

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

## **House Bill 2033**

BY DELEGATES HAMRICK AND MCGEEHAN

[Introduced February 10, 2021; Referred to the  
Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §18B-1-1g; to amend and reenact §18B-1-2 of said code; and to amend and  
 3 reenact §18B-1B-6 of said code; all relating to public higher education governance by  
 4 establishing matrix necessary for an institution of higher education to become exempt from  
 5 the Higher Education Policy Commission, and identifying Fairmont State University,  
 6 Shepherd University, and West Liberty University as exempted schools based on the  
 7 matrix criteria.

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

**ARTICLE 1. GOVERNANCE.**

**§18B-1-1G. Exempted Schools.**

1 (a) The Legislature finds that exempted status has been an effective means of achieving  
 2 enhanced successes at Marshall University, West Virginia University and at the West Virginia  
 3 School of Osteopathic Medicine. The Legislature further finds that desired benefits of efficiencies  
 4 and incentivizing of needed entrepreneurialism can similarly be achieved, enhancing the  
 5 effectiveness of governing boards in fulfilling the state goals of this chapter, through the  
 6 accountability and autonomy associated with exempted status for one or more of the state  
 7 colleges and universities, if certain criteria are met.

8 (b) The Legislature finds that leading higher education authorities in the nation identify  
 9 common, key performance indicators as an important measure of institutional effectiveness,  
 10 including, but not limited to, enrollment benchmarks, fiscal benchmarks, and student success  
 11 benchmarks.

12 (c) The following definitions apply to terms, used in §18B-1-1g of this code, which are not  
 13 otherwise defined in Chapter 18B of this code:

14 (1) “Days of cash reserved” means the audited end-of-fiscal-year cash balance, multiplied  
 15 by 365, and then divided by the audited total expenses less depreciation, and less OPEB and  
 16 pension liability expenses.

17 (2) "Full time equivalent enrollment" means the total number of student credit hours in the  
18 fall term, as of the official date of measurement established by the commission, divided by 15 for  
19 undergraduate students and divided by 12 for graduate students.

20 (3) "Graduation rates" means the proportion of first time in college students who obtain a  
21 bachelor's degree within six years, as further defined by and reported to the US Department of  
22 Education.

23 (4) "Operating expenses" means audited annual total operating expenses.

24 (5) "Retention rates" means the proportion of first-time, fall term, full-time freshmen  
25 students who are in continuing enrollment in the fall term of the next succeeding year.

26 (d) The establishment of exempted status or the removal from exempted status of a state  
27 institution of higher education is solely the province of the Legislature, by legislative action. The  
28 Legislature will draw guidance as to exempted status for institutions consistent with the provisions  
29 of §18B-1-1g of this code.

30 (e) As a foundation for eligibility to be considered for exempted status by the Legislature,  
31 the following conditions apply:

32 (1) Community and technical colleges are not eligible for exempted status;

33 (2) The West Virginia School of Osteopathic Medicine is an institution of unique  
34 characteristics and its continuing inclusion of exempted status is not subject to the data  
35 benchmarking or eligibility criteria provided for in §18B-1-1g of this code;

36 (3) A university with total full time equivalent enrollment exceeding 10,000 is eligible for  
37 exempted status, notwithstanding the provisions of §18B-1-1g of this code;

38 (f) Eligibility for inclusion by the Legislature in exempted status is indicated by achievement  
39 and maintenance of no less than four of the following data benchmarks:

40 (1) Total full time equivalent enrollment: a three year average of not less than 2,000 FTE;

41 (2) Days of cash reserved: a three year average of not less than 50 days, for an institution  
42 of total annual operating expenses less than \$150 million, or a three year average of not less than

43 40 days, for an institution of total annual operating expenses of \$150 million or more;

44 (3) Operating expenses: a three year average of not less than \$35,000,000;

45 (4) Graduation rates: a three year average of not less than 30 percent;

46 (5) Retention rates: a three year average of not less than 60 percent.

47 (g) The Legislature finds that the following are indicated for exempted schools status and  
48 shall be exempted schools as of the effective date of this section: Fairmont State University;  
49 Marshall University; Shepherd University; West Liberty University; the West Virginia School of  
50 Osteopathy; and West Virginia University, including West Virginia University Potomac State  
51 College, and West Virginia University Institute of Technology.

52 (h) Not later than the January legislative interim meetings of each year, the commission  
53 shall submit a report to the legislative oversight commission on education accountability relating  
54 to the exempted schools eligibility criteria established by §18B-1-1 of this code, providing the data  
55 for each of the three preceding years, as available, and the three year average thereof, for each  
56 of the exempted schools and for each of the state colleges and universities. The commission will  
57 share the report contemporaneously with the institutions.

