

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 550

BY SENATOR TARR

[Introduced February 01, 2022; referred
to the Committee on Finance]

1 A BILL to amend and reenact §18B-1-1F of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §18B-1B-4 of said code; and to amend and reenact §18B-2B-6 of said
 3 code, all relating to funding for institutions of higher education; clarifying the powers and
 4 duties of the Higher Education Policy Commission; establishing additional criteria for a
 5 state college or university to be considered administratively and programmatically exempt;
 6 directing the Higher Education Policy Commission to develop and implement a funding
 7 formula model; providing that the funding formula shall govern the appropriation requests
 8 to the Legislature regarding distribution of general revenue to the state's institutions of
 9 higher education; providing for rulemaking; setting forth factors to be included in the rule;
 10 setting out factors which may not be included in the rule; clarifying the powers and duties
 11 of the West Virginia Council for Community and Technical College Education; allowing for
 12 an exemption from oversight by the council in certain circumstances, requiring an
 13 independent audit; and providing for the audit annually.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. State college and university exemption status.

- 1 (a) The Legislature finds that:
- 2 (1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling
 3 certain goals can be incentivized through the accountability and autonomy associated with
 4 exemption status for state colleges and universities based on meeting certain criteria; and
- 5 (2) Leading higher education authorities in the nation identify common, key performance
 6 indicators as an important measure of institutional effectiveness, including, but not limited to,
 7 enrollment benchmarks, fiscal benchmarks, and student success benchmarks.
- 8 (b) The following definitions apply to terms used in this section:
- 9 (1) "Administratively exempted schools" means state colleges and universities:
- 10 (A) That achieve and maintain three out of five of the following:

11 (i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

12 (ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

13 (iii) Credit head count enrollment: A three-year credit head count enrollment increase, or
14 a decrease of not more than five percent over the same period;

15 (iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved;

16 and

17 (v) Composite Financial Index: A Composite Financial Index of not less than one as
18 reported in the college and university's audited financial statements; or

19 (B) Whose governing board requests a review by the chancellor of any special
20 circumstances and the commission grants administratively exempted status based on those
21 special circumstances as verified by the chancellor after his or her review.

22 (2) "Composite Financial Index" means the benchmarking tool used by the Higher
23 Learning Commission as a financial indicator and developed specifically for the higher education
24 industry and is a combination of several different ratios, each of which is comprised of data that,
25 when analyzed further, can provide insight into an institution's financial health and inform
26 decision-making processes;

27 (3) "Credit headcount enrollment" means the total number of unique students, but not
28 counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall,
29 spring, and summer terms in a given academic year at a specific institution;

30 (4) "Days of cash reserved" means the audited end of fiscal year cash balance, multiplied
31 by 365, and then divided by the audited total expenses less depreciation, and less other post
32 employment benefit and pension liability expenses;

33 (5) "Graduation rates" means the proportion of first time in college students who obtain a
34 bachelor's degree within six years, as further defined by and reported to the commission;

35 (6) "Retention rates" means the proportion of first-time, fall term, full-time freshmen
36 students who are in continuing enrollment in the fall term of the next succeeding year; and

37 (7) "State college and university" shall have the same meaning as provided in §18B-1-2
38 of this code.

39 (c) Any state college and university may apply to the commission for designation as an
40 administratively exempted school. The commission shall make its determination as to whether to
41 grant or deny exemption designation based on the definition of administratively exempted school.
42 The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this
43 code to implement the provisions of this section and that addresses loss of an administratively
44 exempted designation. The rule shall at least include the following:

45 (1) After the first year an administratively exempted school fails to meet three of the five
46 criteria under the definition of administratively exempted schools, the commission may advise the
47 institution on strategies that may be implemented in order to meet three of the five criteria before
48 the following year;

49 (2) An institution may not lose its designation as an administratively exempted school until
50 it has failed to meet three of the five criteria under the definition of administratively exempted
51 schools for two consecutive years;

52 (3) If an institution is administratively exempt based on special circumstances, the
53 commission may revoke the administratively exempted status of a state college and university if
54 it determines that the special circumstance that the state college and university's administratively
55 exempted status is based on no longer exists; and

56 (4) The commission shall provide notice to the institution at least 30 days before revoking
57 the institution's administratively exempted status.

58 (d) Notwithstanding any other provision of this code to the contrary:

59 (1) West Virginia University, including West Virginia University Potomac State College and
60 West Virginia University Institute of Technology; Marshall University; and the West Virginia School
61 of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are
62 institutions of unique characteristics and their continuing inclusion as a statutorily exempted

63 school is confirmed; and

64 (2) No other state institution of higher education maintains exempted school status
65 pursuant to any other provision of this code except any exempted school status designated by
66 the commission pursuant to this section: Provided, That any university or college shall be a
67 statutorily exempt school if the state appropriation to that school is less than 40 percent of their
68 gross annual revenue for three consecutive years.

69 (e) Notwithstanding any other provision of this code to the contrary, any state college and
70 university that applies and is designated by the commission as an administratively exempted
71 school is exempt from the following:

72 (1) The required approval of capital projects to ensure that capital projects and facility
73 needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

74 (2) The development and approval of institutional mission definitions pursuant to §18B-
75 1B-4(a)(34) of this code;

76 (3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

77 (4) The rules providing guidance to the governing boards in filling vacancies in the office
78 of the president pursuant to §18B-1B-6(d) of this code;

79 (5) The commission's rule governing and controlling acquisitions and purchases pursuant
80 to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule
81 governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following
82 the procedures for adoption of rules provided for in this code;

83 (6) The required approval of capital improvement projects exceeding \$3 million pursuant
84 to §18B-19-6 of this code;

85 (7) The required approval of lease-purchase agreements for capital improvements and
86 equipment of \$1.5 million or greater pursuant to §18B-19-11 of this code; and

87 (8) The required approval of real estate transactions, lease purchase, and new building
88 construction exceeding \$1 million pursuant to §18B-19-13 of this code.

