

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**House Bill 2800**

BY DELEGATE ELLINGTON

[Passed February 15, 2023; in effect from passage.]



1 AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as  
2 amended, all relating to authorizing legislative rules regarding higher education;  
3 authorizing legislative rules for the Higher Education Policy Commission regarding  
4 Performance-Based Funding Formula, Capital Project Management, Tuition and Fee  
5 Policy, Higher Education Grant Program, Annual Reauthorization of Degree-Granting  
6 Institutions, and Human Resources Administration; and authorizing legislative rules for the  
7 Council for Community and Technical College Education regarding Performance-Based  
8 Funding Formula, Capital Project Management, Workforce Development Initiative Grant  
9 Programs, Annual Reauthorization of Degree-Granting Institutions, and Human  
10 Resources Administration.

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

**ARTICLE 17. LEGISLATIVE RULES.**

**§18B-17-2. Authorizing rules of Higher Education Policy Commission.**

1 (a) The legislative rule filed in the State Register on October 15, 2004, relating to the  
2 Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule), is  
3 authorized.

4 (b) The legislative rule filed in the State Register on October 15, 2004, relating to the  
5 Higher Education Policy Commission (West Virginia Engineering, Science, and Technology  
6 Scholarship Program rule), is authorized.

7 (c) The legislative rule filed in the State Register on October 15, 2004, relating to the  
8 Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program  
9 rule), is authorized.

10 (d) The legislative rule filed in the State Register on October 27, 2005, relating to the  
11 Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

12 (e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher  
13 Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

14 (f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher  
15 Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student  
16 Excellence - PROMISE), is authorized.

17 (g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher  
18 Education Policy Commission (Research Trust Program), is authorized.

19 (h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher  
20 Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating  
21 Presidents), is authorized.

22 (i) The legislative rule filed in the State Register on September 10, 2008, relating to the  
23 Higher Education Policy Commission (Medical Student Loan Program), is authorized, with the  
24 following amendment:

25 On page two, subsection 5.1, following the words "financial aid office" by inserting a new  
26 subdivision 5.1.3 to read as follows: "United States citizenship or legal immigrant status while  
27 actively pursuing United States citizenship."

28 (j) The legislative rule filed in the State Register on December 1, 2008, relating to the  
29 Higher Education Policy Commission (West Virginia Higher Education Grant Program), is  
30 authorized.

31 (k) The legislative rule filed in the State Register on January 26, 2009, relating to the  
32 Higher Education Policy Commission (Accountability System), is authorized.

33 (l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher  
34 Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program), is  
35 authorized.

36 (m) The legislative rule filed in the State Register on January 27, 2010, relating to the  
37 Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state  
38 Student Excellence - PROMISE), is authorized.

39           (n) The legislative rule filed in the State Register on December 8, 2010, relating to the  
40 Higher Education Policy Commission (authorization of degree-granting institutions), is authorized,  
41 with the following amendment:

42           On page 28, subsection 9.1.b, following the words “Good cause shall consist of” by  
43 inserting the words “any one or more of the following”.

44           (o) The legislative rule filed in the State Register on December 12, 2011, relating to the  
45 Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

46           (p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher  
47 Education Policy Commission (authorization of degree-granting institutions), is authorized.

48           (q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher  
49 Education Policy Commission (annual reauthorization of degree-granting institutions), is  
50 authorized.

51           (r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher  
52 Education Policy Commission (Human Resources Administration), is authorized.

53           (s) The legislative rule filed in the State Register on January 24, 2014, relating to the  
54 Higher Education Policy Commission (Capital Project Management), is authorized.

55           (t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher  
56 Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

57           (u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher  
58 Education Policy Commission (Nursing Scholarship Program), is authorized.

59           (v) The legislative rule filed in the State Register on October 28, 2015, relating to the  
60 Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is  
61 authorized.

62           (w) The legislative rule filed in the State Register on October 28, 2015, relating to the  
63 Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

64 (x) The legislative rule filed in the State Register on December 20, 2016, relating to the  
65 Higher Education Policy Commission (West Virginia Higher Education Grant Program), is  
66 authorized.

