

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 444

(By Senators Plymale, Jenkins and Beach)

[Originating in the Committee on Education;
reported March 28, 2013.]

A BILL to amend and reenact §12-1-12d of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-1 and §18B-2A-3 of said code; to amend and reenact §18B-7-11 of said code; to amend and reenact §18B-19-10 of said code; and to amend said code by adding thereto a new section, designated §18B-19-19, all relating to higher education generally; increasing the amounts that Marshall University and West Virginia University may have invested with their respective foundations under certain conditions; authorizing certain actions by certain state

institutions of higher education regarding capital projects and facilities and capital project financing; exempting compensation packages of certain institutional presidents from certain approval process; clarifying that certain members of institutional governing boards are eligible to succeed themselves under certain conditions; collecting, synthesizing and disseminating data from state institutions of higher education; directing institutional boards of governors to cooperate in certain data-related operations; providing certain privacy protections for data; exempting the West Virginia Policy Commission and West Virginia Council for Community and Technical College Education from meeting certain employee ratios; authorizing the use of proceeds from rentals and leases of real property at state institutions of higher education and providing for the transfer of real property to other public bodies; and exempting certain institutional boards of governors from certain approval process related to capital facilities and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-2A-1 and §18B-2A-3 of said code be amended and reenacted; that §18B-7-11 of said code be amended and reenacted; that §18B-19-10 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-19-19, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University and West Virginia University.

- 1 (a) Notwithstanding any provision of this article to the
- 2 contrary, the governing boards of Marshall University and
- 3 West Virginia University each may invest certain funds with
- 4 its respective nonprofit foundation that has been established
- 5 to receive contributions exclusively for that university and
- 6 which exists on January 1, 2005. ~~Any such~~ The investment
- 7 is subject to the limitations of this section.

8 (b) A governing board, through its chief financial officer
9 may enter into agreements, approved as to form by the State
10 Treasurer, for the investment by its foundation of certain
11 funds subject to their administration. Any interest or
12 earnings on the moneys invested is retained by the investing
13 university.

14 (c) Moneys of a university that may be invested with its
15 foundation pursuant to this section are those subject to the
16 administrative control of the university that are collected
17 under an act of the Legislature for specific purposes and do
18 not include any funds made available to the university from
19 the State General Revenue Fund or the funds established in
20 sections eighteen or eighteen-a, article twenty-two, chapter
21 twenty-nine of this code. Moneys permitted to be invested
22 under this section may be aggregated in an investment fund
23 for investment purposes.

24 (d) Of the moneys authorized for investment by this
25 section, Marshall University and West Virginia University

26 each, respectively, may have invested with its foundation at
27 any time not more than the greater of:

28 (1) \$18 million for Marshall University and \$25 million
29 for West Virginia University; or

30 (2) Sixty-five percent of its unrestricted net assets as
31 presented in the statement of net assets for the fiscal year end
32 audited financial reports.

33 (3) Notwithstanding subdivisions (1) and (2) of this
34 subsection, with the approval of the Higher Education Policy
35 Commission, Marshall University may increase the amount
36 invested to ~~\$30~~ \$60 million and West Virginia University
37 may increase the amount invested to ~~\$40~~ \$70 million.

38 (e) Investments by foundations that are authorized under
39 this section shall be made in accordance with and subject to
40 the provisions of the Uniform Prudent Investor Act codified
41 as article six-c, chapter forty-four of this code. As part of its
42 fiduciary responsibilities, each governing board shall
43 establish investment policies in accordance with the Uniform
44 Prudent Investor Act for those moneys invested with its

45 foundation. The governing board shall review, establish and
46 modify, if necessary, the investment objectives as
47 incorporated in its investment policies so as to provide for the
48 financial security of the moneys invested with its foundation.
49 The governing boards shall give consideration to the
50 following:

51 (1) Preservation of capital;

52 (2) Diversification;

53 (3) Risk tolerance;

54 (4) Rate of return;

55 (5) Stability;

56 (6) Turnover;

57 (7) Liquidity; and

58 (8) Reasonable cost of fees.

59 (f) A governing board shall report annually by December
60 31 to the Governor and to the Joint Committee on
61 Government and Finance on the performance of investments
62 managed by its foundation pursuant to this section.

