

**H. B. 4608**

(By Delegates Canterbury, T. Campbell and Anderson)  
[Introduced February 17, 2012; referred to the  
Committee on Education then Finance.]

A BILL to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of Higher Education Policy Commission; requiring that policies and procedures established by the commission ensure that credits, earned by students while attending a college or other in-state higher education institution that is accredited, shall be transferable to another state college or in-state higher education institution if the college or in-state higher education institution attended loses its accreditation; permitting reimbursement of tuition and other costs from college of in-state higher education institution that loses its accreditation; and permitting students to take professional board examinations, where applicable, if the student otherwise qualified before accreditation was lost.

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



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

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

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

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

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

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

20 (A) Developing, building public consensus around and  
21 sustaining attention to a long-range public policy agenda. In  
22 developing the agenda, the commission and council shall seek input  
23 from the Legislature and the Governor and specifically from the  
24 State Board of Education and local school districts in order to

1 create the necessary linkages to assure smooth, effective and  
2 seamless movement of students through the public education and  
3 post-secondary education systems and to ensure that the needs of  
4 public school courses and programs can be fulfilled by the  
5 graduates produced and the programs offered;

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

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

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

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

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

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

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

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

1 chapter;

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

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

8       (10) Report to the Legislature and to the Legislative  
9 Oversight Commission on Education Accountability annually during  
10 the January interim meeting period on a date and at a time and  
11 location to be determined by the President of the Senate and the  
12 Speaker of the House of Delegates. The report shall address at  
13 least the following:

14       (A) The performance of its system of higher education during  
15 the previous fiscal year, including, but not limited to, progress  
16 in meeting the goals, objectives and priorities set forth in  
17 section one-a, article one and article one-d of this chapter and in  
18 the commission's master plan and institutional compacts;

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

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

24       (11) Establish a formal process for identifying capital

1 investment needs and for determining priorities for these  
2 investments for consideration by the Governor and the Legislature  
3 as part of the appropriation request process pursuant to article  
4 nineteen of this chapter.

5 (12) Develop standards and evaluate governing board requests  
6 for capital project financing in accordance with article nineteen  
7 of this chapter;

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

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

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

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

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

3           (18) Advise and consent in the appointment of the presidents  
4 of the institutions of higher education under its jurisdiction  
5 pursuant to section six of this article. The role of the commission  
6 in approving an institutional president is to assure through  
7 personal interview that the person selected understands and is  
8 committed to achieving the goals, objectives and priorities set  
9 forth in the compact, in section one-a, article one and article  
10 one-d of this chapter;

11          (19) Approve the total compensation package from all sources  
12 for presidents of institutions under its jurisdiction, as proposed  
13 by the governing boards. The governing boards must obtain approval  
14 from the commission of the total compensation package both when  
15 institutional presidents are employed initially and afterward when  
16 any change is made in the amount of the total compensation package;

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

23          (21) Approve and implement a uniform standard jointly with the  
24 council to determine which students shall be placed in remedial or

1 developmental courses. The standard shall be aligned with college  
2 admission tests and assessment tools used in West Virginia and  
3 shall be applied uniformly by the governing boards throughout the  
4 public higher education system. The chancellors shall develop a  
5 clear, concise explanation of the standard which they shall  
6 communicate to the State Board of Education and the State  
7 Superintendent of Schools;

8       (22) Jointly with the council, develop and implement an  
9 oversight plan to manage systemwide technology including, but not  
10 limited to, the following:

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

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

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

21       (23) Establish and implement policies and procedures to ensure  
22 that a student may transfer and apply toward the requirements for  
23 a bachelor's degree the maximum number of credits earned at any  
24 regionally accredited in-state or out-of-state community and

1 technical college with as few requirements to repeat courses or to  
2 incur additional costs as are consistent with sound academic  
3 policy; Provided, That the policies and procedures ensure that : (A)  
4 Credits earned by students while attending a college that is  
5 accredited shall be transferable to another state college if the  
6 college attended loses it accreditation after the credits have been  
7 earned; (B) if the credits earned prior to the loss of  
8 accreditation are not transferable after a college loses its  
9 accreditation, students shall be reimbursed for tuition, fees and  
10 other expenses incurred; and (C) students, who attended a college  
11 that lost its accreditation, shall be permitted to take  
12 professional board examinations, where applicable, if the student  
13 otherwise qualified before accreditation was lost;

14 (24) Establish and implement policies and procedures to ensure  
15 that a student may transfer and apply toward the requirements for  
16 a degree the maximum number of credits earned at any regionally  
17 accredited in-state or out-of-state higher education institution  
18 with as few requirements to repeat courses or to incur additional  
19 costs as are consistent with sound academic policy: Provided, That  
20 the policies and procedures ensure that: (A) Credits earned by  
21 students while attending an in-state higher education institution  
22 that is accredited shall be transferable to another in-state higher  
23 education institution if the in-state higher education institution  
24 attended loses it accreditation after the credits have been earned;

1 (B) if the credits earned prior to the loss of accreditation are  
2 not transferable after an in-state higher education institution  
3 loses its accreditation, students shall be reimbursed for tuition,  
4 fees and other expenses incurred; and (C) students, who attended an  
5 in-state higher education institution that lost its accreditation,  
6 shall be permitted to take professional board examinations, where  
7 applicable, if the student otherwise qualified before accreditation  
8 was lost;

