment  
70 for less than the full employment term shall be prorated. A random selection system established  
71 by the employees and approved by the board shall be used to determine the priority if two or more  
72 employees accumulate identical seniority: *Provided*, That when two or more principals have  
73 accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

74 (k) Whenever a county board is required to reduce the number of professional personnel  
75 in its employment, the employee with the least amount of seniority shall be properly notified and  
76 released from employment pursuant to the provisions of section two, article two of this chapter.  
77 The provisions of this subsection are subject to the following:

78 (1) All persons employed in a certification area to be reduced who are employed under a  
79 temporary permit shall be properly notified and released before a fully certified employee in such  
80 a position is subject to release;

81 (2) Notwithstanding any provision of this code to the contrary, all employees subject to  
82 release shall be considered applicants for any vacancy in an established, existing or newly  
83 created position that, on or before February 15, is known to exist for the ensuing school year, and  
84 for which they are qualified, and, upon recommendation of the superintendent, the board shall  
85 appoint the successful applicant from among them before posting such vacancies for application  
86 by other persons;

87 (3) An employee subject to release shall be employed in any other professional position  
88 where the employee is certified and was previously employed or to any lateral area for which the  
89 employee is certified, licensed or both, if the employee's seniority is greater than the seniority of  
90 any other employee in that area of certification, licensure or both;

91 (4) If an employee subject to release holds certification, licensure or both in more than one  
92 lateral area and if the employee's seniority is greater than the seniority of any other employee in  
93 one or more of those areas of certification, licensure or both, the employee subject to release  
94 shall be employed in the professional position held by the employee with the least seniority in any  
95 of those areas of certification, licensure or both; and

96 (5) If, prior to August 1 of the year a reduction in force is approved, the reason for any  
97 particular reduction in force no longer exists as determined by the county board in its sole and  
98 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the  
99 released employee in writing of his or her right to be restored to his or her position of employment.  
100 Within five days of being so notified, the released employee shall notify the board, in writing, of  
101 his or her intent to resume his or her position of employment or the right to be restored shall  
102 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on  
103 the preferred recall list with proper certification and higher seniority, that person shall be placed  
104 in the position restored as a result of the reduction in force being rescinded.

105 (l) For the purpose of this article, all positions which meet the definition of "classroom  
106 teacher" as defined in section one, article one of this chapter shall be lateral positions. For all

107 other professional positions, the county board of education shall adopt a policy by October 31,  
108 1993, and may modify the policy thereafter as necessary, which defines which positions shall be  
109 lateral positions. In adopting the policy, the board shall give consideration to the rank of each  
110 position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and  
111 days in the period of employment.

112 (m) After the twentieth day prior to the beginning of the instructional term, no person  
113 employed and assigned to a professional position may transfer to another professional position  
114 in the county during that instructional term unless the person holding that position does not have  
115 valid certification. The provisions of this subsection are subject to the following:

116 (1) The person may apply for any posted, vacant positions with the successful applicant  
117 assuming the position at the beginning of the next instructional term;

118 (2) Professional personnel who have been on an approved leave of absence may fill these  
119 vacancies upon their return from the approved leave of absence;

120 (3) The county board, upon recommendation of the superintendent may fill a position  
121 before the next instructional term when it is determined to be in the best interest of the students.  
122 The county superintendent shall notify the state board of each transfer of a person employed in a  
123 professional position to another professional position after the twentieth day prior to the beginning  
124 of the instructional term;

125 (4) The provisions of this subsection do not apply to the filling of a position vacated  
126 because of resignation or retirement that became effective on or before the twentieth day prior to  
127 the beginning of the instructional term, but not posted until after that date; and

128 (5) The Legislature finds that it is not in the best interest of the students, particularly in the  
129 elementary grades, to have multiple teachers for any one grade level or course during the  
130 instructional term. It is the intent of the Legislature that the filling of positions through transfers of  
131 personnel from one professional position to another after the twentieth day prior to the beginning  
132 of the instructional term should be kept to a minimum.

133 (n) All professional personnel whose seniority with the county board is insufficient to allow  
134 their retention by the county board during a reduction in work force shall be placed upon a  
135 preferred recall list. As to any professional position opening within the area where they had  
136 previously been employed or to any lateral area for which they have certification, licensure or  
137 both, the employee shall be recalled on the basis of seniority if no regular, full-time professional  
138 personnel, or those returning from leaves of absence with greater seniority, are qualified, apply  
139 for and accept the position.

140 (o) Before position openings that are known or expected to extend for twenty consecutive  
141 employment days or longer for professional personnel may be filled by the board, the board shall  
142 be required to notify all qualified professional personnel on the preferred list and give them an  
143 opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall.  
144 The notice shall be sent by certified mail to the last known address of the employee, and it shall  
145 be the duty of each professional personnel to notify the board of continued availability annually,  
146 of any change in address or of any change in certification, licensure or both.

147 (p) Openings in established, existing or newly created positions shall be processed as  
148 follows:

149 (1) Boards shall be required to post and date notices of each opening at least once. At  
150 their discretion, boards may post an opening for a position other than classroom teacher more  
151 than once in order to attract more qualified applicants. At their discretion, boards may post an  
152 opening for a classroom teacher one additional time after the first posting in order to attract more  
153 qualified applicants only if fewer than three individuals apply during the first posting subject to the  
154 following:

155 (A) Each notice shall be posted in conspicuous working places for all professional  
156 personnel to observe for at least five working days;

157 (B) At least one notice shall be posted within twenty working days of the position openings  
158 and shall include the job description;

159 (C) Any special criteria or skills that are required by the position shall be specifically stated  
160 in the job description and directly related to the performance of the job;

161 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure  
162 that the largest possible pool of qualified applicants may apply; and

163 (E) Job postings may not require criteria which are not necessary for the successful  
164 performance of the job and may not be written with the intent to favor a specific applicant;

165 (2) No vacancy shall be filled until after the five-day minimum posting period of the most  
166 recent posted notice of the vacancy;

167 (3) If one or more applicants under all the postings for a vacancy meets the qualifications  
168 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board  
169 within thirty working days of the end of the first posting period;

170 (4) A position held by a teacher who is certified, licensed or both, who has been issued a  
171 permit for full-time employment and is working toward certification in the permit area shall not be  
172 subject to posting if the certificate is awarded within five years; and

173 (5) Nothing provided herein shall prevent the county board of education from eliminating  
174 a position due to lack of need.

175 (q) Notwithstanding any other provision of the code to the contrary, where the total number  
176 of classroom teaching positions in an elementary school does not increase from one school year  
177 to the next, but there exists in that school a need to realign the number of teachers in one or more  
178 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels  
179 for which they are certified without that position being posted: *Provided*, That the employee and  
180 the county board mutually agree to the reassignment.

181 (r) Reductions in classroom teaching positions in elementary schools shall be processed  
182 as follows:

183 (1) When the total number of classroom teaching positions in an elementary school needs  
184 to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom  
185 teacher being recommended for transfer; and

186 (2) When a specified grade level needs to be reduced and the least senior employee in  
187 the school is not in that grade level, the least senior classroom teacher in the grade level that  
188 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least  
189 senior classroom teacher in the school without that position being posted: *Provided*, That the  
190 employee is certified, licensed or both and agrees to the reassignment.

191 (s) Any board failing to comply with the provisions of this article may be compelled to do  
192 so by mandamus and shall be liable to any party prevailing against the board for court costs and  
193 reasonable attorney fees as determined and established by the court. Further, employees denied  
194 promotion or employment in violation of this section shall be awarded the job, pay and any  
195 applicable benefits retroactive to the date of the violation and payable entirely from local funds.  
196 Further, the board shall be liable to any party prevailing against the board for any court reporter  
197 costs including copies of transcripts.

198 (t) The county board shall compile, update annually on July 1 and make available by  
199 electronic or other means to all employees a list of all professional personnel employed by the  
200 county, their areas of certification and their seniority.

201 (u) Notwithstanding any other provision of this code to the contrary, upon recommendation  
202 of the principal and approval by the classroom teacher and county board, a classroom teacher  
203 assigned to the school may at any time be assigned to a new or existing classroom teacher  
204 position at the school without the position being posted.

205 (v) The amendments to this section during the 2013 regular session of the Legislature  
206 shall be effective for school years beginning on or after July 1, 2013, and the provisions of this  
207 section immediately prior to those amendments remain in effect until July 1, 2013.

## **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing  
a controlled substance on premises of educational facilities; assaults and  
batteries committed by students upon teachers or other school personnel;**

**temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

1           (a) A principal shall suspend a student from school or from transportation to or from the  
2 school on any school bus if the student, in the determination of the principal after an informal  
3 hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection  
4 (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of  
5 subsection (b), section eleven-a, article seven of said chapter; or (iii) sold a narcotic drug, as  
6 defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of  
7 an educational facility, at a school-sponsored function or on a school bus. If a student has been  
8 suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that  
9 the county superintendent recommend to the county board that the student be expelled. Upon  
10 such a request by a principal, the county superintendent shall recommend to the county board  
11 that the student be expelled. Upon such recommendation, the county board shall conduct a  
12 hearing in accordance with subsections (e), (f) and (g) of this section to determine if the student  
13 committed the alleged violation. If the county board finds that the student did commit the alleged  
14 violation, the county board shall expel the student.