89 ~~(g)~~ (f) Not later than the January interims of each year, the commission shall submit a
 90 report to the Legislative Oversight Commission on Education Accountability relating to the
 91 administratively exempted schools' eligibility criteria established by this section, providing the data
 92 for each of the three preceding years, as available, and the three-year average thereof, for each
 93 of the state institutions of higher education under its jurisdiction. The commission shall share the
 94 report with the institutions.

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

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

17 (2) ~~Develop, oversee and advance the promulgation and implementation of a financing~~
 18 ~~rule for state institutions of higher education under its jurisdiction except the exempted schools~~

19 ~~The rule shall meet the following criteria~~ In conjunction with the council, propose emergency and
20 legislative rules in accordance with §29A-3A-1 et seq. and §18B-1-6 of this code to establish a
21 performance-based funding formula model the commission and council shall use, beginning in
22 the fiscal year 2024 budget cycle, in developing their annual budget requests to ensure results-
23 based distribution of appropriations among the state's institutions of higher education, including
24 the statutorily and administratively exempted schools. This funding formula model shall
25 emphasize outcomes focused on student success and post-secondary educational needs in West
26 Virginia as adopted by the Legislature. The formula shall include a range of variables that shall
27 be weighted in a manner that corresponds to each institution's mission and provides incentives
28 for productivity improvements consistent with the goal of strengthening the state's economy and
29 workforce by developing the most competitive and capable graduates in the nation. The rule shall,
30 at a minimum:

31 (A) ~~Provide for an adequate level of educational and general funding for institutions~~
32 ~~pursuant to section five, article one-a of this chapter~~ Establish a set of objective performance
33 metrics that reflect and support the state's higher education goals and priorities and the
34 methodology by which those metrics shall be used in the allocation of state funds;

35 (B) ~~Serve to maintain institutional assets, including, but not limited to, human and physical~~
36 ~~resources and eliminating deferred maintenance~~ Ensure that a portion of each institution's base
37 appropriation is allocated based on outcomes achieved over a defined period of time;

38 (C) ~~Invest and provide incentives for achieving the priority goals in the public policy~~
39 ~~agenda, including, but not limited to, those found in section one-a, article one and article one-d of~~
40 ~~this chapter~~ Incentivize postsecondary results that align with the state's higher education and
41 workforce development priorities;

42 (D) Establish safeguards to ensure stability of the funding formula model including, but
43 not limited to, providing for periodic reviews of and revision to the performance metrics and
44 funding methodology; and

45 (E) Be based upon student progression metrics that reflect the accumulation of credit
46 hours earned; completion metrics that reflect degrees awarded, academic certificates awarded,
47 workforce certificates awarded, and workforce training or contact hours completed; workforce
48 outcomes, based on data provided by Workforce West Virginia, that reflect the number of
49 graduates working in West Virginia or pursuing further education two years after graduation;
50 efficiency metrics that reflect the number of students earning a postsecondary credential
51 compared to the total number of credit hours produced; research and development metrics that
52 reflect the expenditure of non-state funds and, where applicable, patents licensed or otherwise
53 placed into the market by the private sector; and a premium multiplier to prioritized workforce
54 needs of West Virginia as determined by the West Virginia Department of Commerce.

55 (F) The rule shall not use simple enrollment or new program developments not tied to
56 workforce needs as factors of consideration in establishing the funding formula.

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

58 (A) Building public consensus around and sustaining attention to a long-range public policy
59 agenda. In developing the agenda, the commission and council shall seek input from the
60 Legislature, the Governor, the governing boards, and ~~specifically from~~ the State Board of
61 Education and local school districts ~~in order~~ to create the necessary linkages to assure smooth,
62 effective, and seamless movement of students through the public education and postsecondary
63 education systems and to ensure that the needs of public school courses and programs can be
64 fulfilled by the graduates produced and the programs offered;

65 (B) Assisting governing boards ~~to carry~~ in carrying out their duty effectively to govern the
66 individual institutions of higher education;

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

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

69 (B) The Legislature by maintaining a close working relationship with the legislative
70 leadership and the Legislative Oversight Commission on Education Accountability.

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

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

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

76 (8) Establish a formal process for recommending capital investment needs and for
77 determining priorities for state colleges and universities for these investments for consideration
78 by the Governor and the Legislature as part of the appropriation request process pursuant to
79 §18B-19-1 *et seq.* of this code;

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

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

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

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

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

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

99 (15) Approve the total compensation package from all sources for presidents of institutions
100 under its jurisdiction, except the exempted schools, as proposed by the governing boards. The
101 governing boards, except the governing boards of the statutorily exempted schools, must obtain
102 approval from the commission of the total compensation package both when institutional
103 presidents are employed initially and afterward when any change is made in the amount of the
104 total compensation package: *Provided*, That the commission ~~will~~ shall receive notice, but need
105 not approve or confirm, an increase in the compensation of an institutional president that is exactly
106 in the ratio of compensation increases allocated to all institutional employees and approved by
107 the governing board to expressly include the president;

108 (16) Assist and facilitate the work of the institutions to implement the policy of the state to
109 assure that parents and students have sufficient information at the earliest possible age on which
110 to base academic decisions about what is required for students to be successful in college, other
111 postsecondary education, and careers related, as far as possible, to results from current
112 assessment tools in use in West Virginia;

113 (17) Approve and implement a uniform standard jointly with the council to determine which
114 students shall be placed in remedial or developmental courses. The standard shall be aligned
115 with college admission tests and assessment tools used in West Virginia and shall be applied
116 uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of
117 the standard which they shall communicate to the State Board of Education and the State
118 Superintendent of Schools;

119 (18) Jointly with the council and in conjunction with the West Virginia Network, develop
120 and implement an oversight plan to manage systemwide technology, except the exempted
121 schools support the technology needs of the commission, the council, and the institutions by
122 making available leveraged consortium purchasing, software, database and networking support,

123 and other services including, but not limited to, the following:

124 (A) Expanding distance learning and technology networks to enhance teaching and
125 learning, ~~promote~~ and promoting access to quality educational offerings with minimum duplication
126 of effort; and

127 (B) Increasing the delivery of instruction to nontraditional students, ~~to provide~~ providing
128 services to business and industry, and ~~increase~~ increasing the management capabilities of the
129 higher education system.