58 (i) Any failure of an exempted school to maintain three year averages in no less than four  
59 of the listed criteria above the indicated levels in any two consecutive years from the date of  
60 exemption shall be evaluated by the legislative oversight commission on education accountability.  
61 A school maintains exempted status until a further act of the Legislature, if any.

### **§18B-1-2. Definitions.**

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

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

7           (2) “Advanced technology center” means a facility established under the direction of an  
8 independent community and technical college or the council for the purpose of implementing and  
9 delivering education and training programs for high-skill, high-performance 21st Century  
10 workplaces;

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

16           (4) “Board of visitors” means the advisory board previously appointed for the Marshall  
17 University Graduate College and the advisory board previously appointed for West Virginia  
18 University Institute of Technology, which provide guidance to the Marshall University Graduate  
19 College and West Virginia University Institute of Technology, respectively;

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

24           (6) “Chancellor” means the Chancellor for Higher Education where the context refers to a  
25 function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for  
26 Community and Technical College Education where the context refers to a function of the West  
27 Virginia Council for Community and Technical College Education;

28           (7) “Chancellor for Community and Technical College Education” means the chief  
29 executive officer of the West Virginia Council for Community and Technical College Education  
30 employed pursuant to section three, article two-b of this chapter;

31           (8) “Chancellor for Higher Education” means the chief executive officer of the Higher  
32 Education Policy Commission employed pursuant to section five, article one-b of this chapter;

33 (9) "Collaboration" means entering into an agreement with one or more providers of  
34 education services in order to enhance the scope, quality or efficiency of education services;

35 (10) "Community and technical college", in the singular or plural, means the free-standing  
36 community and technical colleges and other state institutions of higher education which deliver  
37 community and technical college education. This definition includes Blue Ridge Community and  
38 Technical College, ~~Bridgmont~~ BridgeValley Community and Technical College, Eastern West  
39 Virginia Community and Technical College, ~~Kanawha Valley Community and Technical College~~  
40 Mountwest Community and Technical College, New River Community and Technical College,  
41 Pierpont Community and Technical College, Southern West Virginia Community and Technical  
42 College, West Virginia Northern Community and Technical College and West Virginia University  
43 at Parkersburg;

44 (11) "Community and technical college education" means the programs, faculty,  
45 administration and funding associated with the delivery of community and technical college  
46 education programs;

47 (12) "Community and technical college education program" means any college-level  
48 course or program beyond the high school level provided through a public institution of higher  
49 education resulting in or which may result in a two-year associate degree award including an  
50 associate of arts, an associate of science and an associate of applied science; certificate  
51 programs and skill sets; developmental education; continuing education; collegiate credit and  
52 noncredit workforce development programs; and transfer and baccalaureate parallel programs.  
53 All programs are under the jurisdiction of the council. Any reference to "post-secondary vocational  
54 education programs" means community and technical college education programs as defined in  
55 this subsection;

56 (13) "Confirm" or "confirmation", when used in reference to action by the commission,  
57 means action in which substantial deference is allocated to the governing authority of a governing  
58 board under its jurisdiction and the action of the commission is to review whether the proposed

59 institutional action is consistent with law and established policy;

60 (14) "Council" means the West Virginia Council for Community and Technical College  
61 Education created by article two-b of this chapter;

62 (15) "Dual credit course" or "dual enrollment course" means a credit-bearing college-level  
63 course offered in a high school by a state institution of higher education for high school students  
64 in which the students are concurrently enrolled and receiving credit at the secondary level.

65 (16) "Essential conditions" means those conditions which shall be met by community and  
66 technical colleges as provided in section three, article three-c of this chapter;

67 (17) "Exempted schools" means West Virginia University, including West Virginia  
68 University Potomac State College, and West Virginia University Institute of Technology, Marshall  
69 University; Fairmont State University; Shepherd University; West Liberty University; and the West  
70 Virginia School of Osteopathic Medicine;

71 (18) "Free-standing community and technical colleges" means Southern West Virginia  
72 Community and Technical College, West Virginia Northern Community and Technical College,  
73 and Eastern West Virginia Community and Technical College, which may not be operated as  
74 branches or off-campus locations of any other state institution of higher education;

75 (19) "Governing boards" or "boards" means the institutional boards of Governors created  
76 by section one, article two-a of this chapter;

77 (20) "Higher Education Policy Commission", "Policy Commission" or "Commission" means  
78 the commission created by section one, article one-b of this chapter;

79 (21) "Independent community and technical college" means a state institution of higher  
80 education under the jurisdiction of the council which is independently accredited, is governed by  
81 its own independent governing board, and may not be operated as a branch or off-campus  
82 location of any other state institution of higher education. This definition includes Blue Ridge  
83 Community and Technical College, ~~Bridgemont~~ BridgeValley Community and Technical College,  
84 Eastern West Virginia Community and Technical College, Kanawha Valley Community and

85 Technical College, Mountwest Community and Technical College, New River Community and  
86 Technical College, Pierpont Community and Technical College, Southern West Virginia  
87 Community and Technical College, West Virginia Northern Community and Technical College;  
88 and West Virginia University at Parkersburg.

