Enrolled

Committee Substitute

for

Senate Bill 760

SENATOR RUCKER, original sponsor

[Passed March 5, 2020; in effect 90 days from passage]
WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 760

SENATOR RUCKER, original sponsor

[Passed March 5, 2020; in effect 90 days from passage]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-1-1f; to amend and reenact §18B-1-2 of said code; to amend and reenact §18B-1B-4 and §18B-1B-6 of said code; to amend and reenact §18B-1D-7 of said code; and to amend and reenact §18B-19-4 of said code, all relating to higher education; providing findings; defining terms; allowing any state college and university to apply to the Higher Education Policy Commission for designation as an administratively exempted school; requiring Higher Education Policy Commission to propose rules for legislative approval that address loss of an administratively exempted designation; setting forth specific exemptions for a college and university designated as an administratively exempted school; requiring Higher Education Policy Commission report to the Legislative Oversight Commission on Education Accountability certain information pertaining to the administratively exempted schools eligibility criteria; updating institution names; referring to exempted schools as statutorily exempted schools; removing obsolete language; updating code to reflect removal of statewide master plan and compact requirements by prior legislation; removing requirement for Higher Education Policy Commission to advise and confirm in the appointment of presidents of the institutions of higher education under its jurisdiction; amending the powers and duties of the Higher Education Policy Commission, consistent with the specific exemptions provided for administratively exempted schools; clarifying that Higher Education Policy Commission can use certain appropriated incentive funds to influence behavior of statutorily and administratively exempted schools; amending requirements pertaining to the required report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability that includes a recommendation for the allocation of general revenue to be appropriated to the institutions; removing requirement for Higher Education Policy Commission to confirm appointment of institutional presidents; requiring classified employees, if any are employed by the institution, be used when doing evaluations of
Enr CS for SB 760

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. State college and university exemption status.

(a) The Legislature finds that:

(1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling certain goals can be incentivized through the accountability and autonomy associated with exemption status for state colleges and universities based on meeting certain criteria; and

(2) Leading higher education authorities in the nation identify common, key performance indicators as an important measure of institutional effectiveness, including, but not limited to, enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

(b) The following definitions apply to terms used in this section:

(1) “Administratively exempted schools” means state colleges and universities:

(A) That achieve and maintain three out of five of the following:

(i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

(ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

(iii) Credit head count enrollment: A three-year credit head count enrollment increase, or a decrease of not more than five percent over the same period;

(iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved;

and
(v) Composite Financial Index: A Composite Financial Index of not less than one as reported in the college and university’s audited financial statements; or

(B) Whose governing board requests a review by the chancellor of any special circumstances and the commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

(2) “Composite Financial Index” means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution’s financial health and inform decision-making processes;

(3) “Credit headcount enrollment” means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

(4) “Days of cash reserved” means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post employment benefit and pension liability expenses;

(5) “Graduation rates” means the proportion of first time in college students who obtain a bachelor’s degree within six years, as further defined by and reported to the commission;

(6) “Retention rates” means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year; and

(7) “State college and university” shall have the same meaning as provided in §18B-1-2 of this code.

(c) Any state college and university may apply to the commission for designation as an administratively exempted school. The commission shall make its determination as to whether to grant or deny exemption designation based on the definition of administratively exempted school. The commission shall propose rules for legislative approval pursuant to §29A-3A-1 et seq. of this
Enr CS for SB 760

code to implement the provisions of this section and that addresses loss of an administratively exempted designation. The rule shall at least include the following:

(1) After the first year an administratively exempted school fails to meet three of the five criteria under the definition of administratively exempted schools, the commission may advise the institution on strategies that may be implemented in order to meet three of the five criteria before the following year;

(2) An institution may not lose its designation as an administratively exempted school until it has failed to meet three of the five criteria under the definition of administratively exempted schools for two consecutive years;

(3) If an institution is administratively exempt based on special circumstances, the commission may revoke the administratively exempted status of a state college and university if it determines that the special circumstance that the state college and university’s administratively exempted status is based on no longer exists; and

(4) The commission shall provide notice to the institution at least 30 days before revoking the institution’s administratively exempted status.

