

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 602

BY SENATORS GRADY, TARR, TRUMP, AND SWOPE

[Originating in the Committee on Education; reported
on February 16, 2023]

1 A BILL to amend and reenact §18B-1-1f of the Code of West Virginia, 1931, as amended, relating
2 to authorizing Bluefield State University and West Virginia State University to offer
3 associate degrees on their campuses without Higher Education Policy Commission or
4 Community and Technical College Council approval; and providing exception.

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~~ enable
26 informed 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 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~~ address loss of an
44 administratively 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 notwithstanding~~ Notwithstanding any
67 provision of this ~~section~~ code to the contrary:

68 (A) ~~any~~ Any college or university shall be exempt from the requirement that the
69 commission approve the establishment of new four-year programs on their own campuses for
70 programs incentivized within the funding formula established in §18B-1B-4 of this code if the state

71 appropriation to that school is less than 40 percent of their operating expenses for three
72 consecutive years; and

73 (B) Due to the need to fulfill their historical mission as historically black colleges and
74 universities, Bluefield State University and West Virginia State University shall be authorized to
75 offer associate degrees on their campuses without commission or council approval: *Provided,*
76 That neither institution may begin an associate degree program that is a duplicate of a program
77 that is currently offered by or planned to be offered by a community and technical college that is
78 in the same community and technical college/career and technical education consortia planning
79 district, as designated by §18B-3C-4 of this code, as the institution. A community and technical
80 college may only demonstrate that it plans to offer a program by showing that it has notified its
81 accreditor of its plans to offer the program or that it has received funding to offer the program.

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

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

87 (2) The development and approval of institutional mission definitions pursuant to §18B-
88 1B-4(a)(34) of this code;

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

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

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

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

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

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

102 (f) Not later than the January interims of each year, the commission shall submit a report
103 to the Legislative Oversight Commission on Education Accountability relating to the
104 administratively exempted school's eligibility criteria established by this section, providing the data
105 for each of the three preceding years, as available, and the three-year average thereof, for each
106 of the state institutions of higher education under its jurisdiction. The commission shall share the
107 report with the institutions.