WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

Senate Bill 619

By Senator Maynard

[Introduced March 10, 2021; referred
to the Committee on Education; and then to the Committee on Finance]

A BILL to repeal §18B-1B-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18B-1-1; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend said code by adding thereto a new section, designated §18B-1A-1; to amend said code by adding thereto two new sections, designated §18B-1B-1a and §18B-1B-5a; to amend and reenact §18B-1B-5 of said code; to amend and reenact §18B-1D-1 of said code; and to amend and reenact §18B-2A-1 and §18B-2A-6 of said code, all relating to reforming the system of higher education governance and administration; specifying legislative intent, findings, and purpose; establishing an Office of Post-Secondary Education and defining the powers and duties thereof; updating definitions; authorizing legislative rulemaking; providing financing objectives and a method for apportioning appropriations to the Office of Post-Secondary Education; terminating the Higher Education Policy Commission; reforming the powers and duties of the Chancellor for Higher Education Policy Commission; defining a distressed institution and establishing procedures to ameliorate the situation or close the institution; requiring reports to the Legislature and establishment of performance agreements to promote accountability; restricting the eligibility of certain persons to serve on a board of governors; and redefining qualifications for an institution of higher education to become a university.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1. Legislative intent; findings; purpose; establishment of state objectives for higher education.

(a) *Intent*. — It is the intent of the Legislature that the governance system, goals and objectives, distribution of state funding and the manner of accountability for the state’s post-secondary colleges and universities be consistent with the findings set forth below.

(b) *Findings*. —

The Legislature finds that in order for West Virginia to compete economically, both nationally and internationally, as well as deliver the services necessary to meet regional and statewide needs, it is vital that it maintains a high-quality system of post-secondary education.

The Legislature further finds that a high-quality system of post-secondary education would include a publicly-supported system of colleges and universities that is capable of providing the people of West Virginia the opportunity for access to high-quality programs at a competitive price for both students and their families.

The Legislature further finds that a high-quality system of post-secondary education that meets regional and statewide needs includes: (1) Preparing students for jobs in high demand fields that are essential to the economic growth of the state as well as providing critical services to the people of West Virginia; and (2) engaging in meaningful research in areas that promote economic growth by meeting the needs of society.

The Legislature further finds that in order for many of the state’s publicly-supported colleges and universities to maintain their fiscal integrity while advancing their mission, it is important that they attract nonresident students whose payment of tuition and fees that more closely reflects the actual cost of instruction supports the state’s ability to provide lower costs for tuition and fees for West Virginia students.

The Legislature further finds that high-quality programs are defined as those that prepare its students for real world success by meeting academic objectives that include assuring that each graduate is competent in their chosen field of study; has the workforce skill necessary to succeed in the economic marketplace; is capable of participating as a knowledgeable member of American civil society; and possesses a solid ethical foundation.

The Legislature further recognizes that state funding of its public colleges and universities through direct appropriation has been reduced to as low as 15 percent of an institution’s operating budget and that, as such, a system of bureaucratic control by a state-level entity while providing relatively small support is unreasonable and a hinderance to an institution competing both nationally and internationally.

The Legislature finds that the requirement that all public institutions of higher education require national accreditation renders further oversight by a highly-centralized, state-level bureaucracy as unnecessarily duplicitous and burdensome.

The Legislature further finds due to the advancements in technology and the online availability of post-secondary education, all of the state institutions of higher education are subject to the highly competitive academic marketplace.

The Legislature further finds that a bureaucratic governance system characterized by top-down control, overreaching rules and regulations, success measured by compliance with such rules and regulations and a lack of fiscal accountability for the public’s support has been incapable of creating and maintaining a high-quality system of post-secondary education that would allow our public institutions to pursue and attain their highest level of potential and enable them to compete nationally and internationally while meeting regional and statewide needs.

The Legislature further finds that a governance system for higher education based upon local control, competition, success measured by meeting regional and statewide needs and fiscal accountability based upon such success will provide our public colleges and universities the opportunity they need to succeed while assuring taxpayers that their support is producing real results.

The Legislature further finds that there is a need for a state-level office of higher education, but that its mission should be confined to providing cost-effective shared services when requested; undertake certain statewide and regional initiatives as set forth in this chapter; administer grants and scholarships; serve a state point of contact for higher education; and generate, maintain, and publish data that would be beneficial to (1) the Legislature in their decision-making process; and (2) students and families seeking to attend a public college or university in West Virginia. The only circumstances in which a state-level office would assume administrative control of a public college or university would be in circumstances in which the fiscal operation of the institution is so impaired that a reorganization or closing of the institution is warranted.