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

133 (19) ~~Establish and implement policies and procedures~~ Propose rules in accordance with
134 §29A-3A-1 et seq. and §18B-1-6 of this code to ensure that, within sound academic policy, a
135 student may transfer and apply toward the requirements ~~for a bachelor's degree~~ of any
136 postsecondary credential the maximum number of credits earned at any regionally accredited in-
137 state or out-of-state ~~community and technical college with as few requirements~~ institution of higher
138 education in a manner that minimizes the need to repeat courses or ~~to incur additional costs.~~ as
139 ~~are consistent with sound academic policy~~ This requirement applies to transfer processes for all
140 levels of postsecondary programs delivered at community and technical colleges, baccalaureate-
141 degree-granting institutions, and graduate-degree-granting institutions;

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

147 (21) ~~Establish and implement policies and procedures to ensure that a student may~~
148 ~~transfer and apply toward the requirements for a master's degree~~ the maximum number of credits

149 ~~earned at any regionally accredited in-state or out-of-state higher education institution with as few~~
150 ~~requirements to repeat courses or to incur additional costs as are consistent with sound academic~~
151 ~~policy;~~

152 ~~(22)~~(20) ~~Establish and implement policies and programs, in cooperation with the council~~
153 ~~and the governing boards, through which~~ Propose rules in accordance with §29A-3A-1 et seq.
154 and §18B-1-6 of this code to develop a program through which a student who has gained
155 knowledge and skills through employment, participation in education and training at vocational
156 schools or other education institutions or Internet-based education programs may demonstrate,
157 by competency-based assessment, that he or she has the necessary knowledge and skills to be
158 granted academic credit or advanced placement standing toward the requirements of an
159 associate's degree or a bachelor's degree at a state institution of higher education;

160 ~~(23)~~(21) Seek out and attend regional, national, and international meetings and forums on
161 education and workforce development-related topics as, in the commission's discretion, are
162 critical for the performance of their duties as members, for the purpose of keeping abreast of
163 education trends and policies to aid it in developing the policies for this state to meet the
164 established education goals, objectives and priorities pursuant to §18B-1-1a and §18B-1D-1 et
165 seq. of this code;

166 ~~(24)~~(22) Promulgate and implement a rule for ~~higher education governing boards and~~
167 ~~institutions except the statutorily exempted schools and administratively exempted schools to~~
168 follow when considering capital projects pursuant to §18B-19-1 et seq. of this code, which rule
169 shall provide for appropriate deference to the value judgments of governing boards ~~under the~~
170 ~~jurisdiction of the commission~~ and may not apply to the statutorily or administratively exempted
171 schools;

172 ~~(25)~~ (23) Submit to the appropriate agencies of the executive and legislative branches of
173 state government an appropriation request that reflects recommended appropriations for the
174 commission and the governing boards under its jurisdiction, including the statutorily and

175 administratively exempted schools. The commission shall submit as part of its appropriation
176 request the separate recommended appropriation request it received from the council, both for
177 the council and for the governing boards under the council's jurisdiction. The commission annually
178 shall submit the proposed allocations based on ~~subsection (d) of this section~~ the funding formula
179 model required by subdivision (a)(2) of this section:

180 ~~(26)~~(24) Promulgate rules allocating reimbursement of appropriations, if made available
181 by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing
182 services to students with physical, learning, or severe sensory disabilities;

183 ~~(27)~~(25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules
184 necessary or expedient to fulfill the purposes of this chapter and Chapter 18C of this code:

185 ~~(28)~~(26) Determine when a joint rule among the governing boards under its jurisdiction is
186 necessary or required by law and, in those instances, in consultation with the governing boards
187 under its jurisdiction, promulgate the joint rule;

188 ~~(29)~~(27) Promulgate and implement a rule jointly with the council whereby course credit
189 earned at a community and technical college transfers for program credit at any other state
190 institution of higher education and is not limited to fulfilling a general education requirement;

191 ~~(30)~~(28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee
192 policy for all governing boards under the jurisdiction of the commission, except the statutorily and
193 administratively exempted schools. The rule shall include, but is not limited to, the following:

194 (A) Differences among institutional missions;

195 (B) Strategies for promoting student access;

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

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

198 ~~(31) Assist governing boards in actions to implement general disease awareness~~
199 ~~initiatives to educate parents and students, particularly dormitory residents, about meningococcal~~
200 ~~meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and~~

201 ~~activities that can increase risks; measures that can be taken to prevent contact or infection; and~~
202 ~~potential benefits of vaccination. The commission shall encourage governing boards that provide~~
203 ~~medical care to students to provide access to the vaccine for those who wish to receive it; and~~

204 ~~(32)(29)~~ Notwithstanding any other provision of this code to the contrary sell, lease,
205 convey or otherwise dispose of all or part of any real property that it owns, in accordance with
206 §18B-19-1 *et seq.* of this code.