67 (y) The legislative rule filed in the State Register on December 20, 2016, relating to the  
68 Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state  
69 Student Excellence - PROMISE), is authorized.

70 (z) The legislative rule filed in the State Register on December 20, 2016, relating to the  
71 Higher Education Policy Commission (Research Trust Fund Program), is authorized.

72 (aa) The legislative rule filed in the State Register on December 20, 2016, relating to the  
73 Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is  
74 authorized.

75 (bb) The legislative rule filed in the State Register on January 16, 2018, relating to the  
76 Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

77 (cc) The legislative rule filed in the State Register on January 16, 2018, relating to the  
78 Higher Education Policy Commission (Human Resources Administration), is authorized.

79 (dd) The legislative rule filed in the State Register on January 22, 2018, relating to the  
80 Higher Education Policy Commission (Capital Project Management), is authorized, with the  
81 following amendments:

82 On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu  
83 thereof a new subdivision 2.1.d., to read as follows: "Efficient use of existing classroom and other  
84 space by institutions, while maintaining an appropriate deference to the value judgments of the  
85 institutional governing boards".;

86 On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in  
87 lieu thereof a new subdivision 4.2.d.5., to read as follows: "Funding will be prioritized for each  
88 institution in accordance with institutional plans confirmed by the Commission or approved by the  
89 Council.";

90 On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in  
91 lieu thereof a new subdivision 4.2.d.6., to read as follows: "Facility utilization rates will be an  
92 important factor in prioritizing capital projects across the systems.";

93 On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in  
94 lieu thereof a new subdivision 4.2.d.7., to read as follows: "Institutions with overall net asset values  
95 and capacity utilization rates that exceed or equal thresholds set annually by the Commission and  
96 Council are the presumptive priority for new facilities. If these projects do not replace an existing  
97 facility, they would be included in the Program Improvement category."; and

98 On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof  
99 a new subdivision 5.6., to read as follows: "A governing board may not implement a campus  
100 development plan or plan update that has not been confirmed by the Commission or approved by  
101 the Council, as appropriate. The purchase of any property for the construction of a facility that is  
102 not included in the campus development plan creates an update to the campus development plan  
103 that must be confirmed by the Commission or approved by the Council, as appropriate, prior to  
104 its purchase. In the case of institutions governed by the Council, this provision applies equally to  
105 property acquired by any means, whether by purchase or otherwise."

106 (ee) The legislative rule filed in the State Register on January 22, 2019, relating to the  
107 Higher Education Policy Commission (Acceptance of Advanced Placement Credit), is repealed.

108 (ff) The legislative rule filed in the State Register on January 22, 2019, relating to the  
109 Higher Education Policy Commission (Human Resources Administration), is repealed.

110 (gg) The legislative rule filed in the State Register on August 28, 2018, relating to the  
111 Higher Education Policy Commission (Guidelines for Governing Boards in Employing and  
112 Evaluating Presidents), is authorized.

113 (hh) The legislative rule filed in the State Register on August 7, 2018, relating to the Higher  
114 Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student  
115 Excellence (PROMISE) Scholarship Program), is authorized, with the following amendments:

116 On page one, subsection 2.1, by striking out all of subdivision 2.1.a. and inserting in lieu  
117 thereof a new subdivision 2.1.a., to read as follows: “Must complete high school graduation  
118 requirements at a West Virginia public, private or home school unless he or she qualified as a  
119 military dependent under Section 5 of this rule, or has commuted to an out-of-state school  
120 pursuant to Section 6 of this rule; and”;

121 On page one, subsection 2.1, by striking out all of subdivision 2.1.b. and inserting in lieu  
122 thereof a new subdivision 2.1.b., to read as follows: “Must complete at least one half of the credits  
123 required for high school graduation through attendance at a public, private or home school in this  
124 state, unless he or she qualified as a military dependent under Section 5 of this rule, or has  
125 commuted to an out-of-state school pursuant to Section 6 of this rule; and”;

126 On page one, subdivision 2.1.c., by striking out the words “Section 5” and inserting in lieu  
127 thereof the words “Section 4”;