(c) *Purpose*. — The primary purpose for supporting a system of state colleges and universities in West Virginia is to: (1) Provide reasonable access for those state residents seeking a post-secondary education at a competitive price; (2) meet the state’s specific workforce needs in high demand fields of employment; and (3) meet certain specific state objectives as defined by the Legislature.

§18B-1-2. Definitions.

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

“Academic objectives” means achieving competence in a student’s chosen field of study; possessing the workplace skills necessary to succeed in the economic marketplace; participating as a knowledgeable member of American civil society; an ethical foundation; and producing meaningful research that enhances the lives of the people of West Virginia.

“Administratively linked community and technical college” means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

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

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

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

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

“Chancellor” means the Chancellor for Higher Education where the context refers to a function of the ~~Higher Education Policy Commission~~ Office of Post-secondary Education. “Chancellor” means the Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

“Chancellor for Community and Technical College Education” means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to §18B-2B-3 of this code;

“Chancellor for Higher Education” means the chief executive officer of the ~~Higher Education Policy Commission~~ Office for Post-secondary Education employed pursuant to §18B-1B-5 of this code;

“Collaboration” means entering into an agreement with one or more providers of education services in order to enhance the scope, quality, or efficiency of education services;

“Community and technical college”, in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

“Community and technical college education” means the programs, faculty, administration, and funding associated with the delivery of community and technical college education programs;

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

~~“Confirm” or “confirmation”, when used in reference to action by the commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the commission is to review whether the proposed institutional action is consistent with law and established policy~~

“Council” means the West Virginia Council for Community and Technical College Education created by §18B-2B-1 *et seq.* of this code;

“Council of Presidents” means an advisory body to the chancellor consisting of the chief executive officers of each of the state institutions of higher education.

“Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level;

“Essential conditions” means those conditions which shall be met by community and technical colleges as provided in §18B-3C-3 of this code;

“Exempted schools” or “statutorily exempted school” means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine;

“Governing boards” or “boards” means the institutional boards of governors created by §18B-2A-1 of this code;

“Higher Education Policy Commission”, “policy commission” or “commission” means ~~the commission created by §18B-1B-1 of this code~~ the Office of Post-secondary Education as successor to the Higher Education Policy Commission;

“Independent community and technical college” means a state institution of higher education under the jurisdiction of the council, which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

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

“Institutional performance agreement” means that agreement entered into by and between the chancellor and each state institution of higher education by which the institution agrees to achieve certain goals upon which have been agreed;

“Rule” or “rules” means a regulation, standard, policy, or interpretation of general application and future effect;

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

“State college and university” means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty University, West Virginia University, West Virginia University Institute of Technology, the West Virginia School of Osteopathic Medicine, or West Virginia State University;

“State institution of higher education” means any university, college, or community and technical college under the jurisdiction of a governing board as that term is defined in this section; and

“Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state; ~~and~~

~~“Vice chancellor for administration” means the person employed in accordance with §18B-4-2 of this code. Any reference in this chapter or chapter 18C of this code to “senior administrator” means vice chancellor for administration~~

§18B-1-6. Rulemaking.

(a) ~~The commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article. This grant of rule-making authority does not limit, overrule, restrict, supplant or supersede the rule-making authority provided to the exempted schools~~ The Office of Post-secondary Education is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with §29A-3A-1 *et seq*. of this code, subject to §18B-1-3 of this code. This grant of rule-making authority does not limit, overrule, restrict, supplant or supersede the rule-making and policy-making authority provided to the exempted schools.

(b) The council is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with §29A-3A-1 *et seq*. of this code, subject to §18B-1-3 of this code. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing boards of state institutions of higher education to promulgate, adopt, amend or repeal any rule under this code:

(1) “Rule” means any regulation, guideline, directive, standard, statement of policy or interpretation of general application which has institution-wide effect or which affects the rights, privileges or interests of employees, students or citizens. Any regulation, guideline, directive, standard, statement of policy or interpretation of general application that meets this definition is a rule for the purposes of this section.