15           (b) A principal shall suspend a student from school, or from transportation to or from the  
16 school on any school bus, if the student, in the determination of the principal after an informal  
17 hearing pursuant to subsection (d) of this section, has: (i) Committed an act or engaged in conduct  
18 that would constitute a felony under the laws of this state if committed by an adult; or (ii) unlawfully  
19 possessed on the premises of an educational facility or at a school-sponsored function a  
20 controlled substance governed by the Uniform Controlled Substances Act as described in chapter  
21 sixty-a of this code. If a student has been suspended pursuant to this subsection, the principal  
22 may request that the superintendent recommend to the county board that the student be expelled.  
23 Upon such recommendation by the county superintendent, the county board may hold a hearing

24 in accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the  
25 student committed the alleged violation. If the county board finds that the student did commit the  
26 alleged violation, the county board may expel the student.

27 (c) A principal may suspend a student from school, or transportation to or from the school  
28 on any school bus, if the student, in the determination of the principal after an informal hearing  
29 pursuant to subsection (d) of this section: (i) Threatened to injure, or in any manner injured, a  
30 student, teacher, administrator or other school personnel; (ii) willfully disobeyed a teacher; (iii)  
31 possessed alcohol in an educational facility, on school grounds, a school bus or at any school-  
32 sponsored function; (iv) used profane language directed at a school employee or student; (v)  
33 intentionally defaced any school property; (vi) participated in any physical altercation with another  
34 person while under the authority of school personnel; or (vii) habitually violated school rules or  
35 policies. If a student has been suspended pursuant to this subsection, the principal may request  
36 that the superintendent recommend to the county board that the student be expelled. Upon such  
37 recommendation by the county superintendent, the county board may hold a hearing in  
38 accordance with the provisions of subsections (e), (f) and (g) of this section to determine if the  
39 student committed the alleged violation. If the county board finds that the student did commit the  
40 alleged violation, the county board may expel the student.

41 (d) The actions of any student which may be grounds for his or her suspension or  
42 expulsion under the provisions of this section shall be reported immediately to the principal of the  
43 school in which the student is enrolled. If the principal determines that the alleged actions of the  
44 student would be grounds for suspension, he or she shall conduct an informal hearing for the  
45 student immediately after the alleged actions have occurred. The hearing shall be held before the  
46 student is suspended unless the principal believes that the continued presence of the student in  
47 the school poses a continuing danger to persons or property or an ongoing threat of disrupting  
48 the academic process, in which case the student shall be suspended immediately and a hearing  
49 held as soon as practicable after the suspension.

50           The student and his or her parent(s), guardian(s) or custodian(s), as the case may be,  
51 shall be given telephonic notice, if possible, of this informal hearing, which notice shall briefly state  
52 the grounds for suspension.

53           At the commencement of the informal hearing, the principal shall inquire of the student as  
54 to whether he or she admits or denies the charges. If the student does not admit the charges, he  
55 or she shall be given an explanation of the evidence possessed by the principal and an opportunity  
56 to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure  
57 of the noticed student to appear, the principal may suspend the student for a maximum of ten  
58 school days, including the time prior to the hearing, if any, for which the student has been excluded  
59 from school.

60           The principal shall report any suspension the same day it has been decided upon, in  
61 writing, to the parent(s), guardian(s) or custodian(s) of the student by regular United States mail.  
62 The suspension also shall be reported to the county superintendent and to the faculty senate of  
63 the school at the next meeting after the suspension.

64           (e) Prior to a hearing before the county board, the county board shall cause a written  
65 notice which states the charges and the recommended disposition to be served upon the student  
66 and his or her parent(s), guardian(s) or custodian(s), as the case may be. The notice shall state  
67 clearly whether the board will attempt at hearing to establish the student as a dangerous student,  
68 as defined by section one, article one of this chapter. The notice also shall include any evidence  
69 upon which the board will rely in asserting its claim that the student is a dangerous student. The  
70 notice shall set forth a date and time at which the hearing shall be held, which date shall be within  
71 the ten-day period of suspension imposed by the principal.

72           (f) The county board shall hold the scheduled hearing to determine if the student should  
73 be reinstated or should, under the provisions of this section, must be expelled from school. If the  
74 county board determines that the student should or must be expelled from school, it also may  
75 determine whether the student is a dangerous student pursuant to subsection (g) of this section.

76 At this, or any hearing before a county board conducted pursuant to this section, the student may  
77 be represented by counsel, may call his or her own witnesses to verify his or her version of the  
78 incident and may confront and cross examine witnesses supporting the charge against him or  
79 her. The hearing shall be recorded by mechanical means unless recorded by a certified court  
80 reporter. The hearing may be postponed for good cause shown by the student but he or she shall  
81 remain under suspension until after the hearing. The state board may adopt other supplementary  
82 rules of procedure to be followed in these hearings. At the conclusion of the hearing the county  
83 board shall either: (1) Order the student reinstated immediately at the end of his or her initial  
84 suspension; (2) suspend the student for a further designated number of days; or (3) expel the  
85 student from the public schools of the county.

86 (g) A county board that did not intend prior to a hearing to assert a dangerous student  
87 claim, that did not notify the student prior to the hearing that a dangerous student determination  
88 would be considered and that determines through the course of the hearing that the student may  
89 be a dangerous student shall schedule a second hearing within ten days to decide the issue. The  
90 hearing may be postponed for good cause shown by the student, but he or she remains under  
91 suspension until after the hearing.

92 A county board that expels a student, and finds that the student is a dangerous student,  
93 may refuse to provide alternative education. However, after a hearing conducted pursuant to this  
94 section for determining whether a student is a dangerous student, when the student is found to  
95 be a dangerous student, is expelled and is denied alternative education, a hearing shall be  
96 conducted within three months after the refusal by the board to provide alternative education to  
97 reexamine whether or not the student remains a dangerous student and whether the student shall  
98 be provided alternative education. Thereafter, a hearing for the purpose of reexamining whether  
99 or not the student remains a dangerous student and whether the student shall be provided  
100 alternative education shall be conducted every three months for so long as the student remains  
101 a dangerous student and is denied alternative education. During the initial hearing, or in any

102 subsequent hearing, the board may consider the history of the student's conduct as well as any  
103 improvements made subsequent to the expulsion. If it is determined during any of the hearings  
104 that the student is no longer a dangerous student or should be provided alternative education, the  
105 student shall be provided alternative education during the remainder of the expulsion period.

106 (h) The superintendent may apply to a circuit judge or magistrate for authority to subpoena  
107 witnesses and documents, upon his or her own initiative, in a proceeding related to a  
108 recommended student expulsion or dangerous student determination, before a county board  
109 conducted pursuant to the provisions of this section. Upon the written request of any other party,  
110 the superintendent shall apply to a circuit judge or magistrate for the authority to subpoena  
111 witnesses, documents or both on behalf of the other party in a proceeding related to a  
112 recommended student expulsion or dangerous student determination before a county board. If  
113 the authority to subpoena is granted, the superintendent shall subpoena the witnesses,  
114 documents or both requested by the other party. Furthermore, if the authority to subpoena is  
115 granted, it shall be exercised in accordance with the provisions of section one, article five, chapter  
116 twenty-nine-a of this code.

117 Any hearing conducted pursuant to this subsection may be postponed: (1) For good cause  
118 shown by the student; (2) when proceedings to compel a subpoenaed witness to appear must be  
119 instituted; or (3) when a delay in service of a subpoena hinders either party's ability to provide  
120 sufficient notice to appear to a witness. A student remains under suspension until after the hearing  
121 in any case where a postponement occurs.

122 (i) Students may be expelled pursuant to this section for a period not to exceed one school  
123 year, except that if a student is determined to have violated the provisions of subsection (a) of  
124 this section the student shall be expelled for a period of not less than twelve consecutive months,  
125 subject to the following:

126 (1) The county superintendent may lessen the mandatory period of twelve consecutive  
127 months for the expulsion of the student if the circumstances of the student's case demonstrably  
128 warrant;

129           (2) Upon the reduction of the period of expulsion, the county superintendent shall prepare  
130 a written statement setting forth the circumstances of the student's case which warrant the  
131 reduction of the period of expulsion. The county superintendent shall submit the statement to the  
132 county board, the principal, the faculty senate and the local school improvement council for the  
133 school from which the student was expelled. The county superintendent may use the following  
134 factors as guidelines in determining whether or not to reduce a mandatory twelve-month  
135 expulsion:

136           (A) The extent of the student's malicious intent;

137           (B) The outcome of the student's misconduct;

138           (C) The student's past behavior history;

139           (D) The likelihood of the student's repeated misconduct; and

140           (E) If applicable, successful completion or making satisfactory progress toward successful  
141 completion of Juvenile Drug Court pursuant to section one-d of this section.

142           (j) In all hearings under this section, facts shall be found by a preponderance of the  
143 evidence.

144           (k) For purposes of this section, nothing herein may be construed to be in conflict with the  
145 federal provisions of the Individuals with Disabilities Education Act, 20 U. S. C. §1400, *et seq.*

146           (l) Each suspension or expulsion imposed upon a student under the authority of this  
147 section shall be recorded in the uniform integrated regional computer information system  
148 (commonly known as the West Virginia Education Information System) described in subsection  
149 (f), section twenty-six, article two, chapter eighteen of this code.

150           (1) The principal of the school at which the student is enrolled shall create an electronic  
151 record within twenty-four hours of the imposition of the suspension or expulsion.

152           (2) Each record of a suspension or expulsion shall include the student's name and  
153 identification number, the reason for the suspension or expulsion and the beginning and ending  
154 dates of the suspension or expulsion.