(d) Notwithstanding any other provision of this code to the contrary:

(1) West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are institutions of unique characteristics and their continuing inclusion as a statutorily exempted school is confirmed; and

(2) No other state institution of higher education maintains exempted school status pursuant to any other provision of this code except any exempted school status designated by the commission pursuant to this section.
(e) Notwithstanding any other provision of this code to the contrary, any state college and university that applies and is designated by the commission as an administratively exempted school is exempt from the following:

1. The required approval of capital projects to ensure that capital projects and facility needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;
2. The development and approval of institutional mission definitions pursuant to §18B-1B-4(a)(34) of this code;
3. The program approval required pursuant to §18B-1B-4(a)(35) of this code;
4. The rules providing guidance to the governing boards in filling vacancies in the office of the president pursuant to §18B-1B-6(d) of this code;
5. The commission’s rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following the procedures for adoption of rules provided for in this code;
6. The required approval of capital improvement projects exceeding $3 million pursuant to §18B-19-6 of this code;
7. The required approval of lease-purchase agreements for capital improvements and equipment of $1.5 million or greater pursuant to §18B-19-11 of this code; and
8. The required approval of real estate transactions, lease purchase, and new building construction exceeding $1 million pursuant to §18B-19-13 of this code.

(g) Not later than the January interims of each year, the commission shall submit a report to the Legislative Oversight Commission on Education Accountability relating to the administratively exempted schools eligibility criteria established by this section, providing the data for each of the three preceding years, as available, and the three-year average thereof, for each of the state institutions of higher education under its jurisdiction. The commission shall share the report with the institutions.
§18B-1-2. Definitions.

The following words when used in this chapter and chapter 18C of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

"Administratively linked community and technical college" means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

"Advanced technology center" means a facility established under the direction of an independent community and technical college or the council for the purpose of implementing and delivering education and training programs for high-skill, high-performance 21st century workplaces;

"Approve" or "approval", when used in reference to action by the commission or the council, means action in which the governance rationale of a governing board under its jurisdiction is given due consideration, and the action of the commission is to additionally establish whether the proposed institutional action is consistent with law and established policy and is an appropriate advancement of the public interest;

"Board of visitors" means the advisory board previously appointed for the West Virginia Graduate College and the advisory board previously appointed for West Virginia University Institute of Technology, which provide guidance to the Marshall University Graduate College and West Virginia University Institute of Technology, respectively;

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

"Chancellor" means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. "Chancellor" means the Chancellor for
Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

“Chancellor for Community and Technical College Education” means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to §18B-2B-3 of this code;

“Chancellor for Higher Education” means the chief executive officer of the Higher Education Policy Commission employed pursuant to §18B-1B-5 of this code;

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

“Community and technical college”, in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

“Community and technical college education” means the programs, faculty, administration, and funding associated with the delivery of community and technical college education programs;

“Community and technical college education program” means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science, and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are
Enr CS for SB 760

under the jurisdiction of the council. Any reference to “post-secondary vocational education programs” means community and technical college education programs as defined in this subdivision;

“Confirm” or “confirmation”, when used in reference to action by the commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the commission is to review whether the proposed institutional action is consistent with law and established policy;

“Council” means the West Virginia Council for Community and Technical College Education created by §18B-2B-1 et seq. of this code;

“Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level;

“Essential conditions” means those conditions which shall be met by community and technical colleges as provided in §18B-3C-3 of this code;

“Exempted schools” or “statutorily exempted schools” means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine;

“Governing boards” or “boards” means the institutional boards of governors created by §18B-2A-1 of this code;

“Higher Education Policy Commission”, “policy commission” or “commission” means the commission created by §18B-1B-1 of this code;

“Independent community and technical college” means a state institution of higher education under the jurisdiction of the council, which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern
West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

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

“Rule” or “rules” means a regulation, standard, policy, or interpretation of general application and future effect;

“Sponsoring institution” means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus, or a division delivering community and technical college education and programs;

“State college and university” means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, or West Virginia State University;

“State institution of higher education” means any university, college, or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

“Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and
each having a core mission of providing affordable access to and delivering high quality
community and technical education in every region of the state; and

“Vice chancellor for administration” means the person employed in accordance with §18B-
4-2 of this code. Any reference in this chapter or chapter 18C of this code to “senior administrator”
means vice chancellor for administration.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.