89 ~~(22) “Institutional compact” means the compact developed by a state institution of higher~~  
90 ~~education, consistent with the public policy agenda for higher education~~

91 ~~(23)~~ (22) “Institutional operating budget” or “operating budget” means for any fiscal year  
92 an institution’s total unrestricted education and general funding from all sources, including, but  
93 not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding  
94 as approved by the commission or council based on comparisons with peer institutions or to reflect  
95 consistent components of peer operating budgets;

96 ~~(24)~~ (23) “Rule” or “rules” means a regulation, standard, policy or interpretation of general  
97 application and future effect;

98 ~~(25)~~ (24) “Sponsoring institution” means a state institution of higher education that  
99 maintained an administrative link to a community and technical college providing essential  
100 services prior to July 1, 2008. This definition includes institutions whose governing boards had  
101 under their jurisdiction a community and technical college, regional campus or a division delivering  
102 community and technical college education and programs;

103 ~~(26)~~ (25) “State college and university” means Bluefield State College, Concord University,  
104 ~~Fairmont State University, Glenville State College, Shepherd University, West Liberty University~~  
105 or West Virginia State University;

106 ~~(27)~~ (26) “State institution of higher education” means any university, college or community  
107 and technical college under the jurisdiction of a governing board as that term is defined in this  
108 section;

109 ~~(28)~~ (27) “Statewide network of independently accredited community and technical  
110 colleges” or “community and technical college network” means the state institutions of higher



111 education under the jurisdiction of the West Virginia Council for Community and Technical College  
 112 Education which are independently accredited, each governed by its own independent governing  
 113 board, and each having a core mission of providing affordable access to and delivering high  
 114 quality community and technical education in every region of the state; and

115 (29) (28) "Vice Chancellor for Administration" means the person employed in accordance  
 116 with section two, article four of this chapter. Any reference in this chapter or chapter 18C of this  
 117 code to "Senior Administrator" means Vice Chancellor for Administration.

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

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

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

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

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

8 (3) Subject to the confirmation of the commission, the governing boards of the following  
 9 institutions, appoint a president: Bluefield State College, Concord University, ~~Fairmont State~~  
 10 ~~University~~, Glenville State College, ~~Shepherd University~~, ~~West Liberty University~~ and West  
 11 Virginia State University. The exempted schools may appoint a president without the confirmation  
 12 or approval of the commission.

13 (4) Subject to the approval of the council, the governing board of the community and  
 14 technical college appoints a president for Blue Ridge Community and Technical College, Bridge  
 15 Valley Community and Technical College, Eastern West Virginia Community and Technical  
 16 College, Mountwest Community and Technical College, New River Community and Technical  
 17 College, Pierpont Community and Technical College, Southern West Virginia Community and

18 Technical College, West Virginia Northern Community and Technical College, and West Virginia  
19 University at Parkersburg;

20 (b) *Other appointments.* — The President of West Virginia University appoints a campus  
21 president to be the administrative head of Potomac State College of West Virginia University; and  
22 a campus president to be the administrative head of West Virginia University Institute of  
23 Technology;

24 (c) *Evaluation of presidents.* —

25 (1) The appointing governing board shall conduct written performance evaluations of the  
26 institution's president. Evaluations shall be done at the end of the initial contract period and in  
27 every third year of employment as president thereafter, recognizing unique characteristics of the  
28 institution and using institutional personnel, boards of advisors as appropriate, staff of the  
29 appropriate governing board and persons knowledgeable in higher education matters who are  
30 not otherwise employed by a governing board. A part of the evaluation shall be a determination  
31 of the success of the institution in meeting the requirements of its institutional compact and in  
32 achieving the goals, objectives and priorities established in articles one and one-d of this chapter.

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

36 (d) The legislative rules of the commission and council promulgated in accordance with  
37 section six, article one of this chapter and §29A-3A-1 *et seq.* of this code which are in effect on  
38 January 1, 2014, continue in effect unless amended or repealed. The rules provide guidance for  
39 the governing boards, but are not applicable to the exempted schools, in filling vacancies in the  
40 office of president in accordance with this chapter and shall include, but are not limited to,  
41 clarifying the powers, duties and roles of the governing boards, commission, council and  
42 chancellors in the presidential appointment process.

NOTE: The purpose of this bill is to establish a matrix necessary for an institution of higher education to become exempt from the Higher Education Policy Commission, and identifying Fairmont State University, Shepherd University, and West Liberty University as exempted schools based on the matrix criteria.

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