9       (25) Establish and implement policies and procedures to ensure  
10 that a student may transfer and apply toward the requirements for  
11 a master's degree the maximum number of credits earned at any  
12 regionally accredited in-state or out-of-state higher education  
13 institution with as few requirements to repeat courses or to incur  
14 additional costs as are consistent with sound academic policy:  
15 Provided, That the policies and procedures ensure that (A) Credits  
16 earned by students while attending an in-state higher education  
17 institution that is accredited shall be transferable to another in-  
18 state higher education institution if the in-state higher education  
19 institution attended loses its accreditation after the credits have  
20 been earned; (B) if the credits earned prior to the loss of  
21 accreditation are not transferable after an in-state higher  
22 education institution loses its accreditation, students shall be  
23 reimbursed for tuition, fees and other expenses incurred; and (C)  
24 students, who attended an in-state higher education institution

1 that lost its accreditation, shall be permitted to take  
2 professional board examinations, where applicable, if the student  
3 otherwise qualified before accreditation was lost;

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

14 (27) Seek out and attend regional, national and international  
15 meetings and forums on education and workforce development-related  
16 topics as, in the commission's discretion, are critical for the  
17 performance of their duties as members, for the purpose of keeping  
18 abreast of education trends and policies to aid it in developing  
19 the policies for this state to meet the established education  
20 goals, objectives and priorities pursuant to section one-a, article  
21 one and article one-d of this chapter;

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

1           (29) Consider and submit to the appropriate agencies of the  
2 executive and legislative branches of state government an  
3 appropriation request that reflects recommended appropriations for  
4 the commission and the governing boards under its jurisdiction. The  
5 commission shall submit as part of its appropriation request the  
6 separate recommended appropriation request it received from the  
7 council, both for the council and for the governing boards under  
8 the council's jurisdiction. The commission annually shall submit  
9 the proposed allocations based on each institution's progress  
10 toward meeting the goals of its compact;

11           (30) The commission may assess institutions under its  
12 jurisdiction, including Marshall University and West Virginia  
13 University, for the payment of expenses of the commission or for  
14 the funding of statewide higher education services, obligations or  
15 initiatives related to the goals set forth for the provision of  
16 public higher education in the state;

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

22           (32) Make appointments to boards and commissions where this  
23 code requires appointments from the State College System Board of  
24 Directors or the University of West Virginia System Board of

1 Trustees which were abolished effective June 30, 2000, except in  
2 those cases where the required appointment has a specific and  
3 direct connection to the provision of community and technical  
4 college education, the appointment shall be made by the council.  
5 Notwithstanding any provisions of this code to the contrary, the  
6 commission or the council may appoint one of its own members or any  
7 other citizen of the state as its designee. The commission and  
8 council shall appoint the total number of persons in the aggregate  
9 required to be appointed by these previous governing boards;

10       (33) Pursuant to article three-a, chapter twenty-nine-a of  
11 this code and section six, article one of this chapter, promulgate  
12 rules necessary or expedient to fulfill the purposes of this  
13 chapter. The commission and the council shall promulgate a uniform  
14 joint legislative rule for the purposes of standardizing, as much  
15 as possible, the administration of personnel matters among the  
16 state institutions of higher education and implementing the  
17 provisions of articles seven, eight, nine and nine-a of this  
18 chapter;

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

23       (35) Promulgate and implement a rule jointly with the council  
24 whereby course credit earned at a community and technical college

1 transfers for program credit at any other state institution of  
2 higher education and is not limited to fulfilling a general  
3 education requirement;

4 (36) By October 1, 2011, promulgate a rule pursuant to section  
5 one, article ten of this chapter, establishing tuition and fee  
6 policy for all governing boards under the jurisdiction of the  
7 commission, including Marshall University and West Virginia  
8 University. The rule shall include, but is not limited to, the  
9 following:

10 (A) Comparisons with peer institutions;

11 (B) Differences among institutional missions;

12 (C) Strategies for promoting student access;

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

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

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

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

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

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

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

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

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

23           (A) The commission's authority to review and approve academic  
24 programs for either Marshall University or West Virginia University

1 is limited to programs that are proposed to be offered at a new  
2 location not presently served by that institution;

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

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

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

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

17 (8) Developing, establishing and implementing information,  
18 assessment, accountability and personnel systems, including  
19 maintaining statewide data systems that facilitate long-term  
20 planning and accurate measurement of strategic outcomes and  
21 performance indicators;

22 (9) Jointly with the council, promulgating and implementing  
23 rules for licensing and oversight for both public and private  
24 degree-granting and nondegree-granting institutions that provide

1 post-secondary education courses or programs in the state. The  
2 council has authority and responsibility for approval of all post-  
3 secondary courses or programs providing community and technical  
4 college education as defined in section two, article one of this  
5 chapter.

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

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

16 (12) Developing budgets and allocating resources for governing  
17 boards under its jurisdiction:

18 (A) For all governing boards under its jurisdiction, except  
19 the governing boards of Marshall University and West Virginia  
20 University, the commission shall review institutional operating  
21 budgets, review and approve capital budgets, and distribute  
22 incentive and performance-based funds;

23 (B) For the governing boards of Marshall University and West  
24 Virginia University, the commission shall distribute incentive and

1 performance-based funds and may review and comment upon the  
2 institutional operating budgets and capital budgets. The  
3 commission's comments, if any, shall be made part of the governing  
4 board's minute record.

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

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

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

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

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

24

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

NOTE: The purpose of this bill is to require that the policies and procedures established by the Higher Education Policy Commission ensure that credits, earned by students while attending a college or other in-state higher education institution that is accredited, shall be transferable to another state college or in-state higher education institution if the college or in-state higher education institution attended loses its accreditation. The bill permits students to be reimbursed for tuition and other costs from college of in-state higher education institution that loses its accreditation. And, the bill permits students to take professional board examinations, where applicable, if the student otherwise qualified before accreditation was lost.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.