207 ~~(33)(30)~~ Policy analysis and research focused on issues affecting institutions of higher
208 education generally or a geographical region thereof;

209 ~~(34)(31)~~ Development and approval of institutional mission definitions, except the
210 statutorily and administratively exempted schools ~~and administratively exempted schools:~~
211 *Provided,* That the commission may use funds appropriated by the Legislature for incentive funds
212 to influence institutional behavior in ways that are consistent with public priorities, including the
213 statutorily and administratively exempted schools ~~and administratively exempted schools;~~

214 ~~(35)(32)~~ Academic program review and approval for governing boards under its
215 jurisdiction, except the statutorily and administratively exempted schools. The review and
216 approval includes use of institutional missions as a template to judge the appropriateness of both
217 new and existing programs and the authority to implement needed changes.

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

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

225 (i) New programs ~~should~~ may not be implemented which change the institutional mission,
226 unless the institution also receives approval for expanding the institutional mission;

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

229 (I) The expenses ~~will~~ shall be addressed by effective reallocations of existing institutional
230 resources; or

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

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

240 (C) The commission shall approve or disapprove proposed academic degree programs in
241 those instances where approval is required as soon as practicable. The commission shall
242 maintain by rule a format model by which a new program approval shall be requested by an
243 institution. When a request for approval of a new program is submitted to the commission, the
244 chancellor shall provide notice within two weeks as to whether the submission meets the required
245 format, and if it does not the chancellor shall identify each specific deficiency and return the
246 request to the institution. The institution may re-file the request for approval with the commission
247 to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the
248 request meets the required format, the commission shall either approve or disapprove the request
249 for the new program. The commission may not withhold approval unreasonably.

250 ~~(36)~~(33) Distribution of funds appropriated to the commission, including incentive and
251 performance-based funds;

252 ~~(37)~~(34) Administration of state and federal student aid programs under the supervision of

253 the vice chancellor for administration, including promulgation of rules necessary to administer
254 those programs;

255 ~~(38)~~(35) Serving as the agent to receive and disburse public funds when a governmental
256 entity requires designation of a statewide higher education agency for this purpose;

257 ~~(39)~~(36) Developing and distributing information, assessment, accountability, and
258 personnel systems for state colleges and universities, including maintaining statewide data
259 systems that facilitate long-term planning and accurate measurement of strategic outcomes and
260 performance indicators;

261 ~~(40)~~(37) Jointly with the council, promulgating and implementing rules for licensing and
262 oversight for both public and private degree-granting and nondegree-granting institutions that
263 provide postsecondary education courses or programs in the state. The council has authority and
264 responsibility for approval of all postsecondary courses or programs providing community and
265 technical college education as defined in §18B-1-2 of this code;

266 ~~(44)~~(38) Developing, facilitating, and overseeing statewide and regional projects and
267 initiatives related to providing postsecondary education at the baccalaureate level and above such
268 as those using funds from federal categorical programs or those using incentive and performance-
269 based funds from any source;

270 ~~(42)~~(39) (A) For all governing boards under its jurisdiction, except for the statutorily
271 exempted schools, the commission shall review institutional operating budgets, review and
272 approve capital budgets, and distribute incentive and performance-based funds.

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

278 ~~(43)~~(40) May provide information, research, and recommendations to state colleges and

279 universities relating to programs and vocations with employment rates greater than 90 percent
280 within six months post-graduation; and

281 ~~(44)~~(41) May provide information, research and recommendations to state colleges and
282 universities on coordinating with the West Virginia State Board of Education about complimentary
283 programs.

284 (b) In addition to the powers and duties provided in ~~subsections (a) and (b)~~ of this section
285 and any other powers and duties assigned to it by law, the commission has other powers and
286 duties necessary or expedient to accomplish the purposes of this ~~article~~ chapter and Chapter 18C
287 of this code: *Provided*, That the provisions of this subsection ~~shall~~ may not be construed to shift
288 management authority from the governing boards to the commission.

289 (c) The commission may withdraw specific powers of a governing board under its
290 jurisdiction for a period not to exceed two years, if the commission determines that ~~any~~ either of
291 the following conditions exist:

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

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

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

300 ~~(d) The Higher Education Policy Commission shall examine the question of general~~
301 ~~revenue appropriations to individual higher education institutions per student, and per credit hour,~~
302 ~~and by other relevant measures at all higher education institutions, including four-year~~
303 ~~baccalaureate institutions and the community and technical colleges, and on or before January~~
304 ~~1, 2018, the commission shall deliver its report to the Joint Committee on Government and~~

305 ~~Finance and the Legislative Oversight Commission on Education Accountability. This report shall~~
306 ~~include a recommendation to the Legislature on a formula for the allocation of general revenue to~~
307 ~~be appropriated to such institutions that provides for ratable funding across all four-year~~
308 ~~institutions and community and technical colleges on a ratable basis, by enrolled student, by credit~~
309 ~~hour or by other relevant measures. On such basis, the commission shall make a~~
310 ~~recommendation to the Legislature as to the amounts that each such institution should have~~
311 ~~appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general~~
312 ~~revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal~~
313 ~~year 2018~~

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL
COLLEGE EDUCATION.**

§18B-2B-6. Powers and duties of the council.

1 (a) The council is the sole agency responsible for administration of vocational-technical-
2 occupational education and community and technical college education in the state. The council
3 has jurisdiction and authority over the community and technical colleges and the statewide
4 network of independently accredited community and technical colleges as a whole, including
5 community and technical college education programs as defined in §18B-1-2 of this code.