155           (3) The state board shall collect and disseminate data so that any principal of a public  
156 school in West Virginia can review the complete history of disciplinary actions taken by West  
157 Virginia public schools against any student enrolled or seeking to enroll at that principal's school.  
158 The purposes of this provision are to allow every principal to fulfill his or her duty under subsection  
159 (b), section fifteen-f, article five, chapter eighteen of this code to determine whether a student  
160 requesting to enroll at a public school in West Virginia is currently serving a suspension or  
161 expulsion from another public school in West Virginia and to allow principals to obtain general  
162 information about students' disciplinary histories.

163           (m) Principals may exercise any other authority and perform any other duties to discipline  
164 students consistent with state and federal law, including policies of the state board.

165           (n) Each county board is solely responsible for the administration of proper discipline in  
166 the public schools of the county and shall adopt policies consistent with the provisions of this  
167 section to govern disciplinary actions.

168           (o) For the purpose of this section, "principal" means the principal, assistant principal, vice  
169 principal or the administrative head of the school or a professional personnel designee of the  
170 principal or the administrative head of the school.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **ARTICLE 1. GOVERNANCE.**

#### **§18B-1-10. Potomac branch of West Virginia University.**

1           (a) Notwithstanding any other provision of this code to the contrary, by July 1, 2005,  
2 Potomac State College shall merge and consolidate with West Virginia University, and become a  
3 fully integrated division of the university. All administrative and academic units shall be  
4 consolidated with primary responsibility for direction and support assigned to West Virginia  
5 University. The advisory board previously appointed for Potomac State College shall be known  
6 as the board of visitors and shall provide guidance to the division in carrying out its mission.

7 (b) Operational costs for the Potomac campus may not exceed by more than ten percent  
8 the average cost per full-time equivalent student for freestanding community and technical  
9 colleges or the southern regional education board average expenditures for two-year institutions.  
10 West Virginia University shall reduce these costs to the mandated level within four years.

11 (c) Auxiliary enterprises shall be incorporated into the West Virginia University auxiliary  
12 enterprise system. The West Virginia University Board of Governors shall determine if operations  
13 at the Potomac campus can be operated on a self-sufficient basis when establishing rates for  
14 auxiliary services and products.

15 (d) Potomac State College has a strong reputation in agriculture and forestry instruction,  
16 preprofessional programs in business, computer science and education, and basic liberal arts  
17 instruction. These programs shall be further cultivated and emphasized as the sustaining mission  
18 of the Potomac campus over the next decade, except that the Higher Education Policy  
19 Commission may change the mission of the Potomac campus at any time the commission  
20 determines appropriate. In order to focus its resources on these programs, the campus shall  
21 contract through Eastern West Virginia Community and Technical College to provide work force  
22 development training, literacy education and technical education programs which are most  
23 efficiently offered within a flexible community and technical college curriculum. This collaborative  
24 relationship shall serve to strengthen both institutions and generate a model relationship between  
25 traditional and community and technical college education for institutions throughout the state.

## **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

### **18B-1B-4. Powers and duties of Higher Education Policy Commission.**

1 (a) The primary responsibility of the commission is to develop, establish and implement  
2 policy that will achieve the goals, objectives and priorities found in section one-a, article one and  
3 article one-d of this chapter. The commission shall exercise its authority and carry out its  
4 responsibilities in a manner that is consistent and not in conflict with the powers and duties  
5 assigned by law to the West Virginia Council for Community and Technical College Education

6 and the powers and duties assigned to the governing boards. To that end, the commission has  
7 the following powers and duties relating to the governing boards under its jurisdiction:

8 (1) Develop, oversee and advance the public policy agenda pursuant to article one-d of  
9 this chapter to address major challenges facing the state, including, but not limited to, the  
10 following:

11 (A) The goals, objectives and priorities established in this chapter including specifically  
12 those goals, objectives and priorities pertaining to the compacts created pursuant to section  
13 seven, article one-d of this chapter; and

14 (B) Development and implementation of the master plan described in section five, article  
15 one-d of this chapter for the purpose of accomplishing the mandates of this section;

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

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

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

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

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

28 (A) Developing, building public consensus around and sustaining attention to a long-range  
29 public policy agenda. In developing the agenda, the commission and council shall seek input from  
30 the Legislature and the Governor and specifically from the state Board of Education and local  
31 school districts in order to create the necessary linkages to assure smooth, effective and

32 seamless movement of students through the public education and post-secondary education  
33 systems and to ensure that the needs of public school courses and programs can be fulfilled by  
34 the graduates produced and the programs offered;

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

37 (C) Holding the governing boards and the higher education systems as a whole  
38 accountable for accomplishing their missions and implementing their compacts;

39 (4) Develop and adopt each compact for the governing boards under its jurisdiction;

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

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

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

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

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

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

49 (9) Establish and implement the benchmarks and performance indicators necessary to  
50 measure institutional progress in achieving state policy priorities and institutional missions  
51 pursuant to section seven, article one-d of this chapter;

52 (10) Establish a formal process for identifying capital investment needs and for  
53 determining priorities for these investments for consideration by the Governor and the Legislature  
54 as part of the appropriation request process pursuant to article nineteen of this chapter;

55 (11) Develop standards and evaluate governing board requests for capital project  
56 financing in accordance with article nineteen of this chapter;

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

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

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

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

69 (16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and  
70 other staff;

71 (17) Advise and consent in the appointment of the presidents of the institutions of higher  
72 education under its jurisdiction pursuant to section six of this article. The role of the commission  
73 in approving an institutional president is to assure through personal interview that the person  
74 selected understands and is committed to achieving the goals, objectives and priorities set forth  
75 in the compact, in section one-a, article one and article one-d of this chapter;

76 (18) Approve the total compensation package from all sources for presidents of institutions  
77 under its jurisdiction, as proposed by the governing boards. The governing boards must obtain  
78 approval from the commission of the total compensation package both when institutional  
79 presidents are employed initially and afterward when any change is made in the amount of the  
80 total compensation package;

81 (19) Establish and implement the policy of the state to assure that parents and students  
82 have sufficient information at the earliest possible age on which to base academic decisions about

83 what is required for students to be successful in college, other post-secondary education and  
84 careers related, as far as possible, to results from current assessment tools in use in West  
85 Virginia;

86 (20) Approve and implement a uniform standard jointly with the council to determine which  
87 students shall be placed in remedial or developmental courses. The standard shall be aligned  
88 with college admission tests and assessment tools used in West Virginia and shall be applied  
89 uniformly by the governing boards throughout the public higher education system. The  
90 chancellors shall develop a clear, concise explanation of the standard which they shall  
91 communicate to the State Board of Education and the State Superintendent of Schools;

92 (21) Jointly with the council, develop and implement an oversight plan to manage  
93 systemwide technology including, but not limited to, the following:

94 (A) Expanding distance learning and technology networks to enhance teaching and  
95 learning, promote access to quality educational offerings with minimum duplication of effort; and

96 (B) Increasing the delivery of instruction to nontraditional students, to provide services to  
97 business and industry and increase the management capabilities of the higher education system.

98 (C) Notwithstanding any other provision of law or this code to the contrary, the council,  
99 commission and governing boards are not subject to the jurisdiction of the Chief Technology  
100 Officer for any purpose;

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

106 (23) Establish and implement policies and procedures to ensure that a student may  
107 transfer and apply toward the requirements for a degree the maximum number of credits earned  
108 at any regionally accredited in-state or out-of-state higher education institution with as few

109 requirements to repeat courses or to incur additional costs as are consistent with sound academic  
110 policy;

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

116 (25) Establish and implement policies and programs, in cooperation with the council and  
117 the governing boards, through which a student who has gained knowledge and skills through  
118 employment, participation in education and training at vocational schools or other education  
119 institutions, or Internet-based education programs, may demonstrate by competency-based  
120 assessment that he or she has the necessary knowledge and skills to be granted academic credit  
121 or advanced placement standing toward the requirements of an associate's degree or a  
122 bachelor's degree at a state institution of higher education;

123 (26) Seek out and attend regional, national and international meetings and forums on  
124 education and workforce development-related topics as, in the commission's discretion, are  
125 critical for the performance of their duties as members, for the purpose of keeping abreast of  
126 education trends and policies to aid it in developing the policies for this state to meet the  
127 established education goals, objectives and priorities pursuant to section one-a, article one and  
128 article one-d of this chapter;

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

131 (28) Consider and submit to the appropriate agencies of the executive and legislative  
132 branches of state government an appropriation request that reflects recommended appropriations  
133 for the commission and the governing boards under its jurisdiction. The commission shall submit  
134 as part of its appropriation request the separate recommended appropriation request it received

135 from the council, both for the council and for the governing boards under the council's jurisdiction.  
136 The commission annually shall submit the proposed allocations based on each institution's  
137 progress toward meeting the goals of its compact;

138 (29) The commission may assess institutions under its jurisdiction, including Marshall  
139 University and West Virginia University, for the payment of expenses of the commission or for the  
140 funding of statewide higher education services, obligations or initiatives related to the goals set  
141 forth for the provision of public higher education in the state;

142 (30) Promulgate rules allocating reimbursement of appropriations, if made available by the  
143 Legislature, to governing boards for qualifying noncapital expenditures incurred in providing  
144 services to students with physical, learning or severe sensory disabilities;