63 (g) The amendments to this section in the second
64 extraordinary session of the Legislature in 2010 ~~shall~~ apply
65 retroactively so that the authority granted by this section shall
66 be construed as if that authority did not expire on July 1,
67 2010.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

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

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

10 commission has the following powers and duties relating
11 to the governing boards under its jurisdiction:

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

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

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

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

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

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

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

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

40 (A) Developing, building public consensus around and
41 sustaining attention to a long-range public policy agenda. In
42 developing the agenda, the commission and council shall
43 seek input from the Legislature and the Governor and
44 specifically from the State Board of Education and local
45 school districts in order to create the necessary linkages to

46 assure smooth, effective and seamless movement of students
47 through the public education and post-secondary education
48 systems and to ensure that the needs of public school courses
49 and programs can be fulfilled by the graduates produced and
50 the programs offered;

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

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

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

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

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

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

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

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

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

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

81 (10) Report to the Legislature and to the Legislative
82 Oversight Commission on Education Accountability annually
83 during the January interim meeting period on a date and at a

84 time and location to be determined by the President of the
85 Senate and the Speaker of the House of Delegates. The
86 report shall address at least the following:

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

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

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

98 (11) Establish a formal process for identifying capital
99 investment needs and for determining priorities for these
100 investments for consideration by the Governor and the
101 Legislature as part of the appropriation request process
102 pursuant to article nineteen of this chapter.

103 (12) Develop standards and evaluate governing board
104 requests for capital project financing in accordance with
105 article nineteen of this chapter, except that Marshall
106 University and West Virginia University are not subject to
107 this subdivision.

108 (13) Ensure that governing boards manage capital
109 projects and facilities needs effectively, including review and
110 approval or disapproval of capital projects, in accordance
111 with article nineteen of this chapter, except that Marshall
112 University and West Virginia University are not subject to
113 this subdivision.

114 (14) Acquire legal services as considered necessary,
115 including representation of the commission, its governing
116 boards, employees and officers, before any court or
117 administrative body, notwithstanding any other provision of
118 this code to the contrary. The counsel may be employed
119 either on a salaried basis or on a reasonable fee basis. In
120 addition, the commission may, but is not required to, call

121 upon the Attorney General for legal assistance and
122 representation as provided by law;

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

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

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

131 (18) Advise and consent in the appointment of the
132 presidents of the institutions of higher education under its
133 jurisdiction pursuant to section six of this article. The role of
134 the commission in approving an institutional president is to
135 assure through personal interview that the person selected
136 understands and is committed to achieving the goals,
137 objectives and priorities set forth in the compact, in section
138 one-a, article one and article one-d of this chapter;

139 (19) Approve the total compensation package from all
140 sources for presidents of institutions under its jurisdiction, as
141 proposed by the governing boards, except that the
142 compensation packages of the presidents of Marshall
143 University and West Virginia University, respectively, are
144 not subject to this subdivision. The governing boards must
145 obtain approval from the commission of the total
146 compensation package both when institutional presidents are
147 employed initially and afterward when any change is made
148 in the amount of the total compensation package;

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

156 (21) Approve and implement a uniform standard jointly
157 with the council to determine which students shall be placed

158 in remedial or developmental courses. The standard shall be
159 aligned with college admission tests and assessment tools
160 used in West Virginia and shall be applied uniformly by the
161 governing boards throughout the public higher education
162 system. The chancellors shall develop a clear, concise
163 explanation of the standard which they shall communicate to
164 the State Board of Education and the State superintendent of
165 Schools;

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

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

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

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

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

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

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

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

213 (27) Seek out and attend regional, national and
214 international meetings and forums on education and
215 workforce development-related topics as, in the
216 commission's discretion, are critical for the performance of
217 their duties as members, for the purpose of keeping abreast
218 of education trends and policies to aid it in developing the
219 policies for this state to meet the established education goals,
220 objectives and priorities pursuant to section one-a, article one
221 and article one-d of this chapter;

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

226 (29) Consider and submit to the appropriate agencies of
227 the executive and legislative branches of state government an
228 appropriation request that reflects recommended
229 appropriations for the commission and the governing boards
230 under its jurisdiction. The commission shall submit as part
231 of its appropriation request the separate recommended