6 (b) The council shall propose rules pursuant to §18B-1-6 of this code and §29A-3A-1 *et*
7 *seq.* of this code to implement the provisions of this section and applicable provisions of §18B-
8 1D-1 *et seq.* of this code:

9 (1) To implement the provisions of §18B-1D-1 *et seq.* of this code relevant to community
10 and technical colleges, the council may propose rules jointly with the commission, or separately,
11 and may choose to address all components of the accountability system in a single rule or may
12 propose additional rules to cover specific components;

13 (2) The rules pertaining to financing policy and benchmarks and indicators required by this

14 section shall be filed with the Legislative Oversight Commission on Education Accountability by
15 October 1, 2008. Nothing in this subsection requires other rules of the council to be promulgated
16 again under the procedure set forth in §29A-3A-1 *et seq.* of this code unless such rules are
17 rescinded, revised, altered or amended; and

18 (3) The Legislature finds that an emergency exists and, therefore, the council shall
19 propose an emergency rule or rules to implement the provisions of this section relating to the
20 financing policy and benchmarks and indicators in accordance with §18B-1-6 of this code and
21 §29A-3A-1 *et seq.* of this code by October 1, 2008. The emergency rule or rules may not be
22 implemented without prior approval of the Legislative Oversight Commission on Education
23 Accountability.

24 (c) The council has the following powers and duties relating to the authority established in
25 subsection (a) of this section:

26 (1) Develop, oversee and advance the public policy agenda for community and technical
27 college education for the purpose of accomplishing the mandates of this section, including, but
28 not limited to, the following:

29 (A) Achieving the goals and objectives established in §18B-1-1 *et seq.* and §18B-1D-1 *et*
30 *seq.* of this chapter;

31 (B) Addressing the goals and objectives contained in the institutional compacts created
32 pursuant to in §18B-1D-7 of this code; and

33 (C) Developing and implementing the master plan described in §18B-1D-5 of this code;

34 (2) Propose a legislative rule pursuant to subsection (b) of this section and §29A-3A-1 *et*
35 *seq.* of this code to develop and implement a financing policy for community and technical college
36 education in West Virginia. The rule shall meet the following criteria:

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

39 (B) Serve to maintain institutional assets, including, but not limited to, human and physical

40 resources and deferred maintenance;

41 (C) Establish a plan for strategic funding to strengthen capacity for support of community
42 and technical college education; and

43 (D) Establish a plan that measures progress and provides performance-based funding to
44 institutions which make significant progress in the following specific areas:

45 (i) Achieving the objectives and priorities established in §18B-1D-1 *et seq.* of this code;

46 (ii) Serving targeted populations, especially working age adults 25 years of age and over;

47 (iii) Providing access to high-cost, high-demand technical programs in every region of the
48 state;

49 (iv) Increasing the percentage of functionally literate adults in every region of the state;

50 and

51 (v) Providing high-quality community and technical college education services to residents
52 of every region of the state.

53 (3) Create a policy leadership structure relating to community and technical college
54 education capable of the following actions:

55 (A) Developing, building public consensus around and sustaining attention to a long-range
56 public policy agenda. In developing the agenda, the council shall seek input from the Legislature
57 and the Governor and specifically from the State Board of Education and local school districts in
58 order to create the necessary linkages to assure smooth, effective and seamless movement of
59 students through the public education and post-secondary education systems and to ensure that
60 the needs of public school courses and programs can be fulfilled by the graduates produced and
61 the programs offered;

62 (B) Ensuring that the governing boards of the institutions under the council's jurisdiction
63 carry out their duty effectively to govern the individual institutions of higher education; and

64 (C) Holding each community and technical college and the statewide network of
65 independently accredited community and technical colleges as a whole accountable for

66 accomplishing their missions and achieving the goals and objectives established in §18B-1-1 *et*
67 *seq.*, §18B-1D-1 *et seq.*, and §18B-3C-1 *et seq.* of this code of this code;

68 (4) Develop for inclusion in the statewide public agenda, a plan for raising education
69 attainment, increasing adult literacy, promoting workforce and economic development and
70 ensuring access to advanced education for the citizens of West Virginia;

71 (5) Provide statewide leadership, coordination, support, and technical assistance to the
72 community and technical colleges and to provide a focal point for visible and effective advocacy
73 for their work and for the public policy agendas approved by the commission and council;

74 (6) Review and adopt annually all institutional compacts for the community and technical
75 colleges pursuant to the provisions of §18B-1D-7 of this code;

76 (7) Fulfill the mandates of the accountability system established in §18B-1D-1 *et seq.* of
77 this code and report on progress in meeting established goals, objectives, and priorities to the
78 elected leadership of the state;

79 (8) Propose a legislative rule pursuant to subsection (b) of this section and §29A-3A-1 *et*
80 *seq.* of this code to establish benchmarks and indicators in accordance with the provisions of this
81 subsection;

82 (9) Establish and implement the benchmarks and performance indicators necessary to
83 measure institutional progress:

84 (A) In meeting state goals, objectives, and priorities established in §18B-1-1 *et seq.* and
85 §18B-1D-1 *et seq.* of this code;

86 (B) In carrying out institutional missions; and

87 (C) In meeting the essential conditions established in §18B-3C-1 *et seq.* of this code;

88 (10) Establish a formal process for identifying needs for capital investments and for
89 determining priorities for these investments for consideration by the Governor and the Legislature
90 as part of the appropriation request process. Notwithstanding the language in §18B-1B-4(11) of
91 this code, the commission is not a part of the process for identifying needs for capital investments

92 for the statewide network of independently accredited community and technical colleges;

93 (11) Draw upon the expertise available within the Governor's Workforce Investment Office
94 and the West Virginia Development Office as a resource in the area of workforce development
95 and training;

96 (12) Acquire legal services that are considered necessary, including representation of the
97 council, its institutions, employees and officers before any court or administrative body,
98 notwithstanding any other provision of this code to the contrary. The counsel may be employed
99 either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not
100 required to, call upon the Attorney General for legal assistance and representation as provided
101 by law;