(2) Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department or school or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

(3) The commission shall promulgate a rule to guide the development of rules made by the governing boards, including a process for comment by the commission as appropriate, except the exempted schools, who shall each promulgate their own such rules. The council shall promulgate a rule to guide the development and approval of rules made by the governing boards. The commission and council shall provide technical assistance in rulemaking as requested. The rules promulgated by the exempted schools, the commission and council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a 30-day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines and other policy statements are posted and can be accessed by the public;

(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines and other policy statements to the extent technically and financially feasible; and

(D) Except for the exempted schools, a procedure for the governing board to follow in submitting its rules for review and comment by the commission and approval by the council, as appropriate:

(i) The governing boards shall submit rules for review and comment to the commission.

(ii) The commission shall return to the governing board its comments and suggestions within 15 business days of receiving the rule.

(iii) If a governing board receives comments or suggestions on a rule from the commission, it shall record these as part of the minute record. The rule is not effective and may not be implemented until the governing board holds a meeting and places on the meeting agenda the comments it has received from the commission.

(d) Nothing in this section requires that any rule reclassified or transferred by the commission or the council under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or modified.

(e) The commission and council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article.

(f) The governing boards shall promulgate and adopt any rule which they are required to adopt by this chapter or chapter eighteen-c of this code no later than July 1, 2011 unless a later date is specified. On and after this date:

(1) Any rule of a governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

(2) Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with this section.

(g) Within 15 business days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended or repealed by the governing board. For all rules adopted, amended or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when each listed rule was promulgated and adopted.

(i) Any rule of the commission or council in effect at the time of the re-enactment of this section or approved by the Legislature during its 2017 Regular Session shall remain in effect and applicable to an institution of higher education under the jurisdiction of the commission or council until such time as an institution exercises its authority to adopt a rule pursuant to this chapter.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

§18B-1A-1. Legislative financing goals; state appropriation; allocation to state colleges and universities.

(a) For the purposes of providing financial support for state institutions of higher education, the Legislature recognizes the following:

(1) The need to provide the people of West Virginia the opportunity for a high-quality post-secondary education through a base of support for each institution

(2) The need to incentivize institutions to meet regional and state workforce needs; and

(3) The need to create graduates who are prepared for real world success;

(b) The Legislature further recognizes that in appropriating and allocating public support for post-secondary education, the funding in any year is dependent upon a number of factors that impact the state’s budget as a whole, statutorily guaranteeing a certain dollar amount or percentage increase in funding to higher education as has been done in the past has proven to be unrealistic and impractical; and the more prudent approach to providing support for higher education is to base the appropriation provided to each institution on a formula based upon the percentages of the total allocation provided.

(c) *State appropriation*. — The Legislature shall make an appropriation to the Office of Post-secondary Education for the benefit of the state’s colleges and universities. The chancellor shall apportion this appropriation for the state colleges and universities among the following pools with no pool receiving more than 30 percent of the total appropriation; provided, the apportionment to the chancellor’s investment fund shall not exceed 10 percent of the appropriation:

(1) Base of support;

(2) Resident support;

(3) Workforce needs;

(4) Academic objectives; and

(5) Chancellor’s investment fund.

(d) *Allocation among institutions*. — The chancellor shall allocate amounts from each pool based upon the following:

(1) *Base of support*. — Each state institution of higher education shall receive a base of support based upon its percentage of full-time equivalent students (FTEs) in proportion to the total number of FTEs at all state institutions of higher education and exempted schools.

(2) *Resident support*. — Each state institution of higher education shall receive an additional base of support based upon its percentage of resident full-time equivalent students (FTEs) in proportion to the total number of resident FTEs at all state institutions of higher education and exempted schools.

(3) *Workforce needs*. — Each state institution of higher education shall receive additional support based upon its ability to address a percentage of the state’s workforce needs in high demand areas as set forth in its performance agreement.

(4) *Academic objectives*. — Each state institution of higher education shall receive additional support based upon its ability to meet the state’s academic objectives as set forth in its performance agreement.

(5) *Chancellor’s investment fund*. — The Office of Post-secondary Education shall receive support for use at the chancellor’s discretion to promote regional and statewide higher education initiatives; assist individual institutions in investing in new programs that meet state and regional workforce needs; invest in meaningful research that advances the quality of life for the people of West Virginia; and, for a period not to exceed three years from the effective date of this provision, provide budgetary assistance for an institution during the transition from the prior allocation of state support to allocation of state support under this section.