145 (31) Make appointments to boards and commissions where this code requires  
146 appointments from the State College System Board of Directors or the University of West Virginia  
147 System Board of Trustees which were abolished effective June 30, 2000, except in those cases  
148 where the required appointment has a specific and direct connection to the provision of  
149 community and technical college education, the appointment shall be made by the council.  
150 Notwithstanding any provisions of this code to the contrary, the commission or the council may  
151 appoint one of its own members or any other citizen of the state as its designee. The commission  
152 and council shall appoint the total number of persons in the aggregate required to be appointed  
153 by these previous governing boards;

154 (32) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article  
155 one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter.  
156 The commission and the council shall promulgate a uniform joint legislative rule for the purposes  
157 of standardizing, as much as possible, the administration of personnel matters among the state  
158 institutions of higher education and implementing the provisions of articles seven, eight, nine and  
159 nine-a of this chapter;

160 (33) Determine when a joint rule among the governing boards under its jurisdiction is  
161 necessary or required by law and, in those instances, in consultation with the governing boards  
162 under its jurisdiction, promulgate the joint rule;

163 (34) Promulgate and implement a rule jointly with the council whereby course credit  
164 earned at a community and technical college transfers for program credit at any other state  
165 institution of higher education and is not limited to fulfilling a general education requirement;

166 (35) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this  
167 chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the  
168 commission, including Marshall University and West Virginia University. The rule shall include,  
169 but is not limited to, the following:

170 (A) Comparisons with peer institutions;

171 (B) Differences among institutional missions;

172 (C) Strategies for promoting student access;

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

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

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

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

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

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

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

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

193 (4) Academic program review and approval for governing boards under its jurisdiction. The  
194 review and approval includes use of institutional missions as a template to judge the  
195 appropriateness of both new and existing programs and the authority to implement needed  
196 changes.

197 (A) The commission's authority to review and approve academic programs for either  
198 Marshall University or West Virginia University is limited to programs that are proposed to be  
199 offered at a new location not presently served by that institution;

200 (B) The commission shall approve or disapprove proposed academic degree programs in  
201 those instances where approval is required as soon as practicable, but in any case not later than  
202 six months from the date the governing board makes an official request. The commission may  
203 not withhold approval unreasonably;

204 (5) Distribution of funds appropriated to the commission, including incentive and  
205 performance-based funds;

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

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

211 (8) Developing, establishing and implementing information, assessment, accountability  
212 and personnel systems, including maintaining statewide data systems that facilitate long-term  
213 planning and accurate measurement of strategic outcomes and performance indicators;

214 (9) Jointly with the council, promulgating and implementing rules for licensing and  
215 oversight for both public and private degree-granting and nondegree-granting institutions that  
216 provide post-secondary education courses or programs in the state. The council has authority  
217 and responsibility for approval of all post-secondary courses or programs providing community  
218 and technical college education as defined in section two, article one of this chapter;

219 (10) Developing, implementing and overseeing statewide and regional projects and  
220 initiatives related to providing post-secondary education at the baccalaureate level and above  
221 such as those using funds from federal categorical programs or those using incentive and  
222 performance-based funds from any source;

223 (11) Quality assurance that intersects with all other duties of the commission particularly  
224 in the areas of research, data collection and analysis, personnel administration, planning, policy  
225 analysis, program review and approval, budgeting and information and accountability systems;  
226 and

227 (12) Developing budgets and allocating resources for governing boards under its  
228 jurisdiction:

229 (A) For all governing boards under its jurisdiction, except the governing boards of Marshall  
230 University and West Virginia University, the commission shall review institutional operating  
231 budgets, review and approve capital budgets, and distribute incentive and performance-based  
232 funds;

233 (B) For the governing boards of Marshall University and West Virginia University, the  
234 commission shall distribute incentive and performance-based funds and may review and  
235 comment upon the institutional operating budgets and capital budgets. The commission's  
236 comments, if any, shall be made part of the governing board's minute record.

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

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

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

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

248 (3) Other circumstances which, in the view of the commission, severely limit the capacity  
249 of the governing board to exercise its powers or carry out its duties and responsibilities.

250 The commission may not withdraw specific powers for a period exceeding two years.  
251 During the withdrawal period, the commission shall take all steps necessary to reestablish sound,  
252 stable and responsible institutional governance.

## **ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**

### **§18B-1D-8. Institutional and system report cards.**

1 (a) The purpose of the institutional and statewide report cards is to make information  
2 available to parents, students, faculty, staff, state policymakers and the general public on the  
3 quality and performance of public higher education. The focus of the report cards is to determine  
4 annual progress of the commission, the council and institutions under their respective jurisdictions  
5 toward achieving state goals and objectives identified in this article and section one-a, article one  
6 of this chapter and system goals and objectives contained in the statewide master plans of the  
7 commission and council created pursuant to section five of this article.

8 (b) The information contained in the report cards shall be consistent and comparable  
9 between and among state institutions of higher education. If applicable, the information shall allow  
10 for easy comparison with higher education-related data collected and disseminated by the  
11 Southern Regional Education Board, the United States Department of Education and other

12 education data-gathering and data-disseminating organizations upon which state policymakers  
13 frequently rely in setting policy.

14 (c) The rules required by subsection (c), section one of this article shall provide for the  
15 collection, analysis and dissemination of information on the performance of the state institutions  
16 of higher education, including health sciences education, in relation to the findings, goals and  
17 objectives set forth in this article and section one-a, article one of this chapter and those contained  
18 in the statewide master plans of the commission and council developed pursuant to section five  
19 of this article.

20 (1) The objective of this portion of the rule is to ensure that the Legislative Oversight  
21 Commission on Education Accountability and others identified in subsection (a) of this section are  
22 provided with full and accurate information while minimizing the institutional burden of  
23 recordkeeping and reporting.

24 (2) This portion of the rule shall identify various indicators of student and institutional  
25 performance that, at a minimum, must be reported annually, set forth general guidelines for the  
26 collection and reporting of data and provide for the preparation, printing and distribution of report  
27 cards under this section.

28 (d) The report cards shall be analysis-driven, rather than simply data-driven, and shall  
29 present information in a format that can inform education policymaking. They shall include an  
30 executive summary which outlines significant trends, identifies major areas of concern and  
31 discusses progress toward meeting state and system goals and objectives. They shall be brief  
32 and concise, reporting required information in nontechnical language. Any technical or supporting  
33 material to be included shall be contained in a separate appendix.

34 (e) The statewide report card shall include the data for each separately listed, applicable  
35 indicator identified in the rule promulgated pursuant to subsection (c) of this section and the  
36 aggregate of the data for all public institutions of higher education.

37 (f) The statewide report card shall be prepared using actual institutional, state, regional  
38 and national data, as applicable and available, indicating the present performance of the individual  
39 institutions, the governing boards and the state systems of higher education. Statewide report  
40 cards shall be based upon information for the current school year or for the most recent school  
41 year for which the information is available, in which case the year shall be clearly noted.

42 (g) The president or chief executive officer of each state institution of higher education  
43 shall prepare and submit annually all requested data to the commission at the times established  
44 by the commission.

45 (h) The higher education central office staff, under the direction of the Vice Chancellor for  
46 Administration, shall provide technical assistance to each institution and governing board in data  
47 collection and reporting and is responsible for assembling the statewide report card from  
48 information submitted by each governing board.

49 (i) The statewide report card shall be completed and disseminated with copies to the  
50 Legislative Oversight Commission on Education Accountability prior to January 1 of each year  
51 and the staff of the commission and the council shall prepare a report highlighting specifically the  
52 trends, progress toward meeting goals and objectives and major areas of concern for public  
53 higher education, including medical education, for presentation to the Legislative Oversight  
54 Commission on Education Accountability at the interim meetings in January, 2009, and annually  
55 thereafter.

56 (j) For a reasonable fee, the Vice Chancellor for Administration shall make copies of the  
57 report cards, including any appendices of supporting material, available to any individual  
58 requesting them.

**§18B-1D-8a. Modification to reporting requirements to the Legislative Oversight  
Commission on Education Accountability.**

1 (a) Notwithstanding any other provisions of this code to the contrary, the following  
2 statutorily mandated reports are not required to be prepared and submitted annually to the

3 Legislature but this information and data previously contained therein shall be combined with  
4 other reports in a manner that reduces the cost and increases the efficacy of those reports. This  
5 includes:

6 (1) All personnel, classification, compensation and human resources reports set out in  
7 section four, article one-b of this chapter, section six, article two-b of this chapter and article nine-  
8 a of this chapter;

9 (2) All capital appropriation requests, priorities and campus and state capital development  
10 plans set out in section four, article one-b of this chapter, section six, article two-b of this chapter  
11 and article nineteen of this chapter;

12 (3) All academic related matters and reports including those detailing institutional  
13 reauthorization at section seven, article four of this chapter; training of institutional Boards of  
14 Governors set out in section nine, article one-d of this chapter and section one, article ten of this  
15 chapter dealing with institutional compliance with tuition and fee increases;

16 (4) All financial aid reports including PROMISE, HEAPS, the Higher Education Grant  
17 Program, the Nursing Scholarship Program, the Underwood-Smith Teacher Scholarship Program  
18 and others set out in chapter eighteen-c of this code.

19 (b) In order to create more efficiency, reporting deadlines of statutorily or rule mandated  
20 reports may be altered, as needed by the Commission without a statutory or rule-making change:  
21 *Provided*, That the reports are always provided within any given calendar year.