(a) The primary responsibility of the commission is to provide shared services in a cost-
effective manner upon request to the state colleges and universities, the council, and the
community and technical colleges; undertake certain statewide and regional initiatives as
specifically designated in this chapter, including those related to the administration of grants and
scholarships and including those in conjunction with the council; to review, confirm, or approve
certain actions undertaken by governing boards, as delineated in this chapter; and assist in the
development of policy that will achieve the goals, objectives and priorities found in §18B-1-1a and
§18B-1D-1 of this code. The commission shall exercise its authority and carry out its
responsibilities in a manner that is consistent and not in conflict with the powers and duties
assigned by law to the West Virginia Council for Community and Technical College Education
and the powers and duties assigned to the governing boards. To that end, the commission has
the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to §18B-1D-1 et seq. of this
code to address major challenges facing the state, including, but not limited to, the goals,
objectives, and priorities established in this chapter; and

(2) Develop, oversee, and advance the promulgation and implementation of a financing
rule for state institutions of higher education under its jurisdiction except the statutorily exempted
schools. The rule shall meet the following criteria:
(A) Provide for an adequate level of educational and general funding for institutions pursuant to §18B-1A-5 of this code;

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

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in §18B-1-1a and §18B-1D-1 et seq. of this code;

(3) In collaboration with the council and the governing boards:

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

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

(4) Serve as a point of contact to state policymakers:

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

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

(5) Upon request, provide shared services to a state institution of higher education;

(6) Administer scholarship and grant programs as provided for in this code;

(7) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to §18B-1D-7 of this code;
(8) Establish a formal process for recommending capital investment needs and for
determining priorities for state colleges and universities for these investments for consideration
by the Governor and the Legislature as part of the appropriation request process pursuant to
§18B-19-1 et seq. of this code;

(9) Except the statutorily exempted schools and the administratively exempted schools,
develop standards and evaluate governing board requests for capital project financing in
accordance with §18B-19-1 et seq. of this code;

(10) Except the statutorily exempted schools and administratively exempted schools,
ensure that governing boards manage capital projects and facilities needs effectively, including
review and approval of capital projects, in accordance with §18B-19-1 et seq. of this code;

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

(12) Employ a Chancellor for Higher Education pursuant to §18B-1B-5 of this code;

(13) Employ other staff as necessary and appropriate to carry out the duties and
responsibilities of the commission and the council, in accordance with §18B-4-1 et seq. of this
code;

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

(15) Approve the total compensation package from all sources for presidents of institutions
under its jurisdiction, except the statutorily exempted schools, as proposed by the governing
boards. The governing boards, except the governing boards of the statutorily exempted schools,
must obtain approval from the commission of the total compensation package both when
institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: Provided, That the commission will receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

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

(17) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of schools;

(18) Jointly with the council, develop and implement an oversight plan to manage systemwide technology except for the statutorily exempted schools, including, but not limited to, the following:

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

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

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission, and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;
(19) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

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

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

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

(23) Seek out and attend regional, national, and international meetings and forums on education and workforce development-related topics as, in the commission’s discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the
established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 et seq. of this code;

(24) Promulgate and implement a rule for higher education governing boards and institutions, except for the statutorily exempted schools and administratively exempted schools, to follow when considering capital projects pursuant to §18B-19-1 et seq. of this code, which rule shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission;

(25) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council’s jurisdiction. The commission annually shall submit the proposed allocations based on subsection (d) of this section;

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

(27) Pursuant to §29A-3A-1 et seq. and §18B-1-6 of this code, promulgate rules necessary or expedient to fulfill the purposes of this chapter;

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

(29) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;
(30) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

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

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

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

(32) Notwithstanding any other provision of this code to the contrary sell, lease, convey, or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-1 et seq. of this code;

(33) Policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

(34) Development and approval of institutional mission definitions except the statutorily exempted schools and administratively exempted schools: Provided, That the commission may use funds appropriated by the Legislature for incentive funds to influence institutional behavior in ways that are consistent with public priorities, including the statutorily exempted schools and administratively exempted schools;

(35) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the
appropriateness of both new and existing programs and the authority to implement needed
government Appropriates the authority to review and approve academic programs for the
statutorily exempted and administratively exempted schools is limited to programs that are
proposed to be offered at a new location not presently served by that institution: Provided, That
West Virginia University and the West Virginia University Institute of Technology are subject to
the commission's authority as provided in §18B-1C-2 of this code.