232 appropriation request it received from the council, both for
233 the council and for the governing boards under the council's
234 jurisdiction. The commission annually shall submit the
235 proposed allocations based on each institution's progress
236 toward meeting the goals of its compact;

237 (30) The commission may assess institutions under its
238 jurisdiction, including Marshall University and West Virginia
239 University, for the payment of expenses of the commission
240 or for the funding of statewide higher education services,
241 obligations or initiatives related to the goals set forth for the
242 provision of public higher education in the state;

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

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

251 System Board of Trustees which were abolished effective
252 June 30, 2000, except in those cases where the required
253 appointment has a specific and direct connection to the
254 provision of community and technical college education, the
255 appointment shall be made by the council. Notwithstanding
256 any provisions of this code to the contrary, the commission
257 or the council may appoint one of its own members or any
258 other citizen of the state as its designee. The commission and
259 council shall appoint the total number of persons in the
260 aggregate required to be appointed by these previous
261 governing boards;

262 (33) Pursuant to article three-a, chapter twenty-nine-a of
263 this code and section six, article one of this chapter,
264 promulgate rules necessary or expedient to fulfill the
265 purposes of this chapter. The commission and the council
266 shall promulgate a uniform joint legislative rule for the
267 purposes of standardizing, as much as possible, the
268 administration of personnel matters among the state
269 institutions of higher education and implementing the

270 provisions of articles seven, eight, nine and nine-a of this
271 chapter;

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

276 (35) Promulgate and implement a rule jointly with the
277 council whereby course credit earned at a community and
278 technical college transfers for program credit at any other
279 state institution of higher education and is not limited to
280 fulfilling a general education requirement;

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

287 (A) Comparisons with peer institutions;

288 (B) Differences among institutional missions;

289 (C) Strategies for promoting student access;

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

291 (E) Such other policies as the commission and council

292 consider appropriate;

293 (37) Implement general disease awareness initiatives to

294 educate parents and students, particularly dormitory

295 residents, about meningococcal meningitis; the potentially

296 life-threatening dangers of contracting the infection;

297 behaviors and activities that can increase risks; measures that

298 can be taken to prevent contact or infection; and potential

299 benefits of vaccination. The commission shall encourage

300 governing boards that provide medical care to students to

301 provide access to the vaccine for those who wish to receive

302 it; and

303 (38) Notwithstanding any other provision of this code to

304 the contrary sell, lease, convey or otherwise dispose of all or

305 part of any real property that it owns, in accordance with

306 article nineteen of this chapter.

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

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

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

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

322 (4) Academic program review and approval for
323 governing boards under its jurisdiction. The review and
324 approval includes use of institutional missions as a template

325 to judge the appropriateness of both new and existing
326 programs and the authority to implement needed changes.

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

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

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

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

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

347 (8) Developing, establishing and implementing
348 information, assessment, accountability and personnel
349 systems, including maintaining statewide data systems that
350 facilitate long-term planning and accurate measurement of
351 strategic outcomes and performance indicators;

352 (9) Jointly with the council, promulgating and
353 implementing rules for licensing and oversight for both
354 public and private degree-granting and nondegree-granting
355 institutions that provide post-secondary education courses or
356 programs in the state. The council has authority and
357 responsibility for approval of all post-secondary courses or
358 programs providing community and technical college
359 education as defined in section two, article one of this
360 chapter.

361 (10) Developing, implementing and overseeing statewide
362 and regional projects and initiatives related to providing

363 post-secondary education at the baccalaureate level and
364 above such as those using funds from federal categorical
365 programs or those using incentive and performance-based
366 funds from any source;

367 (11) Quality assurance that intersects with all other duties
368 of the commission particularly in the areas of research, data
369 collection and analysis, personnel administration, planning,
370 policy analysis, program review and approval, budgeting and
371 information and accountability systems; and

372 (12) Developing budgets and allocating resources for
373 governing boards under its jurisdiction:

374 (A) For all governing boards under its jurisdiction, except
375 the governing boards of Marshall University and West
376 Virginia University, the commission shall review institutional
377 operating budgets, review and approve capital budgets and
378 distribute incentive and performance-based funds;

379 (B) For the governing boards of Marshall University and
380 West Virginia University, the commission shall distribute
381 incentive and performance-based funds and may review and

382 comment upon the institutional operating budgets and capital
383 budgets. The commission's comments, if any, shall be made
384 part of the governing board's minute record.