128 On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu  
129 thereof a new subdivision 2.1.d., to read as follows: “Must have attained a cumulative grade point  
130 average of at least 3.0 on a 4.0 scale, based on county board grading policies, in both core  
131 courses and overall coursework required for graduation by the State Board of Education, while  
132 enrolled in a public or private high school. If home-schooled pursuant to the exemption allowed  
133 by W.Va. Code §18-8-1 as documented by the county school board system, the applicant must  
134 have completed in both the 11th and 12th grades the required core and elective coursework  
135 necessary to prepare students for success in postsecondary education at the associate and  
136 baccalaureate levels by attaining a cumulative grade point average of at least 3.0 on a 4.0 grading  
137 scale in both core courses and overall coursework as determined by the Commission; and”;

138 On page one, subsection 2.1, subdivision 2.1.f., preceding the words “have resided in  
139 West Virginia”, by striking out the word “Must” and inserting in lieu thereof the words “The  
140 applicant and his or her parent or legal guardian must” ;



141 On page one, subdivision 2.1.f., by striking out the words “Section 5” and inserting in lieu  
142 thereof the words “Section 4”;

143 On page one, subdivision 2.1.f., by striking out the words “Section 6” and inserting in lieu  
144 thereof the words “Section 5”;

145 On page two, subsection 2.4., by striking out the words “Section 10.7 or 10.8” and inserting  
146 in lieu thereof the words “Section 9.7 or 9.8”;

147 On page two, subsection 2.5, by striking out the words “Section 8” and inserting in lieu  
148 thereof the words “Section 7”;

149 On page two, subsection 2.5, by striking out the words “Section 10” and inserting in lieu  
150 thereof the words “Section 9”;

151 On page two, by striking out all of section 3 and renumbering the remaining sections  
152 accordingly;

153 On page three, subsection 4.4, by striking out the words “Section 14” and inserting in lieu  
154 thereof the words “Section 13”;

155 On page five-six, subsection 10.6, by striking out the words “Section 10.3” and inserting  
156 in lieu thereof the words “Section 9.3”;

157 On page six, subsection 10.6, by striking out the words “Section 10.2” and inserting in lieu  
158 thereof the words “Section 9.2”;

159 On page six, subsection 10.9.c., by striking out the words “Section 5” and inserting in lieu  
160 thereof the words “Section 4”; and

161 On page eight, subsection 15.1.b, by striking out the words “Section 11.1” and inserting in  
162 lieu thereof the words “Section 10.1”.

163 (ii) The legislative rule filed in the State Register on September 30, 2019, relating to the  
164 Higher Education Policy Commission (Higher Education Accountability System) is authorized.

165 (jj) The legislative rule filed in the State Register on November 5, 2019, relating to the  
166 Higher Education Policy Commission (Underwood-Smith Teaching Scholars Program and  
167 Teacher Education Loan Repayment Program) is authorized.

168 (kk) The legislative rule filed in the State Register on October 4, 2019, relating to the  
169 Higher Education Policy Commission (Accountability System) is repealed.

170 (ll) The legislative rule filed in the State Register on July 29, 2020, relating to the Higher  
171 Education Policy Commission (Mental Health Loan Repayment Program) is authorized, with the  
172 following amendments:

173 On page one, subdivision 3.1.b., after the words “family therapist,” by inserting the words  
174 “psychiatric mental health nurse practitioner,”;

175 On page two, subsection 6.1., by striking out the words “at least” and inserting in lieu  
176 thereof the words “up to”; and

177 On page three, subsection 9.1., after the words “family therapists” by inserting the words  
178 “psychiatric mental health nurse practitioners,”.

179 (mm) The legislative rule filed in the State Register on March 11, 2021, relating to the  
180 Higher Education Policy Commission (Administrative Exemption) is authorized.

181 (nn) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher  
182 Education Policy Commission (Research Trust Fund Program) is authorized.

183 (oo) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher  
184 Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is  
185 authorized.

186 (pp) The legislative rule filed in the State Register on July 29, 2022 relating to the Higher  
187 Education Policy Commission (Performance-Based Funding Formula) is authorized.

188 (qq) The legislative rule filed in the State Register on June 14, 2022 relating to the Higher  
189 Education Policy Commission (Capital Project Management) is authorized.