102 (13) Employ a chancellor for community and technical college education pursuant to §18B-
103 2B-3 of this code;

104 (14) Employ other staff as necessary and appropriate to carry out the duties and
105 responsibilities of the council consistent with the provisions of §18B-4-2 of this code;

106 (15) Employ other staff as necessary and appropriate to carry out the duties and
107 responsibilities of the council who are employed solely by the council;

108 (16) Provide suitable offices in Charleston for the chancellor and other staff: *Provided,*
109 That the offices may be located outside of Charleston at a technology and research center:
110 *Provided, however,* That the current employees of WVNET shall not be moved from Monongalia
111 County without legislative approval;

112 (17) Approve the total compensation package from all sources for presidents of community
113 and technical colleges, as proposed by the governing boards. The governing boards must obtain
114 approval from the council of the total compensation package both when presidents are employed
115 initially and subsequently when any change is made in the amount of the total compensation
116 package;

117 (18) Establish and implement policies and procedures to ensure that students may transfer

118 and apply toward the requirements for a degree the maximum number of credits earned at any
119 regionally accredited in-state or out-of-state higher education institution with as few requirements
120 to repeat courses or to incur additional costs as is consistent with sound academic policy;

121 (19) Establish and implement policies and programs, jointly with the community and
122 technical colleges, through which students who have gained knowledge and skills through
123 employment, participation in education and training at vocational schools or other education
124 institutions, or internet-based education programs, may demonstrate by competency-based
125 assessment that they have the necessary knowledge and skills to be granted academic credit or
126 advanced placement standing toward the requirements of an associate degree or a bachelor's
127 degree at a state institution of higher education;

128 (20) Seek out and attend regional and national meetings and forums on education and
129 workforce development-related topics, as council members consider critical for the performance
130 of their duties. The council shall keep abreast of national and regional community and technical
131 college education trends and policies to aid members in developing the policies for this state that
132 meet the education goals and objectives established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.*
133 of this code;

134 (21) Assess community and technical colleges for the payment of expenses of the council
135 or for the funding of statewide services, obligations or initiatives related specifically to the
136 provision of community and technical college education;

137 (22) Promulgate rules allocating reimbursement of appropriations, if made available by the
138 Legislature, to community and technical colleges for qualifying noncapital expenditures incurred
139 in the provision of services to students with physical, learning or severe sensory disabilities;

140 (23) Assume the prior authority of the commission in examining and approving tuition and
141 fee increase proposals submitted by community and technical college governing boards as
142 provided in §18B-10-1 of this code;

143 (24) Develop and submit to the commission, a single budget for community and technical

144 college education that reflects recommended appropriations for community and technical colleges
145 and that meets the following conditions:

146 (A) Incorporates the provisions of the financing rule mandated by this section to measure
147 and provide performance funding to institutions which achieve or make significant progress
148 toward achieving established state objectives and priorities;

149 (B) Considers the progress of each institution toward meeting the essential conditions set
150 forth in §18B-3C-3 of this code, including independent accreditation; and

151 (C) Considers the progress of each institution toward meeting the goals, objectives, and
152 priorities established in §18B-1D-1 *et seq.* of this code and its approved institutional compact.

153 (25) Administer and distribute the independently accredited community and technical
154 college development account;

155 (26) Establish a plan of strategic funding to strengthen capacity for support and assure
156 delivery of high-quality community and technical college education in all regions of the state;

157 (27) Foster coordination among all state-level, regional and local entities providing post-
158 secondary vocational education or workforce development and coordinate all public institutions
159 and entities that have a community and technical college mission;

160 (28) Assume the principal responsibility for oversight of those community and technical
161 colleges seeking independent accreditation and for holding governing boards accountable for
162 meeting the essential conditions pursuant to §18B-3C-1 *et seq.* of this code;

163 (29) Advise and consent in the appointment of the presidents of the community and
164 technical colleges pursuant to §18B-1B-6 of this code. The role of the council in approving a
165 president is to assure through personal interview that the person selected understands and is
166 committed to achieving the goals and objectives established in the institutional compact and in
167 §18B-1-1 *et seq.*, §18B-1D-1 *et seq.*, and §18B-3C-1 *et seq.* of this code;

168 (30) Provide a single, statewide link for current and prospective employers whose needs
169 extend beyond one locality;

170 (31) Provide a mechanism capable of serving two or more institutions to facilitate joint
171 problem-solving in areas including, but not limited to the following:

172 (A) Defining faculty roles and personnel policies;

173 (B) Delivering high-cost technical education programs across the state;

174 (C) Providing one-stop service for workforce training to be delivered by multiple
175 institutions; and

176 (D) Providing opportunities for resource-sharing and collaborative ventures;

177 (32) Provide support and technical assistance to develop, coordinate, and deliver effective
178 and efficient community and technical college education programs and services in all regions of
179 the state;

180 (33) Assist the community and technical colleges in establishing and promoting links with
181 business, industry and labor in the geographic areas for which each community and technical
182 college is responsible;

183 (34) Develop alliances among the community and technical colleges for resource sharing,
184 joint development of courses and courseware, and sharing of expertise and staff development;

185 (35) Serve aggressively as an advocate for development of a seamless curriculum;

186 (36) Cooperate with all providers of education services in the state to remove barriers
187 relating to a seamless system of public and higher education and to transfer and articulate
188 between and among community and technical colleges, state colleges and universities and public
189 education, preschool through grade 12;

190 (37) Encourage the most efficient use of available resources;

191 (38) Coordinate with the commission in informing public school students, their parents and
192 teachers of the academic preparation that students need in order to be prepared adequately to
193 succeed in their selected fields of study and career plans, including presentation of academic
194 career fairs;

