

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2233**

BY DELEGATES DOYLE, ZUKOFF AND ROWE

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

1 A BILL to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended, relating  
2 to directing the Higher Education Policy Commission to coordinate a plan to provide the  
3 first two years of post-secondary education for free tuition to state high school graduates;  
4 requiring the commission to produce a proposal to submit to the Legislature by October 1,  
5 2021.

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

**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 provide shared services in a cost-  
2 effective manner upon request to the state colleges and universities, the council, and the  
3 community and technical colleges; undertake certain statewide and regional initiatives as  
4 specifically designated in this chapter, including those related to the administration of grants and  
5 scholarships and including those in conjunction with the council; to review, confirm, or approve  
6 certain actions undertaken by governing boards, as delineated in this chapter; and assist in the  
7 development of policy that will achieve the goals, objectives and priorities found in §18B-1-1a and  
8 §18B-1D-1 of this code. The commission shall exercise its authority and carry out its  
9 responsibilities in a manner that is consistent and not in conflict with the powers and duties  
10 assigned by law to the West Virginia Council for Community and Technical College Education  
11 and the powers and duties assigned to the governing boards. To that end, the commission has  
12 the following powers and duties relating to the governing boards under its jurisdiction:

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

16 (2) Develop, oversee, and advance the promulgation and implementation of a financing  
17 rule for state institutions of higher education under its jurisdiction except the statutorily exempted  
18 schools. The rule shall meet the following criteria:

19 (A) Provide for an adequate level of educational and general funding for institutions  
20 pursuant to §18B-1A-5 of this code;

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

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

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

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

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

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

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

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

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

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

42 (7) Establish and implement the benchmarks and performance indicators for state colleges  
43 and universities necessary to measure institutional progress in achieving state policy priorities  
44 and institutional missions pursuant to §18B-1D-7 of this code;

45 (8) Establish a formal process for recommending capital investment needs and for  
46 determining priorities for state colleges and universities for these investments for consideration  
47 by the Governor and the Legislature as part of the appropriation request process pursuant to  
48 §18B-19-1 *et seq.* of this code;

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

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

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

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

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

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

67 (15) Approve the total compensation package from all sources for presidents of institutions  
68 under its jurisdiction, except the statutorily exempted schools, as proposed by the governing  
69 boards. The governing boards, except the governing boards of the statutorily exempted schools,  
70 must obtain approval from the commission of the total compensation package both when

71 institutional presidents are employed initially and afterward when any change is made in the  
72 amount of the total compensation package: *Provided*, That the commission will receive notice,  
73 but need not approve or confirm, an increase in the compensation of an institutional president  
74 that is exactly in the ratio of compensation increases allocated to all institutional employees and  
75 approved by the governing board to expressly include the president;

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

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

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

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

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

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

97           (19) Establish and implement policies and procedures to ensure that a student may  
98 transfer and apply toward the requirements for a bachelor's degree the maximum number of  
99 credits earned at any regionally accredited in-state or out-of-state community and technical  
100 college with as few requirements to repeat courses or to incur additional costs as are consistent  
101 with sound academic policy;

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

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

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

119           (23) Seek out and attend regional, national, and international meetings and forums on  
120 education and workforce development-related topics as, in the commission's discretion, are  
121 critical for the performance of their duties as members, for the purpose of keeping abreast of  
122 education trends and policies to aid it in developing the policies for this state to meet the

123 established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 *et*  
124 *seq.* of this code;

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

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

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

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

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

145 (29) Promulgate and implement a rule jointly with the council whereby course credit  
146 earned at a community and technical college transfers for program credit at any other state  
147 institution of higher education and is not limited to fulfilling a general education requirement;

148 (30) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee

149 policy for all governing boards under the jurisdiction of the commission, except the exempted  
150 schools. The rule shall include, but is not limited to, the following:

151 (A) Differences among institutional missions;

152 (B) Strategies for promoting student access;

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

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

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

161 (32) Notwithstanding any other provision of this code to the contrary sell, lease, convey,  
162 or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-  
163 1 *et seq.* of this code;

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

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

171 (35) Academic program review and approval for governing boards under its jurisdiction.  
172 The review and approval includes use of institutional missions as a template to judge the  
173 appropriateness of both new and existing programs and the authority to implement needed  
174 changes.