190 (rr) The legislative rule filed in the State Register on July 29, 2022 relating to the Higher  
191 Education Policy Commission (Tuition and Fee Policy) is authorized.

192 (ss) The legislative rule filed in the State Register on June 14, 2022 relating to the Higher  
193 Education Policy Commission (Higher Education Grant Program) is authorized.

194 (tt) The legislative rule filed in the State Register on July 29, 2022 relating to the Higher  
195 Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is  
196 authorized.

197 (uu) The legislative rule filed in the State Register on June 14, 2022 relating to the Higher  
198 Education Policy Commission (Human Resources Administration) is authorized.

**§18B-17-3. Authorizing rules of the Council for Community and Technical College  
Education.**

1 (a) The legislative rule filed in the State Register on September 29, 2004, relating to the  
2 West Virginia Council for Community and Technical College Education (performance indicators),  
3 is authorized.

4 (b) The legislative rule filed in the State Register on October 13, 2005, relating to the West  
5 Virginia Council for Community and Technical College Education (authorization of degree-  
6 granting institutions), is authorized.

7 (c) The legislative rule filed in the State Register on October 30, 2006, relating to the West  
8 Virginia Council for Community and Technical College Education (Workforce Development  
9 Initiative Program), is authorized.

10 (d) The legislative rule filed in the State Register on December 4, 2008, relating to the  
11 West Virginia Council for Community and Technical College Education (Employing and  
12 Evaluating Presidents), is authorized.

13 (e) The legislative rule filed in the State Register on December 23, 2008, relating to the  
14 West Virginia Council for Community and Technical College Education (performance indicators),  
15 is authorized.

16 (f) The legislative rule filed in the State Register on February 5, 2009, relating to the West  
17 Virginia Council for Community and Technical College Education (finance), is authorized.

18 (g) The legislative rule filed in the State Register on February 5, 2009, relating to the West  
19 Virginia Council for Community and Technical College Education (Accountability System), is  
20 authorized.

21 (h) The legislative rule filed in the State Register on June 15, 2011, relating to the West  
22 Virginia Council for Community and Technical College Education (Workforce Development  
23 Initiative Program), is authorized.

24 (i) The legislative rule filed in the State Register on October 26, 2011, relating to the West  
25 Virginia Council for Community and Technical College Education (Tuition and Fees), is  
26 authorized.

27 (j) The legislative rule filed in the State Register on October 17, 2012, relating to the West  
28 Virginia Council for Community and Technical College Education (authorization of degree-  
29 granting institutions), is authorized.

30 (k) The legislative rule filed in the State Register on October 17, 2012, relating to the West  
31 Virginia Council for Community and Technical College Education (annual reauthorization of  
32 degree-granting institutions), is authorized.

33 (l) The legislative rule filed in the State Register on March 21, 2013, relating to the West  
34 Virginia Council for Community and Technical College Education (Human Resources  
35 Administration), is authorized.

36 (m) The legislative rule filed in the State Register on August 21, 2012, relating to the West  
37 Virginia Council for Community and Technical College Education (West Virginia EDGE Program),  
38 is authorized.

39 (n) The legislative rule filed in the State Register on January 28, 2014, relating to the West  
40 Virginia Council for Community and Technical College Education (Capital Project Management),  
41 is authorized.

42 (o) The legislative rule filed in the State Register on January 18, 2017, relating to the West  
43 Virginia Council for Community and Technical College Education (annual reauthorization of  
44 degree-granting institutions), is authorized.

45 (p) The legislative rule filed in the State Register on January 18, 2017, relating to the West  
46 Virginia Council for Community and Technical College Education (Business, Occupational, and  
47 Trade Schools), is authorized.

48 (q) The legislative rule filed in the State Register on January 26, 2018, relating to the West  
49 Virginia Council for Community and Technical College Education (Human Resources  
50 Administration), is authorized.