195 (39) Jointly with the commission, approve and implement a uniform standard, as

196 developed by the chancellors, to determine which students shall be placed in remedial or
197 developmental courses. The standard shall be aligned with college admission tests and
198 assessment tools used in West Virginia and shall be applied uniformly by the governing boards
199 throughout the public higher education system. The chancellors shall develop a clear, concise
200 explanation of the standard which the governing boards shall communicate to the State Board of
201 Education and the State Superintendent of Schools;

202 (40) Develop and implement strategies and curriculum for providing developmental
203 education which shall be applied by any state institution of higher education providing
204 developmental education;

205 (41) Develop a statewide system of community and technical college programs and
206 services in every region of West Virginia for competency-based certification of knowledge and
207 skills, including a statewide competency-based associate degree program;

208 (42) Review and approve all institutional master plans for the community and technical
209 colleges pursuant to §18B-2A-4 of this code;

210 (43) Propose rules for promulgation pursuant to subsection (b) of this section and §29A-
211 3A-1 *et seq.* of this code that are necessary or expedient for the effective and efficient
212 performance of community and technical colleges in the state;

213 (44) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative
214 rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule
215 transferred pursuant to rules adopted by the council and provide technical assistance to the
216 institutions under its jurisdiction to aid them in promulgating rules;

217 (45) Develop for inclusion in the higher education report card, as defined in §18B-1D-8 of
218 this code, a separate section on community and technical colleges. This section shall include, but
219 is not limited to, evaluation of the institutions based upon the benchmarks and indicators
220 developed in subdivision (9) of this subsection;

221 (46) Facilitate continuation of the Advantage Valley Community College Network under

222 the leadership and direction of Marshall Community and Technical College;

223 (47) Initiate and facilitate creation of other regional networks of affiliated community and
224 technical colleges that the council finds to be appropriate and in the best interests of the citizens
225 to be served;

226 (48) Develop with the State Board of Education plans for secondary and post-secondary
227 vocational-technical-occupational and adult basic education, including, but not limited to the
228 following:

229 (A) Policies to strengthen vocational-technical-occupational and adult basic education;
230 and

231 (B) Programs and methods to assist in the improvement, modernization and expanded
232 delivery of vocational-technical-occupational and adult basic education programs;

233 (49) Distribute federal vocational education funding provided under the Carl D. Perkins
234 Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing
235 financial assistance among secondary and post-secondary vocational-technical-occupational and
236 adult basic education programs to help meet the public policy agenda.

237 In distributing funds the council shall use the following guidelines:

238 (A) The State Board of Education shall continue to be the fiscal agent for federal vocational
239 education funding;

240 (B) The percentage split between the State Board of Education and the council shall be
241 determined by rule promulgated by the council under the provisions of §29A-3A-1 *et seq.* of this
242 code. The council shall first obtain the approval of the State Board of Education before proposing
243 a rule;

244 (50) Collaborate, cooperate and interact with all secondary and post-secondary
245 vocational-technical-occupational and adult basic education programs in the state, including the
246 programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of
247 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of

248 seamless curriculum and the elimination of duplicative programs;

249 (51) Coordinate the delivery of vocational-technical-occupational and adult basic
250 education in a manner designed to make the most effective use of available public funds to
251 increase accessibility for students;

252 (52) Analyze and report to the State Board of Education on the distribution of spending for
253 vocational-technical-occupational and adult basic education in the state and on the availability of
254 vocational-technical-occupational and adult basic education activities and services within the
255 state;

256 (53) Promote the delivery of vocational-technical-occupational education, adult basic
257 education and community and technical college education programs in the state which emphasize
258 the involvement of business, industry and labor organizations;

259 (54) Promote public participation in the provision of vocational-technical-occupational
260 education, adult basic education and community and technical education at the local level,
261 emphasizing programs which involve the participation of local employers and labor organizations;

262 (55) Promote equal access to quality vocational-technical-occupational education, adult
263 basic education and community and technical college education programs to handicapped and
264 disadvantaged individuals, adults in need of training and retraining, single parents, homemakers,
265 participants in programs designed to eliminate sexual bias and stereotyping and criminal
266 offenders serving in correctional institutions;

267 (56) Meet annually between the months of October and December with the Advisory
268 Committee of Community and Technical College Presidents created pursuant to §18B-2B-8 of
269 this code to discuss those matters relating to community and technical college education in which
270 advisory committee members or the council may have an interest;

271 (57) Accept and expend any gift, grant, contribution, bequest, endowment or other money
272 for the purposes of this article;

273 (58) Assume the powers set out in §18B-2B-9 of this code. The rules previously

274 promulgated by the State College System Board of Directors pursuant to that section and
275 transferred to the commission are hereby transferred to the council and shall continue in effect
276 until rescinded, revised, altered or amended by the council;

277 (59) Pursuant to the provisions of subsection (b) of this section and §29A-3A-1 *et seq.* of
278 this code, promulgate a uniform joint legislative rule with the commission for the purpose of
279 standardizing, as much as possible, the administration of personnel matters among the
280 institutions of higher education;

281 (60) Determine when a joint rule among the governing boards of the community and
282 technical colleges is necessary or required by law and, in those instances and in consultation with
283 the governing boards, promulgate the joint rule;

284 (61) Promulgate a joint rule with the commission establishing tuition and fee policy for all
285 institutions of higher education. The rule shall include, but is not limited to, the following:

286 (A) Comparisons with peer institutions;

287 (B) Differences among institutional missions;

288 (C) Strategies for promoting student access;

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

290 (E) Any other policies the commission and council consider appropriate;

291 (62) In cooperation with the West Virginia Division of Highways, study a method for
292 increasing the signage signifying community and technical college locations along the state
293 interstate highways, and report to the Legislative Oversight Commission on Education
294 Accountability regarding any recommendations and required costs; and

295 (63) Implement a policy jointly with the commission whereby any course credit earned at
296 a community and technical college transfers for program credit at any other state institution of
297 higher education and is not limited to fulfilling a general education requirement.

