

18B-1B-4. Powers and duties of Higher Education Policy Commission.

(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the council, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm or approve certain actions undertaken by governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to article one-d of this chapter to address major challenges facing the state, including, but not limited to, the following:

(A) The goals, objectives and priorities established in this chapter including specifically those goals, objectives and priorities pertaining to the compacts created pursuant to section seven, article one-d of this chapter; and

(B) Development of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;

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

(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;

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

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;

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

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

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

(4) Except the exempted schools, review and comment on each compact for the governing boards under its jurisdiction, and final confirmation of each compact;

- (5) Review and confirm the bi-annual updates of the institutional compacts, except the exempted schools;
- (6) Serve as a point of contact to state policymakers:
 - (A) The Governor for the public policy agenda; and
 - (B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability.
- (7) Upon request, provide shared services to a state institution of higher education;
- (8) Administer scholarship and grant programs as provided for in this code;
- (9) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;
- (10) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter;
- (11) Except the exempted schools, develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;
- (12) Except the exempted schools, ensure that governing boards manage capital projects and facilities needs effectively, including review and approval of capital projects, in accordance with article nineteen of this chapter;
- (13) Acquire legal services as considered necessary, including representation of the commission, 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 basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;
- (14) Employ a Chancellor for Higher Education pursuant to section five of this article;
- (15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter;
- (16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff;
- (17) Advise and confirm in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article, except the exempted schools. The role of the commission in confirming an institutional president is to assure through personal interview

that the person selected understands and is committed to achieving the goals, objectives and priorities set forth in the compact, in section one-a, article one and article one-d of this chapter;

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

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

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

(21) Jointly with the council, develop and implement an oversight plan to manage systemwide technology except the exempted schools, including, but not limited to, the following:

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

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

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

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

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

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

(25) Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be 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;

(26) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives and priorities pursuant to section one-a, article one and article one-d of this chapter;

(27) Promulgate and implement a rule for higher education governing boards and institutions, except the exempted schools, to follow when considering capital projects pursuant to article nineteen of this chapter, which rule shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission;

(28) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council's jurisdiction, including the exempted schools. The commission annually shall submit the proposed allocations based on each institution's progress toward meeting the goals of its compact;

(29) The commission may assess institutions under its jurisdiction, including the exempted schools, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state: Provided, That the commission may not assess institutions pursuant to this subdivision on or after July 1, 2018;

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

(31) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter;

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

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

(34) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

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

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

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

(36) Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.

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

(38) Development and approval of institutional mission definitions except the exempted schools, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

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

(A) The commission's authority to review and approve academic programs for the exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: Provided, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission's authority as provided in section two, article one-c of this chapter;

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

- (1) New programs should not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;
- (2) New programs which will require significant additional expense investments for implementation should not be implemented unless the institution demonstrates that:
 - (i) The expenses will be addressed by effective reallocations of existing institutional resources; or
 - (ii) The expenses can be legitimately spread out over future years and will be covered by reasonably anticipated additional net revenues from new enrollments;
- (3) A new undergraduate program which is significantly similar to an existing program already in the geographic service area should not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: Provided, That the academic programs of the exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.
- (C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may re-file the request for approval with the commission to address any identified deficiencies. Within thirty days after the chancellor's confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.
- (40) Distribution of funds appropriated to the commission, including incentive and performance-based funds;
- (41) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;
- (42) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;
- (43) Developing and distributing information, assessment, accountability and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;
- (44) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in section two, article one of this chapter;
- (45) Developing, facilitating, and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using

funds from federal categorical programs or those using incentive and performance-based funds from any source;

(46) (A) For all governing boards under its jurisdiction, except for the exempted schools, the commission shall review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds;

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

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

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

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

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

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

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

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

(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at all higher education institutions, including four-year baccalaureate institutions and the community and technical colleges, and on or before January 1, 2018, the commission shall deliver its report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. This report shall include a recommendation to the Legislature on a formula for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. On such basis, the commission shall make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general

revenue budget for fiscal year 2019, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal year 2018.