(B) In reviewing and approving academic programs, the commission shall focus on the
following policy concerns:

(i) New programs should not be implemented which change the institutional mission,
unless the institution also receives approval for expanding the institutional mission;
(ii) New programs which will require significant additional expense investments for
implementation should not be implemented unless the institution demonstrates that:
(I) The expenses will be addressed by effective reallocations of existing institutional
resources; or
(II) The expenses can be legitimately spread out over future years and will be covered by
reasonably anticipated additional net revenues from new enrollments;
(iii) A new undergraduate program which is significantly similar to an existing program
already in the geographic service area should not be implemented unless the institution
requesting the new program demonstrates a compelling need in the service area that is not being
met by the existing program: Provided, That the academic programs of the statutorily exempted
and administratively exempted schools are not to be taken into consideration except as it relates
to academic programs offered at West Virginia University in Beckley and West Virginia University
Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in
those instances where approval is required as soon as practicable. The commission shall
maintain by rule a format model by which a new program approval shall be requested by an
institution. When a request for approval of a new program is submitted to the commission, the
chancellor shall provide notice within two weeks as to whether the submission meets the required
format, and if it does not the chancellor shall identify each specific deficiency and return the
request to the institution. The institution may refile the request for approval with the commission
to address any identified deficiencies. Within 30 days after the chancellor’s confirmation that the
request meets the required format, the commission shall either approve or disapprove the request
for the new program. The commission may not withhold approval unreasonably.

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

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

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

(39) Developing and distributing information, assessment, accountability and personnel
systems for state colleges and universities, including maintaining statewide data systems that
facilitate long-term planning and accurate measurement of strategic outcomes and performance
indicators;

(40) Jointly with the council, promulgating and implementing rules for licensing and
oversight for both public and private degree-granting and nondegree-granting institutions that
provide post-secondary education courses or programs in the state. The council has authority
and responsibility for approval of all post-secondary courses or programs providing community
and technical college education as defined in §18B-1-2 of this code;

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

(42) (A) For all governing boards under its jurisdiction, except for the statutorily exempted schools, the commission shall review institutional operating budgets, review, and approve capital budgets, and distribute incentive and performance-based funds.

(B) For the governing boards of the statutorily exempted schools, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission’s comments, if any, shall be made part of the governing board’s minute record and shall be filed with the Legislative Oversight Commission on Education Accountability;

(43) May provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than 90 percent within six months post-graduation; and

(44) May provide information, research, and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in subsections (a) and (c) of this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article: Provided, That the provisions of this subsection shall not be construed to shift management authority from the governing boards to the commission.

(c) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:
(1) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

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

The commission may not withdraw specific powers for a period exceeding two years.

During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at state institutions of higher education under its jurisdiction and the council shall undertake the same analysis for the community and technical colleges, and on or before October 1 of each year the commission and council shall each deliver a report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. These reports shall include a recommendation to the Legislature on a formula or methodology for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. The commission and council shall take into consideration the needs of each institution relating to a base level of appropriation support and mission differentiation. On such basis, the commission and council shall each make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for the next fiscal year, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for the current fiscal year. The commission and council shall engage with the four-year institutions and community and technical colleges, as appropriate, to seek to develop a consensus on the formulas and methodologies underlying any
recommendations required by this subsection. The commission and council shall provide the
four-year institutions and community and technical colleges with at least 30 days written notice to
comment on any recommendations before any report contemplated by this subsection is provided
to the Legislature.