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

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

1 (a) The council is the sole agency responsible for administration of vocational-technical-  
2 occupational education and community and technical college education in the state. The council  
3 has jurisdiction and authority over the community and technical colleges and the statewide

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

7 (b) The council shall propose rules pursuant to section six, article one of this chapter and  
8 article three-a, chapter twenty-nine-a of this code to implement the provisions of this section and  
9 applicable provisions of article one-d of this chapter:

10 (1) To implement the provisions of article one-d of this chapter relevant to community and  
11 technical colleges, the council may propose rules jointly with the commission, or separately, and  
12 may choose to address all components of the accountability system in a single rule or may  
13 propose additional rules to cover specific components;

14 (2) The rules pertaining to financing policy and benchmarks and indicators required by this  
15 section shall be filed with the Legislative Oversight Commission on Education Accountability by  
16 October 1, 2008. Nothing in this subsection requires other rules of the council to be promulgated  
17 again under the procedure set forth in article three-a, chapter twenty-nine-a of this code unless  
18 such rules are rescinded, revised, altered or amended; and

19 (3) The Legislature finds that an emergency exists and, therefore, the council shall  
20 propose an emergency rule or rules to implement the provisions of this section relating to the  
21 financing policy and benchmarks and indicators in accordance with section six, article one of this  
22 chapter and article three-a, chapter twenty-nine-a of this code by October 1, 2008. The  
23 emergency rule or rules may not be implemented without prior approval of the Legislative  
24 Oversight Commission on Education Accountability.

25 (c) The council has the following powers and duties relating to the authority established in  
26 subsection (a) of this section:

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

30 (A) Achieving the goals and objectives established in articles one and one-d of this  
31 chapter;

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

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

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

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

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

43 (C) Establish a plan for strategic funding to strengthen capacity for support of community  
44 and technical college education; and

45 (D) Establish a plan that measures progress and provides performance-based funding to  
46 institutions which make significant progress in the following specific areas:

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

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

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

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

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

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

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

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

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

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

74 (5) Provide statewide leadership, coordination, support, and technical assistance to the  
75 community and technical colleges and to provide a focal point for visible and effective advocacy  
76 for their work and for the public policy agendas approved by the commission and council;

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

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

82           (8) Propose a legislative rule pursuant to subsection (b) of this section and article three-a,  
83 chapter twenty-nine-a of this code to establish benchmarks and indicators in accordance with the  
84 provisions of this subsection;

85           (9) Establish and implement the benchmarks and performance indicators necessary to  
86 measure institutional progress:

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

89           (B) In carrying out institutional missions; and

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

91           (10) Establish a formal process for identifying needs for capital investments and for  
92 determining priorities for these investments for consideration by the Governor and the Legislature  
93 as part of the appropriation request process. Notwithstanding the language in subdivision eleven,  
94 subsection a, section four, article one-b of this chapter, the commission is not a part of the process  
95 for identifying needs for capital investments for the statewide network of independently accredited  
96 community and technical colleges;

97           (11) Draw upon the expertise available within the Governor's Workforce Investment Office  
98 and the West Virginia Development Office as a resource in the area of workforce development  
99 and training;

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

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

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

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

113           (16) Provide suitable offices in Charleston for the chancellor and other staff: *Provided,*  
114 That the offices may be located outside of Charleston at a technology and research center:  
115 *Provided, however,* That the current employees of WVNET shall not be moved from Monongalia  
116 County without legislative approval;

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

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

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

133           (20) Seek out and attend regional and national meetings and forums on education and  
134 workforce development-related topics, as council members consider critical for the performance  
135 of their duties. The council shall keep abreast of national and regional community and technical  
136 college education trends and policies to aid members in developing the policies for this state that  
137 meet the education goals and objectives established in articles one and one-d of this chapter;

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

141           (22) Promulgate rules allocating reimbursement of appropriations, if made available by the  
142 Legislature, to community and technical colleges for qualifying noncapital expenditures incurred  
143 in the provision of services to students with physical, learning or severe sensory disabilities;

144           (23) Assume the prior authority of the commission in examining and approving tuition and  
145 fee increase proposals submitted by community and technical college governing boards as  
146 provided in section one, article ten of this chapter;

147           (24) Develop and submit to the commission, a single budget for community and technical  
148 college education that reflects recommended appropriations for community and technical colleges  
149 and that meets the following conditions:

150           (A) Incorporates the provisions of the financing rule mandated by this section to measure  
151 and provide performance funding to institutions which achieve or make significant progress  
152 toward achieving established state objectives and priorities;

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

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

157           (25) Administer and distribute the independently accredited community and technical  
158 college development account;

- 159           (26) Establish a plan of strategic funding to strengthen capacity for support and assure  
160 delivery of high-quality community and technical college education in all regions of the state;
- 161           (27) Foster coordination among all state-level, regional and local entities providing post-  
162 secondary vocational education or workforce development and coordinate all public institutions  
163 and entities that have a community and technical college mission;
- 164           (28) Assume the principal responsibility for oversight of those community and technical  
165 colleges seeking independent accreditation and for holding governing boards accountable for  
166 meeting the essential conditions pursuant to article three-c of this chapter;
- 167           (29) Advise and consent in the appointment of the presidents of the community and  
168 technical colleges pursuant to section six, article one-b of this chapter. The role of the council in  
169 approving a president is to assure through personal interview that the person selected  
170 understands and is committed to achieving the goals and objectives established in the institutional  
171 compact and in articles one, one-d and three-c of this chapter;
- 172           (30) Provide a single, statewide link for current and prospective employers whose needs  
173 extend beyond one locality;
- 174           (31) Provide a mechanism capable of serving two or more institutions to facilitate joint  
175 problem-solving in areas including, but not limited to the following:
- 176           (A) Defining faculty roles and personnel policies;
- 177           (B) Delivering high-cost technical education programs across the state;
- 178           (C) Providing one-stop service for workforce training to be delivered by multiple  
179 institutions; and
- 180           (D) Providing opportunities for resource-sharing and collaborative ventures;
- 181           (32) Provide support and technical assistance to develop, coordinate, and deliver effective  
182 and efficient community and technical college education programs and services in all regions of  
183 the state;

184           (33) Assist the community and technical colleges in establishing and promoting links with  
185 business, industry and labor in the geographic areas for which each community and technical  
186 college is responsible;

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

189           (35) Serve aggressively as an advocate for development of a seamless curriculum;

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

194           (37) Encourage the most efficient use of available resources;

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

199           (39) Jointly with the commission, approve and implement a uniform standard, as  
200 developed by the chancellors, to determine which students shall be placed in remedial or  
201 developmental courses. The standard shall be aligned with college admission tests and  
202 assessment tools used in West Virginia and shall be applied uniformly by the governing boards  
203 throughout the public higher education system. The chancellors shall develop a clear, concise  
204 explanation of the standard which the governing boards shall communicate to the State Board of  
205 Education and the State Superintendent of Schools;

206           (40) Develop and implement strategies and curriculum for providing developmental  
207 education which shall be applied by any state institution of higher education providing  
208 developmental education;

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

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

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

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

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

225 (46) Facilitate continuation of the Advantage Valley Community College Network under  
226 the leadership and direction of Marshall Community and Technical College;

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

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

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

234 and

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

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

241 In distributing funds the council shall use the following guidelines:

242 (A) The State Board of Education shall continue to be the fiscal agent for federal vocational  
243 education funding;

244 (B) The percentage split between the State Board of Education and the council shall be  
245 determined by rule promulgated by the council under the provisions of article three-a, chapter  
246 twenty-nine-a of this code. The council shall first obtain the approval of the State Board of  
247 Education before proposing a rule;

248 (50) Collaborate, cooperate and interact with all secondary and post-secondary  
249 vocational-technical-occupational and adult basic education programs in the state, including the  
250 programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of  
251 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of  
252 seamless curriculum and the elimination of duplicative programs;

253 (51) Coordinate the delivery of vocational-technical-occupational and adult basic  
254 education in a manner designed to make the most effective use of available public funds to  
255 increase accessibility for students;

256 (52) Analyze and report to the State Board of Education on the distribution of spending for  
257 vocational-technical-occupational and adult basic education in the state and on the availability of  
258 vocational-technical-occupational and adult basic education activities and services within the  
259 state;

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

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

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

271 (56) Meet annually between the months of October and December with the Advisory  
272 Committee of Community and Technical College Presidents created pursuant to section eight of  
273 this article to discuss those matters relating to community and technical college education in which  
274 advisory committee members or the council may have an interest;

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

277 (58) Assume the powers set out in section nine of this article. The rules previously  
278 promulgated by the State College System Board of Directors pursuant to that section and  
279 transferred to the commission are hereby transferred to the council and shall continue in effect  
280 until rescinded, revised, altered or amended by the council;

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

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

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

290 (A) Comparisons with peer institutions;

291 (B) Differences among institutional missions;

292 (C) Strategies for promoting student access;

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

294 (E) Any other policies the commission and council consider appropriate;

295 (62) In cooperation with the West Virginia Division of Highways, study a method for  
296 increasing the signage signifying community and technical college locations along the state  
297 interstate highways, and report to the Legislative Oversight Commission on Education  
298 Accountability regarding any recommendations and required costs; and

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

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

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

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

311 (3) Development and implementation of each community and technical college mission  
312 definition including use of incentive and performance funds to influence institutional behavior in  
313 ways that are consistent with achieving established state goals, objectives, and priorities;

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

317 (5) Development of budget and allocation of resources for institutions delivering  
318 community and technical college education, including reviewing and approving institutional  
319 operating and capital budgets and distributing incentive and performance-based funding;

320 (6) Acting as the agent to receive and disburse public funds related to community and  
321 technical college education when a governmental entity requires designation of a statewide higher  
322 education agency for this purpose;

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

327 (8) Jointly with the commission, development, establishment and implementation of  
328 policies for licensing and oversight of both public and private degree-granting and nondegree-  
329 granting institutions that provide post-secondary education courses or programs;

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

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

337 (e) The council may withdraw specific powers of a governing board under its jurisdiction  
338 for a period not to exceed two years if the council makes a determination that any of the following  
339 conditions exist:

340 (1) The governing board has failed for two consecutive years to develop an institutional  
341 compact as required in section seven, article one-d of this chapter;

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

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

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

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

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

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

357 (2) The commission or the council, as the receiving body, shall place the proposal on its  
358 agenda and shall take final action within sixty days of the date when the request for concurrence  
359 is received; and

360 (3) If the receiving body fails to take final action within sixty days, the original proposal  
361 stands and is binding on both the commission and the council.

**ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.**

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

1 (a) The council annually shall review and analyze all the state community and technical  
2 colleges, and any branches, centers, regional centers or other delivery sites with a community  
3 and technical college mission, to determine their progress toward meeting the goals, objectives,  
4 priorities, and essential conditions established in articles one, one-d and three-c of this chapter.

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

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

10 (1) A community and technical college required to do so has not achieved or is not making  
11 sufficient, satisfactory progress toward achieving the essential conditions, including independent  
12 accreditation;

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

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

19 (4) One or more of the state community and technical colleges, branches, centers,  
20 regional centers or other delivery sites with a community and technical college mission requests  
21 from the council the type of assistance which can best be delivered through implementation of  
22 the provisions of section four of this article. Institutional requests that may be considered by the

23 council include, but are not limited to, assistance in seeking and/or attaining independent  
24 accreditation, in meeting the goals, priorities and essential conditions established in articles one,  
25 one-d and three-c of this chapter, or in establishing and implementing regional networks;

26 (5) One or more state community and technical colleges, branches, centers, regional  
27 centers or other delivery sites with a community and technical college mission has not achieved,  
28 or is not making sufficient, satisfactory progress toward achieving, the goals, objectives and  
29 essential conditions established in articles one, one-d and three-c of this chapter; and

30 (6) The council determines that it is in the best interests of the people of the state or a  
31 region of the state to create a statewide, independently accredited community and technical  
32 college.

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

### **ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.**

#### **§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.**

1 (a) The Workforce Development Initiative Program is continued under the supervision of  
2 the council. The purpose of the program is to administer and oversee grants to community and  
3 technical colleges to implement the provisions of this article in accordance with legislative intent.

4 (b) It is the responsibility of the council to administer the state fund for community and  
5 technical college and workforce development, including setting criteria for grant applications,  
6 receiving applications for grants, making determinations on distribution of funds and evaluating  
7 the performance of workforce development initiatives.

8 (c) The chancellor, under the direction of the council, shall review and approve the  
9 expenditure of all grant funds, including development of application criteria, the review and  
10 selection of applicants for funding and the annual review and justification of applicants for grant  
11 renewal.

12           (1) To aid in decisionmaking, the chancellor appoints an advisory committee consisting of  
13 the Executive Director of the West Virginia Development Office or designee; the Secretary of  
14 Education and the Arts or designee; the Assistant State Superintendent for Technical and Adult  
15 Education; the Chair of the West Virginia Council for Community and Technical College  
16 Education; the Chair of the West Virginia Workforce Investment Council; the Executive Director  
17 of Workforce West Virginia; two members representing business and industry; and one member  
18 representing labor. The advisory committee shall review all applications for workforce  
19 development initiative grants and make recommendations for distributing grant funds to the  
20 council. The advisory committee also shall make recommendations on methods to share among  
21 the community and technical colleges any curricula developed as a result of a workforce  
22 development initiative grant.

23           (2) When determining which grant proposals will be funded, the council shall give special  
24 consideration to proposals by community and technical colleges that involve businesses with  
25 fewer than fifty employees.

26           (3) The council shall weigh each proposal to avoid awarding grants which will have the  
27 ultimate effect of providing unfair advantage to employers new to the state who will be in direct  
28 competition with established local businesses.

29           (d) The council may allocate a reasonable amount, not to exceed five percent up to a  
30 maximum of \$50,000 of the funds available for grants on an annual basis, for general program  
31 administration.

32           (e) Moneys appropriated or otherwise available for the Workforce Development Initiative  
33 Program shall be allocated by line item to an appropriate account. Any moneys remaining in the  
34 fund at the close of a fiscal year are carried forward for use in the next fiscal year.

35           (f) Nothing in this article requires a specific level of appropriation by the Legislature.

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

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

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

5 (1) Tuition and required educational and general fees;

6 (2) Auxiliary and auxiliary capital fees; and

7 (3) Required educational and general capital fees.

8 (b) A governing board may establish a single special revenue account for each of the  
9 following classifications of fees:

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

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

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

15 (4) Subject to any covenants or restrictions imposed with respect to revenue bonds  
16 payable from the accounts, a governing board may expend funds from each special revenue  
17 account for any purpose for which funds were collected within that account regardless of the  
18 original purpose for which the funds were collected.

19 (c) The purposes for which tuition and fees may be expended include, but are not limited  
20 to, health services, student activities, recreational, athletic and extracurricular activities.  
21 Additionally, tuition and fees may be used to finance a student's attorney to perform legal services  
22 for students in civil matters at the institutions. The legal services are limited to those types of

23 cases, programs or services approved by the president of the institution where the legal services  
24 are to be performed.

25 (d) By October 1, 2011, the commission and council each shall propose a rule for  
26 legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to  
27 govern the fixing, collection and expenditure of tuition and other fees by the governing boards  
28 under their respective jurisdictions.

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

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

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

39 (2) Fees for students enrolled in summer terms or other nontraditional time periods shall  
40 be prorated based upon the number of credit hours for which the student enrolls in accordance  
41 with this subsection.

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

44 (1) The governing boards shall permit fee payments to be made in installments over the  
45 course of the academic term. All fees shall be paid prior to awarding course credit at the end of  
46 the academic term.

47 (2) The governing boards also shall authorize the acceptance of credit cards or other  
48 payment methods which may be generally available to students for the payment of fees. The

49 governing boards may charge the students for the reasonable and customary charges incurred in  
50 accepting credit cards and other methods of payment.

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

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

58 (5) A governing board may charge interest or fees for any deferred or installment payment  
59 plans.

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

65 (i) Governing boards shall retain tuition and fee revenues not pledged for bonded  
66 indebtedness or other purposes in accordance with the tuition rules proposed by the commission  
67 and council pursuant to this section. The tuition rules shall address the following areas:

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

69 (2) Allowing governing boards to charge different tuition and fees for different programs;

70 (3) Authorizing a governing board to propose to the commission, council or both, as  
71 appropriate, a mandatory auxiliary fee under the following conditions:

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

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

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

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

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

85 (j) A penalty may not be imposed by the commission or council upon any governing board  
86 based upon the number of nonresidents who attend the institution unless the commission or  
87 council determines that admission of nonresidents to any institution or program of study within  
88 the institution is impeding unreasonably the ability of resident students to attend the institution or  
89 participate in the programs of the institution. The governing boards shall report annually to the  
90 commission or council on the numbers of nonresidents and any other enrollment information the  
91 commission or council may request.

92 (k) Tuition and fee increases of the governing boards, including the governing boards of  
93 Marshall University and West Virginia University, are subject to rules adopted by the commission  
94 and council pursuant to this section and in accordance with article three-a, chapter twenty-nine-a  
95 of this code. The commission or council, as appropriate, shall examine individually each request  
96 from a governing board for an increase and make its determinations as follows:

97 (1) A tuition and fee increase greater than five percent for resident students proposed by  
98 a governing board requires the approval of the commission or council, as appropriate.

99 (2) A fee used solely for the purpose of complying with the athletic provisions of 20 U. S.  
100 C. §1681, *et seq.*, known as Title IX of the Education Amendment of 1972, is exempt from the

101 limitations on fee increases set forth in this subsection for three years from the effective date of  
102 the section.

103 (3) In determining whether to approve or deny a governing board's request for a tuition  
104 and/or fee increase for resident students greater than the increases granted pursuant to  
105 subdivision (1) of this subsection, the commission or council shall determine the progress the  
106 governing board has made toward meeting the conditions outlined in this subsection and shall  
107 make this determination the predominate factor in its decision. The commission or council shall  
108 consider the degree to which each governing board has met the following conditions:

109 (A) Maximizes resources available through nonresident tuition and fee charges to the  
110 satisfaction of the commission or council;

111 (B) Consistently achieves the benchmarks established in the compact pursuant to article  
112 one-d of this chapter;

113 (C) Continuously pursues the statewide goals for post-secondary education and the  
114 statewide compact established in this chapter;

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

117 (E) Demonstrates to the satisfaction of the commission or council that the governing board  
118 is making adequate progress toward achieving the goals for education established by the  
119 Southern Regional Education Board;

120 (F) Demonstrates to the satisfaction of the commission or council that the governing board  
121 has considered the average per capita income of West Virginia families and their ability to pay for  
122 any increases; and

123 (G) Demonstrates to the satisfaction of the commission or council that base appropriation  
124 increases have not kept pace with recognized nation-wide inflationary benchmarks;

125 (4) This section does not require equal increases among governing boards nor does it  
126 require any level of increase by a governing board.