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

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

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

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

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

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

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

**§18B-2A-1. Findings; composition of boards; terms and
qualifications of members; vacancies; eligibility
for reappointment.**

1 (a) *Findings.* –

2 The Legislature finds that the State of West Virginia is
3 served best when the membership of each governing board
4 includes the following:

5 (1) The academic expertise and institutional experience
6 of faculty members and a student of the institution governed
7 by the board;

8 (2) The technical or professional expertise and
9 institutional experience of a classified employee of the
10 institution governed by the board;

11 (3) An awareness and understanding of the issues facing
12 the institution governed by the board; and

13 (4) The diverse perspectives that arise from a
14 membership that is balanced in terms of gender and varied in
15 terms of race and ethnic heritage.

16 (b) *Boards of governors established.* –

17 A board of governors is continued at each of the
18 following institutions: Bluefield State College, Blue Ridge
19 Community and Technical College, Bridgemont Community
20 and Technical College, Concord University, Eastern West
21 Virginia Community and Technical College, Fairmont State
22 University, Glenville State College, Kanawha Valley
23 Community and Technical College, Mountwest Community
24 and Technical College, Marshall University, New River
25 Community and Technical College, Pierpont Community and

26 Technical College, Shepherd University, Southern West
27 Virginia Community and Technical College, West Liberty
28 University, West Virginia Northern Community and
29 Technical College, the West Virginia School of Osteopathic
30 Medicine, West Virginia State University, West Virginia
31 University and West Virginia University at Parkersburg.

32 (c) *Board membership.* –

33 (1) An appointment to fill a vacancy on the board or
34 reappointment of a member who is eligible to serve an
35 additional term is made in accordance with the provisions of
36 this section.

37 (2) The Board of Governors for Marshall University
38 consists of sixteen persons. The Board of Governors for
39 West Virginia University consists of seventeen persons. The
40 boards of governors of the other state institutions of higher
41 education consist of twelve persons.

42 (3) Each board of governors includes the following
43 members:

44 (A) A full-time member of the faculty with the rank of
45 instructor or above duly elected by the faculty of the
46 respective institution;

47 (B) A member of the student body in good academic
48 standing, enrolled for college credit work and duly elected by
49 the student body of the respective institution; and

50 (C) A member from the institutional classified employees
51 duly elected by the classified employees of the respective
52 institution;

53 (4) For the Board of Governors at Marshall University,
54 thirteen lay members appointed by the Governor, by and with
55 the advice and consent of the Senate, pursuant to this section;

56 (5) For the Board of Governors at West Virginia
57 University, twelve lay members appointed by the Governor,
58 by and with the advice and consent of the Senate, pursuant to
59 this section, and additionally:

60 (A) The Chairperson of the Board of Visitors of West
61 Virginia University Institute of Technology;

62 (B) A full-time faculty member representing the
63 extension service at the institution or a full-time faculty
64 member representing the health sciences, selected by the
65 faculty senate.

66 (6) For each board of governors of the other state
67 institutions of higher education, nine lay members appointed
68 by the Governor, by and with the advice and consent of the
69 Senate, pursuant to this section;

70 (A) Of the nine members appointed by the Governor, no
71 more than five may be of the same political party. Of the
72 thirteen members appointed by the Governor to the
73 governing board of Marshall University, no more than eight
74 may be of the same political party. Of the twelve members
75 appointed by the Governor to the governing board of West
76 Virginia University, no more than seven may be of the same
77 political party.

78 (B) Of the nine members appointed by the Governor, at
79 least five shall be residents of the state. Of the thirteen
80 members appointed by the Governor to the governing board

81 of Marshall University, at least eight shall be residents of the
82 state. Of the twelve members appointed by the Governor to
83 the governing board of West Virginia University, at least
84 seven shall be residents of the state.