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

(a) Appointment of institutional presidents. — Appointment of presidents of the state
institutions of higher education, except the statutorily exempted schools, shall be made as follows:

(1) The initial contract term for a president may not exceed two years. At the end of the
initial contract period, and subject to the provisions of subsection (c) of this section, the governing
board may offer the president a contract of longer duration, but not to exceed five years.

(2) The president of a state institution of higher education serves at the will and pleasure
of the appointing governing board.

(3) The governing boards of the following institutions, appoint a president: Bluefield State
College, Concord University, Fairmont State University, Glenville State College, Shepherd
University, West Liberty University and West Virginia State University, West Virginia University,
Marshall University, and the West Virginia School of Osteopathic Medicine.

(4) Subject to the approval of the council, the governing board of the community and
technical college appoints a president for Blue Ridge Community and Technical College, Bridge
Valley Community and Technical College, Eastern West Virginia Community and Technical
College, Mountwest Community and Technical College, New River Community and Technical
College, Pierpont Community and Technical College, Southern West Virginia Community and
Technical College, West Virginia Northern Community and Technical College, and West Virginia
University at Parkersburg.

(b) Other appointments. — The President of West Virginia University appoints a campus
president to be the administrative head of Potomac State College of West Virginia University and
a campus president to be the administrative head of West Virginia University Institute of
Technology.
(c) Evaluation of presidents. —

(1) The appointing governing board shall conduct written performance evaluations of the institution’s president. Evaluations shall be done at the end of the initial contract period and in every third year of employment as president thereafter, recognizing unique characteristics of the institution and using institutional personnel including classified employees if any are employed by the institution, boards of advisors as appropriate, staff of the appropriate governing board, and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact and in achieving the goals, objectives, and priorities established in §18B-1-1 et seq. and §18B-1D-1 et seq. of this code.

(2) After reviewing the evaluations, the governing board shall decide by majority vote of its members on continuing employment and the compensation level for the president in accordance with subsection (a) of this section.

(d) The legislative rules of the commission and council promulgated in accordance with §18B-1-6 and §29A-3A-1 et seq. of this code which are in effect on January 1, 2014, continue in effect unless amended or repealed. The rules provide guidance for the governing boards, but are not applicable to the statutorily exempted or the administratively exempted schools, in filling vacancies in the office of president in accordance with this chapter and shall include, but are not limited to, clarifying the powers, duties and roles of the governing boards, commission, council, and chancellors in the presidential appointment process.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-7. Findings; establishment of institutional compacts; compact elements; submission date; review and approval process; rule required.

(a) The Legislature finds that West Virginia long has recognized the value of education and, on a per capita income basis, ranks very high among the states in its investment to support public education. The Legislature further finds that a combination of state and national demographic and economic factors as well as significant changes in methods of course and
program delivery compel both the state and public higher education to create a process that will
strengthen institutional capacity to provide the services so valued by the citizens of the state and
so essential to promoting economic vitality.

(b) The commission and council each shall organize the statements of legislative goals
and objectives contained in this article and §18B-1-1a of this code in a manner that facilitates the
purposes therein.

(c) **Assignment of geographic areas of responsibility.** —

(1) The commission shall assign geographic areas of responsibility to the state institutions
of higher education under its jurisdiction, except for the statutorily exempted schools. For
institutions other than the statutorily exempted schools, the geographic areas of responsibility
shall be assigned in such a way as to ensure that all areas of the state are provided necessary
programs and services to achieve state goals and objectives. The commission and the council
each shall develop data-based measures to determine the extent to which institutions, with the
exception of the statutorily exempted schools, under their respective jurisdictions are providing
higher education services aligned with state goals and objectives and institutional missions within
their geographic areas of responsibility. This information shall be reported in the statewide data
reporting system established pursuant to §18B-1D-8 of this code.

(2) The council shall assign geographic areas of responsibility to the state institutions of
higher education under its jurisdiction.

(3) The geographic areas of responsibility for the state institutions of higher education
known as West Virginia School of Osteopathic Medicine, Marshall University, and West Virginia
University are statewide.

(4) Each state institution of higher education shall establish benchmarks in collaboration
with the commission or council, as applicable, which include measures of programs and services
by geographic area throughout the assigned geographic area of responsibility.