298 (d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this section,
299 the council has the following general powers and duties related to its role in developing,

300 articulating and overseeing the implementation of the public policy agenda for community and
301 technical colleges:

302 (1) Planning and policy leadership including a distinct and visible role in setting the state's
303 policy agenda for the delivery of community and technical college education and in serving as an
304 agent of change;

305 (2) Policy analysis and research focused on issues affecting the community and technical
306 college network as a whole or a geographical region thereof;

307 (3) Development and implementation of each community and technical college mission
308 definition including use of incentive and performance funds to influence institutional behavior in
309 ways that are consistent with achieving established state goals, objectives, and priorities;

310 (4) Academic program review and approval for the institutions under its jurisdiction,
311 including the use of institutional missions as a template to judge the appropriateness of both new
312 and existing programs and the authority to implement needed changes;

313 (5) Development of budget and allocation of resources for institutions delivering
314 community and technical college education, including reviewing and approving institutional
315 operating and capital budgets and distributing incentive and performance-based funding;

316 (6) Acting as the agent to receive and disburse public funds related to community and
317 technical college education when a governmental entity requires designation of a statewide higher
318 education agency for this purpose;

319 (7) Development, establishment and implementation of information, assessment and
320 internal accountability systems, including maintenance of statewide data systems that facilitate
321 long-term planning and accurate measurement of strategic outcomes and performance indicators
322 for community and technical colleges;

323 (8) Jointly with the commission, development, establishment and implementation of
324 policies for licensing and oversight of both public and private degree-granting and nondegree-
325 granting institutions that provide post-secondary education courses or programs;

326 (9) Development, implementation and oversight of statewide and regionwide projects and
327 initiatives related specifically to providing community and technical college education such as
328 those using funds from federal categorical programs or those using incentive and performance-
329 based funding from any source; and

330 (10) Quality assurance that intersects with all other duties of the council particularly in the
331 areas of planning, policy analysis, program review and approval, budgeting and information and
332 accountability systems.

333 (e) The council may withdraw specific powers of a governing board under its jurisdiction
334 for a period not to exceed two years if the council makes a determination that any of the following
335 conditions exist:

336 (1) The governing board has failed for two consecutive years to develop an institutional
337 compact as required in §18B-1D-7 of this code;

338 (2) The council has received information, substantiated by independent audit, of significant
339 mismanagement or failure to carry out the powers and duties of the board of governors according
340 to state law; or

341 (3) Other circumstances which, in the view of the council, severely limit the capacity of the
342 board of governors to carry out its duties and responsibilities.

343 The period of withdrawal of specific powers may not exceed two years during which time
344 the council is authorized to take steps necessary to reestablish the conditions for restoration of
345 sound, stable and responsible institutional governance.

346 (f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of
347 this section and any others assigned to it by law, the council has those powers and duties
348 necessary or expedient to accomplish the purposes of this article; and

349 (g) When the council and commission, each, is required to consent, cooperate, collaborate
350 or provide input into the actions of the other the following conditions apply:

351 (1) The body acting first shall convey its decision in the matter to the other body with a

352 request for concurrence in the action;

353 (2) The commission or the council, as the receiving body, shall place the proposal on its
354 agenda and shall take final action within 60 days of the date when the request for concurrence is
355 received; and

356 (3) If the receiving body fails to take final action within sixty days, the original proposal
357 stands and is binding on both the commission and the council.

358 (h) Any community and technical college or free-standing community and technical college
359 as those terms are defined in §18B-1-2 of this code that has a state appropriation to that school
360 which is less than 40 percent of the school's gross annual revenue for the three immediately
361 preceding consecutive years shall be statutorily exempt from oversight of the council as that term
362 is defined in §18B-1-2 of this code. To certify their status as exempt, a community and technical
363 college or free-standing community and technical college shall have an independent accountant
364 prepare an audit of the gross revenue of the community and technical college or free-standing
365 community and technical college for the three immediately preceding consecutive years. The
366 independent accountant shall take into consideration all revenue sources contributing to the gross
367 revenue of the community and technical college or free-standing community and technical college
368 in the audit over that three-year period. Once the audit is complete, the independent accountant
369 shall certify the percentage of the funding of the community and technical college or free-standing
370 community and technical college that is attributable to state appropriations over that three-year
371 period. The school may then provide the results to the council. Upon receipt, the council shall
372 examine the audit. Should this figure for that three immediately preceding consecutive year period
373 clearly demonstrate that the state appropriation of the school is less than 40 percent of the gross
374 annual revenue of the community and technical college or free-standing community and technical
375 college, the council shall exempt the community and technical college or free-standing community
376 and technical college from oversight by the council. To maintain this exemption status, the
377 community and technical college or free-standing community and technical college shall provide

- 378 the audit described in this subsection annually by December 31 of each year. Failure to do so
- 379 would render the exemption void and the school would be subject to oversight by the council.

NOTE: The purpose of this bill is to clarify the powers and duties of the Higher Education Policy Commission, establish additional criteria for a state college or university to be considered administratively and programmatically exempt; direct the Higher Education Policy Commission to develop and implement a funding formula model; provide that the funding formula shall govern the appropriation requests to the Legislature regarding distribution of general revenue to the state's institutions of higher education; provide for rulemaking; set forth factors to be included in the rule; set out factors which may not be included in the rule; clarify the powers and duties of the West Virginia Council for Community and Technical College Education; allow for an exemption from oversight by the council in certain circumstances; require an independent audit; and provide for the audit annually.

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