85 (7) In making lay appointments, the Governor shall
86 consider the institutional mission and membership
87 characteristics including the following:

88 (A) The need for individual skills, knowledge and
89 experience relevant to governing the institution;

90 (B) The need for awareness and understanding of
91 institutional problems and priorities, including those related
92 to research, teaching and outreach;

93 (C) The value of gender, racial and ethnic diversity; and

94 (D) The value of achieving balance in gender and
95 diversity in the racial and ethnic characteristics of the lay
96 membership of each board.

97 (d) *Board member terms.* –

98 (1) The student member serves for a term of one year.

99 Each term begins on July 1.

100 (2) The faculty member serves for a term of two years.
101 Each term begins on July 1. Faculty members are eligible to
102 succeed themselves for three additional terms, not to exceed
103 a total of eight consecutive years.

104 (3) The member representing classified employees serves
105 for a term of two years. Each term begins on July 1.
106 Members representing classified employees are eligible to
107 succeed themselves for three additional terms, not to exceed
108 a total of eight consecutive years.

109 (4) The appointed lay citizen members serve terms of ~~up~~
110 ~~to~~ four years each and are eligible to succeed themselves for
111 no more than one additional term, except that citizen
112 members who are appointed to fill unexpired terms are
113 eligible to succeed themselves for two full terms after
114 completing an unexpired term.

115 (5) A vacancy in an unexpired term of a member shall be
116 filled for the unexpired term within thirty days of the
117 occurrence of the vacancy in the same manner as the original
118 appointment or election. Except in the case of a vacancy, all

119 elections are held and all appointments are made no later than
120 June 30 preceding the commencement of the term. Each
121 board of governors shall elect one of its appointed lay
122 members to be chairperson in June of each year. A member
123 may not serve as chairperson for more than four consecutive
124 years.

125 (6) The appointed members of the boards of governors
126 serve staggered terms of up to four years except that four of
127 the initial appointments to the governing boards of
128 community and technical colleges that became independent
129 July 1, 2008, are for terms of two years and five of the initial
130 appointments are for terms of four years.

131 (e) *Board member eligibility, expenses.* –

132 (1) A person is ineligible for appointment to membership
133 on a board of governors of a state institution of higher
134 education under the following conditions:

135 (A) For a baccalaureate institution or university, a person
136 is ineligible for appointment who is an officer, employee or
137 member of any other board of governors; an employee of any

138 institution of higher education; an officer or member of any
139 political party executive committee; the holder of any other
140 public office or public employment under the government of
141 this state or any of its political subdivisions; an employee of
142 any affiliated research corporation created pursuant to article
143 twelve of this chapter; an employee of any affiliated
144 foundation organized and operated in support of one or more
145 state institutions of higher education; or a member of the
146 council or commission. This subsection does not prevent the
147 representative from the faculty, classified employees,
148 students or the superintendent of a county board of education
149 from being members of the governing boards.

150 (B) For a community and technical college, a person is
151 ineligible for appointment who is an officer, employee or
152 member of any other board of governors; a member of a
153 board of visitors of any public institution of higher education;
154 an employee of any institution of higher education; an officer
155 or member of any political party executive committee; the
156 holder of any other public office, other than an elected

157 county office, or public employment, other than employment
158 by the county board of education, under the government of
159 this state or any of its political subdivisions; an employee of
160 any affiliated research corporation created pursuant to article
161 twelve of this chapter; an employee of any affiliated
162 foundation organized and operated in support of one or more
163 state institutions of higher education; or a member of the
164 council or commission. This subsection does not prevent the
165 representative from the faculty, classified employees or
166 students from being members of the governing boards.

167 (2) Before exercising any authority or performing any
168 duties as a member of a governing board, each member shall
169 qualify as such by taking and subscribing to the oath of office
170 prescribed by section five, article IV of the Constitution of
171 West Virginia and the certificate thereof shall be filed with
172 the Secretary of State.

173 (3) A member of a governing board appointed by the
174 Governor may not be removed from office by the Governor
175 except for official misconduct, incompetence, neglect of duty

176 or gross immorality and then only in the manner prescribed
177 by law for the removal of the state elective officers by the
178 Governor.

179 (4) The members of the board of governors serve without
180 compensation, but are reimbursed for all reasonable and
181 necessary expenses actually incurred in the performance of
182 official duties under this article upon presentation of an
183 itemized sworn statement of expenses.