(d) The benchmarks shall be used to determine progress toward meeting the state’s higher
education objectives. The benchmarks shall meet the following criteria:
(1) They shall be objective;
(2) They shall be directly linked to the established objectives;
(3) They shall be measured by the indicators described in subsection (e) of this section;
and
(4) Where applicable, they shall be used to measure progress in geographic areas of responsibility.

(e) The rules required by §18B-1D-1(c) of this code shall include indicators which measure the degree to which the goals and objectives set forth in this article and §18B-1-1a of this code are being met by the institutions under the jurisdiction of the commission and the council, respectively.

(1) The rules pertaining to benchmarks and indicators in effect for the commission and the council on the effective date of this section remain in effect for the institutions under their respective jurisdictions until amended, modified, repealed, or replaced by the commission or the council, respectively, pursuant to the provisions of this article, §18B-1-6 of this code, and §29A-3A-1 et seq. of this code.

(2) The rules shall set forth at least the following as pertains to all state institutions of higher education, except the statutorily exempted schools:

(A) The indicators used to measure the degree to which the goals and objectives are being met;
(B) Uniform definitions for the various data elements to be used in establishing the indicators;
(C) Guidelines for the collection and reporting of data; and
(D) Sufficient detail within the benchmarks and indicators to provide the following information:

(i) Measurable evidence that the pursuits of the institution are focused on the education needs of the citizens of the state and are aligned with the objectives required pursuant to this section;
(ii) Delineation of the objectives and benchmarks for an institution so that the commission or council can precisely measure the degree to which progress is being made toward achieving the goals and objectives provided in this article and §18B-1-1a of this code: Provided, That the commission has no authority regarding the objectives and benchmarks for statutorily exempted schools; and

(iii) Identification of specific objectives that are not being met or toward which sufficient progress is not being made.

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

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

(i) The degree to which progress is being made by institutions toward meeting state goals and objectives and the essential conditions for community and technical college education pursuant to §18B-3C-3 of this code;

(ii) Information and data necessary to be considered by the council in making the determination required by §18B-2C-3 of this code; and

(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination by the council that an institution’s progress toward achieving state goals and objectives and the essential conditions for community and technical college education is so deficient that implementation of the provisions of §18B-2C-4 of this code is warranted and necessary.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-4. Campus development plans.

(a) Each governing board shall update its current campus development plan and submit the updated plan to the commission or council, as appropriate. The submission of a plan or updated plan to the council is for approval. A campus development plan shall be adopted by each governing board for a 10-year period and shall align with criteria specified in the following sources:

(1) The system capital development oversight policy;
(2) The institution’s approved master plan; and
(3) The current campus development plan objectives.

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

(1) The governing board’s development strategy;

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

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

(4) A comprehensive list of major deferred maintenance projects, individually exceeding $75,000 in cost, that need to be addressed for each campus by building or facility including an estimated cost for each;

(5) An analysis as to all buildings and facilities as to the need for renovations, additions, demolition, or any combination thereof;

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

(7) An analysis of telecommunications, utilities, and other infrastructure improvements that are needed;

(8) A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion;

(9) A list of proposed new facilities and building sites;

(10) A list of capital projects in priority order;
(11) Estimates of the timing, phasing, and projected costs associated with individual projects;

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

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

(14) Any other requirement established by the commission and council in the rules required by §18B-19-17 of this code.

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

(d) Not later than the next regularly scheduled meeting of the commission or council, as applicable, following the fifth anniversary date after the commission receives or council approves, as appropriate, the development plan of a governing board the governing board shall report on the progress made in the first five years to implement the campus development plan for each campus under its jurisdiction. In addition, the governing board shall report on its plans to implement the remaining five-year period of its campus development plan.

(e) Each governing board shall update its campus development plan at least once during each 10-year period and any update shall be submitted to the commission or council, as appropriate and those submitted to the council are subject to the approval of the council.

(f) A governing board may not implement a campus development plan or plan update that has not been submitted to the commission or submitted to and approved by the council, as appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

(Chairman, Senate Committee)

Chairman, Senate Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th Day of March 2020.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2020

Time 9:50am