175 (A) The commission's authority to review and approve academic programs for the  
176 statutorily exempted and administratively exempted schools is limited to programs that are  
177 proposed to be offered at a new location not presently served by that institution: *Provided*, That  
178 West Virginia University and the West Virginia University Institute of Technology are subject to  
179 the commission's authority as provided in §18B-1C-2 of this code.

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

182 (i) New programs should not be implemented which change the institutional mission,  
183 unless the institution also receives approval for expanding the institutional mission;

184 (ii) New programs which will require significant additional expense investments for  
185 implementation should not be implemented unless the institution demonstrates that:

186 (I) The expenses will be addressed by effective reallocations of existing institutional  
187 resources; or

188 (II) The expenses can be legitimately spread out over future years and will be covered by  
189 reasonably anticipated additional net revenues from new enrollments;

190 (iii) A new undergraduate program which is significantly similar to an existing program  
191 already in the geographic service area should not be implemented unless the institution  
192 requesting the new program demonstrates a compelling need in the service area that is not being  
193 met by the existing program: *Provided*, That the academic programs of the statutorily exempted  
194 and administratively exempted schools are not to be taken into consideration except as it relates  
195 to academic programs offered at West Virginia University in Beckley and West Virginia University  
196 Institute of Technology in Beckley.

197 (C) The commission shall approve or disapprove proposed academic degree programs in  
198 those instances where approval is required as soon as practicable. The commission shall  
199 maintain by rule a format model by which a new program approval shall be requested by an  
200 institution. When a request for approval of a new program is submitted to the commission, the

201 chancellor shall provide notice within two weeks as to whether the submission meets the required  
202 format, and if it does not the chancellor shall identify each specific deficiency and return the  
203 request to the institution. The institution may refile the request for approval with the commission  
204 to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the  
205 request meets the required format, the commission shall either approve or disapprove the request  
206 for the new program. The commission may not withhold approval unreasonably.

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

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

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

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

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

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

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

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

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

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

241 (45) Work closely with the State Department of Education and the Council for Community  
242 and Technical College Education to produce a proposal to submit to the Legislature by October  
243 1, 2021, for a method to provide two years of free tuition for post-secondary education to all high  
244 school graduates in the state which may be used in a college, university, community college or a  
245 vocational school.

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

251 (c) The commission may withdraw specific powers of a governing board under its  
252 jurisdiction for a period not to exceed two years, if the commission determines that any of the

253 following conditions exist:

254 (1) The commission has received information, substantiated by independent audit, of  
255 significant mismanagement or failure to carry out the powers and duties of the governing board  
256 according to state law; or

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

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

262 (d) The Higher Education Policy Commission shall examine the question of general  
263 revenue appropriations to individual higher education institutions per student, and per credit hour,  
264 and by other relevant measures at state institutions of higher education under its jurisdiction and  
265 the council shall undertake the same analysis for the community and technical colleges, and on  
266 or before October 1 of each year the commission and council shall each deliver a report to the  
267 Joint Committee on Government and Finance and the Legislative Oversight Commission on  
268 Education Accountability. These reports shall include a recommendation to the Legislature on a  
269 formula or methodology for the allocation of general revenue to be appropriated to such  
270 institutions that provides for ratable funding across all four-year institutions and community and  
271 technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant  
272 measures. The commission and council shall take into consideration the needs of each institution  
273 relating to a base level of appropriation support and mission differentiation. On such basis, the  
274 commission and council shall each make a recommendation to the Legislature as to the amounts  
275 that each such institution should have appropriated to it in the general revenue budget for the  
276 next fiscal year, based upon the total general revenue appropriations that such institutions receive  
277 in aggregate in the enacted budget for the current fiscal year. The commission and council shall  
278 engage with the four-year institutions and community and technical colleges, as appropriate, to

279 seek to develop a consensus on the formulas and methodologies underlying any  
280 recommendations required by this subsection. The commission and council shall provide the four-  
281 year institutions and community and technical colleges with at least 30 days written notice to  
282 comment on any recommendations before any report contemplated by this subsection is provided  
283 to the Legislature.

NOTE: The purpose of this bill is to increase the quality of the state's workforce by increasing access to college, community college and career education through providing the first two years of free tuition for state high school graduates.

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