184 (5) The president of the institution shall make available
185 resources of the institution for conducting the business of its
186 board of governors. All expenses incurred by the board of
187 governors and the institution under this section are paid from
188 funds allocated to the institution for that purpose.

**§18B-2A-3. Supervision of governing boards; promulgation of
rules; data collection and dissemination.**

1 (a) The governing boards are subject to the supervision
2 of the commission or the council, as appropriate, except in
3 those instances where specific statutory exceptions are

4 granted by law to the governing boards of Marshall
5 University and West Virginia University.

6 (b) The governing boards of all state institutions of higher
7 education are subject to the provisions of law that relate to
8 the administration of personnel matters including,
9 specifically, articles seven, eight, nine and nine-a of this
10 chapter and to rules promulgated and adopted in accordance
11 with these provisions.

12 (c) The Chancellor for Higher Education and the
13 Chancellor for Community and Technical College Education,
14 under the supervision of their respective boards, are
15 responsible for the coordination of policies, purposes and
16 rules of the governing boards and shall provide for and
17 facilitate sufficient interaction among the governing boards
18 and between the governing boards and the State Board of
19 Education to meet the goals and objectives provided in the
20 compacts and in section one-a, article one and article one-d
21 of this chapter.

22 (d) The governing boards and the State Board of
23 Education shall provide all information requested by the
24 commission and the council, whether the request is made
25 separately or jointly, in an appropriate format and in a timely
26 manner.

27 (1) Each governing board shall cooperate with the West
28 Virginia Network for Educational Telecomputing (WVNET)
29 in designing appropriate interfaces with the databases of
30 institutions under its jurisdiction and shall grant WVNET
31 direct access to these databases.

32 (2) WVNET, on behalf of the commission or council or
33 both, shall generate reports from the data accessed for the
34 purposes set forth in section five, article one-a and sections
35 eight and ten, article one-d of this chapter.

36 (3) All data accessed or received from an institution shall
37 be treated in a manner consistent with the privacy protections
38 outlined in section ten, article one-d of this chapter.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-11. Employees designated as nonclassified; limits; exceptions; reports required.

1 (a) Notwithstanding any provision of this code to the
2 contrary, by July 1, 2015, the percentage of personnel placed
3 in the category of nonclassified at a higher education
4 organization may not exceed twenty percent of the total
5 number of classified and nonclassified employees of that
6 organization as those terms are defined in section two, article
7 nine-a of this chapter and who are eligible for membership in
8 a state retirement system of the State of West Virginia or
9 other retirement plan authorized by the state. A higher
10 education organization which has more than twenty percent
11 of its employees placed in the nonclassified category as
12 defined by this subsection on July 1, 2011, shall reduce the
13 number of nonclassified employees to no more than
14 twenty-five percent by July 1, 2013, and to no more than
15 twenty percent by July 1, 2015, except as set forth in
16 subsections (b) and (c) of this section.

17 (b) For the purpose of determining the ratio of
18 nonclassified employees pursuant to this section, the
19 following conditions apply:

20 (1) Employees of the commission and the Chancellor
21 for Higher Education and employees of the council and the
22 Chancellor for Community and Technical College
23 Education are considered as one organization;

24 (2) Organizations may count as faculty or classified
25 employees, respectively, administrators who retain the
26 right to return to faculty or classified employee positions;
27 and

28 (3) Athletic coaches are excluded from calculation of
29 the ratio. The commission and the council shall include
30 consideration of this employee category in each review
31 required by section nine of this article and shall monitor
32 organizations' use of this category and include this
33 information in the reports required by subsections (a) and
34 (b), section eight of this article.

35 (c) An organization may place up to twenty-five
36 percent of the total number of classified and nonclassified
37 employees of that organization as defined by this section
38 in the nonclassified category under the following
39 conditions:

40 (1) The governing board of an institution votes to
41 approve any percentage or fraction of a percentage number
42 above twenty percent and seeks and receives the approval
43 of the commission or council, as appropriate, before
44 increasing the total above twenty percent.