127 (5) The commission and council shall report to the Legislative Oversight Commission on  
128 Education Accountability regarding the basis for approving or denying each request as  
129 determined using the criteria established in this subsection.

**ARTICLE 13. HIGHER EDUCATION – INDUSTRY PARTNERSHIPS.**

**§18B-13-5. Use of state property and equipment; faculty.**

1 (a) The governing boards are authorized to provide for the low cost and economical use  
2 and sharing of state property and equipment, including computers, research labs and other  
3 scientific and necessary equipment to assist any qualified business within an approved research  
4 park or zone or technology center. The commission shall approve a schedule of nominal or  
5 reduced-cost reimbursements to the state for such use.

6 (b) The governing boards shall develop and provide for a program of release time,  
7 sabbaticals or other forms of faculty involvement or participation with any qualifying business.

8 (c) The Legislature finds that cooperation, communication and coordination are integral  
9 components of higher education’s involvement in economic development. In order to proceed in  
10 a manner that is cost effective and time efficient, it is the duty of the commission to review and  
11 coordinate such aspects of the programs administered by the governing boards. The review and  
12 coordination may not operate to affect adversely sources of funding or any statutory  
13 characterization of any program as an independent entity.

**ARTICLE 18. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.**

**§18B-18-6. Duties of Higher Education Policy Commission.**

1 The Higher Education Policy Commission shall:

2 (a) Establish documentation standards and review procedures to determine the eligibility  
3 of donor gifts to participate in the eminent scholars program when the gift is initially received or  
4 whenever the terms are significantly changed;

5 (b) Require that each participating institution report on total gifts received, investment  
6 earnings realized and anticipated expenditures in its annual operating budget request;

7 (c) Annually develop and submit a consolidated budget request for the eminent scholars  
8 program to the Governor for the fiscal year beginning on July 1, 2003. The budget request shall  
9 include a request for an appropriation by the Legislature to each institutional account each fiscal  
10 year in an amount equal to the investment earnings in the previous fiscal year which are intended  
11 for use in the fiscal year to supplement the salaries of eminent scholars;

12 (d) Allocate any funds appropriated by the Legislature among the participating institutions  
13 in equal installments at the beginning of each quarter.

**(CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

**ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAM.**

**§18C-3-4. Nursing Scholarship Program; Center for Nursing Fund; administration;  
scholarship awards; service requirements.**

1 (a) There is continued in the State Treasury a special revenue account known as the  
2 "Center for Nursing Fund" to be administered by the commission to implement the provisions of  
3 this section and article seven-b, chapter thirty of this code. Any moneys in the account on the  
4 effective date of this section are transferred to the commission's administrative authority.  
5 Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general  
6 revenue. All costs associated with the administration of this section and article seven-b, chapter  
7 thirty of this code shall be paid from the Center for Nursing Fund under the direction of the Vice  
8 Chancellor for Administration. Administrative costs are to be minimized and the maximum amount  
9 feasible is to be used to fund awards for students in nursing programs.

10 (b) The account is funded from the following sources:

11 (1) A supplemental licensure fee, not to exceed \$10 per year, to be paid by all nurses  
12 licensed by the Board of Examiners for Registered Professional Nurses, pursuant to section  
13 eight-a, article seven, chapter thirty of this code, and the Board of Examiners for Licensed  
14 Practical Nurses, pursuant to section seven-a, article seven-a, chapter thirty of this code;

15           (2) Repayments, including interest as set by the Vice Chancellor for Administration,  
16 collected from recipients who fail to practice or teach in West Virginia under the terms of the  
17 scholarship agreement; and

18           (3) Any other funds from any source as may be added to the account.

19           (c) In consultation with the Board of Directors of the West Virginia Center for Nursing,  
20 established pursuant to article seven-b, chapter thirty of this code, the commission shall  
21 administer a scholarship, designated the Nursing Scholarship Program, designed to benefit  
22 nurses who practice in hospitals and other health care institutions or teach in state nursing  
23 programs.

24           (1) Awards are available for students enrolled in accredited nursing programs in West  
25 Virginia. A recipient shall execute an agreement to fulfill a service requirement or repay the  
26 amount of any award received.

27           (2) Awards are made as follows, subject to the rule required by this section:

28           (A) An award for any student may not exceed the full cost of education for program  
29 completion.

30           (B) An award of up to \$3,000 is available for a student in a licensed practical nurse  
31 education program. A recipient is required to practice nursing in West Virginia for one year  
32 following program completion.

33           (C) An award of up to \$7,500 is available for a student who has completed one-half of a  
34 registered nurse education program. A recipient is required to teach or practice nursing in West  
35 Virginia for two years following program completion.

36           (D) An award of up to \$15,000 is available to a student in a nursing master's degree  
37 program or a doctoral nursing or education program. A recipient is required to teach in West  
38 Virginia for two years following program completion.

39           (E) An award of up to \$1,000 per year is available for a student obtaining a licensed  
40 practical nurse teaching certificate. A recipient is required to teach in West Virginia for one year  
41 per award received.

42 (d) An award recipient shall satisfy one of the following conditions:

43 (1) Fulfill the service requirement pursuant to this section and the legislative rule; or

44 (2) Repay the commission for the amount awarded, together with accrued interest as  
45 stipulated in the service agreement.

46 (e) The commission shall promulgate a rule for legislative approval pursuant to article  
47 three-a, chapter twenty-nine-a of this code to implement and administer this section. The rule  
48 shall provide for the following:

49 (1) Eligibility and selection criteria for program participation;

50 (2) Terms of a service agreement which a recipient shall execute as a condition of  
51 receiving an award;

52 (3) Repayment provisions for a recipient who fails to fulfill the service requirement;

53 (4) Forgiveness options for death or disability of a recipient;

54 (5) An appeal process for students denied participation or ordered to repay awards; and

55 (6) Additional provisions as necessary to implement this section.

## **ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

### **§18C-5-7. Higher education adult part-time student grant program.**

1 (a) There is established the Higher Education Adult Part-time Student Grant Program,  
2 referred to in this section as the HEAPS grant program. The grant program established and  
3 authorized by this section is administered by the vice chancellor for administration. Moneys  
4 appropriated or otherwise available for the grant program shall be allocated by line item to an  
5 appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be carried  
6 forward for use in the next fiscal year.

7 (b) As used in this section, the following terms have the meanings ascribed to them:

8 (1) "Approved distance education" means a course of study offered via electronic access  
9 that has been approved for inclusion in the applicant's program of study by the eligible institution  
10 of higher education at which the applicant is enrolled or has been accepted for enrollment;

11           (2) "Part-time" means enrollment for not less than three nor more than eleven semester  
12 or term hours: *Provided*, That in the case of enrollment in postsecondary certificate, industry  
13 recognized credential and other skill development programs in demand occupations in this state,  
14 "part-time" means enrollment on such basis as is established for the program in which enrolled;

15           (3) "Satisfactory academic progress" means maintaining a cumulative grade point average  
16 of at least 2.0 on a 4.0 grading scale with a goal of obtaining a certificate, associate degree or  
17 bachelor's degree. In the case of postsecondary certificate, industry recognized credential and  
18 other skill development programs, satisfactory academic progress means continuous  
19 advancement toward completion of the program on the normal schedule established for the  
20 program in which enrolled;

21           (4) "Eligible institution" means:

22           (A) Any community college; community and technical college; adult technical preparatory  
23 education program or training;

24           (B) Any state college or university, as those terms are defined in section two, article one,  
25 chapter eighteen-b of this code;

26           (C) Any approved institution of higher education as that term is defined in section two of  
27 this article; and

28           (D) Any approved distance education, including world wide web based courses;

29           (5) "Eligible program or programs" or "eligible course or courses" means, in addition to  
30 programs and courses offered by eligible institutions as defined in subdivision (4) of this  
31 subsection:

32           (A) Programs and courses offered by any nationally accredited degree granting institution  
33 of higher learning permitted pursuant to section five, article three, chapter eighteen-b of this code  
34 and approved by the joint commission for vocational-technical-occupational education; and

35           (B) Any postsecondary certificate, industry recognized credential and other skill  
36 development programs of study as defined in this section in a demand occupation in this state;

37           (6) "State resident" means a student who has lived in West Virginia continuously for a  
38 minimum of twelve months immediately preceding the date of application for a HEAPS grant or  
39 renewal of a grant;

40           (7) "Postsecondary certificate program" means an organized program of study, approved  
41 by the joint commission for vocational-technical-occupational education, with defined  
42 competencies or skill sets that may be offered for credit or noncredit and which culminates in the  
43 awarding of a certificate: *Provided*, That postsecondary certificate programs offered by eligible  
44 institutions as defined in subdivision (4) of this subsection do not require the approval of the joint  
45 commission for vocational-technical-occupational education;

46           (8) "Demand occupation" means any occupation having documented verification from  
47 employers that job opportunities in that occupation are currently available or are projected to be  
48 available within a year within the state or regions of the state. The Joint Commission for  
49 Vocational-Technical-Occupational Education shall prepare and update annually a list of  
50 occupations that they determine meet the requirements of this definition;

51           (9) "Industry-recognized credential program" means an organized program that meets  
52 nationally recognized standards in a particular industry, is approved by the joint commission for  
53 vocational-technical-occupational education and which culminates in the awarding of a  
54 certification or other credential commonly recognized in that industry: *Provided*, That industry  
55 recognized credential programs offered by eligible institutions as defined in subdivision (4) of this  
56 subsection do not require the approval of the Joint Commission for Vocational-Technical-  
57 Occupational Education; and

58           (10) "Skill development program" means a structured sequence or set of courses,  
59 approved by the joint commission for vocational-technical-occupational education, with defined  
60 competencies that are designed to meet the specific skill requirements of an occupation and  
61 which culminates in the awarding of a certificate of completion that specifically lists the  
62 competencies or skills mastered: *Provided*, That skill development programs offered by eligible

63 institutions as defined in subdivision (4) of this subsection do not require the approval of the joint  
64 commission.