51 (r) The legislative rule filed in the State Register on January 26, 2018, relating to the West  
52 Virginia Council for Community and Technical College Education (Capital Project Management),  
53 is authorized, with the following amendments:

54 On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu  
55 thereof a new subdivision 2.1.d., to read as follows: "Efficient use of existing classroom and other  
56 space by institutions, while maintaining an appropriate deference to the value judgments of the  
57 institutional governing boards.";

58 On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in  
59 lieu thereof a new subdivision 4.2.d.5., to read as follows: "Funding will be prioritized for each  
60 institution in accordance with institutional plans confirmed by the Commission or approved by the  
61 Council.";

62 On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in  
63 lieu thereof a new subdivision 4.2.d.6., to read as follows: "Facility utilization rates will be an  
64 important factor in prioritizing capital projects across the systems.";

65 On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in  
66 lieu thereof a new subdivision 4.2.d.7., to read as follows: "Institutions with overall net asset  
67 values and capacity utilization rates that exceed or equal thresholds set annually by the

68 Commission and Council are the presumptive priority for new facilities. If these projects do not  
69 replace an existing facility, they would be included in the Program Improvement category.”; and

70 On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof  
71 a new subdivision 5.6., to read as follows: “A governing board may not implement a campus  
72 development plan or plan update that has not been confirmed by the Commission or approved by  
73 the Council, as appropriate. The purchase of any property for the construction of a facility that is  
74 not included in the campus development plan creates an update to the campus development plan  
75 that must be confirmed by the Commission or approved by the Council, as appropriate, prior to  
76 its purchase. In the case of institutions governed by the Council, this provision applies equally to  
77 property acquired by any means, whether by purchase or otherwise.”.

78 (s) The legislative rule filed in the State Register on July 2, 2018, relating to the West  
79 Virginia Council for Community and Technical College Education (Tuition and Fees), is  
80 authorized.

81 (t) The legislative rule filed in the State Register on September 26, 2018, relating to the  
82 West Virginia Council for Community and Technical College Education (Acceptance of Advanced  
83 Placement Credit), is repealed.

84 (u) The legislative rule filed in the State Register on November 20, 2018, relating to the  
85 West Virginia Council for Community and Technical College Education (initial authorization of  
86 degree-granting institutions), is authorized.

87 (v) The legislative rule filed in the State Register on November 20, 2018, relating to the  
88 West Virginia Council for Community and Technical College Education (Workforce Development:  
89 Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response  
90 Grants), is authorized.

91 (w) The legislative rule filed in the State Register on January 25, 2019, relating to the West  
92 Virginia Council for Community and Technical College Education (Human Resources  
93 Administration), is repealed.

94 (x) The legislative rule filed in the State Register on June 3, 2019 relating to the West  
95 Virginia Council for Community and Technical College Education (West Virginia Invests Grant  
96 Program) is authorized.

97 (y) The legislative rule filed in the State Register on April 27, 2021 (Business,  
98 Occupational, and Trade Schools) is authorized).

99 (z) The legislative rule filed in the State Register on April 27, 2021 (Annual Reauthorization  
100 of Degree-Granting Institutions) is authorized.

101 (aa) The legislative rule filed in the State Register on November 10, 2021 (West Virginia  
102 Invests Grant Program) is authorized.

103 (bb) The legislative rule filed in the State Register on July 22, 2022 (Performance-Based  
104 Funding Formula) is authorized.

105 (cc) The legislative rule filed in the State Register on June 13, 2022 (Capital Project  
106 Management) is authorized.

107 (dd) The legislative rule filed in the State Register on July 21, 2022 (Workforce  
108 Development Initiative Grant Programs) is authorized.

109 (ee) The legislative rule filed in the State Register on July 21, 2022 (Annual  
110 Reauthorization of Degree-Granting Institutions) is authorized, with the following amendment:

111 On page 13 by adding a new subsection designated 12.23 to read as follows: Nothing in  
112 this rule in any way affects or limits the due process protections or other protections afforded to  
113 proprietary schools under either W. Va. Code § 18B-2B-9 or 135 C.S.R. 35, *Business,*  
114 *Occupational, and Trade Schools.*

115 (ff) The legislative rule filed in the State Register on June 13, 2022 (Human Resources  
116 Administration) is authorized.





The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect from passage.

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2023.

.....  
*Governor*