45 ~~(2) In the case of personnel employed by the~~
46 ~~commission and the council, the chancellors jointly shall~~
47 ~~agree to increase the percentage number or fraction of a~~
48 ~~number of nonclassified employees beyond twenty percent~~
49 ~~and shall recommend this action to their respective boards~~
50 ~~for approval.~~

51 (A) The commission and council each shall approve or
52 disapprove the increase and shall include the vote, as well

53 as details of the position and justification for placing the
54 position in the nonclassified category, in its minute record.

55 (B) The number of nonclassified personnel may not be
56 increased above twenty percent unless the increase is
57 approved by both the commission and the council.

58 ~~(B)~~ (2) *Powers and duties of commission and council*
59 *regarding nonclassified staff ratios.* –

60 (A) It is the duty of the commission and council jointly to
61 establish criteria for the purpose of making decisions on
62 approving or disapproving requests by organizations to
63 exceed the twenty percent limit for personnel placed in the
64 nonclassified category;

65 (B) The commission and council shall provide technical
66 assistance to organizations under their respective
67 jurisdictions in collecting and interpreting data to ensure that
68 they fulfill the requirements established by this section.
69 Consideration of these issues shall be made part of each
70 review required by section nine of this article and

71 information from the review included in the reports required
72 by subsections (a) and (b), section eight of this article;

73 (C) The chancellors shall monitor the progress of the
74 organizations in meeting the deadlines established in this
75 section and shall report periodically to the council and
76 commission. The commission and council shall make a
77 preliminary compliance report to the Legislative Oversight
78 Commission on Education Accountability by September 1,
79 2013, and a final report on organization compliance to that
80 body by September 1, 2015.

81 (D) Subject to a joint recommendation by the commission
82 and the council and subsequent affirmative action by the
83 Legislature to extend the authority beyond the specified date
84 of termination, the authority of an organization to place more
85 than twenty percent of its personnel in the nonclassified
86 category pursuant to this section expires on July 1, 2016.

87 (d) The current annual salary of a nonclassified employee
88 may not be reduced if his or her position is redefined as a
89 classified position solely to meet the requirements of this

90 section. If such a nonclassified employee is reclassified, his
91 or her salary does not constitute evidence of inequitable
92 compensation in comparison to other employees in the same
93 paygrade.

94 (e) For the purposes of this section only the commission
95 and council are not considered a higher education
96 organization.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

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

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

7 The commission, council and governing boards may not
8 ~~sell lease, convey or otherwise dispose of~~ any real property
9 without first performing the following steps:

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

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

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

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

21 ~~(b)~~ (5) The commission, council or a governing board
22 shall deposit the net proceeds from the sale ~~lease, conveyance~~
23 ~~or other disposal~~ of real property into a special revenue
24 account in the State Treasury to be appropriated by the
25 Legislature in the annual budget bill for the purchase of
26 additional real property, equipment or technology, or for
27 capital improvements or maintenance at the institution that
28 sold the surplus real property.

29 (b) Notwithstanding any other provision of law or this
30 code to the contrary, the commission, council and governing
31 boards each may lease, as lessor, for purposes that further the
32 state goals, objectives and priorities for higher education set
33 out in this code, particularly section one-a, article one and
34 article one-d of this chapter, any real property that it owns,
35 either by contract or at public auction, and retain the
36 proceeds of the lease.

37 (c) Notwithstanding any other provision of law or this
38 code to the contrary, the commission, council and governing
39 boards may convey, transfer or exchange any real property it
40 owns to any other public body.

**§18B-19-19. Exemptions from approval process; reports
required.**

1 Notwithstanding any provision of this chapter to the
2 contrary, the governing boards of Marshall University and
3 West Virginia University each may take any action described
4 or set forth in this article that requires the approval of the

5 commission without seeking commission approval subject to
6 the following conditions:

7 (a) Each governing board shall provide notice of any
8 proposed action to the commission at least thirty days prior
9 to taking the action;

10 (b) Each governing board shall provide any additional
11 information related to the proposed action requested by the
12 commission within thirty days of receiving the commission's
13 request; and

14 (c) Each governing board shall comply with all the
15 mandates in this article, other than commission approval,
16 including the mandates and requirements of section eight,
17 article ten of this chapter regarding the issuance of revenue
18 bonds.