(e) *Calculation of bases of support*. — For the purposes of subdivisions (d)(1) and (d)(2) of this section, the chancellor shall use a three-year rolling average in calculating FTEs for total number of students and the number of FTEs per institution.

(f) *Performance agreements*. — The chancellor shall negotiate and enter into a performance agreement with each state college and university that will set forth the allocation for state support based upon the institution’s ability to meet state workforce needs, academic objectives and any other objective to be funded from the chancellor’s investment fund. No performance agreement shall exceed five years in duration.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

[Repealed.]

§18B-1B-1a. Office of Post-secondary Education established; duties and responsibilities.

(a) There is hereby established an “Office of Post-secondary Education,” hereinafter referred to as “OPE.” It is the intent of the Legislature that the OPE is primarily responsible for (1) Providing shared services in a cost-effective manner upon request of the state colleges and universities, the Council of Presidents, and the community and technical colleges; (2) undertaking certain statewide and regional initiatives specifically designated in this code or initiated under authority granted to the chancellor; (3) administering grants and scholarships and including those in conjunction with the council; and (4) other duties and responsibilities that may be delegated in this code.

The OPE has the following duties and responsibilities:

(1) Administering state appropriations among the state colleges and universities as provided in §18B-1A-4 of this code;

(2) Serve as a point of contact to state policymakers including, but not limited to, the Governor, the legislative leadership, and the Legislative Oversight Commission on Education Accountability.

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

(4) Administer scholarship and grant programs as provided in the code;

(5) Establish and maintain a formal process for recommending capital investment needs and priorities for state institutions of higher education for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to §18B-19-1 *et seq*. of this code.

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

(7) Provide suitable offices in Kanawha County for the chancellor and any vice-chancellors or other staff.

(8) Provide sufficient information that will enable parents and students to make academic decisions that will best position such student at an early age to succeed in college or other post-secondary or career-related opportunity.

(9) Facilitate among the council and the state colleges and universities an agreement that determines which students shall be placed in remedial or developmental courses.

(10) Facilitate among the council and the state colleges and universities an agreement that establishes the following:

(A) The maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution that may be transferred and applied towards any degree;

(B) The process by which a student who has gained knowledge and skills through employment, participation in education, and training at vocational schools or other educational institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to granted academic credit or advanced placement standing toward the requirements of an associate’s degree or a bachelor’s degree at a state institution of higher education.

(11) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriations request that reflects recommended appropriations from the governing boards of the state colleges and universities. The OPE shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and the governing boards under the council’s jurisdiction.

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

(13) Facilitate the creation of agreements or joint rules among the council and the governing boards of the state colleges and universities;

(14) Notwithstanding any other provision of this code to the contrary, sell, lease, convey or otherwise dispose of all or part of any real property acquired by the OPE, the Higher Education Policy Commission, or any other predecessor body;

(15) Conduct policy analysis and research on issues affecting higher education in West Virginia; and

(16) Distribution of funds appropriated for the benefit of the state’s community and technical colleges and state colleges and universities.

§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors and other staff.

~~(a) The commission, created by §18B-1B-1 of this code, shall employ a Chancellor for Higher Education who is the Chief Executive Officer of the Commission and who serves at its will and pleasure.~~

~~(b) The commission shall set the qualifications for the position of chancellor and, when a vacancy occurs, shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:~~

~~(1) Possesses an excellent academic and administrative background;~~

~~(2) Demonstrates strong communication skills;~~

~~(3) Has significant experience and an established national reputation as a professional in the field of higher education;~~

~~(4) Is free of institutional or regional biases; and~~

~~(5) Holds or retains no other administrative position within a system of higher education while employed as chancellor:~~ *~~Provided~~*~~, That nothing contained in this subsection may preclude the Chancellor of the commission from also serving as the Chancellor Of The Council for Community and Technical College Education, as provided in §18B-2B-3 of this code.~~

~~(c) The commission shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract not to exceed three years. At the end of each contract period, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level.~~

~~(d) When filling a vacancy in the position of chancellor, the commission shall enter into an initial employment contract for one year with the candidate selected. At the end of the initial contract period, and each contract period thereafter, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the chancellor.~~

 ~~(e) The commission sets the chancellor’s salary. The salary may not exceed by more than 20 percent the average annual salary of the chief executive officers of state systems of higher education in the states that comprise the membership of the Southern Regional Education Board. Pursuant to §6B-2-5(l) of this code, the chancellor may receive only one form of salary if such person serves as the chancellor for both the higher education policy commission and the council for community and technical colleges.~~