65 (c) A person is eligible for consideration for a HEAPS grant if the person:

66 (1) Demonstrates that he or she has applied for, accepted, or both, other student financial  
67 assistance in compliance with federal financial aid rules, including the federal Pell grant;

68 (2) Demonstrates financial need for funds, as defined by legislative rule;

69 (3) Is a state resident and may not be considered a resident of any other state;

70 (4) Is a United States citizen or permanent resident thereof;

71 (5) Is not incarcerated in a correctional facility;

72 (6) Is not in default on a higher education loan; and

73 (7) Is enrolled in a program of study at less than the graduate level on a part-time basis in  
74 an eligible institution or program of study and is making satisfactory academic progress at the  
75 time of application: *Provided*, That the requirement that the student be making satisfactory  
76 academic progress may not preclude a HEAPS grant award to a student who has been accepted  
77 for enrollment in an eligible institution or program of study but has not yet been enrolled.

78 (d) Each HEAPS grant award is eligible for renewal until the course of study is completed,  
79 but not to exceed an additional nine years beyond the first year of the award.

80 (e) The Higher Education Policy Commission shall propose a legislative rule pursuant to  
81 article three-a, chapter twenty-nine-a of this code to implement the provisions of this section which  
82 shall be filed with the Legislative Oversight Commission on Education Accountability by  
83 September 1, 2003. The Legislature hereby declares that an emergency situation exists and,  
84 therefore, the policy commission may establish, by emergency rule, under the procedures of  
85 article three-a, chapter twenty-nine-a of this code, a rule to implement the provisions of this  
86 section, after approval by the Legislative Oversight Commission on Education Accountability.

87 (f) The legislative rule shall provide at least the following:

88 (1) That consideration of financial need, as required by subdivision (3), subsection (c) of  
89 this section, include the following factors:

90 (A) Whether the applicant has dependents as defined by federal law;

91 (B) Whether the applicant has any personal hardship as determined at the discretion of  
92 the vice chancellor for administration; and

93 (C) Whether the applicant will receive any other source of student financial aid during the  
94 award period.

95 (2) That an appropriate allocation process be provided for distribution of funds directly to  
96 the eligible institutions or programs based on the part-time enrollment figures of the prior year;

97 (3) That not less than twenty-five percent of the funds appropriated in any one fiscal year  
98 be used to make grants to students enrolled in postsecondary certificate, industry recognized  
99 credential and other skill development programs of study: *Provided*, That after giving written  
100 notice to the Legislative Oversight Commission on Education Accountability, the vice chancellor  
101 for administration may allocate less than twenty-five percent of the funds for such grants;

102 (4) That ten percent of the funds appropriated in any one fiscal year shall be granted to  
103 state community and technical colleges by the council for community and technical college  
104 education in accordance with a process specified in the rule for noncredit and customized training  
105 programs which further the economic development goals of the state, help meet the training and  
106 skill upgrade needs of employers in the state, and for which funds are not available from other  
107 sources;

108 (5) That any funds not expended by an eligible institution or program at the end of each  
109 fiscal year shall be returned to the vice chancellor for administration for distribution under the  
110 provisions of this section;

111 (6) That grants under this section shall be available for approved distance education  
112 throughout the calendar year, subject only to the availability of funds; and

113 (7) That the amount of each HEAPS grant award be determined using the following  
114 guidelines:

115 (A) The amount of any HEAPS grant awarded to a student per semester, term hour or  
116 program for those students who are enrolled in eligible institutions or programs operated under  
117 the jurisdiction of an agency of the state or a political subdivision thereof shall be based upon the  
118 following:

119 (i) Actual cost of tuition and fees;

120 (ii) The portion of the costs determined to be appropriate by the commission; and

121 (iii) In addition to factors (i) and (ii) above, in determining the amount of the award, the  
122 vice chancellor may consider the demand for the program pursuant to subdivision (8), subsection  
123 (b) of this section; and

124 (B) The amount of any HEAPS grant awarded to a student who is enrolled in any other  
125 eligible institution, program or course shall be no greater than the average amount for comparable  
126 programs or courses as determined pursuant to the provisions of paragraph (A) above.

127 (g) The HEAPS grant program is subject to any provision of this article not inconsistent  
128 with the provisions of this section.

**ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING  
IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.**

**§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission  
regarding the PROMISE Scholarship.**

1 (a) *Powers of commission.* — In addition to the powers granted by any other provision of  
2 this code, the commission has the powers necessary or convenient to carry out the purposes and  
3 provisions of this article including, but not limited to, the following express powers:

4 (1) To promulgate legislative rules in accordance with the provisions of article three-a,  
5 chapter twenty-nine-a of this code to effectuate the purposes of this article;

6 (2) To invest any of the funds of the West Virginia PROMISE Scholarship Fund established  
7 in section seven of this article with the West Virginia Investment Management Board in  
8 accordance with the provisions of article six, chapter twelve of this code. Any investments made  
9 pursuant to this article shall be made with the care, skill, prudence and diligence under the

10 circumstances then prevailing that a prudent person acting in a like capacity and familiar with  
11 such matters would use in conducting an enterprise of a like character and with like aims.  
12 Fiduciaries shall diversify plan investments to the extent permitted by law to minimize the risk of  
13 large losses, unless under the circumstances it is clearly prudent not to do so;

14 (3) To execute contracts and other necessary instruments;

15 (4) To impose reasonable requirements for residency for students applying for the  
16 PROMISE scholarship. Except as provided in section four, article one of this chapter, a student  
17 shall have met the following requirements to be eligible:

18 (A) Completed at least one half of the credits required for high school graduation in a  
19 public or private high school in this state; or

20 (B) Received instruction in the home or other approved place pursuant to subsection (c),  
21 section one, article eight, chapter eighteen of this code for the two years immediately preceding  
22 application;

23 (C) This subsection does not establish residency requirements for matriculation or fee  
24 payment purposes at state institutions of higher education;

25 (5) To contract for necessary goods and services, to employ necessary personnel and to  
26 engage the services of private persons for administrative and technical assistance in carrying out  
27 the responsibilities of the scholarship program. Any services provided or secured to implement or  
28 administer the provisions of this section remain under the direction and authority of the Vice  
29 Chancellor for Administration;

30 (6) To solicit and accept gifts, including bequests or other testamentary gifts made by will,  
31 trust or other disposition, grants, loans and other aid from any source and to participate in any  
32 federal, state or local governmental programs in carrying out the purposes of this article;

33 (7) To define the terms and conditions under which scholarships are awarded with the  
34 minimum requirements being set forth in section six of this article; and

35           (8) To establish other policies, procedures and criteria necessary to implement and  
36 administer the provisions of this article.

37           (b) *Duties of commission.* — In addition to any duty required by any other provision of this  
38 code, the commission has the following responsibilities:

39           (1) To operate the program in a fiscally responsible manner and within the limits of  
40 available funds;

41           (2) To operate the program as a merit-based program;

42           (3) To adjust academic eligibility requirements should projections indicate that available  
43 funds will not be sufficient to cover future costs; and

44           (4) To maintain contact with graduates who have received PROMISE scholarships and to  
45 provide a written statement of intent to recipients who are selected to receive a PROMISE  
46 scholarship notifying them that acceptance of the scholarship entails a responsibility to supply the  
47 following:

48           (A) Information requested by the commission to determine the number and percentage of  
49 recipients who shall:

50           (i) Continue to live in West Virginia after graduation;

51           (ii) Obtain employment in West Virginia after graduation; and

52           (iii) Enroll in post-graduate education programs;

53           (B) For PROMISE scholars who enroll in post-graduate education programs, the name of  
54 the state in which each post-graduate institution is located; and

55           (C) Any other relevant information the commission reasonably requests to implement the  
56 provisions of this subdivision.

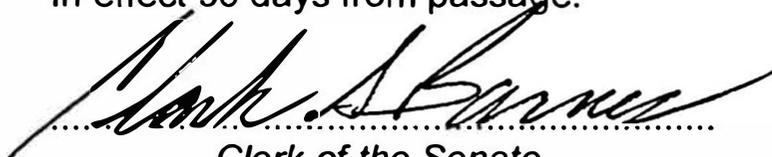
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman, Senate Committee

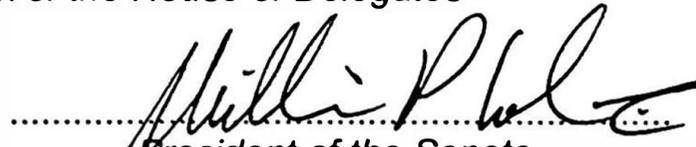
  
.....  
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 2nd.....  
Day of March....., 2016.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

FEB 26 2016

Time 9:50 am