~~(f) The commission may employ a Senior Director for Health Sciences who serves at the will and pleasure of the commission. The Senior Director for Health Sciences shall coordinate the West Virginia University School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The Senior Director for Health Sciences shall perform all duties assigned by the chancellor, the commission and state law. If there is a vacancy in the office of Senior Director of Health Sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee.~~

~~(g) The commission shall employ a Vice Chancellor for Administration pursuant to §18B-4-2 of this code.~~

~~(h) On behalf of the commission, the chancellor may enter into agreements with any state agency or political subdivision of the state, any state institution of higher education or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the commission or by state law.~~

~~(i) The chancellor is responsible for the daily operations of the commission and has the following responsibilities relating to the commission and the governing boards under its jurisdiction:~~

~~(1) To carry out policy and program directives of the commission;~~

~~(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in §18B-1-1a and §18B-1-1d of this code, and in the compacts;~~

~~(3) To prepare and submit to the commission for its approval the proposed budget of the commission including the offices of the chancellor and the vice chancellors;~~

~~(4) To assist the governing boards in developing rules, subject to §18B-1-6 of this code. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in §29A-3A-1~~ *~~et seq~~*~~. of this code. The commission and the council, either separately or jointly as appropriate, are responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;~~

~~(5) To consult with institutions on human relations policies and rules;~~

~~(6) To perform all other duties and responsibilities assigned by the commission or by state law.~~

~~(j) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.~~

~~(k) The chancellor, with the commission, advises the Legislature on matters of higher education in West Virginia. The Chancellor shall work closely with the Legislative Oversight Commission on Education Accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals, objectives and priorities for higher education that the Legislature has established by law.~~

~~(l) The chancellor may design and develop for consideration by the commission new statewide or region-wide initiatives in accordance with the goals set forth in §18B-1-1a and §18B-1D-1~~ *~~et seq.~~* ~~of this code, and the public policy agenda articulated by the commission. In those instances where the initiatives to be proposed have a direct and specific impact or connection to community and technical college education as well as to baccalaureate and graduate education, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education shall design and develop the initiatives jointly for consideration by the commission and the council.~~

~~(m) To further the goals of cooperation and coordination between the commission and the State Board of Education, the chancellor serves as an ex officio, nonvoting member of the state board. The chancellor shall work closely with members of the State Board of Education and with the State Superintendent of Schools to assure that the following goals are met:~~

~~(1) Development and implementation of a seamless kindergarten-through-college system of education; and~~

~~(2) Appropriate coordination of missions and programs~~

(a) The Governor shall employ a Chancellor for Higher Education by contract for a period not to exceed five years and who shall work at his or her will and pleasure.

(b) The duties and responsibilities of the chancellor shall be as follows:

(1) Serve as the Chancellor of the West Virginia Council for Community and Technical College Education;

(2) Serve as chief executive officer of the Office of Post-secondary Education;

(3) Serve as an ex-officio member of the Council of Presidents;

(4) Serve as an ex-officio member of the State Board of Education.

(5) Employ those Vice-Chancellors and other staff as deemed necessary for the effective and efficient operation of the office;

(6) Assist the state institutions of higher education in matters related to or of interest and concern to these institutions;

(7) Serve as an advocate and spokesperson for the state institutions of higher education;

(8) Enter into agreements with any state agency or political subdivision of the state, any state institution of higher education or any other person or entity to enlist staff assistance to execute the duties and responsibilities of the office;

(9) Prepare and submit to the Legislature a consolidated budget for operation of the state institutions of higher education.

(10) Design, develop, and implement new state or region-wide initiatives that promote higher education in West Virginia.

(11) Advise the Legislature on matters of higher education in West Virginia.

(12) Perform all other duties assigned by contract or by state law.

(c) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

§18B-1B-5a. Distressed institutions.

(a) If the chancellor determines that an institution of higher education has become financially or academically unable to function so as to threaten the quality of the academic experience to be delivered, he or she may file a request with the Governor that the college or university be declared a distressed institution. The request must include, in detail, the facts and circumstances upon which such a request has been made.

(b) The chancellor shall provide notice to the institution by certified mail that the request is being made and shall include a copy of the request submitted to the Governor.

(c) An institution receiving a notice pursuant to subsection (b) of this section, shall be given 30 days from the receipt of such notice to respond in writing to the Governor with the chancellor receiving a copy of the response.

(d) The Governor shall review the request, the response and any other information that is available for his or her consideration. Upon review, the Governor shall issue an executive order within six months of the receipt of a response, or receipt of a request if no response is submitted, that:

(1) Declares the college or university a distressed institution and placing the college or university into receivership under the administration of the chancellor for a period not to exceed three years during which time the chancellor shall assume all authority over the institution including the duties and responsibilities provided the governing board in §18B-2A-4 of the code;

(2) Declares the college or university a distressed institution and reorganizes the institution through a merger, acquisition, or other form of reorganization;

(3) Declares the college or university a distressed institution and closes the college or university; or

(4) Dismisses the request.

(e) The Governor shall have the authority to provide within his or her executive order any charge or guidelines that are not contrary to this section.

(f) Pursuant to his or her rule-making authority, the chancellor shall issue guidelines that will provide notice as to the criteria to be considered in making a request to the Governor under this section.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-1. ~~Master plan repealed; accountability system continued~~ Legislative findings; identifying workforce needs; report to the Legislature; performance agreements; annual report to the Legislature; collection and dissemination of data and information by Office of Post-secondary Education.

~~(a) The Legislature finds that:~~

~~(1) Accountability and strategic planning are valuable and necessary components of establishing and achieving goals for higher education in this state and fulfilling missions of the institutions;~~

~~(2) To be most effective and efficient, the accountability and strategic planning process should be coordinated, streamlined, and nonduplicative; and~~

~~(3) Redundant reporting requirements exist in the accountability and strategic planning process which serve to waste scarce resources and decrease efficiency.~~

~~(b) It is the intent of the Legislature that the accountability and strategic planning process for public higher education in this state continues in a unified and comprehensive manner while utilizing the resources of the higher education systems in an economical and efficient manner. To that end:~~

~~(1) The requirement for a statewide master plan for public higher education is repealed, and any provision of this code regarding the plan is void and of no effect;~~

~~(2) The requirements for state and institutional compacts for public higher education are repealed, and any provision of this code regarding the compacts are void and of no effect; and~~

~~(3) When collecting data from an institution, the commission and council first shall consider data generated from the unit-record student, registration, course and personnel files, the audited financial statements, and any source previously submitted formally to the commission or council from which the requested data may be obtained, so long as the data or information available through these sources reflects the most current reporting period~~.

(a) *Findings*. — The Legislature finds that:

(1) Accountability as measured by real results is a valuable and necessary component of fulfilling the purposes for the state’s funding of its state institutions of higher education;

(2) To be most effective, the results the people of West Virginia deserve for their investment in higher education should reflect the workplace needs of the state and fulfilling the academic objectives they require;

(3) Accountability for the results produced by each institution depends upon the mission and fields of study offered by each individual college and university. A one-size-fits-all approach as utilized in the past has proven unsuccessful.

(b) *Workforce needs and academic objectives*. — The chancellor shall work with federal, state and local government agencies, research organizations, employers, employer associations, employee associations, nonprofit organizations, and any other organization that may provide beneficial input to ascertain the workforce needs of the state and the academic skills necessary for graduates to succeed in the highly competitive economic marketplace.

(c*) Report to the Legislature*. — Based upon his or her findings, the chancellor shall prepare a report that he or she shall present to the Legislature that includes: (1) A projection of workforce needs for the state for a period not to exceed five years; and (2) the academic skills necessary for graduates to succeed in the highly competitive economic marketplace.

(d) *Performance agreements*. — The chancellor shall negotiate a performance agreement with each state college and university that shall set goals for:

(1) Meeting the workforce needs of the state; and

(2) Meeting the academic objectives for the state’s college and university graduates.

(3) *Annual report*. — The chancellor shall report to the Legislature, annually, the progress made by each state college and university in meeting the goals established under the performance agreements.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

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

(a) *Findings*. —

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

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

(2) The technical or professional expertise and institutional experience of a classified employee or, as appropriate, nonclassified employee of the institution governed by the board;

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

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

(b) *Boards of governors established*. —

A board of governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty University, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University, West Virginia University and West Virginia University at Parkersburg.

(c) *Board membership*. —

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

(2) The Board of Governors for Marshall University consists of 16 persons. The Board of Governors for West Virginia University consists of 17 persons. The boards of governors of the other state institutions of higher education consist of 12 persons.

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

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

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

(C) A member from the institutional classified employees, duly elected by the classified employees of the respective institution or, if the respective institution does not have classified employees, a member from the institutional nonclassified employees duly elected by the nonclassified employees of the respective institution.

(4) For the Board of Governors at Marshall University, 13 lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section;

(5) For the Board of Governors at West Virginia University, 12 lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section, and additionally:

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

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

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

(A) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the 13 members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the 12 members appointed by the Governor to the governing board of West Virginia University, no more than seven may be of the same political party.

(B) Of the nine members appointed by the Governor, at least five shall be residents of the state. Of the 13 members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the 12 members appointed by the Governor to the governing board of West Virginia University, at least seven shall be residents of the state.

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

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

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

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

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

(d) *Board member terms*. —

(1) The student member serves for a term of one year. Each term begins on July 1.

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

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

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

(5) A vacancy in an unexpired term of a member shall be filled for the unexpired term within 30 days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections are held and all appointments are made no later than June 30 preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than four consecutive years.

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

(e) *Board member eligibility, expenses*. —

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

~~(A) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors within this state; an employee of any institution of higher education within this state; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission: Provided, That if an appointee is an employee or board member of an out-of-state higher education institution, there is no apparent conflict of interest caused by the individual serving in both capacities. This subsection does not prevent the representative from the faculty, classified employees or, as appropriate, nonclassified employees, students or the superintendent of a county board of education from being members of the governing boards.~~

~~(B) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors within this state; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education within this state; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to §18B-12-1 et seq. of this code; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission: Provided, That if an appointee is an employee or board member of an out-of-state higher education institution, there is no apparent conflict of interest caused by the individual serving in both capacities. This subsection does not prevent the representative from the faculty, classified employees or, as appropriate, nonclassified employees or students from being members of the governing boards.~~

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

~~(3) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.~~

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

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

A person is ineligible for appointment to membership on a board of governors of a state institution of higher education who is an officer, employee or member of any other board of governors within this state; an employee of any institution of higher education within this state; an officer or member of any political party executive committee; an employee or the holder of any elective or appointed office of the federal and state government; an employee of any affiliated research corporation created pursuant to §18B-12-1 *et seq*. of this code; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council: *Provided*, That if an appointee is an employee or board member of an out-of-state higher education institution, there is no apparent conflict of interest caused by the individual serving in both capacities. This subsection does not prevent the representative from the faculty, classified employees or, as appropriate, nonclassified employees, students, or the superintendent of a county board of education from being members of the governing boards.

§18B-2A-6. University status for public baccalaureate institutions of higher education.

(a) The purpose of this section is to redesignate certain existing public baccalaureate institutions as universities and to provide a mechanism for other public baccalaureate institutions to become universities. The change in name is based on each institutions ability to meet minimum standards developed and adopted by the commission.

(b) ~~Each governing board of a public baccalaureate institution is authorized to make changes which would further its eligibility to attain university status:~~

~~(1) If the college meets the eligibility requirements established by the commission to attain university status and if the commission grants university status, then the governing board shall determine the effective date on which the public baccalaureate institution becomes a university; and~~

~~(2) On and after the effective date designated by the governing board, the baccalaureate institution shall be designated a university~~

Each public baccalaureate institution who has received the approval of the Higher Learning Commission or other appropriate accrediting body to offer degrees in graduate programs shall be qualified for university status. On or after the date of approval by the Higher Learning Commission or other appropriate accrediting body, the governing board shall determine the effective date on which the institution becomes designated a university.

(c) Concord college, Fairmont state college, Shepherd college and West Virginia state college, having met the eligibility requirements established by the commission to attain university status, are hereby designated as universities on the effective date of this section.

(d) An institution may not request or seek additional state appropriations as a result of the redesignation provided for in this section. No consequences, including the need to meet future accreditation requirements in order to maintain university status, which arise as a result of designating an existing state college as a university, provide sufficient justification for an institution to request or in any way seek additional state funds.

(e) Notwithstanding any provision of this code to the contrary, Marshall University and West Virginia University are, and remain, the only research and doctoral degree-granting public institutions of higher education in this state.

NOTE: The purpose of this bill is to reform the system for the governance and administration of higher education institutions by replacing the Higher Education Policy Commission with a new Office of Post-secondary Education; establishing new goals; reforming the allocation of certain appropriations; and providing measures for increased accountability.

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